PHILIPPINE REPORTS

VOL. 828

MARCH 14, 2018 TO MARCH 21, 2018

VOLUME 828

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

MARCH 14, 2018 TO MARCH 21, 2018

SUPREME COURT
MANILA
2019

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2019

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

FE CRESCENCIA QUIMSON-BABOR
ASSISTANT CHIEF OF OFFICE

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY VI & CHIEF, LAW REPORTS DIVISION

FLOYD JONATHAN LIGOT TELAN
COURT ATTORNEY VI & CHIEF, EDITORIAL DIVISION

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY V & CHIEF, RECORDS DIVISION

LEUWELYN TECSON-LAT
COURT ATTORNEY V

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY IV

LORELEI SANTOS BAUTISTA
COURT ATTORNEY III

MA. CHRISTINA GUZMAN CASTILLO
COURT ATTORNEY II

SUPREME COURT OF THE PHILIPPINES

HON. MARIA LOURDES P.A. SERENO, Chief Justice
HON. ANTONIO T. CARPIO, Senior Associate Justice
HON. PRESBITERO J. VELASCO, JR., Associate Justice
HON. TERESITA J. LEONARDO-DE CASTRO, Associate Justice
HON. DIOSDADO M. PERALTA, Associate Justice
HON. LUCAS P. BERSAMIN, Associate Justice
HON. MARIANO C. DEL CASTILLO, Associate Justice
HON. ESTELA M. PERLAS-BERNABE, Associate Justice
HON. MARVIC MARIO VICTOR F. LEONEN, Associate Justice
HON. FRANCIS H. JARDELEZA, Associate Justice
HON. ALFREDO BENJAMIN S. CAGUIOA, Associate Justice
HON. SAMUEL R. MARTIRES, Associate Justice
HON. NOEL G. TIJAM, Associate Justice
HON. ANDRES B. REYES, JR., Associate Justice
HON. ALEXANDER G. GESMUNDO, Associate Justice

ATTY. EDGAR O. ARICHETA, Clerk of Court En Banc
ATTY. ANNA-LI R. PAPA-GOMBIO, Deputy Clerk of Court En Banc

FIRST DIVISION

Chairperson

Hon. Maria Lourdes P.A. Sereno

Members

Hon. Teresita J. Leonardo-De Castro
Hon. Mariano C. Del Castillo
Hon. Francis H. Jaredeleza
Hon. Noel G. Tijam

Division Clerk of Court

Atty. Librada C. Buena

SECOND DIVISION

Chairperson

Hon. Antonio T. Carpio

Members

Hon. Diosdado M. Peralta
Hon. Estela M. Perlas-Bernabe
Hon. Alfredo Benjamin S. Caguioa
Hon. Andres B. Reyes, Jr.

Division Clerk of Court

Atty. Ma. Lourdes C. Perfecto

THIRD DIVISION

Chairperson

Hon. Presbitero J. Velasco, Jr.

Members

Hon. Lucas P. Bersamin
Hon. Marvic Mario Victor F. Leonen
Hon. Samuel R. Martires
Hon. Alexander G. Gesmundo

Division Clerk of Court

Atty. Wilfredo Y. Lapitan

PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 6927. March 14, 2018]

TOMAS N. OROLA and PHIL. NIPPON AOI INDUSTRY, INC., *complainants, vs.* **ATTY. ARCHIE S. BARIBAR,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARY PUBLIC; IMPORTANCE OF NOTARIZATION, EMPHASIZED.— Notarization is not an empty, meaningless, or routinary act. It is impressed with substantial public interest, and only those who are qualified or authorized may act as such. It is not a purposeless ministerial act of acknowledging documents executed by parties who are willing to pay fees for notarization. Notarization of documents ensures the authenticity and reliability of a document. Notarization of a private document converts such document into a public one, and renders it admissible in court without further proof of its authenticity. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument.

2. ID.; ID.; NECESSITY OF THE AFFIANT'S PERSONAL APPEARANCE BEFORE THE NOTARY PUBLIC, EMPHASIZED.— A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein.

It is his duty to demand that the document presented to him for notarization be signed in his presence. The purpose of the requirement of personal appearance by the acknowledging party before the notary public is to enable the latter to verify the genuineness of the signature of the former. It may be added, too, that only by such personal appearance may the notary public be able to ascertain from the acknowledging party himself that the instrument or document is his own free act and deed. The 2004 Rules on Notarial Practice stresses the necessity of the affiant's personal appearance before the notary public. Rule II, Section 1 and Rule IV, Section 2 (b) provide: SECTION 1. *Acknowledgment*. - "*Acknowledgment*" refers to an act in which an individual on a single occasion: (a) **appears in person before the notary public and presents an integrally complete instrument or document;** (b) **is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules;** and x x x SEC. 2. *Prohibitions*. — ... (b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document — (1) is **not in the notary's presence personally at the time of the notarization**.

3. ID.; ID.; ID.; PENALTY FOR VIOLATION THEREOF.— Jurisprudence provides that a notary public who fails to discharge his duties as such is meted out the following penalties: (1) revocation of notarial commission; (2) disqualification from being commissioned as notary public; and (3) suspension from the practice of law — the terms of which vary based on the circumstances of each case.

APPEARANCES OF COUNSEL

Lope E. Feble for complainants.

D E C I S I O N

PERALTA, *J.*:

The case stemmed from a Complaint[1] dated October 17, 2005 filed before this Court by complainants Tomas N. Orola (*Orola*)

[1] *Rollo,* Vol. I, pp. 1-9.

and Phil. Nippon AOI Industry, Inc. (*Phil. Nippon*) against Atty. Archie S. Baribar (*Baribar*), for allegedly inventing numerous offenses against them, procuring documents with forged signatures, representing a person not his client, and notarizing a document without the person appearing before him as required by law, in violation of his lawyer's oath and Rule 138, Section 20 (c), (d) and (g) of the Rules of Court.

Complainants alleged that Baribar filed a baseless labor case on behalf of his twenty-four (24) clients against them. Orola denied any connection with AOI Kogyo Company Ltd.-Japan which was allegedly not paying labor benefits. In the appeal filed before the National Labor Relations Commission (*NLRC*), Baribar included certain individuals who were not original complainants. Complainants further averred that Baribar notarized the Motion for Reconsideration on September 19, 2005 without the personal appearance of Docufredo Claveria (*Claveria*) since the records of the Bureau of Immigration show that he was overseas at that time. It was also mentioned that Baribar has a prior administrative case, which demonstrates his penchant for committing acts inimical to the image of the legal profession.

In his Comment,[2] Baribar denied all the allegations against him. He claimed that the administrative complaint was a mere harassment suit filed by a political opponent's brother whose wounded family pride caused them to pursue imaginary causes of action against him. During the campaign for 2004 congressional elections, Orola's family's employees approached him to represent them; however, he suggested that they file the case after the elections to avoid misinterpretation. The labor complaint was not baseless since it was supported by a joint affidavit of his clients against Orola and Phil. Nippon.

Sometime in March 2004, he prepared an "Authority to Represent" document. He requested Claveria, Apolonio Akol, Jr. (*Akol*) and Connie Labrador (*Labrador*) to obtain the signatures of the others who live in different municipalities of

[2] *Id.* at 72-84.

Negros Occidental. On September 6, 2004, he personally met 24 of the 27 signatories, asked them to produce their residence certificates and confirm their signature in the document. He confirmed the identities of the others who were unable to bring their residence certificates through their leaders. He overlooked the notarization of the document and was only able to notarize the same on April 15, 2005 because of the renovation of their law office from October 2004 to February 2005. He averred that his mistake to strike through the names of four individuals in the Authority to Represent and verification of the labor complaint left the impression that the latter were parties to the appeal.

Akol and Labrador signed the verification of the motion for reconsideration in his presence. He then asked them to secure Claveria's signature. Thereafter, he received the verification on the last day of filing, and did not hesitate to notarize the same since he personally knew Claveria and was familiar with the latter's signature. He claimed that he acted in the best interest of his client and in good faith.

In a Resolution[3] dated November 22, 2006, the Court referred the case to the Integrated Bar of the Philippines (*IBP*) for investigation, report and recommendation or decision.

On October 30, 2008, IBP Commissioner Rico A. Limpingco (*Commissioner Limpingco*) submitted his Report recommending, thus:

> Given the foregoing circumstances, it is therefore recommended that respondent Atty. Archie Baribar be REPRIMANDED, that his incumbent notarial commission, if any, be REVOKED, and that he be prohibited from being commissioned as a notary public for three (3) years, effective immediately, with a stern warning that [a] repetition of the same or similar conduct in the future will be dealt with more severely.[4]

---

[3] *Id.* at 92.

[4] *Rollo,* Vol. IV, p. 9.

In his report, Commissioner Limpingco stated that an attorney should not be administratively sanctioned for filing a suit on behalf of his client, or for availing of proper procedural remedies, since the choice of legal strategy or theory is his sole concern. Complainants may or may not be liable in the labor case, but the administrative proceeding is not the proper forum to resolve the issue. An examination of the joint affidavit reveals that one Romulo Orola merely stated that he did not authorize any lawyer to represent him, and that he never appeared before Baribar to subscribe any document. Thus, it was not established that he procured documents with forged signatures. Baribar was careless in failing to remove the names of four individuals in the pleadings. He and his clients could not have gained any kind of possible benefit or advantage to the said error.

Lastly, Baribar did not deny that Claveria was not present when he notarized the document on September 19, 2005. When he asked Akol and Labrador to obtain the signature for him, he effectively admitted that it was not his intent to require Claveria's personal presence before him. The Notarial Law mandates that a notary public shall not perform a notarial act if the person involved as a signatory to the instrument is not in his presence personally at the time of notarization.

The Board of Governors adopted the findings of the IBP Commissioner, but modified the recommendation in Resolution No. XVIII-2009-17, to wit:

RESOLVED to *ADOPT* and *APPROVE*, as it is hereby *ADOPTED* and *APPROVED*, ***with modification***, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution [as] Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and for performing a notarial act without requiring the personal appearance of the person involved as signatory to the document at the time of the notarization, Atty. Archie S. Baribar is hereby ***SUSPENDED*** from the practice of law for one (1) year and ***DISQUALIFICATION*** from being commissioned as notary public for two (2) years.[5]

---

[5] *Id.* at 1.

Baribar moved for the reconsideration of the above decision, but the same was denied. Resolution No. XX-2012-619 reads:

RESOLVED to unanimously *DENY* Respondent's Motion for Reconsideration there being no cogent reason to reverse the findings of the Commission and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, Resolution No. XVIII-2009-17 dated February 19, 2009 is hereby ***AFFIRMED***.

The Court's Ruling

The Court agrees with the recommendation of the IBP Board of Governors.

In this case, the Bureau of Immigration certified that Claveria departed from the Philippines on April 27, 2005, and that his name did not appear in its database file of Arrival from April 28, 2005 to October 17, 2005.[6] Baribar also readily admits that Claveria was not present when he notarized the Motion for Reconsideration on September 19, 2005. He explained that he asked the other two affiants, Akol and Labrador, to obtain Claveria's signature. He notarized the signed verification he received as he personally knew Claveria and was familiar with his signature.

Notarization is not an empty, meaningless, or routinary act. It is impressed with substantial public interest, and only those who are qualified or authorized may act as such. It is not a purposeless ministerial act of acknowledging documents executed by parties who are willing to pay fees for notarization.[7] Notarization of documents ensures the authenticity and reliability of a document. Notarization of a private document converts such document into a public one, and renders it admissible in court without further proof of its authenticity. Courts, administrative agencies and the public at large must be able

---

[6] *Rollo,* Vol. I, pp. 56, 58.

[7] *Sappayani v. Gasmen,* 768 Phil. 1, 8 (2015).

to rely upon the acknowledgment executed by a notary public and appended to a private instrument.[8]

A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein.[9] It is his duty to demand that the document presented to him for notarization be signed in his presence.[10] The purpose of the requirement of personal appearance by the acknowledging party before the notary public is to enable the latter to verify the genuineness of the signature of the former. It may be added, too, that only by such personal appearance may the notary public be able to ascertain from the acknowledging party himself that the instrument or document is his own free act and deed.[11]

The 2004 Rules on Notarial Practice stresses the necessity of the affiant's personal appearance before the notary public. Rule II, Section 1 and Rule IV, Section 2 (b) provide:

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

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

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

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

---

[8] *Spouses Anudon v. Atty. Cefra*, 753 Phil. 421, 428 (2015).

[9] *Id.*

[10] *Spouses Domingo v. Reed*, 513 Phil. 339, 350 (2005).

[11] *Flores v. Atty. Chua,* 366 Phil. 132, 152 (1999).

x x x x x x x x x

SEC. 2. *Prohibitions.* — . . .

(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document —

> (1) is **not in the notary's presence personally at the time of the notarization**; and
>
> (2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

The responsibility to faithfully observe and respect the legal solemnity of the oath in an acknowledgment or *jurat* is more pronounced when the notary public is a lawyer because of his solemn oath under the Code of Professional Responsibility to obey the laws and to do no falsehood or consent to the doing of any. Lawyers commissioned as notaries public are mandated to discharge with fidelity the duties of their offices, such duties being dictated by public policy and impressed with public interest.[12]

As a lawyer, Baribar is expected at all times to uphold the integrity and dignity of the legal profession and refrain from any act or omission which might lessen the trust and confidence reposed by the public in the integrity of the legal profession.

As to the penalty, Baribar alleges in his Supplication dated June 24, 2009 that his penalty was grossly disproportionate and inequitable. He cites the 1995 case of *Gamido v. New Bilibid Prisons (NBP) Officials*[13] where the Court imposed a fine of Five Thousand Pesos (₱5,000.00) to the lawyer who notarized the *jurat* in the verification of the petition in the absence of his client who was then an inmate in the NBP and thus was unable to sign before him.

Jurisprudence provides that a notary public who fails to discharge his duties as such is meted out the following penalties: (1) revocation of notarial commission; (2) disqualification from

---

[12] *Agbulos v. Atty. Viray,* 704 Phil. 1, 9 (2013).

[13] 312 Phil. 100, 106 (1995).

being commissioned as notary public; and (3) suspension from the practice of law — the terms of which vary based on the circumstances of each case.[14] In this case, the IBP Commissioner recommended the penalty of reprimand and prohibition from being commissioned as notary public for three (3) years. The Board of Governors, however, modified the penalty imposing one year of suspension from the practice of law and disqualification from being commissioned as notary public for two (2) years.

There are instances where the Court imposed the penalty of revocation of notarial commission and disqualification from being commissioned for one year. In *Villarin v. Atty. Sabate, Jr.,*[15] the Court suspended respondent's commission as a notary public for one year for notarizing the Verification of the Motion to Dismiss with Answer when three of the affiants thereof were not before him and for notarizing the same instrument of which he was one of the signatories. In *Coquia v. Atty. Laforteza*,[16] the Court revoked respondent's notarial commission and disqualified him from being commissioned as a notary public for a period of one year for notarizing a *pre-signed* subject document presented to him and failing to personally verify the identity of all parties who purportedly signed the subject documents as he merely relied upon the assurance of Luzviminda that her companions are the actual signatories to the said documents.

In this case, Baribar asked Akol and Labrador to acquire Claveria's signature in the Verification of the Motion for Reconsideration and subsequently notarized the *pre-signed* document upon receiving it. We agree with the IBP Commissioner that Baribar did not intend to require Claveria's personal appearance before him. It is also noted that he admitted that in another notarized document, he merely relied on the assurances of his clients' leaders that the others who were unable to present

---

[14] *Sappayani v. Gasmen*, *supra* note 7, at 9.

[15] 382 Phil. 1, 7 (2000).

[16] A.C. No. 9364, February 8, 2017.

competent evidence of identity were the actual signatories of the document.

Clearly, Baribar failed to exercise due diligence in upholding his duty as a notary public. His acts also show his offhand disregard of the Notarial rules as to requiring the personal presence of the affiants and the presentation of competent evidence of identity. He must now accept the commensurate consequences of his professional indiscretion. To deter further violations, the Court deems it proper to impose the penalty of suspension from the practice of law for one (1) year, revocation of incumbent commission as a notary public, if any, and disqualification from being commissioned as a notary public for a period of two (2) years.

WHEREFORE, the Court finds respondent Atty. Archie S. Baribar **GUILTY** of breach of the 2004 Rules on Notarial Practice and the Code of Professional Responsibility. Accordingly, the Court **SUSPENDS** him from the practice of law for one (1) year; **REVOKES** his incumbent commission, if any; and **PROHIBITS** him from being commissioned as a notary public for two (2) years, effective immediately. He is **WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely.

Let all the courts, through the Office of the Court Administrator, as well as the IBP and the Office of the Bar Confidant, be notified of this Decision and be it entered into respondent's personal record.

SO ORDERED.

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

---

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

SECOND DIVISION

[G.R. No. 189803. March 14, 2018]

REPUBLIC OF THE PHILIPPINES, represented by the DIRECTOR of the LAND MANAGEMENT BUREAU (LMB), *petitioner, vs.* **FILEMON SAROMO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITIONS TO REVIEW DECISIONS OF THE COURT OF APPEALS; LIMITED ONLY TO QUESTIONS OF LAW; EXCEPTIONS.— As a rule, the factual findings of the CA affirming those of the trial court are final and conclusive, and they cannot be reviewed by the Court which has jurisdiction to rule only on questions of law in petitions to review decisions of the CA filed before the Court, save only in the following circumstances: (1) when the factual conclusion is a finding grounded entirely on speculations, surmises and conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA went beyond the issues of the case in making its findings, which are further contrary to the admissions of both the appellant and the appellee; (7) when the CA's findings are contrary to those of the trial court; (8) when the conclusions do not cite the specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; (10) when the CA's findings of fact, supposedly premised on the absence of evidence, are contradicted by the evidence on record; or (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Thus, for the Court to review the factual findings of the courts below, any of these exceptions must be present in this case.

2. CIVIL LAW; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); PUBLIC FOREST LANDS; AN OFFICIAL PROCLAMATION RELEASING THE LAND

CLASSIFIED AS PUBLIC FOREST LAND IS REQUIRED FOR IT TO FORM PART OF THE DISPOSABLE AGRICULTURAL LANDS OF THE PUBLIC DOMAIN.— [T]here may be indications that the concerned area may be subject to special rules or guidelines for its management and protection; but, it does not follow that as a marine reserve, the area is automatically inalienable and non-disposable. x x x [T]he presidential declaration that the whole of the Batangas coastline is a tourist zone and marine reserve is not sufficient to prove that the subject land is inalienable and non-disposable. Unfortunately, the very survey plan that Saromo submitted to the then Bureau of Lands as basis for his application for free patent and its approval contains a notation that the subject land is "inside unclassified public forest land." x x x [T]estimonial evidence on the physical layout or condition of the subject land — that it was planted with coconut trees and beach houses had been constructed thereon — are not conclusive on the classification of the subject land as alienable agricultural land. **Rather, it is the official proclamation releasing the land classified as public forest land to form part of disposable agricultural lands of the public domain that is definitive**. **Such official proclamation, if there is any, is conspicuously missing in the instant case**. The term "unclassified land" is likewise a legal classification and a positive act is required to declassify inalienable public land into disposable agricultural land. x x x **Without the official declaration that the subject land is alienable and disposable or proof of its declassification into disposable agricultural land, the "unclassified public forest land's" legal classification of the subject land remains**.

3. ID.; ID.; FREE PATENTS; AN INALIENABLE AND NON-DISPOSABLE LAND CANNOT BE THE SUBJECT OF A FREE PATENT APPLICATION BECAUSE ONLY AGRICULTURAL PUBLIC LANDS SUBJECT TO DISPOSITION CAN BE THE SUBJECT OF FREE PATENTS.— The Republic has adduced compelling evidence, which were not contradicted by Saromo, that the subject land was inalienable and non-disposable at the time of his application. x x x [I]t is clear that when Plan Psu-4A-004479 surveyed in the name of Saromo was verified and plotted by the Forest Management Service in the corresponding land classification map, it falls on Project No. 38-A, Block C, of the Land

Classification (LC) Map No. 3276 (Exh. "L") certified on June 29, 1987, which is **forest land (permanent forest)** within the foreshore area of Calatagan, Batangas. In addition, LC Map No. 3342 (Exh. "M") was presented to prove that as of October 10, 1984, the whole of Calatagan, Batangas was unclassified public forest and that there was no land classification certified or declared prior to 1984 covering the subject land. Engr. Calubayan explained the reference to the LC Map of Calatagan, Batangas as warranted by the technical data found in the survey plan prepared by Engr. Guevara for Saromo such that when the said data are projected, they fall within the LC Map of Calatagan, Batangas. In fine, the Republic presented credible evidence to show that the subject land remains within unclassified forest land, which conforms with the NOTE in the survey plan for Saromo. The subject land, is therefore, inalienable and non-disposable and could not have been the valid subject of a free patent application because only agricultural public lands subject to disposition can be the subject of free patents.

4. ID.; ID.; ID.; THE VALIDITY OF A FREE PATENT CANNOT BE AFFIRMED BASED ON THE MERE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES WHEN THERE ARE DISCREPANCIES IN THE DOCUMENTS RELATIVE TO THE FREE PATENT APPLICATION.— The presumption of regularity in the performance of official duties in the processing and approval of Saromo's free patent has been controverted by the evidence presented by the Republic. Also, the evidence presented by Saromo put in serious doubt the regularity in the processing and approval of his free patent. The survey plan in question includes a NOTE that the subject land is within "unclassified public forest land." The investigator and verifier of the then Bureau of Lands, who processed Saromo's application, did not present any land classification map that would negate such NOTE. Also, as testified to by Engr. Calubayan, the investigation report of Aguilar mentioned that the land applied for is inside agricultural land under proposed project No. 31, LC Map 225 (Exh. "26" as corrected) but LC Map 225 is for Sibulan, Negros Oriental. LC Map 718 mentioned in the Survey Authority (Exh. "25" as corrected) refers to Taal, Batangas. Even Saromo himself contradicted the investigation report of Aguilar which indicated that "[t]he occupation and cultivation of the applicant [Saromo],

as far as [Aguilar has] been able to ascertain date from 1944" and the subject land was "first occupied and cultivated by Filemon Saromo in 1944." His very Application for Free Patent (Exh."2"), which is under oath, contained untrue information, as confirmed by him, although he attributed the incorrectness to clerical error. Since the year "1944" appears in both his Application for Free Patent and in the investigation report of Aguilar, the error can no longer be categorized as clerical. Rather, an intention to mislead or make a false representation is evident. x x x Saromo could not have first occupied the subject land in 1944 as indicated in his sworn Application for Free Patent and in the investigation report, because he bought the subject land in 1967 at the earliest or 1969 at the latest, and he was then 44 or 46 years old. Given the foregoing discrepancies in the documents relative to Saromo's free patent application, the processing and approval of his free patent were far from regular. Thus, the validity of his free patent cannot be affirmed based on the mere presumption of regularity in the performance of official duties.

5. REMEDIAL LAW; ACTIONS; REVERSION; PROPER WHEN THE GOVERNMENT OFFICIALS CONCERNED IN THE PROCESSING AND APPROVAL OF THE FREE PATENT APPLICATION ERRED IN GRANTING THE FREE PATENT OVER UNCLASSIFIED PUBLIC FOREST LAND WHICH CANNOT BE REGISTERED UNDER THE TORRENS SYSTEM.— [T]here are several discrepancies in the documents relative to Saromo's free patent application, which indicate incorrect and misleading facts and statements. Taken together, they can be considered as "false statements" on the essential conditions for the grant of the free patent in favor of Saromo, and as such, they *ipso facto* justify the cancellation of the free patent and the corresponding Torrens certificate of title issued to him. x x x Since, at the very least, the government officials concerned in the processing and approval of Saromo's free patent application erred or were mistaken in granting a free patent over unclassified public forest land, which could not be registered under the Torrens system and over which the Director of Lands had no jurisdiction, the free patent issued to Saromo ought to be cancelled. In the same vein, the Torrens title issued pursuant to the invalid free patent should likewise be cancelled. Since the reversion of the subject land to the State is in order, needless to say that the Regalian doctrine has been accordingly applied in the resolution of this case.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Balita & Associates Law Office for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a petition for review on *certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated June 30, 2009 (Decision) of the Court of Appeals[3] (CA) in CA-G.R. CV. No. 87801, denying the appeal of the petitioner Republic of the Philippines (Republic) and affirming the Decision[4] dated October 24, 2005 of the Regional Trial Court of Balayan, Batangas, Branch 9 (RTC) in Civil Case No. 3929. The RTC Decision dismissed the reversion and cancellation of title complaint filed by the Republic against respondent Filemon Saromo (Saromo). The Petition also assails the Resolution[5] dated October 12, 2009 of the CA denying the motion for reconsideration filed by the Republic.

The Facts and Antecedent Proceedings

As culled from the CA Decision, the facts are as follows:

On September 25, 1980, Geodetic Engineer Francisco C. Guevarra surveyed the land subject of this case for x x x Filemon Saromo. Engineer Guevarra then prepared Survey Plan No. PSU-4-A-004479 (Exhibit "A"). At the bottom left hand portion of the plan is a NOTE

---

[1] *Rollo*, pp. 9-62, excluding Annexes.

[2] *Id*. at 64-76. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Amelita G. Tolentino and Sixto C. Marella, Jr. concurring.

[3] Special Twelfth Division.

[4] *Rollo*, pp. 79-97. Penned by Vice-Executive Judge Elihu A. Ybañez.

[5] *Id*. at 78 to 78-A.

that states: "This survey is formerly a portion of China Sea. This survey is inside **unclassified public forest land** and is apparently inside the area covered by Proclamation No. 1801 dated November 10, 1978. This survey is within 100.00 meters strip along the shore line. This survey was endorsed by the District Land Officer D.L.O. No. (IV-A-1), Batangas City dated December 11, 1980." The survey plan of the subject lot includes the salvage zone.

On September 30, 1980, Survey Plan No. PSU-4-A-004479 was submitted to Region IV-A for approval.

On December 11, 1980, the survey plan was endorsed by the District Land Officer, Batangas City and on the following day, December 12, 1980, the plan was approved by Flor U. Pelayo, Officer-in-Charge.

On December 24, 1980, Saromo, then fifty [50] years old, executed an Application for Free Patent (Exh. "N"), covering the subject property, which he filed with the Bureau of Lands, District Land Office No. IV-A-1 in Batangas City. The application stated among others that the land is an agricultural public land covered by Survey No. PSU-4-A-004479, containing an area of forty five thousand eight hundred eight (45,808) square meters and that Saromo first occupied and cultivated the land by himself in 1944 (Exh. "N-2" and. "N-3").

x x x x x x x x x

On the same date, Saromo executed an affidavit (Exh. "4"), stating that he is the holder of Free Patent Application No. (IV-A-1) 15603 and that he holds himself responsible for any liability, whether civil and/or criminal that may arise if the land has already been adjudicated as private property and/or the corresponding certificate of title had in fact been issued and for any statement he had made therein that may be found untrue or false.

On January 24, 1981, Saromo executed an affidavit (Exh. ["]3["]) in support of a Notice of Application for Free Patent stating that said Notice of Application for Free Patent (which was not signed by the Director of Lands) was posted on the bulletin board of the barrio where the land is situated and at the door of the municipal building on December 24, 1980 until the 24th day of January 1981.

On March 4, 1981, Alberto A. Aguilar executed an investigation report (Exh. "P") stating that on January 14, 1981, he went to and examined the land applied for by Saromo; that the land applied for is inside agricultural area under proposed Project No. 31 LC Map 225.

While the certified true copy of said investigation report submitted by the Republic mentions "LC Map 225", the xerox copy of the same investigation report offered in evidence by Saromo as "Exhibit 26", contains an insertion of the number ["]#235" above the words LC Map 225.

On May 18, 1981, Jaime Juanillo, District Land Officer, issued an Order (Exh. "O") approving the application for free patent of Saromo and ordering the issuance of Patent No. 17522 in his favor. The Order stated that the land applied for has been classified as alienable and disposable; the investigation conducted by Land Investigation/Inspector Alberto A. Aguilar revealed that the land applied for has been occupied and cultivated by the applicant himself and/or his predecessors[-]in[-]interest since July 4, 1926 or prior thereto.

On May 26, 1981, Original Certificate of Title No. P-331 (Exh. "C") was issued in the name of Filemon Saromo by Deputy Register of Deeds for the Province of Batangas, Gregorio C. Sembrano.

On October 16, 1981, a certain Luis Mendoza filed with the Bureau of Lands a protest against the Free Patent awarded to Saromo. The investigation was not terminated because of the resignation of the investigator from the Bureau and his departure for the United States. (Exh. "B"; p. 21, TSN, Aprill5, 2002, Atty. Rogelio Mandar)

On September 6, 1999, the Director of Lands issued Special Order No. 99-99 creating an investigation team headed by Atty. Rogelio C. Mandar to verify and determine the legality of the issuance of Free Patent No. 17522, now OCT No. P-331, in the name of Saromo covering the subject parcel of land identified as Lot No. 3, Plan PSU-4-A-004479, containing an area of forty five thousand eight hundred eight (45,808) square meters (Exhs. "B"; pp. 6-7, TSN, April 15, 2002, Atty. Mandar). The investigation team found from the documents gathered that:

> a) the subject lot covered by Free Patent No. 17522 in the name of Saromo, identified and described under Plan PSU-4-A-004479, was not alienable and disposable at the time of the issuance thereof, as it was found upon investigation to be "inside unclassified public forest and covered by Proclamation No. 1801 declaring the whole of Batangas Coastline as tourist zone (Exh. "B", p. 2)

> b) the issuance of Free Patent No. 17522 in the name of Saromo was highly improper and irregular, and Free Patent No. 17522 and the corresponding OCT N[o]. P-331 issued to Saromo is null and void *ab initio* and the land covered must be reverted to the State. x x x

x x x (O]n September 19, 2001, the Republic filed this case for Reversion/Cancellation of Title before the [RTC].

[The Republic], in its Complaint, alleged that the subject lot covered by OCT No. P-331 is inside the unclassified forest [land] and also inside the area covered by Proclamation No. 1801 dated November 10, 1978 declaring the land as Tourist Zones and Marine Preserve under the administration and control of the Philippine Tourism Industry. It further alleged that upon ocular inspection, it was ascertained that the land is situated along the coastline of Brgy. Balibago and that since it is part of the shore, it concluded that the subject lot is part of the public dominion and therefore, cannot be titled in the name of private person.

On the other hand, (Saromo), in his Answer, denied the allegations of [the Republic] and countered that the subject land is disposable and alienable the same being an agricultural land suited for cultivation and plantation of fruit bearing trees at the time the free patent was issued to him. He claimed that he is the owner of the subject lot in fee simple by virtue of OCT No. [P-]331 and Free Patent No. 17522, which was lawfully issued to him by the Lands Management Bureau (formerly, Bureau of Lands).[6]

Ruling of the RTC

The RTC rendered a Decision[7] dated October 24, 2005 in favor of Saromo, the dispositive portion of which states:

> WHEREFORE, premises considered, the instant complaint is hereby ***DISMISSED*** for lack of merit.
>
> No pronouncement as to the costs.
>
> SO ORDERED.[8]

---

[6] *Id*. at 64-68.

[7] *Id*. at 79-97.

[8] *Id*. at 97.

The RTC relied heavily on the testimony of Engr. Francisco Guevara[9] (Engr. Guevara), who testified that the note appearing on the survey plan indicated "past and present annotations" placed by the office of the Bureau of Lands and that the "land is no longer a forest land and it belongs to what was alienated and disposed by the [then] Bureau of Lands and therefore, it is suited for plantation, cultivation[.]"[10]

The RTC also stated that the then Bureau of Lands verified the truthfulness of the information given by Saromo before it approved the free patent application; and the fact that the free patent was issued to Saromo only confirmed his statement in his application that the subject land was alienable and disposable, being agricultural land.[11] The RTC concluded that the findings of the field investigator of the then Bureau of Lands as to the nature of the subject land after conducting his ocular inspection at the time of the application for free patent should be given more weight since that is the foremost issue to be considered by the concerned agency before granting the application for free patent.[12] The RTC found that the Republic failed to overturn the presumption of regularity in the performance of the official function of the employee of the then Bureau of Lands who approved the free patent.[13]

Regarding the issue that the subject land is covered by Proclamation No. 1801,[14] the RTC stated that it "was so explicit in enumerating the areas covered by the said law and it shows that the subject property was not one of those listed therein."[15]

---

[9] Also spelled as Guevarra in some parts of the records.

[10] *Rollo*, p. 93.

[11] *Id*. at 93-94.

[12] *Id*. at 94.

[13] *Id*.

[14] DECLARING CERTAIN ISLANDS, COVES AND PENINSULAS IN THE PHILIPPINES AS TOURIST ZONES AND MARINE RESERVE UNDER THE ADMINISTRATION AND CONTROL OF THE PHILIPPINE TOURISM AUTHORITY, November 10, 1978.

[15] *Rollo*, p. 95.

According to the RTC, there is, likewise, nothing in the law which provides that those covered thereby is inalienable and non-disposable because the law declares certain islands, coves and peninsulas in the Philippines as Tourist Zones and Marine Reserve under the administration and control of the Philippine Tourism Authority (PTA).[16]

The RTC concluded that the subject land is well within the purview of a public land which is alienable and disposable, and the patent title issued to Saromo is not tainted with any irregularity as claimed by the Republic.[17]

The Republic filed a motion for reconsideration, which was opposed by Saromo. The RTC denied the motion in its Resolution dated April 24, 2006.[18]

The Republic appealed the RTC Decision to the CA.

Ruling of the CA

The CA in its Decision[19] dated June 30, 2009 denied the appeal of the Republic. The dispositive portion thereof states:

IN THE LIGHT OF ALL THE FOREGOING, the appeal is hereby **DENIED**. The decision dated 24 October 2005 of the Regional Trial Court of Balayan, Batangas, Branch 9, in Civil Case No. 3929 is hereby **AFFIRMED**.

No costs.

SO ORDERED.[20]

The CA also relied on the testimony of Engr. Guevara, who was the person who prepared the survey plan referred to above, to the effect that the subject land is an agricultural land and,

---

[16] See *id*.

[17] *Id*. at 96-97.

[18] *Id*. at 70.

[19] *Id*. at 64-76.

[20] *Id*. at 76.

therefore, alienable and disposable.[21] The CA noted the explanation of Engr. Guevara on the meaning of "unclassified public forest land" annotated on the survey plan to the effect that since the subject land is "capable of being cultivated and planted with trees, vegetables and other plantation done by any occupants," it follows that the same is already alienable and disposable.[22] Thus, the CA ruled that the Republic failed to prove its cause of action by preponderance of evidence.[23]

The CA further noted that Saromo complied with all the necessary requirements for the issuance of a free patent and he relied on the knowledge and expertise of the District Land Office, which is tasked to manage and issue patents pursuant to existing laws.[24] The CA determined that the Republic failed to prove the fraud and misrepresentation that Saromo allegedly committed.[25]

The Republic filed a motion for reconsideration, which was opposed by Saromo and denied by the CA in its Resolution dated October 12, 2009.[26]

Hence, the instant Petition. Saromo filed his Comment[27] dated March 9, 2010.

The Issues

The Petition raises the following issues:

1. Whether the CA erred on a question of law in upholding that the subject land is alienable and disposable at the time of issuance of free patent title to Saromo.

---

[21] *Id*. at 73.

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

[23] *Id*. at 75.

[24] *Id*. at 74.

[25] *Id*. at 75.

[26] *Id*. at 78 to 78-A.

[27] *Id*. at 204-207.

2. Whether the CA erred in not applying Section 91 of the Public Land Act on fraud and misrepresentation and in disregarding the attendant fraud and misrepresentation of Saromo in his free patent application.

3. Whether the CA erred in applying the presumption of regularity in the performance of official duties of the officer who issued Saromo's free patent.

4. Whether the principle of Regalian doctrine applies in the present case.[28]

The Court's Ruling

The Petition is impressed with merit.

While the Republic seeks the reversal of the finding of both the CA and the RTC that the subject land is alienable and disposable via a question of law issue, it actually seeks a review by the Court of their factual findings. The Court cannot make the legal conclusion that the Republic seeks without a review of the facts upon which the CA and the RTC based their ruling that the subject land is alienable and disposable.

As a rule, the factual findings of the CA affirming those of the trial court are final and conclusive, and they cannot be reviewed by the Court which has jurisdiction to rule only on questions of law in petitions to review decisions of the CA filed before the Court, save only in the following circumstances: (1) when the factual conclusion is a finding grounded entirely on speculations, surmises and conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA went beyond the issues of the case in making its findings, which are further contrary to the admissions of both the appellant and the appellee; (7) when the CA's findings are contrary to those of the trial court; (8) when the conclusions do not cite the specific evidence on which

[28] *Id*. at 28.

they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; (10) when the CA's findings of fact, supposedly premised on the absence of evidence, are contradicted by the evidence on record;[29] or (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[30] Thus, for the Court to review the factual findings of the courts below, any of these exceptions must be present in this case.

The subject land is unclassified public forest land.

From the outset, the Republic argues that Proclamation No. 1801 expressly declared the Batangas Coastline as a tourist zone; hence, it is a reserved area incapable of alienation and disposition by private individuals.[31]

The Court is not persuaded by this argument of the Republic.

Indeed, Proclamation No. 1801 includes the "Whole of Batangas Coastline"[32] as a tourist zone and marine reserve under the administration and control of the PTA, and the law requires that: "No development projects or construction for any purposes shall be introduced within the zones without prior approval of the President of the Philippines upon recommendation of the Philippine Tourism Authority."[33] However, as correctly observed by the RTC, there is nothing in the law which provides that the areas covered thereby are necessarily inalienable and non-disposable.[34]

---

[29] *Republic v. Sps. Tan*, 676 Phil. 337, 351 (2011), citing *Philippine National Oil Company v. Maglasang*, 591 Phil. 534, 544-545 (2008).

[30] *Co v. Vargas*, 676 Phil. 463, 471 (2011), citing *Development Bank of the Philippines v. Traders Royal Bank*, 642 Phil. 547, 556-557 (2010).

[31] *Rollo*, pp. 30-31.

[32] Proclamation No. 1801, No. 1.

[33] Proclamation No. 1801.

[34] *Rollo*, p. 95.

Section 4 of Presidential Decree No. 564[35] provides that the PTA has the purpose of promoting "the development into integrated resort complexes of selected and well defined geographic areas with potential tourism value, known otherwise as 'tourist zones'."

On the other hand, the Tourism Act of 2009 or Republic Act No. (RA) 9593[36] defines "Tourism Enterprise Zones" or TEZs in the following manner:

> SEC. 59. *Tourism Enterprise Zones*.— Any geographic area with the following characteristics may be designated as a Tourism Enterprise Zone:
>
> (a) The area is capable of being defined into one contiguous territory;
>
> (b) It has historical and cultural significance, environmental beauty, or existing or potential integrated leisure facilities within its bounds or within reasonable distances from it;
>
> (c) It has, or it may have, strategic access through transportation infrastructure, and reasonable connection with utilities infrastructure systems;
>
> (d) It is sufficient in size, such that it may be further utilized for bringing in new investments in tourism establishments and services; and
>
> (e) It is in a strategic location such as to catalyze the socioeconomic development of their neighboring communities.

Under RA 9593, it is the newly created TIEZA (Tourism Infrastructure and Enterprise Zone Authority) that shall designate TEZs, upon recommendation of any local government unit (LGU)

---

[35] REVISING THE CHAPTER OF THE PHILIPPINE TOURISM AUTHORITY CREATED UNDER PRESIDENTIAL DECREE NO. 189, DATED MAY 11, 1973, October 2, 1974.

[36] AN ACT DECLARING A NATIONAL POLICY FOR TOURISM AS AN ENGINE OF INVESTMENT, EMPLOYMENT, GROWTH AND NATIONAL DEVELOPMENT, AND STRENGTHENING THE DEPARTMENT OF TOURISM AND ITS ATTACHED AGENCIES TO EFFECTIVELY AND EFFICIENTLY IMPLEMENT THAT POLICY, AND APPROPRIATING FUNDS THEREFOR, May 12, 2009.

or private entity, or through joint ventures between the public and the private sectors.[37]

From the above descriptions of "tourist zones" and TEZs, they appear to be the same. But, there is nothing from their descriptions from which it can be deduced that as tourist zones or TEZs, they are therefore inalienable and non-disposable.

Proclamation No. 1801 also declares the "Whole of Batangas Coastline" a marine reserve. As defined: "A Marine Reserve is an MPA where strict sanctuary conditions are not mandated for the entire area, but there is still a desire to control access and activities, such as boating, mooring and various fishing techniques. It may consist of multiple zones including a sanctuary area,"[38] while "[a] Marine Protected Area (MPA) is any specific marine area that has been reserved by law or other effective means and is governed by special rules or guidelines to manage activities and protect the entire, or part of, the enclosed coastal and marine environment."[39]

Based on the above definitions, there may be indications that the concerned area may be subject to special rules or guidelines for its management and protection; but, it does not follow that as a marine reserve, the area is automatically inalienable and non-disposable.

Given the foregoing, the presidential declaration that the whole of the Batangas coastline is a tourist zone and marine reserve is not sufficient to prove that the subject land is inalienable and non-disposable.

Unfortunately, the very survey plan that Saromo submitted to the then Bureau of Lands as basis for his application for free

---

[37] RA 9593, Sec. 60.

[38] "*Increasing the Resilience of Marine Ecosystems: Creating and Managing Marine Protected Areas in the Philippines*" by Karin Post, Marine Conservation Philippines, <https:/www.marineconservationphilippines.org/wp-content/uploads/Marine-Protected-Areas-in-the-Philippines.pdf>, p. 6 (last accessed on January 26, 2018).

[39] *Id*.

patent and its approval contains a notation that the subject land is "inside unclassified public forest land."[40] To recall, the NOTE appearing at the bottom left hand portion of the Survey Plan No. PSU-4A-004479 (Exhibit "A")[41] prepared by Engr. Guevara states: "This survey is formerly a portion of China Sea. This survey is inside **unclassified public forest land** and is apparently inside the area cover[ed] by Proclamation No. 1801 dated Nov[ember] 10, 1978. This survey is within 100.00 meters strip along the shore line. This survey was indorsed by the District Land Officer D.L.O. No. (IV-A-1), Batangas City dated December 11, 1980."[42]

As is, the NOTE qualifies as an admission of Saromo under Section 26, Rule 130 of the Rules of Court, which provides: "[t]he act, declaration or omission of a party as to a relevant fact may be given in evidence against him." The NOTE is an admission by Saromo that the subject land is "inside unclassified public forest land." Thus, unless Saromo is able to rebut in a clear and convincing manner such admission or declaration, it will remain as an admission against his interest and binding upon him.

Saromo presented the testimonies of Engr. Guevara, Alberto Aguilar (Aguilar) and Engineer Carlito Cabrera (Engr. Cabrera) to rebut the land classification expressly indicated in the NOTE.

Both the RTC and the CA were convinced of the testimonial evidence that Saromo adduced, and they relied heavily on the testimony of Engr. Guevara in arriving at the factual conclusion that the subject land is agricultural land and, thus, alienable and disposable. The CA even quoted Engr. Guevara's testimony on cross-examination,[43] to wit:

[Atty. Benjamin C. Asido: (to the witness)]

---

[40] Records (Vol. I), p. 28.

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

[42] *Id*. at 28; emphasis and underscoring supplied.

[43] *Rollo*, pp. 73-74.

Q May we ask you again, what you mean by the note, "This survey is inside unclassified public forest land," what is the meaning of that?

A It meant that the place was already alienable and disposable as classified by the Bureau of Forestry and if there are any improvements such as grasses, they really reflect as unclassified forest. But then, this is capable o[f] being cultivated and planted with trees, vegetables and other plantation done by any occupants, sir.

Q In other words, what you are saying is, is that the meaning of inside unclassified public forest is that it is already alienable and disposable, is that what you mean?

A Yes, sir.[44]

Aside from the foregoing explanation, Engr. Guevara commented on the significance of the said NOTE during his direct examination, to wit:

[Atty. Paciano B. Balita (to witness)]

Q In your plan, there is a note, what is the significance of that note, if any?

A In the note it is placed here that all corners not otherwise described PLS are cyl. concrete monuments 15x60 cm, and the others were planted PS cyl. concrete monuments 15x60 and these comers are formerly a portion of China sea and this survey is inside unclassified public forest land and is apparently inside the area covered by Proclamation No. 1801 dated November 10, 1978 and all the survey is within 100 meters strip along the shoreline and this survey was indorsed by the district land officer D.L.O. Bo. (IV-A1), Batangas City dated December 11, 1980. These are the notes placed by the office of the Bureau of Lands, indicating that all these are past and present annotations in the place, sir.[45]

The CA also stated: "And his testimony on the meaning of 'unclassified public forest land' was not rebutted by the [Republic]."[46]

---

[44] TSN, February 23, 2004, p. 23.

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

[46] *Rollo*, p. 74.

The CA further mentioned the testimony of Aguilar, who was the investigator of the District Land Office of the then Bureau of Lands in Batangas City and conducted an ocular inspection of the subject land during the processing of Saromo's free patent application. Aside from identifying his investigation report[47] and the order of approval of Saromo's application,[48] Aguilar merely made a conclusion when asked as to the "physical feature" of the land, to wit:

> [Atty. Paciano B. Balita (to the witness)]
>
> Q You made a report. Now, during your inspection, would you tell the Court what actually was the physical feature of the land?
>
> A The land being applied for free-patent is agricultural in nature, sir.[49]

As reflected in his investigation report, the improvements in the land consisted of "coconuts" and that "the land applied for is inside Agricultural area under proposed project No. 31 L.C. map 225."[50]

Engr. Cabrera, a geodetic engineer, who was assigned as a final verifier of the Chief Survey Division of the then Bureau of Lands and conducted a verification survey, testified as well on the "physical feature or condition" of the subject land in this manner:

> [Atty. Paciano B. Balita (to the witness)]
>
> Q Would you be able to tell the Honorable Court, actually the physical feature or condition of this property subject of this suit?

---

[47] Exh. "26" (as corrected), formerly marked Exh. "15", records (Vol. II), pp. 415-417.

[48] Exh. "16", *id*. at 402.

[49] TSN, September 13, 2004, p. 8.

[50] With "235" written above 225. Exh. "26", *supra* note 47, at 415.

A That is agricultural in nature because there was an improvement thereon; planted with coconut trees, beach houses, sir.

Q It is not a forest land or timber land?

A No, sir.[51]

Both the RTC and the CA erred in unduly relying on the testimony of Engr. Guevara because his observation as to the physical features of the subject land is not conclusive to remove the subject land from its "unclassified forest land" classification and overturn the NOTE that the area he surveyed was "inside unclassified public forest land." Similarly, the testimonies of Engr. Guevara, Aguilar and Engr. Cabrera on their observations as to the physical features of the subject land during their ocular inspection are not clear and convincing proof that the subject land is alienable and disposable.

As the Court held in *The Secretary of the Department of Environment and Natural Resources v. Yap*,[52] forest land of the public domain in the context of both the Public Land Act and the Constitution is a classification descriptive of its legal nature or status and does not have to be descriptive of what the land looks like, *viz.*:

Forests, in the context of both the Public Land Act and the Constitution[53] classifying lands of the public domain into "*agricultural, forest or timber, mineral lands and national parks*," do not necessarily refer to large tracts of wooded land or expanses covered by dense growths of trees and underbrushes.[54] The discussion in *Heirs of Amunategui v. Director of Forestry*[55] is particularly instructive:

---

[51] TSN, September 13, 2004, p. 18.

[52] 589 Phil. 156 (2008).

[53] CONSTITUTION (1987), Art. XII, Sec. 3; CONSTITUTION (1973), Art. XIV, Sec. 10, as amended; and CONSTITUTION (1935), Art. XIII, Sec. 1.

[54] *Republic v. Naguiat*, 515 Phil. 560, 564 (2006).

[55] 211 Phil. 260 (1983).

> A forested area classified as forest land of the public domain does not lose such classification simply because loggers or settlers have stripped it of its forest cover. Parcels of land classified as forest land may actually be covered with grass or planted to crops by *kaingin* cultivators or other farmers. "Forest lands" do not have to be on mountains or in out of the way places. Swampy areas covered by mangrove trees, nipa palms, and other trees growing in brackish or sea water may also be classified as forest land. **The classification is descriptive of its legal nature or status and does not have to be descriptive of what the land actually looks like.** Unless and until the land classified as "forest" is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain, the rules on confirmation of imperfect title do not apply.[56] (Emphasis supplied)

There is a big difference between "forest" as defined in a dictionary and "forest or timber land" as a classification of lands of the public domain as appearing in our statutes. One is descriptive of what appears on the land while the other is a legal status, a classification for legal purposes.[57] At any rate, the Court is tasked to determine the **legal** status of Boracay Island, and not look into its physical layout. Hence, even if its forest cover has been replaced by beach resorts, restaurants and other commercial establishments, it has not been automatically converted from public forest to alienable agricultural land.[58]

From the foregoing, testimonial evidence on the physical layout or condition of the subject land—that it was planted with coconut trees and beach houses had been constructed thereon — are not conclusive on the classification of the subject land as alienable agricultural land. **Rather, it is the official proclamation releasing the land classified as public forest land to form part of disposable agricultural lands of the public domain that is definitive. Such official proclamation, if there is any, is conspicuously missing in the instant case.**

---

[56] *Id*. at 265.

[57] *Republic v. Court of Appeals*, 238 Phil. 475, 482 (1987).

[58] *The Secretary of the Department of Environment and Natural Resources v. Yap*, *supra* note 52, at 191-192.

The term "unclassified land" is likewise a legal classification and a positive act is required to declassify inalienable public land into disposable agricultural land. The Court in *Heirs of the late Sps. Palanca v. Republic*[59] observed that:

> While it is true that the land classification map does not categorically state that the islands are public forests, the fact that they were unclassified lands leads to the same result. In the absence of the classification as mineral or timber land, the land remains unclassified land until released and rendered open to disposition.[60] When the property is still unclassified, whatever possession applicants may have had, and however long, still cannot ripen into private ownership.[61] This is because, pursuant to Constitutional precepts, all lands of the public domain belong to the State, and the State is the source of any asserted right to ownership in such lands and is charged with the conservation of such patrimony.[62] Thus, the Court has emphasized the need to show in registration proceedings that the government, through a positive act, has declassified inalienable public land into disposable land for agricultural or other purposes.[63]

Given the foregoing, the misapprehension of the "facts" as adduced by Saromo through the foregoing testimonial evidence warrants the review by the Court of the findings of fact of both the CA and the RTC. **Without the official declaration that the subject land is alienable and disposable or proof of its declassification into disposable agricultural land, the "unclassified public forest land's" legal classification of the subject land remains.**

---

[59] 531 Phil. 602, 616-617 (2006).

[60] *Director of Lands v. IAC*, 292 Phil. 341, 352 (1993), citing *Yngson v. Sec. of Agriculture and Natural Resources*, 208 Phil. 374, 379 (1983); *Republic v. CA*, 188 Phil. 142 (1980).

[61] *Director of Lands v. CA*, 214 Phil. 606, 610 (1984); *Adorable v. Director of Forestry*, 107 Phil. 401, 404 (1960); *Republic v. CA*, 178 Phil. 530, 537 (1979).

[62] *Director of Lands v. CA*, *id.* at 609.

[63] *Director of Lands v. IAC*, *supra* note 60, at 350.

Engr. Guevara even admitted that the NOTE in his survey plan indicated "past and present annotations" placed by the "office of the Bureau of Lands." This is confirmation of the land classification status of the subject land as "unclassified public forest land" and such remained even at the time when he executed the survey plan. Otherwise, the NOTE should have contained a further annotation that said classification had been changed. Also, Engr. Guevara did not present and testify on the applicable land classification map that would corroborate his finding that the subject land was already disposable agricultural land.

In addition to the exception that the judgments of the courts below are based on misapprehension of facts, the other exception that is applicable in this case is when the findings of fact are contradicted by the evidence on record.

The Republic has adduced compelling evidence, which were not contradicted by Saromo, that the subject land was inalienable and non-disposable at the time of his application.

The Republic presented as witness Leonito D. Calubayan (Engr. Calubayan), a geodetic engineer and Community Environment Resources Officer of Calaca, Batangas of the Department of Environment and Natural Resources, who testified as follows:

[Atty. Benjamin C. Asido (to witness)]

Q Sometime in July 2002, did you receive a letter request [from] one Atty. Benjamin Asido in relation to this complaint in this particular case?

A Yes, sir.

x x x x x x x x x

Q Do you have [the] letter request of Atty. Asido?

x x x x x x x x x

A Yes, it is on file, sir.

ASIDO:

Q May I have that record?

INTERPRETER:

Witness showing a letter request addressed to CENRO Officer dated July 10, 2002.

ASIDO:

May I make [of] record, your Honor, that the letter request be marked as Exhibit "1". A letter request dated July 10, 2002 requesting the CENRO Officer to certify whether or not the land subject of this case is alienable or disposable.

Q What action, if any, did you take on the letter request?

A It is a standard operating procedure that whenever communication of this nature has been received by our office, I used to forward this to our Chief of Forestry, the Chief of Forest Management Service, sir.

Q What action, if any, did your Chief of Management Service take?

A Well, as requested in the request, the office through the Chief of Forest Management Service prepared a certification, sir.

Q May I have that Certification?

A (Witness showing a Certification dated October 9, 2002)

ASIDO:

May I request, your Honor, that this Certification prepared by Pedro Caringal, Jr. be marked as Exhibit "J".

x x x x x x x x x

ASIDO:

Q In this Certification marked as Exhibit "J", you stated under paragraph 1 and I quote: "Plan PSU-4A-004479 surveyed in the name of Filemon Saromo covered by Original Certificate of Title No. P-331 with an area of 4.5 hectares more or less in the Municipality of Calatagan, Batangas," do you have that plan with you now? Plan PSU-4A-004479?

A I have the copy of that plan, sir. This is the copy of the plan on record, sir.

(Witness showing a plan of the land surveyed for Filemon Saromo)

x x x x x x x x x

Q Under paragraph 1 of this Certification, Exhibit "J", you stated that the area covered by OCT No. P-331 is within the foreshore area of the Municipality of Calatagan?

A Yes, sir, because the approved plan of PSU-4A-004479 was projected and verified against [sheet] 5 of 9 sheets land classification map number, in short, under LC Map 3276 verified on June 29, 1987, sir.

Q Do you have that LC map with you?

A Yes, sir.

Q May I have that LC Map?

A This is the LC Map that Iam referring to (Witness showing LC Map 3276)

Q Will you please indicate in your report the land subject of this case in the LC Map 3276?

A This is the area where the subject PSU Plan falls when verified and plotted in the LC Map. It falls on Project No. 38-A, Block C, which states that it is **forest land (permanent forest)** with an area of 38.8 hectares the overall area of the project where that PSU falls, sir.

ASIDO:

May we request that the LC Map be marked as Exhibit "L" for the plaintiff and area indicated by the witness subject of this case be marked as Exhibit "L-1", your Honor.

x x x x x x x x x

ASIDO:

We [request] that the investigation report relative to the application for Free Patent [of Saromo] be marked as Exhibit "P", your Honor.

x x x x x x x x x

Q Now in this Investigation Report under paragraph 7 it states that the land is not inside agricultural area LC Map No. 225, do you have this LC Map 225?

A I have with me the record of LC Map 225 (Witness showing LC Map 225)

Q Is this LC Map for the Province of Batangas?

A It says here, it is Sibulan, sir.

Q Where is Sibulan?

A May I see the map, sir. According to this LC [Map] 225, it appears that it covers the Municipality of Sibulan, Negros Oriental.

ASIDO:

May we request, your Honor, that the LC Map No. 225 be marked as an evidence as Exhibit "Q" and the Municipality of Sibulan, Negros Oriental be marked as Exhibit "Q-1", your Honor.

May we request that paragraph 7 of the investigation report be marked as Exhibit "P-1", your Honor.

Q Also this LC Map, it made mention [of] Project No. 31. Do you have that map?

A This LC 718, there is written project No. 31 but this subdivision, the Municipality ofTaal, sir.

Q Where is that?

A This is also in Batangas, sir.

Q How far is Barrio Balibago from Taal?

A It is so far away, Taal and Balibago, sir.

ASIDO:

May we request, your Honor, that Project No. 31 be marked as Exhibit "R", your Honor.[64]

On cross-examination, Engr. Calubayan explained that based on the projection of the survey plan for Saromo, it is within the Municipality of Calatagan despite the indication in OCT

---

[64] TSN, March 10, 2003, pp. 5-16, 26-29; underscoring and emphasis supplied.

No. P-331 issued to Saromo that it is in Balibago, Lian, Batangas, to wit:

[Atty. Paciano B. Balita (to witness)]

Q Did you see before that the property, subject of this suit, is located at Calatagan, Batangas?

A According to our findings, when the property in question was projected, the foreshore area is within the Municipality of Calatagan, sir.

Q What is the basis of your findings?

A Based on our projection with the land classification map, it appears that it falls within the foreshore area of the Municipality of Calatagan. There is a technical data. The land classification map has a latitude and longtitude. The land in question is also provided with that geographic coordinate so we computed that, so by means of that coordinate, we can project on the land classification map where the property could be located or could fall, sir.

Q So, your basis was a technical data?

A Yes, sir.

x x x x x x x x x

Q The torrens title of OCT No. P-331, from the description, would you still insist that the property could be traced as indicated in the title?

A The title states that this is located in Lian, however, when we issued a certification that was based on the land classification map, that was issued sometime in 1987, so the survey appears to be executed earlier than what the land classification map was issued, sir.[65]

From the foregoing, it is clear that when Plan Psu-4A-004479 surveyed in the name of Saromo was verified and plotted by the Forest Management Service in the corresponding land classification map, it falls on Project No. 38-A, Block C, of

[65] TSN, May 26, 2003, 12-15.

the Land Classification (LC) Map No. 3276 (Exh. "L") certified on June 29, 1987, which is **forest land (permanent forest)** within the foreshore area of Calatagan, Batangas.[66]

In addition, LC Map No. 3342 (Exh. "M") was presented to prove that as of October 10, 1984, the whole of Calatagan, Batangas was unclassified public forest and that there was no land classification certified or declared prior to 1984 covering the subject land.[67] Engr. Calubayan explained the reference to the LC Map of Calatagan, Batangas as warranted by the technical data found in the survey plan prepared by Engr. Guevara for Saromo such that when the said data are projected, they fall within the LC Map of Calatagan, Batangas.

In fine, the Republic presented credible evidence to show that the subject land remains within unclassified forest land, which conforms with the NOTE in the survey plan for Saromo. The subject land, is therefore, inalienable and non-disposable and could not have been the valid subject of a free patent application because only agricultural public lands subject to disposition can be the subject of free patents.[68]

There are attenuating circumstances that put in doubt the applicability of the presumption of regularity in the performance of official duties.

The presumption of regularity in the performance of official duties in the processing and approval of Saromo's free patent has been controverted by the evidence presented by the Republic. Also, the evidence presented by Saromo put in serious doubt the regularity in the processing and approval of his free patent.

The survey plan in question includes a NOTE that the subject land is within "unclassified public forest land." The investigator

---

[66] See Purpose of Offer of Exhs. "J" and "L", records (Vol. II), pp. 262 and 263.

[67] *Id*. at 263.

[68] See Commonwealth Act No. 141, Sec. 44.

and verifier of the then Bureau of Lands, who processed Saromo's application, did not present any land classification map that would negate such NOTE.

Also, as testified to by Engr. Calubayan, the investigation report of Aguilar mentioned that the land applied for is inside agricultural land under proposed project No. 31, LC Map 225 (Exh. "26" as corrected)[69] but LC Map 225 is for Sibulan, Negros Oriental. LC Map 718 mentioned in the Survey Authority (Exh. "25" as corrected)[70] refers to Taal, Batangas.

Even Saromo himself contradicted the investigation report of Aguilar which indicated that "[t]he occupation and cultivation of the applicant [Saromo], as far as [Aguilar has] been able to ascertain date from 1944" and the subject land was "first occupied and cultivated by Filemon Saromo in 1944."[71] His very Application for Free Patent (Exh."2")[72], which is under oath, contained untrue information, as confirmed by him, although he attributed the incorrectness to clerical error. Since the year "1944" appears in both his Application for Free Patent and in the investigation report of Aguilar, the error can no longer be categorized as clerical. Rather, an intention to mislead or make a false representation is evident.

Saromo testified as follows:

[Atty. Paciano Balita (to witness)]

Q Since when have you been occupying this property, subject of this suit?

A When I purchased the adjacent land, it was [in] 1967 and some of it was in the year 1969, sir.

x x x x x x x x x

---

[69] Records (Vol. II), p. 415.

[70] *Id*. at 414.

[71] *Id*. at 415.

[72] Records (Vol. I), p. 22. The Application for Free Patent indicates that Saromo first occupied and cultivated by himself in 1944 and he entered upon and began cultivation of the subject land in 1944.

Q By the way, in your affidavit or application it is stated here that when you submitted an application you were only 11 years old, what can you say to that?

A No, sir. I was already 44 or 46 years old.

Q Why it was indicated here that you were 11 years old, who prepared this?

A It was the surveyor and it was a pro forma of the Bureau of Lands. I believed that is a clerical error. It is impossible that I was only 11 years old because I'm not in a position to purchase a lot yet, sir.

Q That was in 1980?

A Yes, sir.

Q And now, 2004 that is 24 years ago?

A Yes, sir.

Q How old are you now?

A 69, sir. This coming March I'll be 70 years old.[73]

Saromo could not have first occupied the subject land in 1944 as indicated in his sworn Application for Free Patent and in the investigation report, because he bought the subject land in 1967 at the earliest or 1969 at the latest, and he was then 44 or 46 years old.

Given the foregoing discrepancies in the documents relative to Saromo's free patent application, the processing and approval of his free patent were far from regular. Thus, the validity of his free patent cannot be affirmed based on the mere presumption of regularity in the performance of official duties.

Reversion of the subject land is warranted under Section 91 of Commonwealth Act No. (CA) 141.

Section 91 of CA 141, otherwise known as The Public Land Act, provides:

---

[73] TSN, January 26, 2004, pp. 17-21.

SEC. 91. The statements made in the application shall be considered as essential conditions and parts of any concession, title, or permit issued on the basis of such application, and any false statement therein or omission of facts altering, changing, or modifying the consideration of the facts set forth in such statements, and any subsequent modification, alteration, or change of the material facts set forth in the application shall **ipso facto** produce the cancellation of the concession, title, or permit granted. It shall be the duty of the Director of Lands, from time to time and whenever he may deem it advisable, to make the necessary investigations for the purpose of ascertaining whether the material facts set out in the application are true, or whether they continue to exist and are maintained and preserved in good faith, and for the purposes of such investigation, the Director of Lands is hereby empowered to issue **subpoenas** or **subpoena duces tecum** and, if necessary, to obtain compulsory process from the courts. In every investigation made in accordance with this section, the existence of bad faith, fraud, concealment, or fraudulent and illegal modification of essential facts shall be presumed if the grantee or possessor of the land shall refuse or fail to obey a **subpoena** or **subpoena duces tecum** lawfully issued by the Director of Lands or his authorized delegates or agents, or shall refuse or fail to give direct and specific answers to pertinent questions, and on the basis of such presumption, an order of cancellation may issue without further proceedings.

As mentioned above, there are several discrepancies in the documents relative to Saromo's free patent application, which indicate incorrect and misleading facts and statements. Taken together, they can be considered as "false statements" on the essential conditions for the grant of the free patent in favor of Saromo, and as such, they *ipso facto* justify the cancellation of the free patent and the corresponding Torrens certificate of title issued to him.

Even if Section 91 of CA 141 is ruled out, reversion is warranted based on mistake or error on the part of government officials or agents.

In *Republic v. Hachero*,[74] the Court observed:

---

[74] 785 Phil. 784 (2016).

Reversion is an action where the ultimate relief sought is to revert the land back to the government under the Regalian doctrine. Considering that the land subject of the action originated from a grant by the government, its cancellation therefore is a matter between the grantor and the grantee.[75] In *Republic v. Guerrero*,[76] the Court gave a more general statement that "this remedy of reversion can only be availed of in cases of fraudulent or unlawful inclusion of the land in patents or certificates of title."[77] Nonetheless, the Court recognized in *Republic v. Mangotara*,[78] that there were instances when it granted reversion for reasons other than fraud:

> x x x. In *Estate of the Late Jesus S. Yujuico v. Republic (Yujuico case)*, reversion was defined as an action which seeks to restore public land fraudulently awarded and disposed of to private individuals or corporations to the mass of public domain. It bears to point out, though, that the Court also allowed the resort by the Government to actions for reversion to cancel titles that were void for reasons other than fraud, i.e., violation by the grantee of a patent of the conditions imposed by law; and lack of jurisdiction of the Director of Lands to grant a patent covering inalienable forest land or portion of a river, **even when such grant was made through mere oversight**.[79] [Emphasis Supplied]

In the case at bench, although the Republic's action for cancellation of patent and title and for reversion was not based on fraud or misrepresentation on the part of Hachero, his title could still be cancelled and the subject land reverted back to the State because the grant was made through mistake or oversight. x x x[80]

The Court further observed in *Hachero*:

At any rate, it is a time-honored principle that the statute of limitations or the lapse of time does not run against the State.

---

[75] *Republic v. Roxas*, 723 Phil. 279, 308 (2013).

[76] 520 Phil. 296 (2006).

[77] *Id*. at 314.

[78] 638 Phil. 353 (2010).

[79] *Id*. at 461.

[80] *Supra* note 74, at 795-796.

Jurisprudence also recognizes the State's immunity from estoppel as a result of the mistakes or errors of its officials and agents. These well- established principles apply in the case at bench. The Court in *Republic v. Roxas* elucidated:

x x x x x x x x x

> Be that as it may, **the mistake or error of the officials or agents** of the [Bureau of Lands] in this regard **cannot be invoked against the government** with regard to property of the public domain. It has been said that **the State cannot be estopped by the omission, mistake or error of its officials or agents**.
>
> It is well-recognized that if a person obtains a title under the Public Land Act which includes, by oversight, lands which cannot be registered under the Torrens system, or when the Director of Lands did not have jurisdiction over the same because it is a public domain, the grantee does not, by virtue of the said certificate of title alone, become the owner of the land or property illegally included. Otherwise stated, property of the public domain is incapable of registration and its inclusion in a title nullifies that title.[81]

Since, at the very least, the government officials concerned in the processing and approval of Saromo's free patent application erred or were mistaken in granting a free patent over unclassified public forest land, which could not be registered under the Torrens system and over which the Director of Lands had no jurisdiction, the free patent issued to Saromo ought to be cancelled. In the same vein, the Torrens title issued pursuant to the invalid free patent should likewise be cancelled.

Since the reversion of the subject land to the State is in order, needless to say that the Regalian doctrine has been accordingly applied in the resolution of this case.

WHEREFORE, the Petition is hereby **GRANTED.** The Decision dated June 30, 2009 of the Court of Appeals in CA-G.R. CV. No. 87801, denying the appeal of the petitioner and affirming the Decision dated October 24, 2005 of the Regional

---

[81] *Id.* at 797-799.

Trial Court of Balayan, Batangas, Branch 9 in Civil Case No. 3929, and the Court of Appeals' Resolution dated October 12, 2009, denying the petitioner's motion for reconsideration, are **REVERSED** and **SET ASIDE**. The dismissal of the Complaint for Reversion and/or Cancellation of Title is **REVERSED** and is given **DUE COURSE**. Free Patent No. 17522 and Original Certificate of Title No. P-331 issued in favor of respondent Filemon Saromo are declared **NULL** and **VOID**. The Register of Deeds for the Province of Batangas is hereby directed to **CANCEL** Original Certificate of Title No. P-331 and all subsequent, derivative certificates of title, if any, which may have been issued during the pendency of the case. The **REVERSION** in favor of the State of Lot No. Psu-4A-004479 with technical description indicated in Original Certificate of Title No. P-331 situated in Balibago, Lian, Batangas with an area of 45,808 square meters is hereby ordered.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 191249. March 14, 2018]

CORAZON LIWAT-MOYA, as substituted by her surviving heirs, namely: MARIA THERESA MOYA SIOSON, ROSEMARIE MOYA KITHCART and MARIA CORAZON MOYA GARCIA, *petitioner, vs.* **EXECUTIVE SECRETARY EDUARDO R. ERMITA and RAPID CITY REALTY & DEVELOPMENT CORPORATION, for itself and as authorized representative of CENTURY PEAK CORPORATION,** *respondents.*

---

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

SYLLABUS

1. POLITICAL LAW; THE PHILIPPINE MINING ACT OF 1995 (RA NO. 7942); EXPLORATION AND DEVELOPMENT OF MINERAL RESOURCES; APPLICATIONS STILL PENDING UPON THE EFFECTIVITY OF RA NO. 7942 NECESSITATES COMPLIANCE WITH THE REQUIREMENTS.— Presidential Decree (*P.D.*) No. 463, or the Mineral Resources Development Decree of 1974, was the operative law at the time petitioner filed her application for Mineral Production Sharing Agreement (MPSA). x x x [T]he preferential right given to applications still pending upon the effectivity of The Philippine Mining Act of 1995 (R.A. No. 7942), [the present law on mining], is subject to the following conditions: (1) that the applicant submits the status report, letter of intent, and all the lacking requirements as provided by DENR Memorandum Order (DMO) No. 97-07; and (2) that said compliance is performed within the deadlines set. The non-fulfilment of any of these conditions precludes the DENR Secretary, through the Mines and Geosciences Bureau (MGB), from even considering the grant of an MPSA to petitioner, for such grant contemplates that the applicant has completed the requirements and that an evaluation thereof shows his competence to undertake mineral production. Clearly, without the complete requirements, the MGB would have no basis for evaluation.

2. ID.; ID.; ID.; ID.; FAILURE TO SUBMIT ALL THE DOCUMENTARY REQUIREMENTS WITHIN THE DEADLINE RENDERED THE MINERAL PRODUCTION SHARING AGREEMENT (MPSA)APPLICATION *IPSO FACTO* CANCELLED PURSUANT TO DMO NO. 97-07 IN RELATION TO RA NO. 7942.— [DMO No. 97-07] mandate[s] that petitioner's failure to submit a status report, letter of intent, and the other requirements to complete her pending MPSA application within the prescribed period shall cause the automatic cancellation of her mining application. x x x Consequently, petitioner's application for MPSA is deemed to have been automatically denied when the deadline lapsed without her submission of the pertinent requirements.

3. ID.; ID.; ID.; ID.; ID.; MINES AND GEOSCIENCES BUREAU (MGB) AUTHORIZED TO CANCEL MINING APPLICATIONS FOR NON-COMPLIANCE WITH THE

LAWS AND RULES.— Section 9 of R.A. No. 7942 charges the MGB with the administration and disposition of mineral lands and mineral resources, x x x Pursuant thereto, DAO No. 96-40 authorizes the MGB to deny or cancel mining applications that fail to comply with pertinent laws, rules, and regulations, x x x The MGB's denial of petitioner's application is thus valid and perforce stands. It was rendered pursuant to the agency's administrative powers, which has been defined as a function that is "concerned with the work of applying policies and enforcing orders as determined by proper governmental organs." This Court has previously ruled that an agency's grant or denial of applications, licenses, permits, and contracts are executive and administrative in nature. Being purely administrative, it may not be interfered with by the courts unless the issuing authority has gone beyond its statutory authority, has exercised unconstitutional powers or has clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion.

APPEARANCES OF COUNSEL

Burkley and Aquino Law Office for petitioner.

Delos Angeles Aguirre Olaguer Salomon & Fabro for respondents.

D E C I S I O N

MARTIRES, *J.*:

This is a petition for review on certiorari, seeking to reverse and set aside the 30 September 2009 Decision[1] and the 8 February 2010 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 104063, which upheld the 1 June 2007 Decision[3] of the Office of the President *(OP)* in O.P. Case No. 07-A-034 entitled

---

[1] *Rollo*, Vol. I, pp. 34-49; penned by Associate Justice Rosmari D. Carandang, and concurred in by Associate Justices Arturo G. Tayag and Michael P. Elbinias.

[2] *Id*. at 51-53.

[3] *Id*. at 217-223.

"In Re: Application for Mineral Production Sharing Agreement of Ms. Corazon Liwat-Moya Denominated as AMPSA No. SMR-013-96."

THE FACTS

On 22 May 1991, petitioner Corazon Liwat-Moya *(petitioner)* filed an application for Mineral Production Sharing Agreement *(MPSA)* with the Mines and Geosciences Bureau *(MGB)*. The application was denominated as AMPSA No. SMR-013-96, covering 650 hectares of land located at Loreto, Surigao del Norte, within Parcel III of the Surigao Mineral Reservation *(SMR)*.[4]

Pursuant to her application, petitioner undertook the required publications. She also alleged that she had substantially complied with the mandatory documentary requirements of her application for MPSA.[5]

On 15 February 1993 and 19 February 1997, the MGB sent notice-letters to petitioner, requiring her to submit additional requirements for her application. The MGB did not receive any response.[6]

On 3 March 1995, Republic Act *(R.A.)* No. 7942, or the Philippine Mining Act of 1995, was enacted.

Pursuant to the preferential rights given by R.A. No. 7942 to mining claims and applications when the law took effect, the Department of Environment and Natural Resources *(DENR)* issued DENR Memorandum Order *(DMO)* 97-07 providing the "Guidelines in the Implementation of the Mandatory September 15, 1997 Deadline for the Filing of Mineral Agreement Applications by Holders of Valid and Existing Mining Claims and Lease/Quarry Applications and for Other Purposes." Under Section 13 thereof, all holders of pending applications for MPSA which still lack mandatory requirements shall submit on or before

---

[4] *Id*. at 11.

[5] *Id*. at 12-13.

[6] *Id*. at 13.

15 September 1997, a status report on all such requirements and a letter of intent undertaking to fully comply with all mandatory requirements within forty-five (45) calendar days, or until 30 October 1997.

On 24 November 1998, the MGB sent a letter to petitioner notifying her of her failure to submit all the mandatory requirements under DMO No. 97-07. There was no response from petitioner.[7] On 19 October 1999, the MGB sent another letter, but the same was returned to the sender with the notation that "addressee moved[,] no forwarding address."[8]

Consequently, on 26 February 2001, the MGB, through then-director Horacio C. Ramos, issued an order[9] denying petitioner's application for MPSA on the ground of noncompliance with pertinent laws, rules and regulations despite due notice, particularly on petitioner's noncompliance with the set deadlines under DMO No. 97-07.

On 25 June 2001, respondent Rapid City Realty & Development Corporation *(RCRDC)* filed with the MGB three (3) exploration permit applications *(EPA)* which were consolidated into one application denominated as EPA-000058-XIII. The area covered by petitioner's application for MPSA is included in RCRDC's EPA.[10] On 7 January 2004, the MGB issued an area clearance certifying that the area covered by RCRDC's EPA was not in conflict with any valid and existing mining tenements.[11]

On 21 December 2004, petitioner filed a motion for reconsideration of the MGB's 26 February 2001 order, alleging that there was improper service of the letters-notice and the order in violation of DMO No. 99-34.[12]

---

[7] *Id*. at 139-140.

[8] *Id*. at 13.

[9] *Id*. at 139-140.

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

[11] *Id*. at 174; *rollo*, Vol. II, pp. 650-61.

[12] *Id*. at 142.

On 7 January 2005 and 14 January 2005, RCRDC's EPA was duly published in *The Manila Times* and *The Surigao Times*. It was also aired over DXRZ-A, a local radio station in Surigao City, and posted in required locations, as mandated by existing rules and regulations.[13]

On 19 July 2005, the Assistant Secretary and Concurrent Director of the MGB, Jeremias L. Dolino, issued an order denying petitioner's motion for reconsideration for lack of merit. Petitioner thereafter appealed to the DENR Secretary on 16 August 2005.[14]

On 23 June 2005, the Panel of Arbitrators of the MGB issued a certification that as of said date, no adverse claim, protest or opposition was filed against RCRDC relative to the latter's EPA.[15]

On 8 August 2005, petitioner filed a protest against RCRDC's application with the MGB Panel of Arbitrators, which she subsequently amended on 22 November 2005.[16]

On 25 May 2006, RCRDC conditionally assigned its rights and interests over EPA-000058-XIII to Century Peak Corporation *(CPC)* through a Deed of Conditional Assignment.[17]

On 13 June 2006, the DENR Secretary rendered a decision[18] which reversed and set aside the 16 July 2005 order of the MGB Director. In said decision, the DENR Secretary indicated that petitioner's assertions "teem with convincing validity" and consequently ordered the reinstatement of her application for MPSA. The DENR Secretary also directed the MGB to set a schedule for compliance with the mandatory requirements upon petitioner's receipt of a copy of the decision.

---

[13] *Id*. at 174.

[14] *Id*. at 14 and 142-144.

[15] *Id*. at 175.

[16] *Id*. at 14.

[17] *Rollo*, Vol. II, pp. 578 and 659-660.

[18] *Rollo*, Vol. I, pp. 146-150.

On 28 June 2006, RCRDC filed with the DENR Secretary a Motion for Leave to Intervene with Motion for Reconsideration of the decision.

On 18 December 2006, the Panel of Arbitrators of the MGB dismissed petitioner's motion pending adverse claim/opposition against RCRDC for being moot and academic, in view of the DENR Secretary's decision.[19]

On 6 January 2007, the DENR Secretary issued an order[20] denying RCRDC's motion, holding that the issues raised in the motion "could be properly ventilated with the Panel of Arbitrators who has original and exclusive jurisdiction over the issues raised, and this Office is only of appellate jurisdiction."

Aggrieved, RCRDC filed an appeal with the OP on 18 January 2007.

The Ruling of the Office of the President

On 1 July 2007, the OP, through Executive Secretary Eduardo R. Ermita, issued a decision ordering that the 6 January 2007 decision of the DENR Secretary be vacated and reversed. It ruled that RCRDC is entitled to intervene in the case because it has a substantial right to protect its EPA, which covers the areas previously assigned to petitioner. It also held that the DENR Secretary erred in reinstating petitioner's cancelled application for MPSA because records show her negligence relative to her application which is thus barred by laches.

On 3 July 2007, petitioner filed a motion for reconsideration of the OP decision, but it was denied on 21 May 2008.[21] Thereafter, petitioner filed a petition for review under Rule 43 with the CA, assailing this decision.

---

[19] *Id*. at 151-152.

[20] *Id*. at 165-167.

[21] *Id*. at 240-241.

The Ruling of the Court of Appeals

On 30 September 2009, the CA issued a decision denying the petition for lack of merit. The CA ruled that RCRDC had the right to intervene before the DENR Secretary, which right continues until the case is finally decided because intervention is allowed at any time before rendition of judgment and, in certain cases, even on appeal. It also opined that petitioner's application for MPSA *ipso facto* expired when she did not take any step to comply with the pertinent provisions of DMO No. 97-07; and that the subsequent letters-notice sent by the MGB after the deadlines, i.e., the 24 November 1998 and the 19 October 1999 letters, served no purpose because the deadlines set under DMO 97-07 were inextendible.

On 21 October 2009, petitioner filed her motion for reconsideration, which was denied by the CA in its 8 February 2010 resolution.

Hence, this petition.

ISSUES

Petitioner now comes to this Court seeking to set aside the decisions of the CA on the following grounds:

1. CONTRARY TO THE RULING OF THE HONORABLE COURT OF APPEALS, THE PANEL OF ARBITRATORS, AS CORRECTLY HELD BY THE DENR SECRETARY, HAS ORIGINAL AND EXCLUSIVE JURISDICTION OVER THE PRIVATE RESPONDENTS' INTERVENTION AS EXPRESSLY MANDATED BY R.A. NO. 7942 OR THE PHILIPPINE MINING ACT OF 1995. HENCE, THE PROPER FORUM FOR THE PRIVATE RESPONDENTS' INTERVENTION WAS THE PANEL OF ARBITRATORS AND NOT THE OFFICE OF THE PRESIDENT; AND
2. THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE OP TO RULE ON PETITIONER'S EXPLORATION PERMIT APPLICATION WHICH WAS NOT AN ISSUE IN THIS CASE; THE HONORABLE SECRETARY OF THE DENR CORRECTLY REINSTATED THE AMPSA NO. SMR-013-96 OF THE PETITIONER IN HIS ORDER DATED 13 JUNE 2006 RULING

THAT THE LATTER'S ASSERTIONS TEEM WITH CONVINCING VALIDITY.

The core issue in the instant case is whether or not petitioner's MPSA application was properly denied.

THE COURT'S RULING

It is the policy of our mining laws to promote national growth through the grant of supervised exploration and development of mineral resources to qualified persons, necessitating the complete and prompt compliance with requirements.

Presidential Decree *(P.D.)* No. 463, or the Mineral Resources Development Decree of 1974, was the operative law at the time petitioner filed her application for MPSA. It underscored the importance of mineral production to the growth of national economy and the need to encourage qualified persons to undertake the exploration and development of mineral resources, *viz*:

WHEREAS, **mineral production is a major support of the national economy, and therefore the intensified discovery, exploration, development and wise utilization of the country's mineral resources are urgently needed for national development**;

WHEREAS, the **existence of large undeveloped mineral areas** and the proliferation of small mining claims deter modern development of the country's mineral resources and **urgently require well-planned exploration, development and systematic exploitation of mineral lands to accelerate production and to bolster the national economy**;

WHEREAS, effective and continuous mining operations require considerable outlays of capital and resources, and make it **imperative that persons possessing the financial resources and technical skills for modern exploratory and development techniques be encouraged to undertake the exploration, development and exploitation of our mineral resources**;

WHEREAS, the foregoing objectives cannot be achieved within the shortest possible time without removing the deficiencies and limitations of existing laws and improving the same in order to provide for a modernized administration and disposition of mineral lands and **to promote and encourage the development and exploitation thereof**. (emphasis and underlining supplied)

R.A. No. 7942, the present law on mining, adopts a similar policy, to wit:

Section 2. *Declaration of Policy*. — All mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State. **It shall be the responsibility of the State to promote their rational exploration, development, utilization and conservation through the combined efforts of government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protects the rights of affected communities**. (emphasis and underlining supplied)

R.A. No. 7942 defines the persons qualified to undertake mining operations, to wit:

Section 3. *Definition of Terms*. —

x x x x x x x x x

(aq) "Qualified person" means any citizen of the Philippines with capacity to contract, or a corporation, partnership, association, or cooperative organized or authorized for the purpose of engaging in mining, **with technical and financial capability to undertake mineral resources development** and duly registered in accordance with law at least sixty per centum (60%) of the capital of which is owned by citizens of the Philippines: Provided, That a legally organized foreign-owned corporation shall be deemed a qualified person for purposes of granting an exploration permit, financial or technical assistance agreement or mineral processing permit. (emphasis and underlining supplied)

x x x x x x x x x

Relative to mineral production sharing agreements under P.D. No. 463, Executive Order *(E.O.)* No. 279 also instructs that said agreements should incorporate the minimum terms and

conditions enumerated therein.[22] Towards this end, DENR Administrative Order *(DAO)* No. 57, providing the guidelines on mineral production sharing agreements under E.O. No. 279, sets forth the minimum requirements that must be submitted by prospective proponents.[23]

These provisions bring to the fore the intent of the law to boost national economy by granting mineral exploration and development only to qualified persons who can competently and promptly undertake mining operations.

They underscore the need not only for complete but also prompt compliance with the specific requirements of the rules. Complete compliance is necessary to ensure that the MPSA applicant is a qualified person as defined under the law and has the requisite skills, financial resources, and technical ability to conduct mineral exploration and development consistent with state policies. Prompt compliance, on the other hand, ensures that non-moving applications are weeded out in order to give other qualified persons an opportunity to develop mining areas whose potential for mineral production might never be realized, to the detriment of our national economy.

Consistent with this intent, Section 113 of R.A. No. 7942 limits the period for entering into mineral agreements by a holder of mining claims and applications filed under P.D. No. 463 and still pending when the new law took effect, *viz*:

> Section 113. *Recognition of Valid and Existing Mining Claims and Lease/Quarry Application*. — Holders of valid and existing mining claims, lease/quarry applications shall be given preferential rights to enter into any mode of mineral agreement with the government **within two (2) years from the promulgation of the rules and regulations implementing this Act**. (emphasis and underlining supplied)

DAO No. 96-40, or the Revised Implementing Rules and Regulations *(IRR)* of R.A. No. 7942, in compliance with the

---

[22] E.O. No. 279, Section 2.

[23] DAO No. 57, Article 3, series of 1989.

above mandate, sets a specific date for compliance and further provides that failure to exercise the preferential rights granted by the law within the stated period results in automatic abandonment of the pending application, *viz*:

Section 273. *Recognition of Valid and Existing Mining Claims and Lease/Quarry Applications*. —

Holders of valid and existing mining claims, lease/quarry applications shall be given preferential rights to enter into any mode of Mineral Agreement with the Government until September 14, 1997: *Provided*, That **failure on the part of the holders of valid and subsisting mining claims, lease/quarry applications to exercise their preferential rights within the said period to enter into any mode of Mineral Agreements shall constitute automatic abandonment of the mining claims, quarry/lease applications and the area thereupon shall be declared open for mining application by other interested parties**. (emphasis and underlining supplied)

In line with the above, DMO No. 97-07 was issued, providing for the guidelines in processing pending mining applications with insufficient compliance with requirements at the time R.A. No. 7942 took effect. Section 13 thereof specifies the requirements for the pending applications, *viz*:

Section 13. *Status of Pending MPSA and FTAA Applications Filed Under DAO No. 57 and No. 63 with Insufficient Compliance with Mandatory Requirements Pursuant to the IRR.*

All holders of pending MPSA and FTAA applications filed under DAO No. 57 and No. 63 with insufficient compliance with the mandatory requirements pursuant to the IRR **shall submit on or before September 15, 1997, a Status Report on all such requirements specifically indicating those yet to be complied with and a Letter of Intent undertaking to complete compliance with all mandatory requirements within forty-five (45) calendar days, or until October 30, 1997; Provided, that failure of the concerned applicant to file said Status Report and Letter of Intent by September 15, 1997 or to submit all mandatory requirements by October 30, 1997 shall cause the denial of the pertinent MPSA/ FTAA applications**; Provided, further, that in the case of the mandatory Certificate of Satisfactory Environmental Management

and Community Relations Record, the submission of the pertinent and duly accomplished application forms may be accepted in lieu thereof. (emphasis and underlining supplied)

Section 14 additionally provides that the deadlines are not subject to extension, *viz*:

Section 14. *No Extension of Periods.* —

The deadline set at September 15, 1997 pursuant to Section 4 hereof and all other periods prescribed herein **shall not be subject to extension**. (emphasis and underlining supplied)

It is therefore clear that the preferential right given to applications still pending upon the effectivity of R.A. No. 7942 is subject to the following conditions: (1) that the applicant submits the status report, letter of intent, and all the lacking requirements as provided by DMO No. 97-07; and (2) that said compliance is performed within the deadlines set. The non-fulfilment of any of these conditions precludes the DENR Secretary, through the MGB, from even considering the grant of an MPSA to petitioner, for such grant contemplates that the applicant has completed the requirements and that an evaluation thereof shows his competence to undertake mineral production. Clearly, without the complete requirements, the MGB would have no basis for evaluation.

Petitioner's failure to submit all the documentary requirements within the deadline rendered her MPSA application ipso facto cancelled pursuant to DMO No. 97-07 in relation to R.A. No. 7942.

It is not disputed that petitioner filed her application for MPSA on 22 May 1991, under P.D. No. 463 and the rules then operative; that her compliance with the requirements was substantial[24] rather than complete; that she was directed to submit additional

[24] *Rollo*, Vol. I, pp. 12-13 and 24.

requirements by the MGB through a letter-notice dated 15 February 1993, which was not heeded; that her application was still pending when R.A. No. 7942 took effect on 3 March 1995; that the MGB sent her another letter dated February 1997, which again went unheeded; that DMO No. 97-07 was thereafter issued on 27 August 1997 and published in *The Manila Times* a day after; and that petitioner failed to submit the requirements under DMO No. 97-07 within the deadline set therein.

The MGB order of denial noted that petitioner failed to file the status report, letter of intent, and all other requirements under DMO No. 97-07, even after letters-notice to her were sent through registered mail.[25] Petitioner did not refute this. She merely posits that the service of the letters-notice was defective because the MGB did not comply with the three letters-notice rule in DMO No. 99-34.

Section 8 of DMO No. 99-34 provides that the MGB "shall adopt the Three Letters-Notice Policy in exacting compliance of mining applicants with all requirements to support mining applications. Thus, each letter-notice shall give the mining applicant fifteen (15) to thirty days upon receipt of the Letter-Notice to comply with the pertinent requirement: Provided, That an interval of no more than thirty (30) days between deadlines shall be observed in sending the Letters-Notice."

Petitioner contends that the 24 November 1998 and 19 October 1999 letters-notice of the MGB were sent after the expiration of the deadline under DMO No. 97-07 and were one (1) year apart, in violation of the provision.

Petitioner mistakenly appreciates the import of DMO No. 97-07 in relation to DAO No. 96-40 and R.A. No. 7942, as well as the relevance of the three notice-letters policy embodied in DMO No. 99-34.

Notably, the rules[26] mandate that petitioner's failure to submit a status report, letter of intent, and the other requirements to

---

[25] *Id*. at 139-140.

[26] DMO No. 97-07, Section 13.

complete her pending MPSA application within the prescribed period shall cause the automatic cancellation of her mining application.

In *Bonaventure Mining Corporation v. V.I.L. Mines, Inc.*,[27] the Court found that a corporation, which filed a financial or technical assistance application *(FTAA)* prior to the enactment of R.A. No. 7942, filed its letter of intent only on 26 September 1997, or 11 days after the 15 September 1997 deadline prescribed in DMO No. 97-07 in case of relinquishment/divestment of areas in excess of the maximum contract area for FTAAs. Accordingly, the Court held that noncompliance with DMO No. 97-07 on retention requirements caused the automatic cancellation of the FTAA. The Court ruled thus:

> **DMO 97-07 was promulgated precisely to set a specific date for all FTAA applicants within which to relinquish all areas in excess of the maximum prescribed by law. Accordingly, the deadline cannot be extended or changed except by amending DMO 97-07**. OIC-Regional Director Reynulfo Juan had no authority to extend the deadline set by DMO 97-07. We agree with the ruling of the Court of Appeals:
>
> > The language of the memorandum order is plain, precise and unequivocal — the period cannot be extended. Beyond that, the pending FTAA applications could no longer be officially acted upon as they were deemed to have expired. **DMO 97-07 could only be extended by another memorandum order or law specifically amending the deadline set forth therein. No government officer or employee can do so.**
>
> x x x x x x x x x
>
> > **It is Our considered view that the FTAA application of Greenwater *ipso facto* expired when it did not take any step to comply with the order. There was no need for any pronouncement or official action. If ever there would be any executive action, it would only be to certify that the application was already cancelled as OIC-Regional Director Reynulfo Juan did when, on January 23, 1998 (sic), it wrote**

[27] 584 Phil. 207 (2008).

Greenwater that its application over the excess areas was cancelled. No executive action can stretch the deadline beyond what was stated in the memorandum order, DMO 97-07.

OIC-Regional Director Reynulfo Juan violated DMO 97-07, when in his October 22, 1997 Letter, he gave Greenwater a period beyond the date of the deadline within which to submit the technical descriptions of the areas it wanted to relinquish. By giving Greenwater a period extending beyond October 30, 1997, he was in effect extending the deadline set forth in Section 13 of DMO 97-07. That he could not lawfully do.

He had no authority extending the deadline because the memorandum order which he was supposed to implement stated that the "period prescribed herein *shall not be subject to extension*." Beyond October 30, 1997 all FTAA applications which failed to comply with the memorandum order expired and were deemed cancelled by operation of law.[28] (emphasis and underlining supplied)

The instant case does not merely involve the delayed filing of the requirements under DMO No. 97-07, but the complete absence thereof. Thus, there is all the more reason to apply this Court's pronouncement in the above case.

Consequently, petitioner's application for MPSA is deemed to have been automatically denied when the deadline lapsed without her submission of the pertinent requirements.

The DENR Secretary exceeded his authority when he directed the MGB to set a schedule for petitioner's compliance with the lacking mandatory requirements, for in effect he extended the deadline, contrary to the express mandate of DMO No. 97-07.

It is thus clear that petitioner cannot invoke any defect in the service of the letters-notice or the order of denial, sent after the expiration of the deadline to support her position that the denial of her application was invalid. The following reasons further strengthen this position:

---

[28] *Id*. at 221-222.

First, the rules expressly provide that her application shall be denied the moment she fails to comply with the requirements within the deadline. No executive action or pronouncement was even necessary because DMO No. 97-07 already provided the consequence for failure to meet the deadline.[29] The order of denial issued by the MGB was only confirmatory of the status mandated by the law and rules.

Second, it is well-settled that duly published administrative rules and regulations which implement the law that they have been entrusted to enforce have the force and effect of that law and are just as binding as if they have been written into the statute. They enjoy the presumption of regularity and validity until finally declared otherwise by the courts.[30] Their publication serves as constructive notice to the general public.[31] It appears on record, undisputed, that DMO No. 97-07 was duly published in *The Manila Times* on 28 August 1997.[32] Thus, petitioner was presumed to have known that her compliance with certain requirements was mandated within a specific deadline in order to retain her MPSA application.

Third, petitioner's reliance on the three letters-notice rule under DMO No. 99-34 is misplaced. Issued after the enactment of R.A. No. 7942, the rule is a mode of exacting compliance for applications filed under said law. It cannot apply to applications filed prior to the effectivity of R.A. No. 7942 because, as discussed, the law limited the compliance of applications filed before its effectivity within a specific period, i.e., two (2) years from the promulgation of rules and regulations implementing the law. Per DAO No. 96-40, clarified by DMO No. 97-07, said two-year period had expired on 15 September 1997 and 30 October 1997 with

---

[29] *Id*. at 221.

[30] *Spouses Dacudao v. Secretary Gonzales,* 701 Phil. 96, 110-111 (2013) citing *ABAKADA Guro Party List (formerly AASJS) v. Purisima*, 584 Phil. 246 (2008).

[31] *Tañada v. Tuvera,* 230 Phil. 528, 536 (1986).

[32] *Rollo*, Vol. I, p. 139. See first paragraph, MGB Order of Denial dated 26 February 2001.

no extensions. Thus, at the time that DMO No. 99-34 was issued on 27 December 1999, it had already contemplated that applications filed under the previous law (1) were able to complete the requirements within the deadline or (2) were denied by operation of law due to noncompliance.

Even if DMO No. 97-07 did not specifically provide the sanction of denial for noncompliance with requirements within the deadline, the MGB is authorized to cancel mining applications for noncompliance with the laws and rules.

Section 9 of R.A. No. 7942 charges the MGB with the administration and disposition of mineral lands and mineral resources, *viz*:

> Section 9. *Authority of the Bureau*. — **The Bureau shall have direct charge in the administration and disposition of mineral lands and mineral resources** and shall undertake geological, mining, metallurgical, chemical, and other researches as well as geological and mineral exploration surveys. **The Director shall recommend to the Secretary the granting of mineral agreements to duly qualified persons and shall monitor the compliance by the contractor of the terms and conditions of the mineral agreements**. The Bureau may confiscate surety, performance and guaranty bonds posted through an order to be promulgated by the Director. The Director may deputize, when necessary, any member or unit of the Philippine National Police, barangay, duly registered nongovernmental organization (NGO) or any qualified person to police all mining activities. (emphasis and underlining supplied)

Pursuant thereto, DAO No. 96-40 authorizes the MGB to deny or cancel mining applications that fail to comply with pertinent laws, rules, and regulations, to wit:

> Section 7. Organization and Authority of the Bureau.
>
> x x x x x x x x x
>
> The Bureau shall have the following authority, among others:
>
> x x x x x x x x x

e. **To cancel or to recommend cancellation after due process**, mining rights, **mining applications** and mining claims **for non-compliance with pertinent laws, rules and regulations**. (emphasis and underlining supplied)

It is clear from the foregoing that even if the rules did not provide a specific sanction in case of noncompliance with the requirements, the MGB could properly exercise its power to cancel mining applications for said reason.

It must be noted that from the time she filed her MPSA application in 1991 up to the time the MGB issued its order of denial on 2001, petitioner did not exert any effort to fully comply with the requirements under the rules, as she has even admitted that her compliance was merely substantial rather than complete.[33] This merited the denial of her application based on the above provision.

The MGB's denial of petitioner's application is thus valid and perforce stands. It was rendered pursuant to the agency's administrative powers, which has been defined as a function that is "concerned with the work of applying policies and enforcing orders as determined by proper governmental organs."[34] This Court has previously ruled that an agency's grant or denial of applications, licenses, permits, and contracts are executive and administrative in nature.[35] Being purely administrative, it may not be interfered with by the courts unless the issuing authority has gone beyond its statutory authority, has exercised unconstitutional powers or has clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion.[36] These do not obtain in the case at bar, because the MGB's denial

---

[33] *Rollo*, Vol. I, pp. 12-13.

[34] *Basiana Mining Exploration Corp. v. Secretary of the DENR,* G.R. No. 191705, 7 March 2016, 785 SCRA 527, 537.

[35] *Republic of the Philippines v. Express Telecommunication Co., Inc.*, 424 Phil. 373, 401 (2002) citing *Lacuesta v. Herrera*, 159 Phil. 133, 140-141 (1975).

[36] *Id*. at 402.

was grounded on petitioner's noncompliance with the application for MPSA requirements within the deadline set by the rules, a fact that petitioner does not dispute.

Even equitable considerations cannot favor petitioner.

Petitioner cannot seek refuge under equitable considerations bearing in mind that there is no showing that she had endeavored to complete her application for more than 10 years from the time it was filed; that it was only after three (3) years from the issuance of the MGB's order of denial that she filed a motion for reconsideration thereto, and her allegation of improper service is baseless; and that the reasons she cites as basis for her lack of action (i.e., the challenge lodged against the constitutionality of E.O. No. 279 and subsequently R.A. No. 7942) are clearly insufficient to hold off action on her MPSA application because well-settled is the rule that laws are presumed constitutional unless finally declared otherwise by judicial interpretation.[37] It has even been held that the possible unconstitutionality of a statute does not by itself justify an injunction against its enforcement.[38]

Considering the foregoing, the areas previously covered by petitioner's application for MPSA became open for mining applications the moment the deadlines outlined in the rules lapsed without her submission of the documentary requirements. Consequently, when RCRDC filed its EPA on 25 June 2001, after the lapse of the deadline under DMO No. 97-07 and after the MGB had issued the order denying petitioner's application, the areas were already open and could validly be the subject of RCRDC's application. Thus, what is inequitable is to rule now that it is petitioner's application which should be given due course.

It is also for this reason that it is unnecessary to pass upon the issue on the propriety of RCRDC's resort to intervention,

---

[37] *Ermita v. Delorino*, 666 Phil. 122, 134 (2011) citing *Executive Secretary v. CA*, 473 Phil. 27, 56 (2004).

[38] *Id*. at 135 citing *Younger v. Harris*, 401 U.S. 37 (1971).

for it is clear that petitioner had already lost any right to her mining application by operation of law prior to the date that RCRDC filed its EPA, and the DENR Secretary had no authority to reinstate her application. Notably, in its five (5)-page decision, the DENR Secretary did not cite any legal or substantive basis for the order of reinstatement, other than a vague reference to the "convincing validity" of appellant's assertions, to wit:

> The appellant's assertions teem with convincing validity that to deny her the chance to prove herself in this field of endeavor would not be in keeping with her constitutional rights to due process.
>
> We now resolve the case substantively and sacrifice the matter of technicality in order to serve a higher objective, that is, to give Ms. Moya a fair chance to show how serious she is to this venture and help in her own little way boost the sagging economy.[39]

This constituted the whole of the DENR Secretary's discussion on the merits of petitioner's appeal. No explanation was made as to why her assertions were valid and why the rules should be disregarded in her case. As previously discussed, there is utterly no basis to disregard the clear mandate of DMO 97-07.

WHEREFORE, the petition is **DENIED**. The Decision dated 30 September 2009 and the Resolution dated 8 February 2010 of the Court of Appeals in CA-G.R. SP No. 104063 are **AFFIRMED**. Costs against petitioner.

SO ORDERED.

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

---

[39] *Rollo*, Vol. I, p. 150.

THIRD DIVISION

[G.R. No. 191939. March 14, 2018]

ALLIED BANKING CORPORATION, *petitioner,*[1] *vs.* **IN THE MATTER OF THE PETITION TO HAVE STEEL CORPORATION OF THE PHILIPPINES PLACED UNDER CORPORATE REHABILITATION WITH PRAYER FOR THE APPROVAL OF THE PROPOSED REHABILITATION PLAN, EQUITABLE PCI BANK, INC.,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION LAW; FINANCIAL REHABILITATION RULES OF PROCEDURE (A.M. NO. 12-12-11-SC); APPLIES TO A PETITION FOR REHABILITATION FILED UNDER THE 2000 INTERIM RULES ON CORPORATE REHABILITATION (A.M. NO. 00-8-10-SC); CASE AT BAR.— The rehabilitation petition was filed by EPCIB under A.M. No. 00-8-10-SC dated 21 November 2000, or the 2000 Interim Rules of Procedure on Corporate Rehabilitation (*Interim Rules*). On 27 August 2013, however, the Court enacted A.M. No. 12-12-11-SC, or the Financial Rehabilitation Rules of Procedure (*Rehabilitation Rules*), which amended and revised the Interim Rules and the subsequent 2008 Rules of Procedure on Corporate Rehabilitation (*2008 Rules*), in order to incorporate the significant changes brought about by Republic Act No. 10142 (*R.A. No. 10142*), otherwise known as the Financial Rehabilitation and Insolvency Act of 2010 (*FRIA*). x x x The question thus arises: May the Rehabilitation Rules be applied to resolve the present petition, when the subject petition for rehabilitation was filed under the Interim Rules. The Court rules in the affirmative. Section 2, Rule 1 of the Rehabilitation Rules governs rehabilitation cases

[1] The Petition for Review was originally filed with the title "In the Matter of the Peition to Have Steel Corporation of the Philippines Placed under Corporate Rehabilitation with Prayer for the Approval of the Proposed Rehabilitation Plan," reflecting Equitable PCI Bank, Inc. as petitioner-appellee and Allied Banking Corportion as appellant. For clarity, the present title reflects ABC as petitioner and EPCIB as respondent.

already pending, except when its application would not prove feasible or would work injustice x x x. The soundness of upholding the retroactive effect of a commencement order is easily discernible. In *Philippine Bank of Communications v. Basic Polyprinters and Packaging Corporation*, the Court said that rehabilitation proceedings seek to give insolvent debtors the opportunity to reorganize their affairs and to efficiently and equitably distribute its remaining assets, x x x The filing of a petition for the rehabilitation of a debtor, when the court finds that it is sufficient in form and substance, is both (1) an acknowledgment that the debtor is presently financially distressed; and (2) an attempt to conserve and administer its assets in the hope that it will eventually return to its former state of successful financial operation and liquidity. The inherent purpose of rehabilitation is to find ways and means to minimize the expenses of the distressed corporation during the rehabilitation period by providing the best possible framework for the corporation to gradually regain or achieve a sustainable operating form.

2. ID.; ID.; ID.; ID.; STAY ORDER; IMMEDIATELY EFFECTIVE AND WILL NOT BE INVALIDATED EVEN IF MADE PRIOR TO THE REQUIRED PUBLICATION OF THE NOTICE OF THE COMMENCEMENT OF THE PROCEEDINGS.— It is true that under the Interim Rules, similar to the Rehabilitation Rules, publication of the notice of the commencement of the proceedings is necessary to acquire jurisdiction over all persons affected, x x x. The question posed herein is whether the immediate effectivity of the stay order is inconsistent with the publication requirement under the Rules, such that the rehabilitation court cannot invalidate acts made after its issuance but prior to its publication. The Court rules in the negative. Taking into consideration the laudable objectives of rehabilitation proceedings, the immediate effectivity of the stay order means that the RTC, through an order commencing rehabilitation and staying claims against the debtor, acknowledges that the debtor requires rehabilitation immediately and therefore it can not only prohibit but also nullify acts made after its effectivity, when such acts are violative of the stay order, to prevent any irreparable detriment to the debtor's successful restoration. The foregoing is validated by the Interim Rules, where the court can declare void any transaction made in violation of the stay order, x x x. The publication requirement

only means that all affected persons must, to satisfy the requirements of due process, be notified that as of a particular date, the debtor in question requires rehabilitation and should temporarily be exempt from paying its obligations, unless allowed by the court. Once due notice is made, the rehabilitation court may nullify actions inconsistent with the stay order but which may have been taken prior to publication, precisely because prior to publication, creditors may not yet be aware that they are to desist from pursuing claims against the insolvent debtor. Again, the immediate effectivity of the stay order can be traced to the purpose of rehabilitation: once the necessity of rehabilitating the debtor is recognized, through a petition duly granted, it is imperative that the necessary steps to preserve its assets are taken at the earliest possible time.

3. CIVIL LAW; CONTRACTS; WHILE A CONTRACT IS THE LAW BETWEEN THE PARTIES, THE PROVISIONS OF POSITIVE LAW WHICH REGULATE CONTRACTS SHALL LIMIT AND GOVERN THEIR RELATIONS.— Anent the alleged impairment of contract, basic is the principle that the law is deemed written into every contract, such that while a contract is the law between the parties, the provisions of positive law which regulate contracts shall limit and govern their relations. At the time the Trust Receipt Agreement was entered into by ABC and SCP, the law expressly allowed corporations to be declared in a state of suspension of payments under specific instances. Consequently, said law and its implementing rules are deemed incorporated in the Trust Receipt Agreement, thereby limiting ABC's right to enforce its claim against SCP once a stay or suspension order is issued. Clearly, the principle on inviolability of contracts was not violated.

4. REMEDIAL LAW; JURISDICTION; REHABILITATION PROCEEDINGS ARE ACTIONS *IN REM*; UNDER BOTH THE REHABILITATION RULES AND THE INTERIM RULES, PUBLICATION OF THE NOTICE OF THE COMMENCEMENT OF REHABILITATION PROCEEDINGS IS THE OPERATIVE ACT WHICH VESTS THE COURT WITH JURISDICTION OVER ALL AFFECTED PARTIES.— The essence of procedural due process is one which hears before it condemns, which proceeds upon inquiry and renders judgment only upon trial. It contemplates notice and opportunity to be heard before judgment is rendered affecting

one's person or property. Rehabilitation proceedings are considered *in rem*. *In rem* actions are against the thing itself and they are binding upon the whole world, unlike *in personam* actions, which are against a person on the basis of his personal liability. "Against the thing" means that the resolution of the case affects the direct or indirect interests of others and assumes that those interests attach to the thing which is the subject matter of the litigation. The Court has consistently held that in actions *in personam*, jurisdiction over the parties is required since they seek to impose personal liability. On the other hand, courts need not acquire jurisdiction over the person of the defendant in actions *in rem* because they are not directed against a specific person. The court need only acquire jurisdiction over the res. Nonetheless, some form of notice to all affected parties is required to satisfy the requirements of due process. Under both the Rehabilitation Rules and the Interim Rules, publication of the notice of the commencement of rehabilitation proceedings is the operative act which vests the court with jurisdiction over all affected parties. As discussed earlier, once jurisdiction is acquired, the court can subject all those affected to orders consistent with the rehabilitation of the insolvent debtor, including the reversal of any transfer, payment, or sale made after the filing of the petition.

APPEARANCES OF COUNSEL

Verna Lynn V. Aceveda and *Joanne L. Villareal* for petitioner.

Joaquin P. Obieta and *Edcel G. Bolinao* for Steel Corp. of the Phils.

Belo Gozon Elma Parel Asuncion & Lucila for Banco de Oro.

D E C I S I O N

MARTIRES, *J.*:

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the 22 July 2008 Decision[2] and 12

---

[2] *Rollo,* pp. 11-29; penned by Associate Justice Jose Catral Mendoza, with Associate Justices Andres B. Reyes, Jr., and Sesinando E. Villon, concurring.

April 2010 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 97206. The CA affirmed the 22 November 2006 Resolution of the Regional Trial Court *(RTC* or *the rehabilitation court),* Branch 2, Batangas City, in Spec. Proc. No. 06-7993, which ordered the bank creditors of Steel Corporation of the Philippines *(SCP)* to unfreeze and restore the latter's bank accounts to the possession, control, and custody of the rehabilitation receiver.

THE FACTS

On 11 September 2006, Equitable PCI Bank, Inc. *(EPCIB),* as creditor, filed a petition for the corporate rehabilitation of its debtor SCP with the RTC.

EPCIB alleged, among others, that due to the onslaught of the 1997 Asian Financial Crisis, SCP began experiencing a downward trend in its financial condition which prompted various banks and financial institutions to grant it with term loan facilities and working capital lines; that SCP failed to make timely payments on its term loan facilities; that SCP also defaulted on its loan obligations under the December 2002 Omnibus Agreement,[4] where lending banks and other financial institutions agreed to reschedule and restructure SCP's payments on the principal loan and interest, reinstate its working capital lines and establish a new trade financing line; and that the petition for corporate rehabilitation is grounded on Section 1, Rule 4 of the Interim Rules of Corporate Rehabilitation, which provides that "any debtor who foresees the impossibility of meeting its debts when they respectively fall due, or any creditor or creditors holding at least twenty-five percent (25%) of the debtor's total liabilities, may petition the proper Regional Trial Court to have the debtor placed under rehabilitation."

Apart from the foregoing agreements, Allied Banking Corporation *(ABC)* granted SCP with a revolving credit facility denominated as a letter of credit/trust receipt line in the amount of ₱100 million,

---

[3] *Id*. at 32-34.

[4] *Id*. at 260-324.

which SCP availed of to finance the importation of its raw materials. Pursuant to this arrangement, SCP executed a trust receipt *(TR)*,[5] which authorizes ABC to charge SCP's account in its possession under instances specified in paragraph 9 thereof, *viz*:

> In the event of any bankruptcy, insolvency, suspension of payment, or failure, or assignment for the benefit of creditors, on my/our part, or of the non-fulfillment of any obligation, or of the non-payment at maturity of any acceptance specified hereon or under any credit issued by the ALLIED BANKING CORPORATION for my/our account, or of the non-payment of any indebtedness on my/our part to the said bank, all obligations, acceptances, indebtedness, and liabilities whatsoever shall thereupon (with or without notice) mature and become due and payable. The ALLIED BANKING CORPORATION is hereby constituted my/our attorney-in-fact, with authority to examine my/our books and records, to charge my/our account or to sell any other property of mine/ours in its possession, and to liquidate any or all of my/our obligations under this Trust Receipt.

The RTC Ruling

On 12 September 2006, the RTC issued an Order[6] *(the subject order)* granting EPCIB's petition, the dispositive portion of which reads:

> WHEREFORE, finding the petition to be sufficient in form and substance, this Order is hereby issued—
>
> (a) Appointing Santiago T. Gabionza Jr., with address at Villanueva Gabionza and De Santos Law Offices, 20/F 139 Corporate Center, Valero Street, Salcedo Village, Makati City, as Rehabilitation Receiver of Steel Corporation of the Philippines, directing him to assume his position as such upon the taking of an oath before the Branch Clerk of this Court and after posting a bond in the amount of ₱300,000.00 to guarantee the faithful discharge of his duties and obedience to the Orders of this Court;
>
> (b) Upon acceptance by Santiago T. Gabionza, Jr. of his appointment as Rehabilitation Receiver, directing him:

---

[5] *Id*. at 109-110.

[6] *Id*. at 434-438.

[i] to take possession, control and custody of the assets of the debtor Steel Corporation of the Philippines;

[ii] to closely oversee and monitor the operations of the said debtor corporation during the pendency of the proceedings and to immediately report to this Court any material adverse change in its business;

[iii] to ensure that the value of the properties of Steel Corporation of the Philippines are reasonably maintained pending the termination of whether or not it should be rehabilitated;

[iv] to investigate the acts, conduct, properties, liabilities, and financial condition of the debtor-corporation, the operation of its business and the desirability of the continuance thereof, and any matter relevant to the proceedings or to the formulation of a rehabilitation plan;

[v] to report to this Court any fact ascertained by him pertaining to the causes of the debtor's problems, fraud, preferences, dispositions, encumbrances, misconduct, mismanagement, and irregularities committed by the stockholders, directors, management, or any other person against the debtor;

[vi] to evaluate the existing assets and liabilities, earnings and operations of the said debtor-corporation;

[vii] to determine and recommend to this Court the best way to salvage and protect the interests of the creditors, stockholders and the general public;

[viii] to exercise such powers and prerogatives stated above as may be necessary and proper under the law and the Interim Rules of Procedure on Corporate Rehabilitation over all other corporations, persons or entities as may be affected by these proceedings;

[ix] to apply to this Court for any order or directive that he may deem necessary or desirable to aid him in the exercise of his powers and performance of his duties and functions.

(c) Staying all claims against SCP, by all other corporations, persons or entities insofar as they may be affected by the present proceedings, until further notice from this Court, pursuant to Sec. 6, of Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation.

Steel Corporation of the Philippines is hereby prohibited from selling, encumbering, transferring or disposing in any manner of its

assets and properties except in the ordinary course of its business and as may be approved by the Rehabilitation Receiver.

The suppliers of goods or services of Steel Corporation of the Philippines are prohibited from withholding supply of goods and services in the ordinary course of business for as long as it is able to make payment for the services and goods supplied after the issuance of this Order.

Steel Corporation of the Philippines is directed to pay in full the administrative expenses incurred after the issuance of this Order.

The petitioner is directed to publish this Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks.

All other creditors and all interested parties, including the Securities and Exchange Commission, are directed to file and serve on the petitioner, thru their counsels on record, Divina and Uy Law Offices, 8th Floor, Pacific Star Building, Makati Avenue corner Sen. Gil Puyat Ave., Makati City, a verified comment on the petition, with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing. Failure to do so will constitute a bar on such creditors and all interested parties from participating in the proceedings.

x x x x x x x x x

SO ORDERED. (emphasis supplied)

On 15 September 2006, petitioner applied the remaining proceeds of SCP's Current Account No. 1801-004-87-6 *(subject account*) in the amount of ₱6,750,000.00, maintained with its Aguirre Branch, to its obligations under the TR.

On 29 October 2006, SCP filed an urgent omnibus motion alleging that petitioner violated the rehabilitation court's stay order when it applied the proceeds of its current account to the payment of obligations covered by the stay order. Consequently, it prayed for ABC to immediately restore its current account, credit back to said account the amount of ₱6,750,000.00, and honor any and all transactions of SCP in said account.

On 2 November 2006, ABC filed an opposition, mainly contending that SCP's obligations with it had become due and

demandable, rendering legal compensation valid and proper; that petitioner did not violate the stay order, as it had no notice of its issuance at the time of the legal compensation; and that petitioner cannot be legally compelled to extend credit to SCP against its will.

On 22 November 2006, the RTC issued a resolution *(the subject resolution*), finding merit in SCP's position, to wit:

> WHEREFORE, in view of all the foregoing, the Court hereby orders as follows:
>
> x x x x x x x x x
>
> 3. ABC to restore SCP's Current Account No. 1801-004-87-6 at Aguirre Branch, Makati City, and to credit back to the said account the entire deposit balance therein of ₱6,750,000.00 and to honor any and all transactions of SCP in said account as may be approved by the Rehabilitation Receiver.
>
> x x x x x x x x x

Aggrieved, ABC filed a petition for review under Rule 43 with the CA.

The CA Ruling

The CA affirmed the resolution of the RTC, *viz*:

> WHEREFORE, the November 22, 2006 Resolution of the Regional Trial Court, Branch 2, Batangas City, in Sp. Proc. No. 06-7993, is AFFIRMED.

The CA ruled that the RTC's stay order was effective from the date of its issuance on 12 September 2006, on the basis of Section 11, Rule 4, and Section 5, Rule 3, of the Interim Rules of Corporate Rehabilitation; thus, ABC was bound to comply with it on said date. The CA also ruled that the subject account was already under *custodia legis* by virtue of the stay order, rendering ABC's unilateral application of the proceeds in the subject account improper. On the issue of impairment of contractual rights, the CA held that no impairment exists because no changes were made in the amount or rate of SCP's debt to

ABC. Only the enforcement of the latter's claims is being stayed or suspended.

Unconvinced, ABC filed a motion for reconsideration of the CA decision, which was denied by the CA in its resolution; hence, the instant petition.

The present petition

ABC contends that it was deprived of its right to due process when the RTC ordered ABC to restore SCP's current account and to credit back the amount previously set off. ABC asserts that it was not yet bound by the 12 September 2006 stay order when it made the set off on 15 September 2006 because jurisdiction over it had not yet been acquired by the rehabilitation court; the stay order was only published on 16 September 2006.

ABC further contends that when it offset the proceeds in the subject account, it merely applied the provisions of law on legal compensation, since SCP had already incurred a default in its obligations rendering operative the terms of the TR it had issued.

ISSUES

ABC raises the following issues:

I. THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE LOWER COURT'S DECISION THAT PETITIONER ABC IS BOUND BY THE SEPTEMBER 12, 2006 STAY ORDER THEREBY UNLAWFULLY DEPRIVING THE PETITIONER OF ITS RIGHT TO DUE PROCESS OF LAW.

II. THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE LOWER COURT'S DECISION THAT PETITIONER ABC IS PROHIBITED FROM APPLYING THE PROCEEDS OF THE DEPOSIT ACCOUNT OF STEEL CORPORATION TO ITS OUTSTANDING OBLIGATIONS FROM THE DATE OF THE ISSUANCE OF THE STAY ORDER ON 12 SEPTEMBER 2006, AS THE SAID PROCEEDS ARE ALREADY UNDER CUSTODIA LEGIS, BY VIRTUE OF THE STAY ORDER.

THE COURT'S RULING

The central argument to the present petition is that the RTC could not invalidate an act already consummated prior to the

date that the subject order was published, since it was only on said date that the court acquired jurisdiction over ABC. ABC primarily bases its assertion on Section 1, Rule 3 of the Interim Rules,[7] which considers rehabilitation proceedings as *in rem* and jurisdiction over all those affected acquired only upon publication of the notice commencing proceedings.

This Court is thus tasked to determine when the subject order took effect for purposes of compliance, and whether the rehabilitation court can reverse or invalidate acts that are inconsistent with its stay order and are made after its issuance but prior to its publication.

Applying the provisions of the present Rehabilitation Rules, the rehabilitation court properly invalidated ABC's action.

The rehabilitation petition was filed by EPCIB under A.M. No. 00-8-10-SC dated 21 November 2000, or the 2000 Interim Rules of Procedure on Corporate Rehabilitation *(Interim Rules).*

On 27 August 2013, however, the Court enacted A.M. No. 12-12-11-SC, or the Financial Rehabilitation Rules of Procedure *(Rehabilitation Rules),* which amended and revised the Interim Rules and the subsequent 2008 Rules of Procedure on Corporate Rehabilitation *(2008 Rules),* in order to incorporate the significant changes brought about by Republic Act No. 10142 *(R.A. No. 10142),* otherwise known as the Financial Rehabilitation and Insolvency Act of 2010 *(FRIA).*[8]

---

[7] 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.

[8] The Resolution of the Court under A.M. No. 12-12-11-SC states:

x x x x x x x x x

Whereas, the Supreme Court, through Memorandum No. 46-2010 dated September 30, 2010 (as amended by Memorandum Order No. 17-2013 dated May 9, 2013), tasked the Sub-Committee on Commercial Courts to revise

The Rehabilitation Rules provides that the court shall issue a commencement order once it finds the petition for rehabilitation sufficient in form and substance.[9] This commencement order primarily contains: a declaration that the debtor is under rehabilitation, the appointment of a rehabilitation receiver, a directive for all creditors to file their verified notices of claim, and an order staying claims against the debtor.[10] The rehabilitation proceedings shall be deemed to have commenced from the date of filing of the petition,[11] which is also termed the commencement date.

Under the same Rules, the effects of such commencement order shall retroact to the date that the petition was filed, and renders void any attempt to collect on or enforce a claim against the debtor or to set off any debt by the debtor's creditors, after the commencement date, to wit:

> SEC. 9. EFFECTS OF THE COMMENCEMENT ORDER. – The effects of the court's issuance of a Commencement Order shall retroact to the date of the filing of the petition and, in addition to the effects of a Stay or Suspension Order described in the foregoing section, shall
>
> x x x x x x x x x
>
> (B) **prohibit or otherwise serve as the legal basis for rendering null and void the results of any extrajudicial activity or process to seize property, sell encumbered property, or otherwise attempt to collect on or enforce a claim against the debtor after the commencement date unless otherwise allowed under these Rules**, subject to the provisions of Section 49 of this Rule;
>
> (C) **serve as legal basis for rendering null and void any set-off after the commencement date of any debt owed to the debtor by any of the debtor's creditors**; (emphasis supplied)

---

and/or amend A.M. No. 00-8-10-SC or the Rules of Procedure on Corporate Rehabilitation (2008) to incorporate the significant changes brought about by the enactment of R.A. No. 10142, particularly on rehabilitation proceedings;

x x x x x x x x x

[9] Section 6, Rule 2, the Rehabilitation Rules.

[10] Section 8, Rule 2, the Rehabilitation Rules.

[11] *Id*.

x x x x x x x x x

The order issued by the RTC on 12 September 2006, which effectively initiated rehabilitation proceedings and included a suspension of all claims against SCP, is akin to the commencement order under the Rehabilitation Rules.

Clearly, therefore, if the Rehabilitation Rules were to be applied, the directive of the rehabilitation court restoring SCP's current account and crediting back the offset amount is valid and proper, since the offsetting was made on 15 September 2006, after the commencement date on 11 September 2006, when the petition for rehabilitation was filed.

The question thus arises: May the Rehabilitation Rules be applied to resolve the present petition, when the subject petition for rehabilitation was filed under the Interim Rules.

The Court rules in the affirmative.

Section 2, Rule 1 of the Rehabilitation Rules governs rehabilitation cases already pending, except when its application would not prove feasible or would work injustice, to wit:

SEC. 2. SCOPE. – These Rules shall apply to petitions for rehabilitation of corporations, partnerships, and sole proprietorships, filed pursuant to Republic Act No. 10142, otherwise known as the Financial Rehabilitation and Insolvency Act (*FRIA*) of 2010.

These Rules shall similarly govern all further proceedings in suspension of payments and rehabilitation cases already pending, except to the extent that, in the opinion of the court, its application would not be feasible or would work injustice, in which event the procedures originally applicable shall continue to govern. (emphasis supplied)

The above provision is consistent with the mandate under R.A. No. 10142, *viz*:

SEC. 146. *Application to Pending Insolvency, Suspension of Payments and Rehabilitation Cases*. – This Act shall govern all petitions filed after it has taken effect. **All further proceedings in insolvency, suspension of payments and rehabilitation cases then pending, except to the extent that in the opinion of the court**

their application would not be feasible or would work injustice, in which event the procedures set forth in prior laws and regulations shall apply. (emphasis supplied)

The soundness of upholding the retroactive effect of a commencement order is easily discernible.

In *Philippine Bank of Communications v. Basic Polyprinters and Packaging Corporation*,[12] the Court said that rehabilitation proceedings seek to give insolvent debtors the opportunity to reorganize their affairs and to efficiently and equitably distribute its remaining assets, *viz*:

> Rehabilitation proceedings in our jurisdiction have equitable and rehabilitative purposes. On the one hand, they attempt to provide for the efficient and equitable distribution of an insolvent debtor's remaining assets to its creditors; and on the other, to provide debtors with a "fresh start" by relieving them of the weight of their outstanding debts and permitting them to reorganize their affairs. **The purpose of rehabilitation proceedings is to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings**. (emphasis supplied)

The filing of a petition for the rehabilitation of a debtor, when the court finds that it is sufficient in form and substance, is both (1) an acknowledgment that the debtor is presently financially distressed; and (2) an attempt to conserve and administer its assets in the hope that it will eventually return to its former state of successful financial operation and liquidity.[13] The inherent purpose of rehabilitation is to find ways and means to minimize the expenses of the distressed corporation during the rehabilitation period by providing the best possible framework for the corporation to gradually regain or achieve a sustainable operating form.[14]

Certainly, when a petition for rehabilitation is filed and subsequently granted by the court, its purpose will be defeated

---

[12] 745 Phil. 651 (2014).

[13] *BIR v. Lepanto Ceramics, Inc.*, G.R. No. 224764, 24 April 2017.

[14] *Id*.

if the debtors are still allowed to arbitrarily dispose of their property and pay their liabilities, outside of the ordinary course of business and what is allowed by the court, after the filing of the said petition. Such a scenario does not promote an environment where the debtor could regain its operational footing, contrary to the dictates of rehabilitation.

The petition itself, when granted by the court, is already a recognition of the debtor's distressed financial status not only at the time the order is issued, but also at the time the petition is filed. It is, therefore, more consistent with the objectives of rehabilitation to recognize that the effects of an order commencing rehabilitation proceedings and staying claims against the debtor should retroact to the date the petition is filed.

Accordingly, the Court finds that application of the Rehabilitation Rules to the case at bar is proper, insofar as it clarifies the effect of an order staying claims against a debtor sought to be rehabilitated.

Such application promotes a just and sound resolution to the present controversy, bearing in mind the inherent purpose of rehabilitation proceedings. It is also feasible, considering the subject resolution was within the Rehabilitation Court's powers, wielded for the same purpose identified in both the Interim Rules and the Rehabilitation Rules which is to promote a timely, fair, transparent, effective, and efficient rehabilitation of debtors.[15]

Even the Interim Rules provides for the immediate effectivity of a stay order.

Even if the retroactive effect under the Rehabilitation Rules is inapplicable to the case at bar, the Interim Rules expressly provides that the stay order is effective upon its issuance, *viz*:

Sec. 11. *Period of the Stay Order.* – The stay order shall be **effective from the date of its issuance until the dismissal of the petition or**

---

[15] Section 2, Rule 2, the Interim Rules; Section 3, Rule 1, the Rehabilitation Rules.

the termination of the rehabilitation proceedings. (emphasis supplied)

x x x x x x x x x

The foregoing provision finds support in Section 5, Rule 3, of the Interim Rules, to wit:

Sec. 5. *Executory Nature of Orders.* – **Any order issued by the court under these Rules is immediately executory.** A petition for review or an appeal therefrom shall not stay the execution of the order unless restrained or enjoined by the appellate court. The review of any order or decision of the court or an appeal therefrom shall be in accordance with the Rules of Court: *Provided, however,* that the reliefs ordered by the trial or appellate courts shall take into account the need for resolution of proceedings in a just, equitable, and speedy manner. (emphasis supplied)

This Court quotes with approval the CA's disquisition on this matter:

From the above provisions, a stay order issued by the court in a corporate rehabilitation proceeding is effective from the date of its issuance until the dismissal of the petition or the termination of the rehabilitation proceedings. In fact, it is *immediately executory*.

In the case at bar, there is no doubt that the rehabilitation court correctly held that the appellant is bound by the September 12, 2006 Stay Order as of the date of its issuance, the same being *immediately executory and effective* without any further act, event, or condition being necessary to compel compliance therewith as expressly provided in Sec. 11, Rule IV and Sec. 5, Rule III of the Interim Rules of Procedure on Corporate Rehabilitation.

x x x x x x x x x

It should be stressed that the Interim Rules was enacted to provide for a summary and non-adversarial rehabilitation proceedings. This is in consonance with the commercial nature of a rehabilitation case, which is aimed to be resolved expeditiously for the benefit of all the parties concerned and the economy in general.

x x x x x x x x x

It is true that under the Interim Rules, similar to the Rehabilitation Rules, publication of the notice of the

commencement of the proceedings is necessary to acquire jurisdiction over all persons affected, *viz*:

> 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.
>
> x x x x x x x x x

The question posed herein is whether the immediate effectivity of the stay order is inconsistent with the publication requirement under the Rules, such that the rehabilitation court cannot invalidate acts made after its issuance but prior to its publication. The Court rules in the negative.

Taking into consideration the laudable objectives of rehabilitation proceedings, the immediate effectivity of the stay order means that the RTC, through an order commencing rehabilitation and staying claims against the debtor, acknowledges that the debtor requires rehabilitation immediately and therefore it can not only prohibit but also nullify acts made after its effectivity, when such acts are violative of the stay order, to prevent any irreparable detriment to the debtor's successful restoration.

The foregoing is validated by the Interim Rules, where the court can declare void any transaction made in violation of the stay order, *viz*:

> Sec. 8. *Voidability of Illegal Transfers and Preferences*. – Upon motion or *motu proprio*, **the court may declare void any transfer of property or any other conveyance, sale, payment, or agreement made in violation of its stay order or in violation of these Rules**. (emphasis supplied)

The publication requirement only means that all affected persons must, to satisfy the requirements of due process, be notified that as of a particular date, the debtor in question requires rehabilitation and should temporarily be exempt from paying its obligations, unless allowed by the court. Once due notice is

made, the rehabilitation court may nullify actions inconsistent with the stay order but which may have been taken prior to publication, precisely because prior to publication, creditors may not yet be aware that they are to desist from pursuing claims against the insolvent debtor.

Again, the immediate effectivity of the stay order can be traced to the purpose of rehabilitation: once the necessity of rehabilitating the debtor is recognized, through a petition duly granted, it is imperative that the necessary steps to preserve its assets are taken at the earliest possible time.

It is thus apparent that the RTC properly invalidated petitioner's action made on 15 September 2006, after the subject order was issued.

There was no impairment of contract or deprivation of due process.

According to ABC, the subject resolution constituted an impairment of its contract with SCP because under the TR it executed in ABC's favor, ABC had the right to charge SCP's account in case of nonpayment of any indebtedness. ABC also claims lack of due process because the rehabilitation court directed ABC to restore SCP's account even when the offsetting was made prior to publication of the subject order, when ABC was not yet deemed notified of the order.

Anent the alleged impairment of contract, basic is the principle that the law is deemed written into every contract, such that while a contract is the law between the parties, the provisions of positive law which regulate contracts shall limit and govern their relations.[16] At the time the Trust Receipt Agreement was entered into by ABC and SCP, the law expressly allowed corporations to be declared in a state of suspension of payments under specific instances.[17]

---

[16] *Heirs of Severina San Miguel v. CA,* 416 Phil. 943, 954 (2001)*; Sulo Sa Nayon, Inc. v. Nayong Pilipino Foundation*, 596 Phil. 715, 723 (2009).

[17] Section 5 (d), Presidential Decree 902-A, as amended by Presidential Decree 1758.

Consequently, said law and its implementing rules are deemed incorporated in the Trust Receipt Agreement, thereby limiting ABC's right to enforce its claim against SCP once a stay or suspension order is issued. Clearly, the principle on inviolability of contracts was not violated.

It must also be noted that the subject order did not eliminate or reduce SCP's obligations to ABC, but merely suspended its enforcement while rehabilitation is being undertaken. In fact, one of the purposes of rehabilitation is to ensure the efficient and equitable distribution of the insolvent debtor's remaining assets to its creditors.[18]

In *Golden Merchandising Corporation v. Equitable PCI Bank*,[19] which involved the question of whether the shorter redemption period, provided under R.A. No. 8791 and applied to a real mortgage contract executed prior to the enactment of said law, constitutes a violation against the constitutional proscription on impairment of contracts, the Court ruled that there was no impairment because the provision in question did not divest juridical persons of their right to redeem but merely modified the time for the exercise of such right.

Similarly, ABC was not deprived of its right to enforce its claim against SCP. The creditor's right to enforce his claim despite the issuance of a stay order is even validated by Section 8 of the Rehabilitation Rules, to wit:

SEC. 8. COMMENCEMENT OF PROCEEDINGS AND ISSUANCE OF COMMENCEMENT ORDER. – The rehabilitation proceedings shall be deemed to have commenced from the date of filing of the petition.

x x x x x x x x x

The issuance of a stay order does not affect the right to commence actions or proceedings in order to preserve *ad cautelam* a claim against the debtor and to toll the running of the prescriptive

---

[18] *Supra* note 12, at 660-661.

[19] 706 Phil. 427 (2013).

period to file the claim. For this purpose, the plaintiff may file the appropriate court action or proceedings by paying the amount of One Hundred Thousand Pesos (₱100,000.00) or one-tenth (1/10) of the prescribed filing fee, whichever is lower. The payment of the balance of the filing fee shall be a jurisdictional requirement for the reinstatement or revival of the case. (emphasis supplied)

It is also clear from the previous discussion that ABC was not deprived of due process when the RTC issued the subject resolution.

The essence of procedural due process is one which hears before it condemns, which proceeds upon inquiry and renders judgment only upon trial. It contemplates notice and opportunity to be heard before judgment is rendered affecting one's person or property.[20]

Rehabilitation proceedings are considered *in rem*.[21] *In rem* actions are against the thing itself and they are binding upon the whole world,[22] unlike *in personam* actions, which are against a person on the basis of his personal liability.[23] "Against the thing" means that the resolution of the case affects the direct or indirect interests of others and assumes that those interests attach to the thing which is the subject matter of the litigation.[24]

The Court has consistently held that in actions *in personam*, jurisdiction over the parties is required since they seek to impose personal liability. On the other hand, courts need not acquire jurisdiction over the person of the defendant in actions *in rem* because they are not directed against a specific person. The court need only acquire jurisdiction over the res.[25] Nonetheless, some form of notice to all affected parties is required to satisfy

---

[20] *Aberca, et al. v. Ver, et al.*, 684 Phil. 207, 221-222 (2012).

[21] *Supra* note 7.

[22] *De Pedro v. Romasan Development Corporation*, 748 Phil. 706, 725 (2014).

[23] *Biaco v. Philippine Countryside Rural Bank*, 544 Phil. 45, 55 (2007).

[24] *Supra* note 22, at 725-726.

[25] *Id*.

the requirements of due process. Under both the Rehabilitation Rules and the Interim Rules, publication of the notice of the commencement of rehabilitation proceedings is the operative act which vests the court with jurisdiction over all affected parties. As discussed earlier, once jurisdiction is acquired, the court can subject all those affected to orders consistent with the rehabilitation of the insolvent debtor, including the reversal of any transfer, payment, or sale made after the filing of the petition.

It is not disputed that the 12 September 2006 Order of the rehabilitation court was duly published on 16 September 2006; that said order contained a directive for all creditors to file their verified comment on the petition within a stated period; and that ABC filed its verified comment on 17 October 2006.

It is therefore evident that petitioner was notified of the rehabilitation proceedings and given an opportunity to be heard, as in fact it filed a comment thereon, thereby satisfying due process requirements. Moreover, as previously discussed, there was no undue deprivation of property because SCP's obligation to ABC remains.

WHEREFORE, the petition is **DENIED.** The 22 July 2008 Decision and 12 April 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 97206 are **AFFIRMED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 197663. March 14, 2018]

TEAM ENERGY CORPORATION (formerly: MIRANT PAGBILAO CORPORATION and SOUTHERN ENERGY QUEZON, INC.), *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

[G.R. No. 197770. March 14, 2018]

REPUBLIC OF THE PHILIPPINES rep. by the BUREAU OF INTERNAL REVENUE, *petitioner, vs.* **TEAM ENERGY CORPORATION,** *respondent.*

SYLLABUS

1. TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE; PRESCRIPTIVE PERIODS REGARDING JUDICIAL CLAIMS FOR REFUNDS OR TAX CREDITS OF INPUT VAT; 30-DAY PERIOD FOR APPEAL FROM THE DECISION OF THE COMMISSIONER OF THE INTERNAL REVENUE TO THE COURT OF TAX APPEALS.— The prescriptive periods regarding judicial claims for refunds or tax credits of input VAT are explicitly set forth in Section 112(D) of the 1997 NIRC: x x x The text of the law is clear that resort to an appeal with the Court of Tax Appeals should be made within 30 days either from receipt of the decision denying the claim or the expiration of the 120-day period given to the Commissioner to decide the claim. x x x Section 112(D) is consistent with Section 11 of Republic Act No. 1125, as amended by Section 9 of Republic Act No. 9282 (2004), which provides a 30-day period of appeal either from receipt of the adverse decision of the Commissioner or from the lapse of the period fixed by law for action.

2. ID.; ID.; ID.; ID.; STRICT COMPLIANCE THEREOF IS REQUIRED.— "Excess input tax is not an excessively, erroneously, or illegally collected tax." A claim for refund of this tax is in the nature of a tax exemption, which is based on Sections 110(B) and 112(A) of 1997 NIRC, allowing VAT-

registered persons to recover the excess input taxes they have paid in relation to their zero-rated sales. "The term 'excess' input VAT simply means that the input VAT available as [refund] credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due." Accordingly, claims for tax refund/credit of excess input tax are governed not by Section 229 but only by Section 112 of the NIRC. A claim for input VAT refund or credit is construed strictly against the taxpayer. Accordingly, there must be strict compliance with the prescriptive periods and substantive requirements set by law before a claim for tax refund or credit may prosper. The mere fact that Team Energy has proved its excess input VAT does not entitle it as a matter of right to a tax refund or credit. The 120+30-day periods in Section 112 is not a mere procedural technicality that can be set aside if the claim is otherwise meritorious. It is a mandatory and jurisdictional condition imposed by law. Team Energy's failure to comply with the prescriptive periods is, thus, fatal to its claim.

3. **ID.; ID.; VALUE ADDED TAX; CREDITABLE INPUT TAX MUST BE EVIDENCED BY A VAT INVOICE OR OFFICIAL RECEIPT.—** Claimants of tax refunds have the burden to prove their entitlement to the claim under substantive law and the factual basis of their claim. Moreover, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations. Under Section 110(A)(1) of the 1997 NIRC, creditable input tax must be evidenced by a VAT invoice or official receipt, which must in turn reflect the information required in Sections 113 and 237 of the Code, x x x Section 4.108-1 of Revenue Regulations No. 7-95 summarizes the information that must be contained in a VAT invoice and a VAT official receipt: x x x This Court reiterates that to claim a refund of unutilized or excess input VAT, purchase of goods or properties must be supported by VAT invoices, while purchase of services must be supported by VAT official receipts.

4. **ID.; ID.; ID.; ID.; STRICT COMPLIANCE WITH SUBSTANTIATION AND INVOICING REQUIREMENTS IS NECESSARY CONSIDERING OUR VAT'S NATURE AND VAT SYSTEM'S TAX CREDIT METHOD, WHERE TAX PAYMENTS ARE BASED ON OUTPUT AND INPUT TAXES AND WHERE THE SELLER'S OUTPUT TAX**

BECOMES THE BUYER'S INPUT TAX THAT IS AVAILABLE AS TAX CREDIT OR REFUND IN THE SAME TRANSACTION.— For context, VAT is a tax imposed on each sale of goods or services in the course of trade or business, or importation of goods "as they pass along the production and distribution chain." It is an indirect tax, which "may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services." The output tax due from VAT-registered sellers becomes the input tax paid by VAT-registered purchasers on local purchase of goods or services, which the latter in turn may credit against their output tax liabilities. On the other hand, for a non-VAT purchaser, the VAT shifted forms part of the cost of goods, properties, and services purchased, which may be deductible as an expense for income tax purposes. x x x Our VAT system is invoice-based, i.e. taxation relies on sales invoices or official receipts. A VAT-registered entity is liable to VAT, or the output tax at the rate of 0% or 10% (now 12%) on the gross selling price of goods or gross receipts realized from the sale of services. Sections 106(D) and 108(C) of the Tax Code expressly provide that VAT is computed at 1/11 of the total amount indicated in the *invoice* for sale of goods or *official receipt* for sale of services. This tax shall also be recognized as input tax credit to the purchaser of the goods or services. x x x A VAT-registered person may opt, however, to apply for tax refund or credit certificate of VAT paid corresponding to the zero-rated sales of goods, properties, or services to the extent that this input tax has not been applied against the output tax. Strict compliance with substantiation and invoicing requirements is necessary considering VAT's nature and VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.

APPEARANCES OF COUNSEL

Follosco Morallos & Herce for Team Energy Corp.

Office of the Solicitor General for Republic of the Philippines and the Commisioner of Internal Revenue.

D E C I S I O N

LEONEN, *J.*:

For a judicial claim for Value Added Tax (VAT) refund to prosper, the claim must not only be filed within the mandatory 120+30-day periods. The taxpayer must also prove the factual basis of its claim and comply with the 1997 National Internal Revenue Code (NIRC) invoicing requirements and other appropriate revenue regulations. Input VAT payments on local purchases of goods or services must be substantiated with VAT invoices or official receipts, respectively.

The Petitions for Review in G.R. Nos. 197663 and 197770 seek to reverse and set aside the April 8, 2011 Decision[1] and July 7, 2011 Resolution[2] of the Court of Tax Appeals En Banc in CTA EB No. 603. The assailed Decision affirmed with modification the October 5, 2009 Decision[3] and February 23, 2010 Resolution[4] of the Court of Tax Appeals in Division,

---

[1] *Rollo* (G.R. No. 197663), pp. 54-80, inclusive of Annex A. The Decision was penned by Associate Justice Juanito C. Castañeda, Jr.; concurred in by Associate Justices Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas; concurred and dissented by Presiding Justice Ernesto D. Acosta (pp. 81-84); and dissented by Associate Justice Lovell R. Bautista (pp. 85-90) of the Court of Tax Appeals, *En Banc*.

[2] *Id*. at 91-101. The Resolution was penned by Associate Justice Juanito C. Castañeda, Jr.; concurred in by Associate Justices Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, and Esperanza R. Fabon-Victorino; concurred and dissented by Presiding Justice Ernesto D. Acosta (pp. 102-105); and dissented by Associate Justice Lovell R. Bautista of the Court of Tax Appeals, *En Banc*. Associate Justices Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas were on wellness leave.

[3] *Id*. at 13-36 (inclusive of Annex A). The Decision, docketed as CTA Case Nos. 7229 and 7298, was penned by Associate Justice Caesar A. Casanova, concurred in by Associate Justice Lovell R. Bautista, and concurred and dissented by Presiding Justice Ernesto D. Acosta (pp. 37-39) of the First Division, Court of Tax Appeals, Quezon City.

[4] *Id*. at 41-46. The Resolution was penned by Associate Justice Caesar A. Casanova, concurred in by Associate Justice Lovell R. Bautista, and

granting Team Energy Corporation (Team Energy) a tax refund/credit in the reduced amount of ₱11,161,392.67, representing unutilized input VAT attributable to zero-rated sales for the taxable year 2003. The assailed Resolution denied the respective motions for reconsideration filed by Team Energy and the Commissioner of Internal Revenue (Commissioner).

Team Energy is a VAT-registered entity with Certificate of Registration No. 96-600-002498. It is engaged in power generation and electricity sale to National Power Corporation (NPC) under a Build, Operate, and Transfer scheme.[5]

On November 13, 2002, Team Energy filed with the Bureau of Internal Revenue (BIR) "an Application for Effective Zero-Rate of its supply of electricity to the NPC, which was subsequently approved."[6]

For the year 2003, Team Energy filed its Original and Amended Quarterly VAT Returns on the following dates and with the following details:

Quarter	Original Return	Amended Return	Zero-rated Sales	Input VAT
1st	April 25, 2003	July 25, 2003	₱3,170,914,604.24	₱15,085,320.31
2nd	July 25, 2003	October 27, 2003	3,034,739,252.93	15,898,643.56
3rd	October 27, 2003	-	2,983,478,607.66	21,151,308.57
4th	January 24, 2004	July 26, 2004[7]	3,019,672,908.84	31,330,081.06
Total			**₱12,208,805,373.67**[8]	**₱83,465,353.50**[9]

concurred and dissented by Chairperson Ernesto D. Acosta (pp. 47-52) of the Special First Division, Court of Tax Appeals, Quezon City.

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

[6] *Id*. at 14.

[7] *Id*. at 14-15.

[8] *Id*. at 23.

[9] *Id*. at 25.

On December 17, 2004, Team Energy filed with the Revenue District Office No. 60 in Lucena City a claim for refund of unutilized input VAT in the amount of ₱83,465,353.50, for the first to fourth quarters of taxable year 2003.[10]

On April 22, 2005, Team Energy appealed before the Court of Tax Appeals its 2003 first quarter VAT claim of ₱15,085,320.31. The appeal was docketed as CTA Case No. 7229.[11]

Opposing the appeal, the Commissioner averred that the amount claimed by Team Energy was not properly documented and that NPC's exemption from taxes did not extend to its electricity supplier such as Team Energy.[12]

On July 22, 2005, Team Energy appealed its VAT refund claims for the second to fourth quarters of 2003 in the amount of ₱68,380,033.19, docketed as CTA Case No. 7298.[13]

As special and affirmative defenses, the Commissioner alleged that it was imperative upon Team Energy to prove its compliance with the registration requirements of a VAT taxpayer; the invoicing and accounting requirements for VAT-registered persons; and the checklist of requirements for a VAT refund under Revenue Memorandum Order No. 53-98. Furthermore, the Commissioner contended that Team Energy must prove that the claims were filed within the prescriptive periods and that the input taxes being claimed had not been applied against any output tax liability or were not carried over in the succeeding quarters.[14]

On October 12, 2005, the two (2) cases were consolidated.[15]

---

[10] *Id.* at 56.

[11] *Id.*

[12] *Id.* at 56-57.

[13] *Id.* at 56. The CA Decision states ₱63,380,033.19 on this page but the correct amount is ₱68,380,033.19. See *rollo* (G.R. No. 197663), p. 58.

[14] *Id.* at 57-58.

[15] *Id.* at 59.

The Court of Tax Appeals First Division partially granted Team Energy's petition.[16] It held that NPC's exemption from direct and indirect taxes had long been resolved by this Court.[17] Consequently, NPC's electricity purchases from independent power producers, such as Team Energy, were subject to 0% VAT pursuant to Section 108(B)(3) of the 1997 NIRC.[18]

The Court of Tax Appeals First Division further ruled that ₱20,986,302.67 out of the reported zero-rated sales of ₱12,208,805,373.67 must be excluded for Team Energy's failure to submit the corresponding official receipts, leaving a balance of ₱12,187,819,071.00 as substantiated zero-rated sales.[19] Consequently, only 99.83%[20] of the validly supported input VAT payments being claimed could be considered.

The Court of Tax Appeals First Division likewise disallowed ₱12,642,304.32 of Team Energy's claimed input VAT for its failure to meet the substantiation requirements under Sections 110(A) and 113(A) of the 1997 NIRC and Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95 or the Consolidated Value Added Tax Regulations.[21] Team Energy's reported output VAT liability of ₱776.36 in its Quarterly VAT Return for the third quarter of 2003 was further deducted from the substantiated input VAT.[22] The Court of Tax Appeals used the following computation in determining Team Energy's total allowable input VAT:

---

[16] *Id*. at 30.

[17] *Id*. at 21.

[18] *Id*. at 20.

[19] *Id*. at 24.

[20] *Id*.; Computed as follows:

Substantiated zero-rated sales	₱12,187,819,071.00
Divided by total declared zero-rated sales	₱12,208,805,373.67
Rate of substantiated zero-rated sales	**99.83%**

[21] *Id*. at 25.

[22] *Id*. at 28.

Substantiated Input VAT	₱70,823,049.18
Less: Output VAT	776.36
Excess: Input VAT	70,822,272.82
Multiply by rate of substantiated zero-rated sales	99.83%
Excess input VAT attributable to substantiated zero-rated sales	**₱70,700,533.01**[23]

Finally, on the issue of prescription, the Court of Tax Appeals First Division held that "[t]he reckoning of the two-year prescriptive period for the filing of a claim for input VAT refund starts from the date of filing of the corresponding quarterly VAT return."[24] It explained that this Court's ruling in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*,[25] to the effect that "the two-year prescriptive period for the filing of a claim for input VAT refund starts from the close of the taxable quarter when the relevant sales were made,"[26] must be applied to cases filed after the promulgation of *Mirant*. Accordingly, Team Energy's administrative claim filed on December 17, 2004, and judicial claims filed on April 22, 2005 and July 22, 2005 were well within the two (2)-year prescriptive period.[27]

The dispositive portion of the October 5, 2009 Decision provided*:*

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. [The Commissioner of Internal Revenue] is hereby **ORDERED** to **REFUND** or **ISSUE** a tax credit certificate to [Team Energy] in the amount of ₱70,700,533.01.

SO ORDERED.[28] (Emphasis in the original)

---

[23] *Id*. at 29.

[24] *Id*.

[25] 586 Phil. 712 (2008) [Per *J*. Velasco, Jr., Second Division].

[26] *Rollo* (G.R. No. 197663), p. 30.

[27] *Id*.

[28] *Id*.

Upon the denial of her Motion for Reconsideration, the Commissioner filed on March 31, 2010 a Petition for Review with the Court of Tax Appeals En Banc.[29] She argued that the Court of Tax Appeals First Division erred in allowing the tax refund/credit as Team Energy's administrative and judicial claims for the first and second quarters were filed beyond the two (2)-year period prescribed in Section 112(A) of the 1997 NIRC.[30] Additionally, she averred that Team Energy's judicial claims for the second, third, and fourth quarters of 2003 were filed beyond the 30-day period to appeal under Section 112 of the 1997 NIRC.[31] Team Energy filed its Comment/Opposition to the Petition.[32]

On April 8, 2011, the Court of Tax Appeals En Banc promulgated its Decision, partially granting Team Energy's petition. It held that Team Energy's judicial claim for refund for the second, third, and fourth quarters of 2003 was filed only on July 22, 2005 or beyond the 30-day period prescribed under Section 112(D)[33] of the 1997 NIRC. Consequently, the claim for these quarters must be denied for lack of jurisdiction. Furthermore, the Court of Tax Appeals En Banc found Team Energy entitled to a refund in the reduced amount of ₱11,161,392.67, representing unutilized input VAT attributable to its zero-rated sales for the first quarter of 2003.

The dispositive portion of the Court of Tax Appeals En Banc April 8, 2011 Decision read:

WHEREFORE, on the basis of the foregoing considerations, the Petition for Review . . . is **PARTIALLY GRANTED.** The assailed Decision and Resolution of the First Division dated October 5, 2009 and February 23, 2010, respectively, are hereby **MODIFIED.** Accordingly, [the Commissioner] is ORDERED to refund in favor

---

[29] *Rollo* (G.R. No. 197770), p. 18.

[30] *Rollo* (G.R. No. 197663), p. 62.

[31] *Id*. at 61-62.

[32] *Id*. at 62.

[33] Now Section 112 (C), pursuant to RA 9337.

of [Team Energy] the reduced amount of Eleven Million One Hundred Sixty[-]One Thousand Three Hundred Ninety[-]Two [Pesos] and Sixty[-]Seven Centavos (₱11,161,392.67) representing unutilized input value-added tax (VAT) paid on its domestic purchases of goods and services and importation of goods attributable to its zero-rated sales for the first quarter of taxable year 2003.

SO ORDERED.[34] (Emphasis in the original)

The separate partial motions for reconsideration of Team Energy and the Commissioner were denied in the Court of Tax Appeals En Banc July 7, 2011 Resolution.[35]

Team Energy and the Commissioner filed their separate Petitions for Review before this Court, docketed as G.R. Nos. 197663[36] and 197770,[37] respectively.

After the parties have filed their respective comments to the petitions and replies to these comments, this Court directed them to submit their respective memoranda in its July 1, 2013 Resolution.[38]

Team Energy filed its Consolidated Memorandum[39] while the Commissioner filed a Manifestation,[40] stating that she was adopting her Comment dated February 21, 2012[41] as her Memorandum.

The issues for this Court's resolution are as follows:

First, whether or not the Court of Tax Appeals erred in disallowing Team Energy Corporation's claim for tax refund

---

[34] *Rollo* (G.R. No. 197663), pp. 74-75.

[35] *Id*. at 100.

[36] *Id*. at 112-141.

[37] *Rollo* (G.R. No. 197770), pp. 8-37.

[38] *Rollo* (G.R. No. 197663), pp. 368-370.

[39] *Id*. at 376-414.

[40] *Id*. at 371.

[41] *Id*. at 275-305.

of its unutilized input VAT for the second to fourth quarters of 2003 on the ground of lack of jurisdiction;

Second, whether or not the Court of Tax Appeals erred in failing to recognize the interchangeability of VAT invoices and VAT official receipts to comply with the substantiation requirements for refunds of excess or unutilized input tax under Sections 110 and 113 of the 1997 National Internal Revenue Code, resulting in the disallowance of ₱258,874.55; and

Finally, whether or not Team Energy Corporation's failure to submit the Registration and Certificate of Compliance issued by the Energy Regulatory Commission (ERC) disqualifies it from claiming a tax refund/credit.

I

The prescriptive periods regarding judicial claims for refunds or tax credits of input VAT are explicitly set forth in Section 112(D)[42] of the 1997 NIRC:

> Section 112. *Refunds or Tax Credits of Input Tax.* —
>
> . . . .
>
> (D) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, ***the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals***. (Emphasis supplied)

---

[42] Now Section 112(C), per amendments introduced by Republic Act No. 9337 (2005).

The text of the law is clear that resort to an appeal with the Court of Tax Appeals should be made within 30 days either from receipt of the decision denying the claim or the expiration of the 120-day period given to the Commissioner to decide the claim.

It was in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[43] where this Court first pronounced that observance of the 120+30-day periods in Section 112(D)[44] is crucial in filing an appeal with the Court of Tax Appeals. This was further emphasized in *Commissioner of Internal Revenue v. San Roque Power Corporation*[45] where this Court categorically held that compliance with the 120+30-day periods under Section 112 of the 1997 NIRC is mandatory and jurisdictional. Exempted from this are VAT refund cases that are prematurely filed before the Court of Tax Appeals or before the lapse of the 120-day period between December 10, 2003, when the BIR issued Ruling No. DA-489-03, and October 6, 2010, when this Court promulgated *Aichi*.[46]

Section 112(D)[47] is consistent with Section 11 of Republic Act No. 1125, as amended by Section 9 of Republic Act No. 9282 (2004), which provides a 30-day period of appeal either from receipt of the adverse decision of the Commissioner or from the lapse of the period fixed by law for action:

Section 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, . . . may **file an appeal with the CTA within thirty (30) days after the receipt of such decision**

---

[43] 646 Phil. 710 (2010) [Per *J.* Del Castillo, First Division].

[44] Now Section 112(C), per amendments introduced by Republic Act No. 9337 (2005).

[45] 703 Phil. 310 (2013) [Per *J.* Carpio, *En Banc*].

[46] *Id.* at 398–399.

[47] Now Section 112(C), per amendments introduced by Republic Act No. 9337 (2005).

or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2)[48] herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon**. (Emphasis supplied)

In this case, Team Energy's judicial claim was filed beyond the 30-day period required in Section 112(D). The administrative claim for refund was filed on December 17, 2004.[49] Thus, BIR had 120 days to act on the claim, or until April 16, 2005. Team Energy, in turn, had until May 16, 2005 to file a petition with the Court of Tax Appeals but filed its appeal only on July 22, 2005, or 67 days late. Thus, the Court of Tax Appeals En Banc correctly denied its claim for refund due to prescription.

Team Energy argues, however, that the application of the *Aichi* doctrine to its claim would violate the rule on non-retroactivity of judicial decisions.[50] Team Energy adds that when it filed its claims for refund with the BIR and the Court of Tax Appeals, both the administrative and judicial claims for refund must be filed within the two (2)-year prescriptive period.[51] Moreover, Revenue Regulations No. 7-95 did not

---

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

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

. . . . . .

(2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**[.]

[49] *Rollo* (G.R. No. 197663), p. 56.

[50] *Id*. at 387.

[51] *Id*. at 388.

require a specific number of days after the 60-day, now 120-day, period given to the Commissioner to decide on the claim within which to appeal to the Court of Tax Appeals.[52] Team Energy contends that to deny its claim of ₱70,700,533.01 duly proven before the Court of Tax Appeals First Division "would result to unjust enrichment on the part of the government."[53]

This Court is not persuaded.

When Team Energy filed its refund claim in 2004, the 1997 NIRC was already in effect, which clearly provided for: (a) 120 days for the Commissioner to act on a taxpayer's claim; and (b) 30 days for the taxpayer to appeal either from the Commissioner's decision or from the expiration of the 120-day period, in case of the Commissioner's inaction.

"Rules and regulations [including Revenue Regulations No. 7-95] or parts [of them] which are contrary to or inconsistent with [the NIRC] are . . . amended or modified accordingly."[54]

This Court, in construing the law, merely declares what a particular provision has always meant. It does not create new legal obligations. This Court does not have the power to legislate. Interpretations of law made by courts necessarily always have a "retroactive" effect.[55]

In *Aichi*, where the issue on prematurity of a judicial claim was first raised and passed upon, this Court applied outright its interpretation of the 1997 NIRC's language on the mandatory character of the 120+30-day periods. Consequently, it ordered the dismissal of *Aichi*'s appeal due to premature filing of its claim for refund/credit of input VAT. The administrative and judicial claims in *Aichi* were filed on September 30, 2004, even prior to the filing of Team Energy's claims.

---

[52] *Id*. at 393–394.

[53] *Id*. at 396.

[54] TAX CODE, Sec. 291.

[55] See *Dissenting Opinion of J. Leonen* in *Commissioner of Internal Revenue v. San Roque Power Corp.,* 719 Phil. 137 (2013) [Per J. Carpio, *En Banc*].

San Roque dealt with judicial claims which were either prematurely filed or had already prescribed. That case, specifically in G.R. No. 197156, *Philex Mining Corporation v. Commissioner of Internal Revenue,* involved the filing of a judicial claim beyond the 30-day period to appeal as in this case. Then and there, this Court rejected Philex Mining Corporation's (Philex) judicial claim because of late filing:

> Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim long after the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. **In any event, whether governed by jurisprudence before, during, or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing.** Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late.
>
> The *Atlas* doctrine cannot save Philex from the late filing of its judicial claim. **The inaction of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, "deemed a denial" of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and inappealable.** The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences.[56] (Emphasis supplied, citation omitted)

Philex filed its judicial claim on October 17, 2007, before *Aichi* was promulgated.

---

[56] *Commissioner of Internal Revenue v. San Roque Power Corporation*, 703 Phil. 310, 362-363 (2013) [Per *J*. Carpio, *En Banc*].

The proper application of the mandatory and jurisdictional nature of the 120+30-day periods, whether prospective or retroactive, was, in fact, at the heart of this Court *en banc*'s debates in *San Roque*.

Some justices were of the view that the mandatory and jurisdictional nature of the 120+30-day periods must be applied prospectively, or at the earliest upon the effectivity of Revenue Regulations No. 16-2005,[57] or upon the finality of *Aichi*.[58] Still others[59] argued for retroactive application to all undecided VAT

---

[57] RR 16-2005, otherwise known as the Consolidated Value-Added Tax Regulations of 2005, became effective on **November 1, 2005**. The prefatory statement of RR 16-2005 provides:

Pursuant to the provisions of Secs. 244 and 245 of the National Internal Revenue Code of 1997, as last amended by Republic Act No. 9337 (Tax Code), in relation to Sec. 23 of the said Republic Act, these Regulations are hereby promulgated to implement Title IV of the Tax Code, as well as other provisions pertaining to Value-Added Tax (VAT). These Regulations supersedes Revenue Regulations No. 14-2005 dated June 22, 2005.

In the *Dissenting Opinion of J. Velasco* in *Commissioner of Internal Revenue v. San Roque Power Corp.,* 719 Phil. 137, 400-434 (2013) [Per *J.* Carpio, *En Banc*]*, J.* Velasco, joined by Justices Mendoza and Perlas-Bernabe, opined that the permissive treatment of the 120+30-day periods should be reckoned not from December 10, 2003 when BIR Ruling No. DA-489-03 was issued, but from January 1, 1996 (the effective date of Revenue Regulation (RR) No. 7-95, which still applied the two (2)-year prescriptive period to judicial claims) to October 31, 2005 (prior to the effective date of RR No. 16-2005). He explained that it was only in RR No. 16-2005 (effective November 1, 2005), particularly Section 4.112-1, where the reference to the two (2)-year prescriptive period in conjunction with the filing of a judicial claim for refund/credit of input VAT was deleted.

[58] *Separate Dissenting Opinion of C.J. Sereno* in *Commissioner of Internal Revenue v. San Roque Power Corp.,* 719 Phil. 137, 395-400 (2013) [Per *J.* Carpio, *En Banc*].

[59] In the *Separate Opinion of J. Leonen* in *Commissioner of Internal Revenue v. San Roque Power Corp.,* 719 Phil. 137, 388–395 (2013) [Per *J.* Carpio, *En Banc*]*, J.* Leonen, joined by Justice Del Castillo, argued that the plain text of Section 112 of the 1997 NIRC would already put the private parties within a reasonable range of interpretation that would serve them notice as to the remedies that were available to them. An erroneous construction placed upon the law by the Commissioner, even if it has been

refund cases regardless of the period when the claim for refund was made.

The majority held that the 120+30-day mandatory periods were already in the 1997 NIRC when the taxpayers filed their judicial claims. The law is clear, plain, and unequivocal and must be applied exactly as worded. However, the majority considered as an exception, for equitable reasons, BIR Ruling No. DA-489-03, which expressly stated that taxpayers need not wait for the lapse of the 120-day period before seeking judicial relief. Thus, judicial claims filed from December 10, 2003, when BIR Ruling No. DA-489-03 was issued, to October 6, 2010, when the *Aichi* doctrine was adopted, were excepted from the strict application of the 120+30-day mandatory and jurisdictional periods.

San Roque Power Corporation (San Roque) filed a motion for reconsideration and supplemental motion for reconsideration in G.R. No. 187485, arguing for the prospective application of the 120+30-day mandatory and jurisdictional periods. This Court denied *San Roque* with finality on October 8, 2013.[60]

In *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership,*[61] Mindanao II Geothermal Partnership (Mindanao II) filed its administrative and judicial claims on October 6, 2005 and July 21, 2006, respectively, prior to the promulgation of *Aichi* and *San Roque.* While its administrative claim was found to have been timely filed, this Court nevertheless denied its refund claim because the judicial claim was filed late or only 138 days after the lapse of the 120+30-day periods. This Court held that the 30-day period to appeal was mandatory and jurisdictional, applying the ruling in *San Roque*. It further emphasized that late filing was absolutely prohibited.

---

followed for years, must be abandoned. When the text of the law is clear, unbridled administrative discretion to read it otherwise cannot be condoned.

[60] See *Commissioner of Internal Revenue v. San Roque Power Corporation*, 719 Phil. 137 (2013) [Per *J.* Carpio, *En Banc*].

[61] 724 Phil. 534 (2014) [Per *C.J.* Sereno, First Division].

Since then, the 120+30-day periods have been applied to pending cases,[62] resulting in denial of taxpayers' claims due to late filing. This Court finds no reason to except this case.

Further, the Commissioner's inaction on Team Energy's claim during the 120-day period is "deemed a denial," pursuant to Section 7(a)(2)[63] of Republic Act No. 1125, as amended by Section 7 of Republic Act No. 9282. Team Energy had 30 days from the expiration of the 120-day period to file its judicial claim with the Court of Tax Appeals. Its failure to do so rendered the Commissioner's "deemed a denial" decision as final and inappealable.

Team Energy's contention that denial of its duly proven refund claim would constitute unjust enrichment on the part of the government is misplaced.

"Excess input tax is not an excessively, erroneously, or illegally collected tax."[64] A claim for refund of this tax is in

---

[62] *Commissioner of Internal Revenue v. Toledo Power Co.,* 766 Phil. 20 (2015) [Per *C.J.* Sereno, First Division]; *CE Casecnan Water and Energy Company, Inc. v. Commissioner of Internal Revenue,* 764 Phil. 595 (2015) [Per *J.* Leonen, Second Division]; *Northern Mindanao Power Corp. v. Commissioner of Internal Revenue,* 754 Phil. 146 (2015) [Per *C.J.* Sereno, First Division]; *Rohm Apollo Semiconductor Phils. v. Commissioner of Internal Revenue,* 750 Phil. 624 (2015) [Per *C.J.* Sereno, First Division]; *CBK Power Co. Ltd. v. Commissioner of Internal Revenue,* 724 Phil. 686 (2014) [Per *C.J.* Sereno, First Division]; *Commissioner of Internal Revenue v. Dash Engineering Philippines, Inc.,* 723 Phil. 433 (2013) [Per *J.* Mendoza, Third Division].

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

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

. . . . . .

(2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**[.] (Emphasis supplied)

[64] *Dissenting Opinion* of *J.* Leonen in *Commissioner of Internal Revenue v. San Roque Power Corp.,* 703 Phil. 310, 389 (2013) [Per *J.* Carpio, *En Banc*].

the nature of a tax exemption, which is based on Sections 110(B) and 112(A) of 1997 NIRC, allowing VAT-registered persons to recover the excess input taxes they have paid in relation to their zero-rated sales. "The term 'excess' input VAT simply means that the input VAT available as [refund] credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due."[65] Accordingly, claims for tax refund/credit of excess input tax are governed not by Section 229 but only by Section 112 of the NIRC.

A claim for input VAT refund or credit is construed strictly against the taxpayer.[66] Accordingly, there must be strict compliance with the prescriptive periods and substantive requirements set by law before a claim for tax refund or credit may prosper.[67] The mere fact that Team Energy has proved its excess input VAT does not entitle it as a matter of right to a tax refund or credit. The 120+30-day periods in Section 112 is not a mere procedural technicality that can be set aside if the claim is otherwise meritorious. It is a mandatory and jurisdictional condition imposed by law. Team Energy's failure to comply with the prescriptive periods is, thus, fatal to its claim.

II

On the disallowance of some of its input VAT claims, Team Energy submits that "at the time when the unutilized input VAT [was] incurred in 2003, the applicable NIRC provisions did not create a distinction between an official receipt and an invoice

---

[65] *Commissioner of Internal Revenue v. San Roque Power Corp.,* 703 Phil. 310, 366 (2013) [Per *J.* Carpio, *En Banc*].

[66] See *Microsoft Philippines, Inc. v. Commissioner of Internal Revenue,* 662 Phil. 762 (2011) [Per *J.* Carpio, Second Division]; *CIR v. Manila Mining Corporation,* 505 Phil. 650, 671 (2005) [Per *J.* Carpio Morales, Third Division].

[67] See *Commissioner of Internal Revenue v. San Roque Power Corp.,* 703 Phil. 310 (2013) [Per *J.* Carpio, *En Banc*]; *Commissioner of Internal Revenue v. Manila Mining Corp.,* 505 Phil. 650 (2005) [Per *J.* Carpio Morales, Third Division].

in substantiating a claim for refund."[68] Section 113 of the 1997 NIRC, prior to its amendment by Republic Act No. 9337 in 2005, provides:

> Section 113. Invoicing and Accounting Requirements for VAT-Registered Persons. –
>
> (A) Invoicing Requirements. – A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

Team Energy posits that Section 113, prior to its amendment by Republic Act No. 9337, must be applied to its input VAT incurred in 2003, and that the disallowed amount of ₱258,874.55 supported by VAT invoice or official receipts should be allowed.

Team Energy's contention is untenable.

Claimants of tax refunds have the burden to prove their entitlement to the claim under substantive law and the factual basis of their claim.[69] Moreover, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.[70]

---

[68] *Rollo* (G.R. No. 197663), p. 397.

[69] See *Luzon Hydro Corp. v. Commissioner of Internal Revenue,* 721 Phil. 202 (2013) [Per *J.* Bersamin, First Division]; *Commissioner of Internal Revenue v. Seagate Technology (Philippines),* 491 Phil. 317 (2005) [Per *J.* Panganiban, Third Division]; *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue,* 547 Phil. 332 (2007) [Per *J.* Corona, First Division].

[70] *Bonifacio Water Corp. v. Commissioner of Internal Revenue,* 714 Phil. 413 (2013) [Per *J.* Peralta, Third Division]; *Microsoft Philippines, Inc. v. Commissioner of Internal Revenue,* 662 Phil. 762 (2011) [Per *J.* Carpio, Second Division].

Under Section 110(A)(1) of the 1997 NIRC, creditable input tax must be evidenced by a VAT invoice or official receipt, which must in turn reflect the information required in Sections 113 and 237 of the Code, *viz:*

Section 113. *Invoicing and Accounting Requirements for VAT-Registered Persons. —*

(A) *Invoicing Requirements.* — A VAT-registered person shall, for every sale, issue an invoice or receipt. **In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:**

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

. . . . . .

Section 237. *Issuance of Receipts or Sales or Commercial Invoices.* — **All persons subject to an internal revenue tax** shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (₱25.00) or more, **issue duly registered receipts or sales or commercial invoices**, prepared at least in duplicate, **showing the date of transaction, quantity, unit cost and description of merchandise or nature of service**: *Provided*, *however*, That in the case of sales, receipts or transfers in the amount of One hundred pesos (₱100.00) or more, or regardless of amount, **where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax**; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, **receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further*, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.** (Emphasis supplied)

Section 4.108-1 of Revenue Regulations No. 7-95 summarizes the information that must be contained in a VAT invoice and a VAT official receipt:

Section 4.108-1. *Invoicing Requirements* — **All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:**

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. the word "zero rated" imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or receipts and this shall be considered as a "VAT Invoice". All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.

If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. **A "VAT Invoice" shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 [now Sections 106 and 108] of the Code.**

The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records. (Emphasis supplied)

In this case, the Court of Tax Appeals disallowed Team Energy's input VAT of ₱258,874.55, which consisted of:

1. Input taxes of ₱78,134.65 claimed on local purchase of goods supported by documents other than VAT invoices;[71] and
2. Input taxes of ₱180,739.90 claimed on local purchase of services supported by documents other than VAT official receipts.[72]

Team Energy submits that the disallowances "essentially result from the non-recognition [by] the [Court of Tax Appeals] En Banc of the interchangeability of VAT invoices and VAT [official receipts] in a claim for refund of excess or unutilized input tax."[73]

In *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue,*[74] this Court was confronted with the same issue on the substantiation of the taxpayer-applicant's zero-rated sales of services. In that case, AT&T Communications Services Philippines, Inc. (AT&T) applied for tax refund and/or tax credit of its excess/unutilized input VAT from zero-rated sales of services for calendar year 2002. The Court of Tax Appeals First Division, as affirmed by the En Banc, denied AT&T's claim "for lack of substantiation" on the ground that:

> [C]onsidering that the subject revenues pertain to gross receipts from services rendered by petitioner, **valid VAT official receipts** and not mere sales invoices **should have been submitted** in support thereof. Without proper VAT official receipts, the foreign currency payments received by petitioner from services rendered for the four (4) quarters of taxable year 2002 in the sum of US$1,102,315.48 with the peso equivalent of ₱56,898,744.05 cannot qualify for zero-rating for VAT purposes.[75] (Emphasis in the original)

---

[71] *Rollo* (G.R. No. 197663), p. 71.

[72] *Id*. at 72.

[73] *Id*. at 134.

[74] 640 Phil. 613 (2010) [Per *J*. Carpio Morales, Third Division].

[75] *Id*. at 615.

Reversing the Court of Tax Appeals, this Court held that since Section 113 did not distinguish between a sales invoice and an official receipt, the sales invoices presented by AT&T would suffice provided that the requirements under Sections 113 and 237 of the Tax Code were met. It further explained:

> Sales invoices are recognized commercial documents to facilitate trade or credit transactions. They are proofs that a business transaction has been concluded, hence, should not be considered bereft of probative value. Only the preponderance of evidence threshold as applied in ordinary civil cases is needed to substantiate a claim for tax refund proper.[76] (Citations omitted)

However, in a subsequent claim for tax refund or credit of input VAT filed by AT&T for the calendar year 2003, the same issue on the interchangeability of invoice and official receipt was raised. This time in *AT&T Communications Services Phils., Inc. v. Commissioner of Internal Revenue*,[77] this Court held that there was a clear delineation between official receipts and invoices and that these two (2) documents could not be used interchangeably. According to this Court, Section 113 on invoicing requirements must be read in conjunction with Sections 106 and 108, which specifically delineates sales invoices for sales of goods and official receipts for sales of services.

> Although it appears under [Section 113 of the 1997 NIRC] that there is no clear distinction on the evidentiary value of an invoice or official receipt, it is worthy to note that the said provision is a general provision which covers all sales of a VAT[-]registered person, whether sale of goods or services. It does not necessarily follow that the legislature intended to use the same interchangeably. The Court therefore cannot conclude that the general provision of Section 113 of the NIRC of 1997, as amended, intended that the invoice and official receipt can be used for either sale of goods or services, because there

---

[76] *Id*. at 618-619.

[77] 747 Phil. 337 (2014) [Per *J*. Perez, First Division]. See also *KEPCO Philippines Corporation v. CIR*, G.R. No. 181858, 24 November 2010, 636 SCRA 166 [Per *J*. Mendoza, Second Division] cited in *Northern Mindanao Power Corp. v. Commissioner of Internal Revenue,* G.R. No. 185115, February 18, 2015 [Per *C.J*. Sereno, First Division].

are specific provisions of the Tax Code which clearly delineates the difference between the two transactions.

In this instance, Section 108 of the NIRC of 1997, as amended, provides:

> SEC. 108. ***Value-added Tax on Sale of Services*** and Use or Lease of Properties. —
>
> . . . . . .
>
> (C) Determination of the Tax — The tax shall be computed by multiplying the total amount indicated in the ***official receipt*** by one-eleventh (1/11).

Comparatively, Section 106 of the same Code covers sale of goods, thus:

> SEC. 106. ***Value-added Tax on Sale of Goods or Properties.*** —
>
> . . . . . .
>
> (D) Determination of the Tax. — The tax shall be computed by multiplying the total amount indicated in the ***invoice*** by one-eleventh (1/11).

Apparently, the construction of the statute shows that the legislature intended to distinguish the use of an invoice from an official receipt. It is more logical therefore to conclude that subsections of a statute under the same heading should be construed as having relevance to its heading. The legislature separately categorized VAT on sale of goods from VAT on sale of services, not only by its treatment with regard to tax but also with respect to substantiation requirements. Having been grouped under Section 108, its subparagraphs, (A) to (C), and Section 106, its subparagraphs (A) to (D), have significant relations with each other.

Legislative intent must be ascertained from a consideration of the statute as a whole and not of an isolated part or a particular provision alone. This is a cardinal rule in statutory construction. For taken in the abstract, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when the word or phrase is considered with those with which it is associated. Thus, an apparently general provision may have a limited application if

viewed together with the other provisions.[78] (Emphasis supplied, citation omitted)

This Court reiterates that to claim a refund of unutilized or excess input VAT, purchase of goods or properties must be supported by VAT invoices, while purchase of services must be supported by VAT official receipts.

For context, VAT is a tax imposed on each sale of goods or services in the course of trade or business, or importation of goods "as they pass along the production and distribution chain."[79] It is an indirect tax, which "may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services."[80] The output tax[81] due from VAT-registered sellers becomes the input tax[82] paid by VAT-registered purchasers on local purchase of goods or services, which the latter in turn may credit against their output tax liabilities. On the other hand, for a non-VAT purchaser, the VAT shifted forms part of the cost of goods, properties, and services purchased, which may be deductible as an expense for income tax purposes.[83]

---

[78] *AT&T Communications Services Phils., Inc. v. Commissioner of Internal Revenue,* 747 Phil. 337, 356–357 (2014) [Per *J.* Perez, First Division].

[79] *Commissioner of Internal Revenue v. Seagate Technology (Philippines),* 491 Phil. 317, 332 (2005) [Per *J.* Panganiban, Third Division].

[80] TAX CODE, Sec. 105.

[81] "Output tax" means the VAT due on the sale or lease of taxable goods, properties or services by a VAT-registered or VAT-registrable person. *See* last paragraph of Sec. 110(A)(3) of the Tax Code.

[82] "'[I]nput tax' means the [VAT] due from or paid by a VAT-registered person in the course of his [or her] trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code." *See* Sec. 110(A)(3) of the Tax Code.

[83] See *Commissioner of Internal Revenue v. Benguet Corporation*, 501 Phil. 343 (2005) [Per *J.* Tinga, Second Division].

Panasonic Communications Imaging Corp. v. Commissioner of Internal Revenue[84] explained the concept of VAT and its collection through the tax credit method:

> The VAT is a tax on consumption, an indirect tax that the provider of goods or services may pass on to his customers. Under the VAT method of taxation, which is invoice-based, an entity can subtract from the VAT charged on its sales or outputs the VAT it paid on its purchases, inputs and imports. For example, when a seller charges VAT on its sale, it issues an invoice to the buyer, indicating the amount of VAT he charged. For his part, if the buyer is also a seller subjected to the payment of VAT on his sales, he can use the invoice issued to him by his supplier to get a reduction of his own VAT liability. The difference in tax shown on invoices passed and invoices received is the tax paid to the government. In case the tax on invoices received exceeds that on invoices passed, a tax refund may be claimed.
>
> Under the 1997 NIRC, if at the end of a taxable quarter the seller charges output taxes equal to the input taxes that his suppliers passed on to him, no payment is required of him. It is when his output taxes exceed his input taxes that he has to pay the excess to the BIR. If the input taxes exceed the output taxes, however, the excess payment shall be carried over to the succeeding quarter or quarters. Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any excess over the output taxes shall instead be refunded to the taxpayer.[85] (Citations omitted)

Our VAT system is invoice-based, i.e. taxation relies on sales invoices or official receipts. A VAT-registered entity is liable to VAT, or the output tax at the rate of 0% or 10% (now 12%) on the gross selling price[86] of goods or gross receipts[87]

---

[84] 625 Phil. 631 (2010) [Per *J*. Abad, Second Division].

[85] *Id*. at 638-639.

[86] "The term '*gross selling price'* means the total amount of money or its equivalent **which the purchaser pays or is obligated to pay** to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price." (Emphasis supplied) *See* last paragraph of Section 106(A)(1) of the Tax Code.

[87] "The term '*gross receipts'* means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental

realized from the sale of services. Sections 106(D) and 108(C) of the Tax Code expressly provide that VAT is computed at 1/11 of the total amount indicated in the *invoice* for sale of goods or *official receipt* for sale of services.[88] This tax shall also be recognized as input tax credit to the purchaser of the goods or services.

---

or royalty, including the amount charged for materials supplied with the services and deposits and advanced **payments actually or constructively received** during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax." (Emphasis supplied) *See* last paragraph of Section 108(A) of the Tax Code.

[88] TAX CODE, Secs. 106 and 108 provide:

Section 106. *Value-added Tax on* ***Sale of Goods or Properties.*** —

(A) *Rate and Base of Tax.* — These shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) of the **gross selling price or gross value in money of the goods or properties sold**, bartered or exchanged, such tax to be paid by the seller or transferor. . . .

. . . . . .

(D) *Determination of the Tax.* —

(1) **The tax shall be computed by multiplying the total amount indicated in the *invoice* by one-eleventh (1/11)**.

(2) *Sales Returns, Allowances and Sales Discounts.* — The value of goods or properties sold and subsequently returned or for which allowances were granted by a VAT-registered person may be deducted from the gross sales or receipts for the quarter in which a refund is made or a credit memorandum or refund is issued. Sales discount granted and indicated in the invoice at the time of sale and the grant of which does not depend upon the happening of a future event may be excluded from the gross sales within the same quarter it was given.

Section 108. *Value-added Tax on* ***Sale of Services and Use or Lease of Properties.*** —

(A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of **gross receipts derived from the sale or exchange of services**, including the use or lease of properties. . . .

. . . . . .

(C) *Determination of the Tax.* — **The tax shall be computed by multiplying the total amount indicated in the *official receipt* by one-eleventh (1/11).** (Emphasis supplied)

Under Section 110[89] of the 1997 NIRC, the input tax on purchase of goods or properties, or services is creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties;

(b) To the importer upon payment of the VAT prior to the release of the goods from the custody of the Bureau of Customs; and

[(c)] [T]o the purchaser [of services], lessee [of property] or licensee upon payment of the compensation, rental, royalty or fee.

---

[89] TAX CODE, Sec. 110 provides:

Section 110. *Tax Credits.* —

(A) *Creditable Input Tax.* —

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

(i) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.

(b) Purchase of services on which a value-added tax has been actually paid.

(2) The input tax on domestic purchase of goods or properties shall be creditable.

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

However, in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:

A VAT-registered person may opt, however, to apply for tax refund or credit certificate of VAT paid corresponding to the zero-rated sales of goods, properties, or services to the extent that this input tax has not been applied against the output tax.

Strict compliance with substantiation and invoicing requirements is necessary considering VAT's nature and VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.

The Court of Tax Appeals further pointed out that the noninterchangeability between VAT official receipts and VAT invoices avoids having the government refund a tax that was not even paid.

(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and

(b) A ratable portion of any input tax which cannot be directly attributed to either activity.

. . . . . .

(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. Any input tax attributable to the purchase of capital goods or 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.

(C) *Determination of Creditable Input Tax*. — The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter shall be reduced by the amount of claim for refund or tax credit for value-added tax and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale.

The claim for tax credit referred to in the foregoing paragraph shall include not only those filed with the Bureau of Internal Revenue but also those filed with other government agencies, such as the Board of Investments and the Bureau of Customs.

It should be noted that the seller will only become liable to pay the output VAT upon receipt of payment from the purchaser. If we are to use sales invoice in the sale of services, an absurd situation will arise when the purchaser of the service can claim tax credit representing input VAT even before there is payment of the output VAT by the seller on the sale pertaining to the same transaction. As a matter of fact[,] if the seller is not paid on the transaction, the seller of service would legally not have to pay output tax while the purchaser may legally claim input tax credit thereon. The government ends up refunding a tax which has not been paid at all. Hence, to avoid this, VAT official receipt for the sale of services is an absolute requirement.[90]

In conjunction with this rule, Revenue Memorandum Circular No. 42-03[91] expressly provides that an "invoice is the supporting document for the claim of input tax on purchase of goods whereas official receipt is the supporting document for the claim of input tax on purchase of services." It further states that a taxpayer's failure to comply with the invoicing requirements will result to the disallowance of the claim for input tax. Pertinent portions of this circular provide:

A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.

If the claim for refund/[tax credit certificate] is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g. failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account

---

[90] *Rollo* (G.R. No. 197663), p. 98.

[91] Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters (2003).

subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer.

Pursuant to Sections 106(D) and 108(C) in relation to Section 110 of the 1997 NIRC, the output or input tax on the sale or purchase of goods is determined by the total amount indicated in the VAT invoice, while the output or input tax on the sale or purchase of services is determined by the total amount indicated in the VAT official receipt.

Thus, the Court of Tax Appeals properly disallowed the input VAT of ₱258,874.55 for Team Energy's failure to comply with the invoicing requirements.

III

The Commissioner submits that the Court of Tax Appeals En Banc erred in granting Team Energy a tax refund/credit of ₱11,161,392.67, representing unutilized input VAT attributable to zero-rated sales of electricity to NPC.[92] She maintains that Team Energy is not entitled to any tax refund or credit because it cannot qualify for VAT zero-rating under Republic Act No. 9136[93] or the Electrical Power Industry Reform Act (EPIRA) Law for failure to submit its ERC Registration and Certificate of

---

[92] *Rollo* (G.R. No. 197770), p. 28.

[93] Rep. Act No. 9136, Sec. 6 provides:

Section 6. *Generation Sector.* — Generation of electric power, a business affected with public interest, shall be competitive and open.

Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.

Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.

Upon implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.

Compliance.[94] She avers that to operate a generation facility, Team Energy must have a duly issued ERC Certificate of Compliance, without which an entity cannot be considered a power generation company and its sales of generated power will not qualify for VAT zero-rating.[95]

The Court of Tax Appeals rejected this argument on the ground that the issue was raised for the first time in a motion for partial reconsideration, *viz:*

> [The Commissioner] raised the issue of [Team Energy's] failure to submit the Registration and Certificate of Compliance (COC) issued by ERC for the first time in the instant Motion for Partial Reconsideration. The said issue was neither raised in the Court a quo nor in the Petition for Review with the Court En Banc. The rule is well settled that no question will be considered by the appellate court which has not been raised in the court below. When a party deliberately adopts a certain theory, and the case is tried and decided upon the theory in the court below, he will not be permitted to change his theory on appeal, because to permit him to do so would be unfair to the adverse party. Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular but also extrajudicial and invalid. In the case of *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,*[96] the Supreme Court said:
>
> > The rule is well-settled that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal, much more in a motion for reconsideration as in this case, because this would

---

Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.

The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements.

[94] *Rollo* (G.R. No. 197770), pp. 21-22.

[95] *Id.* at 24.

[96] G.R. No. 168498 (Resolution), [April 24, 2007], 550 Phil. 316-326.

> be offensive to the basic rules of fair play, justice and due process. This last ditch effort to shift to a new theory and raise a new matter in the hope of a favorable result is a pernicious practice that has consistently been rejected.

Also, both parties stipulated and recognized in the Joint Stipulation of Facts and Issues that [Team Energy] is principally engaged in the business of power generation. Moreover, [the Commissioner] acknowledged [Team Energy's] sale of electricity to the NPC as zero-rated evidence[d] by the approved Application for VAT zero-rating.[97]

The Commissioner now asserts that her counsel's mistake in belatedly raising the issue should not prejudice the State, as it is not bound by the errors of its officers or agents.[98] She adds that despite the Stipulation of Facts, the Court of Tax Appeals should have determined Team Energy's compliance with Republic Act No. 9136 or the EPIRA Law because the burden lies on the taxpayer to prove its entitlement to a refund.[99]

The Commissioner's argument is misplaced.

Team Energy's claim for unutilized or excess input VAT was anchored not on the EPIRA Law but on Section 108(B)(3)[100] of the 1997 NIRC, in relation to Section 13 of Republic Act

---

[97] *Rollo* (G.R. No. 197770), pp. 83-84.

[98] *Id*. at 30.

[99] *Id*. at 31.

[100] Sec. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. —

. . . . . .

(B) *Transactions Subject to Zero Percent (0%) Rate.*— The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

. . . . . .

(3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate[.]** (Emphasis supplied)

No. 6395[101] or the NPC's charter,[102] before its repeal by Republic Act No. 9337. One of the issues presented before the Court of Tax Appeals First Division was "[w]hether or not the power generation services rendered by [Team Energy] to NPC are subject to zero percent (0%) VAT pursuant to Section 108(B)(3)."[103] Otherwise stated, the Court of Tax Appeals First Division was confronted with the legal issue of whether NPC's tax exemption privilege includes the indirect tax of VAT to entitle Team Energy to 0% VAT rate. The Court of Tax Appeals aptly resolved the issue in the affirmative, consistent with this Court's pronouncements[104]

---

[101] Rep. Act No. 6395, Sec. 13 provides:

Section 13. *Non-profit Character of the Corporation*; *Exemption from all Taxes, Duties, Fees, Imposts and other Charges by Government and Governmental Instrumentalities*. — The Corporation shall be non-profit and shall devote all its returns from its capital investment, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section one of this Act, the Corporation is hereby declared exempt:

(a) From the payment of all taxes, duties, fees, imposts, charges, costs and service fees in any court or administrative proceedings in which it may be a party, restrictions and duties to the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities;

(b) From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities;

(c) From all import duties, compensating taxes and advanced sales tax, and wharfage fees on import of foreign goods required for its operations and projects; and

(d) From all taxes, duties, fees, imposts, and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the Corporation in the generation, transmission, utilization, and sale of electric power. (Repealed by Section 24 of Republic Act No. 9337 [July 1, 2005]).

[102] *Rollo* (G.R. No. 197663), p. 402.

[103] *Rollo* (G.R. No. 197770), p. 105.

[104] See *CBK Power Co. Ltd. v. Commissioner of Internal Revenue,* 724 Phil. 686 (2014) [Per *C.J.* Sereno, First Division]; *Kepco Philippines Corp.*

that NPC is exempt from all taxes, both direct and indirect, and services rendered by any VAT-registered person or entity to NPC are effectively subject to 0% rate.

Indeed, the requirements of the EPIRA law would apply to claims for refund filed under the EPIRA. In such case, the taxpayer must prove that it has been duly authorized by the ERC to operate a generation facility and that it derives its sales from power generation. This was the thrust of this Court's ruling in *Commissioner of Internal Revenue v. Toledo Power Company (TPC)*.[105]

In *Toledo,* the Court of Tax Appeals granted Toledo Power Company's (TPC) claim for refund of unutilized input VAT attributable to sales of electricity to NPC, but denied refund of input VAT related to sales of electricity to other entities[106] for failure of TPC to prove that it was a generation company under the EPIRA. This Court held that TPC's failure to submit its ERC Certificate of Compliance renders its sales of generated power not qualified for VAT zero-rating. This Court, in affirming the Court of Tax Appeals, held:

> Section 6 of the EPIRA provides that the sale of generated power by generation companies shall be zero-rated. Section 4 (x) of the same law states that a generation company "refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity." Corollarily, **to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA, a taxpayer must establish: (1) that it is a generation company, and (2) that it derived sales from power generation.**

---

v. Commissioner of Internal Revenue, 656 Phil. 68 (2011) [Per *J.* Mendoza, Second Division]; *San Roque Power Corp. v. Commissioner of Internal Revenue,* 620 Phil. 554 (2009) [Per *J.* Chico-Nazario, Third Division]; *Philippine Geothermal Inc. v. Commissioner of Internal Revenue,* 503 Phil. 278 (2005) [Per *J.* Quisumbing, First Division].

[105] 774 Phil. 92 (2015) [Per *J.* Del Castillo, Second Division].

[106] *Id.* at 98. Cebu Electric Cooperative III (CEBECO), Atlas Consolidated Mining and Development Corporation (ACMDC), and Atlas Fertilizer Corporation (AFC).

. . . . . .

In this case, when the EPIRA took effect in 2001, TPC was an existing generation facility. And at the time the sales of electricity to CEBECO, ACMDC, and AFC were made in 2002, TPC was not yet a generation company under EPIRA. Although it filed an application for a COC on June 20, 2002, it did not automatically become a generation company. It was only on June 23, 2005, when the ERC issued a COC in favor of TPC, that it became a generation company under EPIRA. Consequently, TPC's sales of electricity to CEBECO, ACMDC, and AFC cannot qualify for VAT zero-rating under the EPIRA.[107] (Emphasis supplied)

Here, considering that Team Energy's refund claim is premised on Section 108(B)(3) of the 1997 NIRC, in relation to NPC's charter, the requirements under the EPIRA are inapplicable. To qualify its electricity sale to NPC as zero-rated, Team Energy needs only to show that it is a VAT-registered entity and that it has complied with the invoicing requirements under Section 108(B)(3) of the 1997 NIRC, in conjunction with Section 4.108-1 of Revenue Regulations No. 7-95.[108]

Finally, the Commissioner is bound by her admission in the Joint Stipulation of Facts and Issues,[109] concerning the prior approval of Team Energy's 2002 Application for Effective Zero-Rate of its supply of electricity to the NPC.[110] Thus, she is estopped from asserting that Team Energy's transactions cannot be effectively considered zero-rated.

In sum, the Court of Tax Appeals En Banc found proper the refund of ₱11,161,392.67, representing unutilized input VAT

---

[107] *Commissioner of Internal Revenue v. Toledo Power Company,* 774 Phil. 92, 111-114 (2015) [Per *J.* Del Castillo, Second Division].

[108] See *Kepco Philippines Corp. v. Commissioner of Internal Revenue,* 656 Phil. 68 (2011) [Per *J.* Mendoza, Second Division]. See also *Panasonic Communications Imaging Corp. v. Commissioner of Internal Revenue,* 625 Phil. 631 (2010) [Per *J.* Abad, Second Division].

[109] *Rollo* (G.R. No. 197770), pp. 103-106.

[110] *Id*. at 104.

attributable to Team Energy's zero-rated sales for the first quarter of 2003.[111] This Court accords the highest respect to the factual findings of the Court of Tax Appeals[112] considering its developed expertise on the subject, unless there is showing of abuse in the exercise of its authority.[113] This Court finds no reason to overturn the factual findings of the Court of Tax Appeals on the amounts allowed for refund.

WHEREFORE, the Petitions are **DENIED.** The April 8, 2011 Decision and July 7, 2011 Resolution of the Court of Tax Appeals En Banc in CTA EB No. 603 are **AFFIRMED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 208396. March 14, 2018]

ARIEL A. EBUENGA, *petitioner, vs.* **SOUTHFIELD AGENCIES, INC., WILHEMSEN SHIP MANAGEMENT HOLDING LTD., AND CAPT. SONNY VALENCIA,** *respondents.*

---

[111] *Id*. at 63.

[112] *Commissioner of Internal Revenue v. Toledo Power, Inc.,* 725 Phil. 66 (2014) [Per *J.* Peralta, Third Division] citing *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue,* 529 Phil. 785 (2006) [Per *J.* Chico-Nazario, First Division].

[113] *Commissioner of Internal Revenue v. Team Sual Corp.,* 739 Phil. 215 (2014) [Per *J.* Carpio, Second Division]; *Kepco Philippines Corp. v. Commissioner of Internal Revenue,* 650 Phil. 525 (2011) [Per *J.* Mendoza, Second Division].

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); SECTION 20 (B) THEREOF; SEAFARERS ARE MANDATED TO SEE A COMPANY-DESIGNATED PHYSICIAN FOR A POST-EMPLOYMENT MEDICAL EXAMINATION WITHIN THREE (3) WORKING DAYS FROM THEIR ARRIVAL, AND NON-COMPLIANCE THEREOF SHALL RESULT IN THE FORFEITURE OF THE RIGHT TO CLAIM DISABILITY BENEFITS; RATIONALE FOR THE 3-DAY MANDATORY REPORTING.— Section 20(B) of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) established the procedures for assessing claims for disability benefits. It mandates seafarers to see a company-designated physician for a post-employment medical examination, which must be done within three (3) working days from their arrival. Failure to comply shall result in the forfeiture of the right to claim disability benefits: x x x. *Manota v. Avantgarde Shipping Corporation* explained why the requisite three (3)-day period for examination by the company-designated physician "must be strictly observed": The 3-day mandatory reporting requirement must be strictly observed since within 3 days from repatriation, it would be fairly manageable for the physician to identify whether the disease . . . was contracted during the term of his employment or that his working conditions increased the risk of contracting the ailment. .... Moreover, the post-employment medical examination within 3 days from . . . arrival is required in order to ascertain [the seafarer's] physical condition, since to ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employers would have no protection against unrelated disability claims.

2. ID.; ID.; ID.; ID.; SEAFARER'S ENTITLEMENT TO PERMANENT DISABILITY BENEFITS, RULES; A TEMPORARY TOTAL DISABILITY ONLY BECOMES

PERMANENT WHEN SO DECLARED BY THE COMPANY PHYSICIAN WITHIN THE PERIODS HE IS ALLOWED TO DO SO, OR UPON THE EXPIRATION OF THE MAXIMUM 240-DAY MEDICAL TREATMENT PERIOD WITHOUT A DECLARATION OF EITHER FITNESS TO WORK OR THE EXISTENCE OF A PERMANENT DISABILITY.— *Kestrel Shipping Co., Inc. v. Munar*, citing *Vergara v. Hammonia Maritime Services, Inc.* clarified the rules and the period for reckoning a seafarer's permanent disability for purposes of entitlement to disability benefits: In *Vergara v. Hammonia Maritime Services, Inc.*, this Court read the POEA-SEC in harmony with the Labor Code and the AREC in interpreting in holding that: (a) the 120 days provided under Section 20-B (3) of the POEA-SEC is the period given to the employer to determine fitness to work and when the seafarer is deemed to be in a state of total and temporary disability; (b) the 120 days of total and temporary disability may be extended up to a maximum of 240 days should the seafarer require further medical treatment; and (c) a total and temporary disability becomes permanent when so declared by the company-designated physician within 120 or 240 days, as the case may be, or upon the expiration of the said periods without a declaration of either fitness to work or permanent disability and the seafarer is still unable to resume his regular seafaring duties.... x x x. As we outlined above, **a temporary total disability only becomes permanent *when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability***.

3. ID.; ID.; ID.; ID.; THE MANDATORY REPORTING REQUIRES THE SEAFARER TO SUBMIT TO AN EXAMINATION WITHIN THREE (3) WORKING DAYS FROM HIS OR HER ARRIVAL, AND THE EMPLOYER TO CONDUCT A MEANINGFUL AND TIMELY EXAMINATION OF THE SEAFARER.— [T]his Court has clarified that the conduct of post-employment medical examination is not a unilateral burden on the part of the seafarer. Rather, it is a reciprocal obligation where the seafarer is obliged to submit to an examination within three (3) working days from his or her arrival, and the employer is correspondingly obliged "to conduct a meaningful and timely examination of the seafarer":

We note on this point that the obligation imposed by the mandatory reporting requirement under Section 20 (B) (3) of the 1996 POEA-SEC is not solely on the seafarer. It requires the employer to likewise act on the report, and in this sense partakes of the nature of a reciprocal obligation. Reciprocal obligations are those which arise from the same cause, and where each party is effectively a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other. While the mandatory reporting requirement obliges the seafarer to be present for the post-employment medical examination, which must be conducted within three (3) working days upon the seafarer's return, it also poses the employer the implied obligation to conduct a meaningful and timely examination of the seafarer.

4. ID.; ID.; ID.; ID.; THE SEAFARER'S CLAIM FOR DISABILITY BENEFITS IS NOT HINDERED BY HIS OR HER RELIANCE ON A PHYSICIAN OF HIS OR HER OWN CHOOSING WHERE THE EMPLOYER REFUSES TO HAVE THE SEAFARER EXAMINED.— In cases where the employer refuses to have the seafarer examined, the seafarer's claim for disability benefits is not hindered by his or her reliance on a physician of his or her own choosing: The Court has in the past, under unique circumstances, sustained the award of disability benefits even if the seafarer's disability had been assessed by a personal physician. In *Philippine Transmarine Carriers, Inc. v. NLRC*, we affirmed the grant by the CA and by the NLRC of disability benefits to a claimant, based on the recommendation of a physician not designated by the employer. The "claimant consulted a physician of his choice when the company-designated physician refused to examine him."

5. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; IN LABOR CASES, THE REQUISITE QUANTUM OF PROOF IS SUBSTANTIAL EVIDENCE.— It is petitioner's claim that respondents failed to deliver their part of the reciprocal obligation by refusing to entertain him when he asked to have himself examined. He insists that their refusal is allegedly an offshoot of his acrimony with them, which began after his report of a colleague's death to the International Transport Workers' Federation. Petitioner weaves a curious narrative of indifference and oppression but, just as curiously, has nothing more than bare allegations to

back him up. He falls far too short of the requisite quantum of proof in labor cases. He failed to discharge his burden to prove his allegations by substantial evidence.

6. ID.; CIVIL PROCEDURE; APPEALS; THE SUPREME COURT IS DUTY-BOUND TO RESPECT THE UNIFORM FINDINGS OF THE LABOR ARBITER, THE NATIONAL LABOR RELATIONS COMMISSION, AND THE COURT OF APPEALS, AND SHOULD BE CAREFUL NOT TO SUBSTITUTE ITS OWN APPRECIATION OF THE FACTS TO THOSE OF THE TRIBUNALS WHICH HAVE PREVIOUSLY WEIGHED THE PARTIES' CLAIMS AND EVEN PERSONALLY PERUSED THE EVIDENCE.— [T]his Court is duty-bound to respect the uniform findings of Labor Arbiter Savari, the National Labor Relations Commission, and the Court of Appeals. In the context of the present Rule 45 Petition, this Court is limited to resolving pure questions of law. It should be careful not to substitute its own appreciation of the facts to those of the tribunals which have previously weighed the parties' claims and even personally perused the evidence: As a rule, only questions of law may be raised in a Rule 45 petition. In one case, we discussed the particular parameters of a Rule 45 appeal from the CA's Rule 65 decision on a labor case, as follows: 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. Accordingly, we do not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field. Nor do we substitute our "own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence

is credible." The factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this Court.

7. ID.; ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI*; MAY ONLY BE CONCERNED WITH PURE QUESTIONS OF LAW; EXCEPTIONS.— It is true that there are exceptions to the rule that Petitions for Review on *Certiorari* may only be concerned with pure questions of law. But these exceptions are not occasioned by their mere invocation. A party who files a Rule 45 Petition and asserts that his or her case warrants this Court's review of factual questions bears the burden of proving two (2) things. First is the basic exceptionality of his or her case such that this Court must go out of its way to revisit the evidence. Second is the specific factual conclusion that he or she wants this Court to adopt in place of that which was made by the lower tribunals. This dual burden requires a party to not merely plead or aver. He or she must demonstrate and prove. His or her evidentiary task persists before this Court precisely because he or she pleads this Court to sustain different factual conclusions. Petitioner's deficiencies manifest his failure to discharge this burden.

8. LABOR AND SOCIAL LEGISLATION; LABOR CODE; THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); SECTION 20(B) THEREOF; FOR DISABILITY TO BE COMPENSABLE, THE SEAFARER MUST PROVE THAT THE ILLNESS OR INJURY IS WORK-RELATED, AND THAT THE WORK-RELATED ILLNESS OR INJURY EXISTED DURING THE TERM OF THE SEAFARER'S EMPLOYMENT CONTRACT.— Even if this Court were to overlook petitioner's utter failure to substantiate his version of events, no award of disability benefits is availing as petitioner has failed to demonstrate that his affliction was work-related. *Tagud v. BSM Crew Service Centre Phils., Inc.* explained the twin requirements for compensation of disability: For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) that the illness or injury must be work-related, and (2) that the work-related illness or injury must have existed during the term of the seafarer's employment contract. The 2000 POEA-SEC defines "work-related injury" as injury resulting in disability or death arising out of and in the course of employment and "work-related illness"

as any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of the 2000 POEA-SEC. Thus, the seafarer only has to prove that his illness or injury was acquired during the term of employment to support his claim for sickness allowance and disability benefits.

9. ID.; ID.; ID.; SECTION 32(-A) THEREOF; OCCUPATIONAL DISEASES; CONDITIONS FOR COMPENSABILITY; NOT ESTABLISHED.— To be "work-related" is to say that there is a "reasonable linkage between the disease suffered by the employee and his work." Section 32-A, paragraph 1 of the POEA-SEC, thus, requires the satisfaction of all of its listed general conditions "[f]or an occupational disease and the resulting disability or death to be compensable": Section 32-A. OCCUPATIONAL DISEASES For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied: (1) The seafarer's work must involve the risks described herein; (2) The disease was contracted as a result of the seafarer's exposure to the described risks; (3) The disease was contracted within a period of exposure and under such other factors necessary to contract it; (4) There was no notorious negligence on the part of the seafarer. x x x. [C]ontrary to Section 32-A of the POEA-SEC, petitioner failed to demonstrate how his work necessarily "involve[d] the risks described" and how he contracted his affliction specifically "as a result of [his] exposure to the described risks." Likewise, petitioner needed to be repatriated merely two (2) months into his engagement. x x x. Again, contrary to Section 32-A of the POEA-SEC, the brevity of his engagement contradicts the likelihood that his disc desiccation—a degenerative ailment requiring prolonged conditions—"was contracted within a period of exposure and under such other factors necessary to contract it."

10. ID.; ID.; ID.; DISABILITY BENEFITS CANNOT BE AWARDED ABSENT A CAUSAL RELATIONSHIP BETWEEN A SEAFARER'S WORK AND AILMENT; PETITIONER IS NOT ENTITLED TO PERMANENT DISABILITY BENEFITS.— Petitioner's cause is grossly deficient in several ways. First, he failed to undergo the requisite examination, thereby creating a situation resulting in the forfeiture of his claims. This alone suffices for the denial of his Petition. Second, he posited a narrative of indifference and

oppression but failed to adduce even the slightest substantiation of it. He asked this Court to overturn the consistent findings of the three (3) tribunals but offered nothing other than his word as proof. Finally, he averred a medical condition from which no causal connection can be drawn to his brief engagement as chief cook. He would have this Court sustain an imputation grounded on coincidence and conjecture. In this review, this Court is bound by basic logical parameters. First, as a court without the opportunity to personally peruse the evidence, this Court cannot cavalierly disregard the uniform anterior findings of the three (3) tribunals. Second, a factual conclusion must be borne by substantial evidence. Finally, this Court should not award disability benefits absent a causal relationship between a seafarer's work and ailment. Petitioner's case fails in all of these parameters. Hence, his Petition must be denied.

APPEARANCES OF COUNSEL

Rowena A. Martin for petitioner.
Del Rosario and Del Rosario Law Offices for respondents.

D E C I S I O N

LEONEN, *J.*:

This Court is duty-bound to respect the consistent prior findings of the Labor Arbiter, of the National Labor Relations Commission, and of the Court of Appeals. It must be cautious not to substitute its own appreciation of the facts to those of the tribunals which have previously weighed the parties' claims and personally perused the evidence. It will not discard consistent prior findings and award disability benefits to a seafarer who fails to adduce even an iota of evidence, let alone substantial evidence, and fails to draw a causal connection between his or her alleged ailment and working conditions.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure, praying that the April

[1] *Rollo*, pp. 3-43, Petition for Review on *Certiorari*.

29, 2013 Decision[2] and July 26, 2013 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 126939 be reversed and set aside.

The assailed Court of Appeals April 29, 2013 Decision affirmed the June 29, 2012 Decision[4] of the National Labor Relations Commission which, in turn, affirmed Labor Arbiter Lilia S. Savari's (Labor Arbiter Savari) October 12, 2011 Decision,[5] dismissing Ariel A. Ebuenga's (Ebuenga) complaint[6] for permanent disability benefits. The assailed Court of Appeals July 26, 2013 Resolution[7] denied Ebuenga's Motion for Reconsideration.

Ebuenga was hired by Southfield Agencies, Inc. (Southfield) as a chief cook aboard respondent Wilhemsen Ship Management Holding Ltd.'s (Wilhemsen) vessel, M/V Super Adventure.[8] Ebuenga boarded the vessel on December 19, 2010.[9]

About two (2) months into his engagement, or on February 26, 2011, Ebuenga wrote a letter to Southfield, Wilhemsen, and Captain Sonny Valencia (Capt. Valencia)[10] (collectively, respondents), asking that he be repatriated as soon as possible "to attend to a family problem."[11] Respondents acted favorably on this request and Ebuenga was repatriated on March 5, 2011.[12]

---

[2] *Id*. at 45-56. The Decision was penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Amelita G. Tolentino and Danton Q. Bueser of the Fourth Division, Court of Appeals, Manila.

[3] *Id*. at 58-59. The Resolution was penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Amelita G. Tolentino and Danton Q. Bueser of the Fourth Division, Court of Appeals, Manila.

[4] No copy annexed to the Petition. *See rollo*, p. 45.

[5] No copy annexed to the Petition. *See rollo*, pp. 5 and 45.

[6] No copy annexed to the Petition. *See rollo*, p. 4.

[7] *Rollo,* pp. 58-59.

[8] *Id*. at 45-46.

[9] *Id*. at 10.

[10] "Capt. Sonny Valencia is the president and/or manager of the local manning agent." See *rollo*, p. 9.

[11] *Rollo*, p. 46.

[12] *Id*.

Without consulting Southfield's designated physician, Ebuenga had himself checked at St. Luke's Medical Center where he underwent Magnetic Resonance Imaging. The test revealed that he was afflicted with "Multilevel Disk Dessication, from C2-C3 to C6-C7."[13] He was advised to undergo physical therapy.[14]

Ebuenga went back to his hometown in Bogtong, Legaspi City to undergo physical therapy sessions. Thereafter, he consulted Dr. Misael Jonathan A. Ticman, who issued a Disability Report, finding him to be permanently disabled and no longer fit to work as a seafarer. Consequently, Ebuenga filed a complaint for permanent disability benefits.[15]

In his Position Paper, Ebuenga disavowed voluntarily seeking repatriation on account of a family concern. He claimed instead that upon embarkation, a crew member died from overfatigue. He reported this death to the International Transport Workers' Federation, which took no action. Incensed at Ebuenga's actions, the captain of the vessel, Capt. Jonathan B. Lecias, Sr. (Capt. Lecias), coerced him to sign a letter seeking immediate repatriation. Ebuenga also claimed to have reported to Capt. Lecias that he was suffering intense back pain but the latter refused to entertain this because of the animosity between them. He added that upon repatriation, he sought medical assistance from the company-designated physician, but was refused. Thus, he was forced to seek treatment on his own.[16]

In their defense, respondents denied that there was ever an incident where Ebuenga encountered medical problems while on board the vessel. However, they noted that Ebuenga had been a delinquent crew member as he was always complaining and agitating his colleagues about the lack of a washing machine. They added that Ebuenga's claim for disability benefits could

---

[13] *Id*.

[14] *Id*.

[15] *Id*.

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

not be entertained as he failed to undergo the requisite post-employment medical examination with the company-designated physician.[17]

In her October 12, 2011 Decision,[18] Labor Arbiter Savari dismissed Ebuenga's complaint. Labor Arbiter Savari explained that Ebuenga failed to prove that he had suffered an illness or injury while on board the M/V Super Adventure. She added that Ebuenga may no longer claim disability benefits for failing to undergo a post-employment medical examination with the company-designated physician.[19]

The National Labor Relations Commission denied Ebuenga's appeal in its June 29, 2012 Decision.[20]

On April 29, 2013, the Court of Appeals found no grave abuse of discretion on the part of the National Labor Relations Commission. It also denied Ebuenga's Motion for Reconsideration in its July 26, 2013 Resolution.[21]

Hence, Ebuenga filed the present Petition.[22] He contends that he could not have forfeited his claims as respondents refused to have the company-designated physician examine him.[23] He also insists on his version of events: that he came in conflict with Capt. Lecias over the death of a co-worker, was forced to sign a letter recounting a family emergency, and was denied assistance by Capt. Lecias when he fell ill while on board the M/V Super Adventure.

For resolution is the issue of whether or not petitioner Ariel A. Ebuenga is entitled to permanent disability benefits.

---

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

[18] No copy annexed to the Petition. See *rollo*, p. 5.

[19] *Rollo*, p. 48.

[20] No copy annexed to the Petition. See *rollo*, p. 48.

[21] *Rollo*, pp. 58-59.

[22] *Id*. at 3-43.

[23] *Id*. at 12.

Subsumed under this is the issue of whether or not his failure to have himself examined by the company-designated physician bars him from pursuing his claim.

The Petition lacks merit.

I

Section 20(B) of the Philippine Overseas Employment Administration -Standard Employment Contract (POEA-SEC)[24] established the procedures for assessing claims for disability benefits. It mandates seafarers to see a company-designated physician for a post-employment medical examination, which must be done within three (3) working days from their arrival. Failure to comply shall result in the forfeiture of the right to claim disability benefits:

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

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

. . . . . .

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

   For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

---

[24] POEA Memo. Circ. No. 09 (2000), Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels.

> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.[25] (Emphasis supplied)

Kestrel Shipping Co., Inc. v. Munar,[26] citing *Vergara v. Hammonia Maritime Services, Inc.*,[27] clarified the rules and the period for reckoning a seafarer's permanent disability for purposes of entitlement to disability benefits:

> In *Vergara v. Hammonia Maritime Services, Inc.,* this Court read the POEA-SEC in harmony with the Labor Code and the AREC in interpreting in holding that: (a) the 120 days provided under Section 20-B (3) of the POEA-SEC is the period given to the employer to determine fitness to work and when the seafarer is deemed to be in a state of total and temporary disability; (b) the 120 days of total and temporary disability may be extended up to a maximum of 240 days should the seafarer require further medical treatment; and (c) a total and temporary disability becomes permanent when so declared by the company-designated physician within 120 or 240 days, as the case may be, or upon the expiration of the said periods without a declaration of either fitness to work or permanent disability and the seafarer is still unable to resume his regular seafaring duties. . . . [28]

This Court's discussion on the same topic in *Vergara*[29] read:

---

[25] POEA Memo. Circ. No. 09 (2000), Sec. 20 (b) as amended by POEA Memo. Circ. No. 10 (2010) Sec. 20 (A.3) which substantially reproduces Sec. 20 (b) but adds the following:

"The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation or accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses."

[26] 702 Phil. 717 (2013) [Per *J*. Reyes, First Division].

[27] 588 Phil. 895 (2008) [Per *J*. Brion, Second Division].

[28] 702 Phil. 732-733 (2013) [Per *J*. Reyes, First Division].

[29] 588 Phil. 895(2008) [Per *J*. Brion, Second Division].

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

. . . . . .

As we outlined above, **a temporary total disability only becomes permanent *when so declared by the company physician within the periods he is allowed to do so*, or *upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability***. In the present case, while the initial 120-day treatment or temporary total disability period was exceeded, the company-designated doctor duly made a declaration well within the extended 240-day period that the petitioner was fit to work. Viewed from this perspective, both the NLRC and CA were legally correct when they refused to recognize any disability because the petitioner had already been declared fit to resume his duties. In the absence of any disability after his temporary total disability was addressed, any further discussion of permanent partial and total disability, their existence, distinctions and consequences, becomes a surplusage that serves no useful purpose.[30] (Emphasis supplied, citations omitted)

Manota v. Avantgarde Shipping Corporation[31] explained why the requisite three (3)-day period for examination by the company-designated physician "must be strictly observed":

---

[30] *Id*. at 912-913.

[31] 715 Phil. 54 (2013) [Per *J*. Peralta, Third Division].

The 3-day mandatory reporting requirement must be strictly observed since within 3 days from repatriation, it would be fairly manageable for the physician to identify whether the disease . . . was contracted during the term of his employment or that his working conditions increased the risk of contracting the ailment.

. . . . . .

Moreover, the post-employment medical examination within 3 days from . . . arrival is required in order to ascertain [the seafarer's] physical condition, since to ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employers would have no protection against unrelated disability claims.[32]

However, this Court has clarified that the conduct of post-employment medical examination is not a unilateral burden on the part of the seafarer. Rather, it is a reciprocal obligation where the seafarer is obliged to submit to an examination within three (3) working days from his or her arrival, and the employer is correspondingly obliged "to conduct a meaningful and timely examination of the seafarer":[33]

We note on this point that the obligation imposed by the mandatory reporting requirement under Section 20 (B) (3) of the 1996 POEA-SEC is not solely on the seafarer. It requires the employer to likewise act on the report, and in this sense partakes of the nature of a reciprocal obligation. Reciprocal obligations are those which arise from the same cause, and where each party is effectively a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other. While the mandatory reporting requirement obliges the seafarer to be present for the post-employment medical

---

[32] *Id.* at 64-65 citing *Crew and Ship Management International, Inc. and Salena, Inc. v. Jina T. Soria*, G.R. No. 175491, December 10, 2012; *Jebsens Maritime, Inc. v. Undag*, G.R. No. 191491, December 14, 2011, 662 SCRA 670, 681.

[33] *Career Philippines Shipmanagement, Inc., et al. v. Serna*, 700 Phil. 1 (2012) [Per *J.* Brion, Second Division].

examination, which must be conducted within three (3) working days upon the seafarer's return, it also poses the employer the implied obligation to conduct a meaningful and timely examination of the seafarer.

The petitioners failed to perform their obligation of providing timely medical examination, thus rendering meaningless Serna's compliance with the mandatory reporting requirement. With his July 14, 1999 visit, Serna clearly lived up to his end of the agreement; it was the petitioners who defaulted on theirs. They cannot now be heard to claim that Serna should forfeit the right to claim disability benefits under the POEA-SEC and their [Collective Bargaining Agreement].[34]

In cases where the employer refuses to have the seafarer examined, the seafarer's claim for disability benefits is not hindered by his or her reliance on a physician of his or her own choosing:

The Court has in the past, under unique circumstances, sustained the award of disability benefits even if the seafarer's disability had been assessed by a personal physician. In *Philippine Transmarine Carriers, Inc. v. NLRC*, we affirmed the grant by the CA and by the NLRC of disability benefits to a claimant, based on the recommendation of a physician not designated by the employer. The "claimant consulted a physician of his choice when the company-designated physician refused to examine him." In *Cabuyoc v. Inter-Orient Navigation Shipmanagement, Inc*., we reinstated the NLRC's decision, affirmatory of that of the labor arbiter, which awarded sickness wages to the petitioner therein even if his disability had been assessed by the Philippine General Hospital, not by a company-designated hospital. Similar to the case at bar, the seafarer in *Cabuyoc* initially sought medical assistance from the respondent employer but it refused to extend him help.[35] (Citations omitted)

---

[34] *Id*. at 15 citing *Cortes v. Court of Appeals*, 527 Phil. 153, 160 (2006) [Per J. Ynares-Santiago, First Division], citing Tolentino, Arturo, *Commentaries and Jurisprudence on the Civil Code of the Phils*., Vol. IV, 1985 edition, p. 175.

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

II

It is petitioner's claim that respondents failed to deliver their part of the reciprocal obligation by refusing to entertain him when he asked to have himself examined. He insists that their refusal is allegedly an offshoot of his acrimony with them, which began after his report of a colleague's death to the International Transport Workers' Federation.

Petitioner weaves a curious narrative of indifference and oppression but, just as curiously, has nothing more than bare allegations to back him up. He falls far too short of the requisite quantum of proof in labor cases. He failed to discharge his burden to prove his allegations by substantial evidence.[36]

In the first place, this Court is duty-bound to respect the uniform findings of Labor Arbiter Savari, the National Labor Relations Commission, and the Court of Appeals. In the context of the present Rule 45 Petition, this Court is limited to resolving pure questions of law. It should be careful not to substitute its own appreciation of the facts to those of the tribunals which have previously weighed the parties' claims and even personally perused the evidence:

As a rule, only questions of law may be raised in a Rule 45 petition. In one case, we discussed the particular parameters of a Rule 45 appeal from the CA's Rule 65 decision on a labor case, as follows:

> 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

---

[36] In *Tenazas v. R. Villegas Taxi Transport*, 731 Phil. 217, 229 (2014) [Per *J.* Reyes, First Division]: "It is an oft-repeated rule that in labor cases, as in other administrative and quasi-judicial proceedings, 'the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.' '[T]he burden of proof rests upon the party who asserts the affirmative of an issue.'"

> 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.

Accordingly, we do not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field. Nor do we substitute our "own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible." The factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this Court.[37]

Labor Arbiter Savari, the National Labor Relations Commission, and the Court of Appeals are consistent in finding that petitioner's claim of presenting himself for examination is direly unsupported by evidence. The Court of Appeals emphasized that "petitioner's narration of facts is bereft of details as to the alleged report."[38] Petitioner could not even state when he actually wanted to have himself examined. He could neither identify the person he approached for his request nor disclose the exact manner and circumstances of his being rebuffed.[39] Ultimately, petitioner has nothing more than a scant, one-sentence story: he went to Southfield's office, was refused, and had to go to another doctor.

---

[37] *Career Philippines Shipmanagement, Inc., et al v. Serna*, 700 Phil. 9-10 (2012) [Per J. Brion, Second Division] citing *Montoya v. Transmed Manila Corporation*, 613 Phil. 616 (2009) [Per J. Brion, Second Division]; *Cabuyoc v. Inter-Orient Navigation Shipmanagement, Inc.*, 537 Phil. 897 (2006) [Per J. Garcia, Second Division]; *Sarocam v. Interorient Maritime Ent., Inc.*, 526 Phil. 448, 454 (2006) [Per J. Callejo, Sr., First Division]; *Cootauco v. MMS Phil. Maritime Services, Inc.*, 629 Phil. 506 (2010) [Per J. Perez, Second Division].

[38] *Rollo*, p. 54.

[39] *Id.*

Petitioner himself claims that respondents' refusal to have him medically examined was only the last episode in a prolonged conflict. If indeed it was, petitioner must logically be expected to adduce proof, not only of that terminal episode, but of his complete narrative and its many incidents. In this regard, too, petitioner was grossly deficient.

Given petitioner's slew of allegations, coupled with his burden of repudiating the uniform findings of the three (3) tribunals, it is glaring that petitioner annexed nothing to his Petition and Reply[40] except the assailed Court of Appeals Decision and Resolution. His plea for this Court to overturn the uniform antecedent findings of the three (3) tribunals demands more than attaching a copy of the immediately preceding judgments. Attaching a copy of the assailed judgments to a Rule 45 Petition does not even manage to accomplish any evidentiary purpose. One could hazard that petitioner's scant annexes were included only out of conventional compliance with Rule 45, Section 4[41]

In the words of the Court of Appeals:

"As correctly observed by the tribunals *a quo*, this claim was not substantiated in the records. Even petitioner's narration of facts is bereft of details as to the alleged report made at the manning agency's office. Notably, petitioner failed to specify the name of the employee to whom he reported, the time he reported and the reason why private respondent South Field allegedly refused to render him a medical examination. The absence of these details casts serious doubt on the veracity of petitioner's allegation that he indeed reported for post-employment medical examination."

[40] *Id*. at 72-83.

[41] 1997 RULES OF CIV. PROC., Rule 45, Sec. 4 provides:

Section 4. Contents of petition. — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true

of the 1997 Rules of Civil Procedure because his Petition would otherwise have been denied outright.[42]

It is true that there are exceptions to the rule that Petitions for Review on Certiorari may only be concerned with pure questions of law.[43] But these exceptions are not occasioned by

---

copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42.

[42] 1997 RULES OF CIV. PROC., Rule 45, Sec. 5 provides:

Section 5. Dismissal or denial of petition. — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

The Supreme Court may on its own initiative deny the petition on the ground that the appeal is without merit, or is prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.

[43] In *Pascual v. Burgos*, G.R. No. 171722, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/171722.pdf> 11 [Per *J.* Leonen, Second Division]:

However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

their mere invocation. A party who files a Rule 45 Petition and asserts that his or her case warrants this Court's review of factual questions bears the burden of proving two (2) things. First is the basic exceptionality of his or her case such that this Court must go out of its way to revisit the evidence. Second is the specific factual conclusion that he or she wants this Court to adopt in place of that which was made by the lower tribunals. This dual burden requires a party to not merely plead or aver. He or she must demonstrate and prove. His or her evidentiary task persists before this Court precisely because he or she pleads this Court to sustain different factual conclusions.

Petitioner's deficiencies manifest his failure to discharge this burden.

Petitioner's allegation of a deceased colleague could have been substantiated by official records. He did not adduce these documents. Worse, he could not even name that co-worker. The truth is that there is no certainty if someone actually died on board. Likewise, while petitioner claims that respondents were so hostile to him, he claims to have still managed to lodge a complaint while on mid-voyage to the International Transport Workers' Federation. If he was so ingenious to do this mid-voyage despite the belligerence of his superiors, nothing could have prevented him from adducing proof that he made that report. A copy of any form of acknowledgment by the International Transport Workers' Federation would have bolstered his cause. He must certainly have access to an acknowledgment as he himself initiated and pursued the purported complaint. He also claims that the M/V Super Adventure was arrested specifically because of his complaint.[44] Yet, he presented no record or attestation of this occurrence.

If it is also true that Capt. Lecias was so hostile as to demand his repatriation and downright abusive as to withhold medical

---

These exceptions similarly apply in petitions for review filed before this court involving civil, labor, tax, or criminal cases. (Citations omitted)

[44] *Rollo*, p. 11.

attention to an ill crew member, petitioner could have at least presented affidavits from colleagues to corroborate in whole or in part his account. He must realize that his allegations are not mere assertions to further his narrative; they are also grave accusations that a captain violated his most important role in protecting his crew.[45] This Court, lending its approval to claims such as petitioner's, could potentially become the basis of punitive measures against captains of vessels. As this Court's decisions set precedents, it has all the more reason to not be swayed by bare allegations.

Petitioner would have this Court hang on to nothing but his word. He would have this Court discard the consistent findings of the three (3) tribunals on nothing but faith in what he asserts. This Court cannot act with blind credulity. With the utter dearth of proof advancing petitioner's cause, this Court is constrained to sustain the consonant findings of Labor Arbiter Savari, of the National Labor Relations Commission, and of the Court of Appeals.

III

Even if this Court were to overlook petitioner's utter failure to substantiate his version of events, no award of disability benefits is availing as petitioner has failed to demonstrate that his affliction was work-related.

Tagud v. BSM Crew Service Centre Phils., Inc.[46] explained the twin requirements for compensation of disability:

---

[45] In *Inter-Orient Maritime Enterprises, Inc. v. National Labor Relations Commission*, 305 Phil. 286, 297 (1994) [Per *J*. Feliciano, Third Division]:

"Of these roles, by far the most important is the role performed by the captain as commander of the vessel; for such role (which, to our mind, is analogous to that of "Chief Executive Officer" [CEO] of a present-day corporate enterprise) has to do with the operation and preservation of the vessel during its voyage and the protection of the passengers (if any) and crew and cargo."

[46] *Tagud v. BSM Crew Service Centre Phils., Inc*., G.R. No. 219370, December 6, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/december2017/219370.pdf> [Per *J*. Carpio, Second Division].

For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) that the illness or injury must be work-related, and (2) that the work-related illness or injury must have existed during the term of the seafarer's employment contract.

The 2000 POEA-SEC defines "work-related injury" as injury resulting in disability or death arising out of and in the course of employment and "work-related illness" as any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of the 2000 POEA-SEC. Thus, the seafarer only has to prove that his illness or injury was acquired during the term of employment to support his claim for sickness allowance and disability benefits.[47]

To be "work-related" is to say that there is a "reasonable linkage between the disease suffered by the employee and his work."[48] Section 32-A, paragraph 1 of the POEA-SEC, thus, requires the satisfaction of all of its listed general conditions "[f]or an occupational disease and the resulting disability or death to be compensable":

Section 32-A. OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

(1) The seafarer's work must involve the risks described herein;

(2) The disease was contracted as a result of the seafarer's exposure to the described risks;

(3) The disease was contracted within a period of exposure and under such other factors necessary to contract it;

(4) There was no notorious negligence on the part of the seafarer.[49]

---

[47] *Id*. at 8.

[48] *Dayo v. Status Maritime Corporation*, 751 Phil. 778, 789 (2015) [Per *J*. Leonen, Second Division].

[49] POEA Memo. Circ. No. 09 (2000), Sec. 32-A.

Petitioner himself wrote and submitted a letter requesting repatriation "to attend to a family problem."[50] Petitioner did not deny the existence of this letter but disavowed it as having been made under duress. The preceding discussion demonstrated how petitioner's attempts at disavowal are a folly. The declaration in that letter, therefore, stands and amounts to an admission professing the true reasons for his repatriation, belying his belated claim of suffering an injury while aboard M/V Super Adventure.

Petitioner's account concerning this letter is also laden with a fatal inconsistency. According to him, his entire acrimonious relationship with respondents arose from his report of a co-worker's death to the International Transport Workers' Federation. This report allegedly made Capt. Lecias so indignant that he forced petitioner into fabricating a letter requesting to be sent home. However, while petitioner himself claims this death happened "upon embarkation,"[51] his letter was made more than two (2) months after embarkation, on February 26, 2011.[52] Petitioner, too, would not be repatriated until March 5, 2011.[53]

Petitioner's own account raises curious questions. If, indeed, Capt. Lecias was so incensed at petitioner that he was made to immediately fabricate a repatriation request, why was the letter made only on February 26, 2011? Why would a captain so driven to discard a seafarer have to wait so long to effect his or her repatriation?

Medical literature underscores petitioner's affliction—disc desiccation—as a degenerative change of intervertebral discs, the incidence of which climbs with age and is a normal part of disc aging.[54] Hence, it is not a condition peculiarly borne by

---

[50] *Rollo*, p. 46.

[51] *Id*. at 10.

[52] *Rollo*, p. 46.

[53] *Id*.

[54] See MCGRAW-HILL EDUCATION, *HARRISON'S PRINCIPLES OF INTERNAL MEDICINE* (19th ed.); and Lumbar Disc Degenerative Disease: Disc

petitioner's occupation. Moreover, petitioner was engaged to serve, not merely as a regular cook, but as chief cook. While his designation to this position does not absolutely negate occasions of physical exertion, it can nevertheless be reasonably inferred that his engagement did not principally entail intense physical labor, as would have been the case with other seafarers such as deckhands. In any case, contrary to Section 32-A of the POEA-SEC, petitioner failed to demonstrate how his work necessarily "involve[d] the risks described" and how he contracted his affliction specifically "as a result of [his] exposure to the described risks."

Likewise, petitioner needed to be repatriated merely two (2) months into his engagement. This is not disputed, whether on the basis of petitioner's claims of falling ill mid-voyage or on the basis of his letter request to respondents. Again, contrary to Section 32-A of the POEA-SEC, the brevity of his engagement contradicts the likelihood that his disc desiccation—a degenerative ailment requiring prolonged conditions—"was contracted within a period of exposure and under such other factors necessary to contract it."[55]

IV

Petitioner's cause is grossly deficient in several ways. First, he failed to undergo the requisite examination, thereby creating a situation resulting in the forfeiture of his claims. This alone suffices for the denial of his Petition. Second, he posited a narrative of indifference and oppression but failed to adduce even the slightest substantiation of it. He asked this Court to overturn the consistent findings of the three (3) tribunals but offered nothing other than his word as proof. Finally, he averred a medical condition from which no causal connection can be drawn to his brief engagement as chief cook. He would have this Court sustain an imputation grounded on coincidence and conjecture.

Degeneration Symptoms and Magnetic Resonance Image Findings, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3863659/.

[55] POEA Memo. Circ. No. 09 (2000), Sec. 32-A.

In this review, this Court is bound by basic logical parameters. First, as a court without the opportunity to personally peruse the evidence, this Court cannot cavalierly disregard the uniform anterior findings of the three (3) tribunals. Second, a factual conclusion must be borne by substantial evidence. Finally, this Court should not award disability benefits absent a causal relationship between a seafarer's work and ailment. Petitioner's case fails in all of these parameters. Hence, his Petition must be denied.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The assailed April 29, 2013 Decision and July 26, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 126939 are **AFFIRMED**.

SO ORDERED.

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

SPECIAL SECOND DIVISION

[G.R. No. 208651. March 14, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMEO ANTIDO *y* LANTAYAN** *a.k.a.* **ROMEO ANTIGO *y* LANTAYAN** *alias* **"JON-JON",** *accused-appellant.*

SYLLABUS

CRIMINAL LAW; CRIMINAL LIABILITY; TOTALLY EXTINGUISHED BY THE DEATH OF THE ACCUSED; BUT CIVIL LIABILITY IN CONNECTION WITH THE ACCUSED'S CRIMINAL ACTS MAY BE BASED ON

SOURCES OTHER THAN DELICTS.— Under prevailing law and jurisprudence, accused-appellant's death prior to his final conviction by the Court renders dismissible the criminal cases against him. Article 89 (1) of the Revised Penal Code provides that criminal liability is **totally extinguished** by the death of the accused x x x Thus, upon accused-appellant's death pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil action instituted therein for the recovery of the civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal action. However, it is well to clarify that accused-appellant's civil liability in connection with his acts against the victim, AAA, may be based on sources other than *delicts*; in which case, AAA may file a separate civil action against the estate of accused-appellant, as may be warranted by law and procedural rules.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

In a Resolution[1] dated April 7, 2014, the Court affirmed the Decision[2] dated December 7, 2012 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04602 finding accused-appellant Romeo Antido *y* Lantayan a.k.a. Romeo Antigo *y* Lantayan alias "Jon-Jon" (accused-appellant) guilty beyond reasonable doubt of the crime of Rape, the pertinent portion of which reads:

WHEREFORE, the Court **ADOPTS** the findings of fact and conclusions of law in the December 7, 2012 Decision of the CA in CA- G.R. CR-HC No. 04602 and **AFFIRMS** said Decision finding

---

[1] *Rollo*, pp. 45-46.

[2] *Id.* at 2-11. Penned by Associate Justice Manuel M. Barrios with Associate Justices Remedios A. Salazar-Fernando and Normandie B. Pizarro concurring.

accused-appellant Romeo Antido *y* Lantayan a.k.a. Romeo Antigo *y* Lantayan alias "Jon-Jon" **GUILTY** beyond reasonable doubt of the crime of Rape punishable under paragraph 1 of Article 266-A in relation to paragraph 5 of Article 266-B, under RA 8353. Accordingly, he is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay private complainant the following amounts: (*a*) ₱75,000.00 as civil indemnity; (*b*) ₱75,000.00 as moral damages; and (*c*) ₱30,000.00 as exemplary damages, consistent with existing jurisprudence.[3]

However, it appears that before the promulgation of the said Resolution, accused-appellant had already died on December 28, 2013, as evidenced by his Certificate of Death.[4]

As will be explained hereunder, there is a need to reconsider and set aside the April 7, 2014 Resolution and enter a new one dismissing the criminal case against accused-appellant.

Under prevailing law and jurisprudence, accused-appellant's death prior to his final conviction by the Court renders dismissible the criminal cases against him. Article 89 (1) of the Revised Penal Code provides that criminal liability is **totally extinguished** by the death of the accused, to wit:

> Article 89. *How criminal liability is totally extinguished.*— Criminal liability is totally extinguished:
>
> 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment[.]

In *People v. Culas*,[5] the Court thoroughly explained the effects of the death of an accused pending appeal on his liabilities, as follows:

> From this lengthy disquisition, we summarize our ruling herein:
>
> 1. Death of the accused pending appeal of his conviction extinguishes his criminal liability[,] as well as the civil liability[,] based solely thereon.

---

[3] *Id*. at 45.

[4] *Id*. at 42, including dorsal portion.

[5] See G.R. No. 211166, June 5, 2017.

As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore.*"

2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than *delict*. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

a) Law
b) Contracts
c) Quasi-contracts
d) x x x
e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.[6]

Thus, upon accused-appellant's death pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil action instituted therein for the recovery of the civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal action. However, it is well to clarify that accused-appellant's civil liability

---

[6] See *id.*, citing *People v. Layag*, G.R. No. 214875, October 17, 2016, 806 SCRA 190, 195-196.

in connection with his acts against the victim, AAA,[7] may be based on sources other than *delicts*; in which case, AAA may file a separate civil action against the estate of accused-appellant, as may be warranted by law and procedural rules.[8]

WHEREFORE, the Court resolves to: (*a*) **SET ASIDE** the Court's Resolution dated April 7, 2014 in connection with this case; (*b*) **DISMISS** Criminal Case No. 03-212115 before the Regional Trial Court of Manila, Branch 29 by reason of the death of accused-appellant Romeo Antido *y* Lantayan a.k.a. Romeo Antigo *y* Lantayan alias "Jon-Jon"; and (*c*) **DECLARE** the instant case **CLOSED** and **TERMINATED**. No costs.

SO ORDERED.

Carpio[*] (*Chairperson*), *del Castillo, Martires*,[**] and *Tijam*,[***] *JJ.*, concur.

---

[7] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act (RA) No. 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRRENCE 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 THEREFOR, 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 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.

[8] See *People v. Culas*, *supra* note 5.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

[**] Designated additional member pursuant to A.M. No. 17-03-03-SC dated March 14, 2017.

[***] Designated additional member pursuant to A.M. No. 17-03-03-SC dated March 14, 2017.

SECOND DIVISION

[G.R. No. 212362. March 14, 2018]

JOSE T. ONG BUN, *petitioner, vs.* **BANK OF THE PHILIPPINE ISLANDS,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE SUPREME COURT WILL NOT ENTERTAIN QUESTIONS OF FACT AS THE FACTUAL FINDINGS OF THE APPELLATE COURTS ARE FINAL, BINDING, OR CONCLUSIVE ON THE PARTIES AND UPON THE SAME WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.—** The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt" when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court. In *Chessman v. Intermediate Appellate Court*, this Court distinguished questions of law from questions of fact, thus: As distinguished from a question of law — which exists "when the doubt or difference arises as to what the law is on a certain state of facts" — "there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts"; or when the "query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and the probabilities of the situation."

2. **ID.; ID.; ID.; ID.; EXCEPTIONS; PRESENT.—** [T]he rules do admit of exceptions. Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is

a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellate; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. In the present case, the findings of facts of the RTC and the CA are apparently in contrast, hence, this Court deems it proper to rule on the issues raised in the petition.

3. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT; REQUISITES; EVEN WHERE IT IS THE PLAINTIFF WHO ALLEGES NON-PAYMENT, THE GENERAL RULE IS THAT THE BURDEN RESTS ON THE DEFENDANT TO PROVE PAYMENT, RATHER THAN ON THE PLAINTIFF TO PROVE NON-PAYMENT.—** When the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such defense to the claim of the creditor. Even where it is the plaintiff ([petitioner] herein) who alleges non-payment, the general rule is that the burden rests on the defendant ([respondent] herein) to prove payment, rather than on the plaintiff to prove non-payment. Verily, an obligation may be extinguished by payment. However, two requisites must concur: (1) identity of the prestation, and (2) its integrity. The first means that the very thing due must be delivered or released; and the second, that the prestation be fulfilled completely. In this case, no acknowledgment nor proof of full payment was presented by respondent but merely a pronouncement that there are no longer any outstanding Silver Certificates of Deposits in its books of accounts. x x x. x x x [T]he conclusion that the Silver Certificates of Deposit may have been withdrawn by the petitioner or his wife although they failed to surrender the custodian certificates is speculative and replete of any proof or evidence.

4. ID.; ID.; ID.; ID.; THE SURRENDER OF CERTIFICATES OF DEPOSITS WILL PROMOTE THE PROTECTION OF THE BANK AND MORE IN LINE WITH THE HIGH STANDARDS EXPECTED OF ANY BANKING INSTITUTION, AS THEIR BUSINESS BEING IMPRESSED WITH PUBLIC INTEREST, ARE EXPECTED TO EXERCISE MORE CARE AND PRUDENCE THAN PRIVATE INDIVIDUALS IN THEIR DEALINGS.— The CA further ruled that the surrender of the CCs is not required for the withdrawal of the certificates of deposit themselves or for the payment of the Silver Certificates of Deposit, hence, even if the holder has in his possession the said custodian certificates, this does not *ipso facto* mean that he is an unpaid depositor of the bank. Such conclusion is illogical because the very wordings contained in the CCs would suggest otherwise, thus: This instrument is transferable only in the books of the Custodian by the holder, or in the event of transfer, by the transferee or buyer thereof in person or by a duly authorized attorney-in-fact upon surrender of this instrument together with an acceptable deed of assignment. x x x. Furthermore, the surrender of such certificates would have promoted the protection of the bank and would have been more in line with the high standards expected of any banking institution. Banks, their business being impressed with public interest, are expected to exercise more care and prudence than private individuals in their dealings. The Court is not unmindful of the fact that a bank owes great fidelity to the public it deals with, its operation being essentially imbued with public interest x x x.

5. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES OF PRESCRIPTION AND LACHES CANNOT BE RAISED BEFORE THE SUPREME COURT UNLESS AN APPEAL WAS FILED BY THE SAME PARTY RAISING SUCH ISSUES. — As to the issues of prescription and laches raised by the respondent in its Comment, the same were not passed upon by the CA and cannot be raised before this Court unless an appeal was filed by the same respondent raising such issues.

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; DAMAGES; MORAL DAMAGES; THE PERSON CLAIMING MORAL DAMAGES MUST PROVE THE EXISTENCE OF BAD FAITH BY CLEAR AND CONVINCING EVIDENCE FOR THE LAW ALWAYS PRESUMES GOOD FAITH; AWARD OF MORAL DAMAGES, DELETED.— The award of moral

and exemplary damages, however, must be deleted for failure of petitioner to show that respondent was in bad faith or acted in any wanton, fraudulent, reckless, oppressive or malevolent manner in its dealings with petitioner. "The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, serious anxiety as the result of the actuations of the other party. Invariably such action must be shown to have been willfully done in bad faith or with ill motive."

7. ID.; ID.; ID.; EXEMPLARY DAMAGES; IN CONTRACTS AND QUASI-CONTRACTS, THE COURT HAS THE DISCRETION TO AWARD EXEMPLARY DAMAGES IF THE DEFENDANT ACTED IN A WANTON, FRAUDULENT, RECKLESS, OPPRESSIVE, OR MALEVOLENT MANNER; AWARD OF EXEMPLARY DAMAGES UNWARRANTED IN CASE AT BAR.— [I]n contracts and *quasi*-contracts, the Court has the discretion to award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. In this case, it appears that respondent had an honest belief that before its merger with FEBTC, the subject CCs were already paid and cleared from its books, hence, belying any claim that it acted in any manner that would warrant the grant of moral and exemplary damages to the petitioner.

8. ID.; ID.; ID.; ATTORNEY'S FEES; THE COURTS MUST CLEARLY AND DISTINCTLY SET FORTH IN THEIR DECISIONS THE BASIS FOR THE AWARD THEREOF, AS IT IS NOT ENOUGH THAT THEY MERELY STATE THE AMOUNT OF THE GRANT IN THE DISPOSITIVE PORTION OF THEIR DECISIONS; AWARD OF ATTORNEY'S FEES MUST BE OMITTED IN CASE AT BAR.— The award of attorney's fees must also be omitted. We have consistently held that an award of attorney's fees under Article 2208 demands factual, legal, and equitable justification to avoid speculation and conjecture surrounding the grant thereof. Due to the special nature of the award of attorney's fees, a rigid standard is imposed on the courts before these fees could be granted. Hence, it is imperative that they clearly and distinctly set forth in their decisions the basis for the award thereof. It is not enough that they merely state the amount of the grant in

the dispositive portion of their decisions. It bears reiteration that the award of attorney's fees is an exception rather than the general rule; thus, there must be compelling legal reason to bring the case within the exceptions provided under Article 2208 of the Civil Code to justify the award. In this case, the RTC merely justified the grant of attorney's fees on the reasoning that petitioner was forced to litigate. Thus, the present case does not fall within the exception provided under Article 2208 of the Civil Code.

APPEARANCES OF COUNSEL

Posecion Sindico & Firmeza Law Office for petitioner.
Treñas & Rubias Law Offices for respondent.

D E C I S I O N

PERALTA, *J.*:

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated May 22, 2014, of petitioner Jose T. Ong Bun, that seeks to reverse and set aside the Decision[1] dated September 25, 2012 and Resolution[2] dated March 19, 2014 of the Court of Appeals (*CA*) in CA-G.R. CV No. 02715 dismissing petitioner's complaint for collection of sum of money and damages against respondent Bank of the Philippine Islands (*BPI*).

The facts follow.

In 1989, Ma. Lourdes Ong, the wife of petitioner, purchased the following three (3) silver custodian certificates (*CC*) in the Spouses' name from the Far East Bank & Trust Company (*FEBTC*):

---

[1] Penned by Associate Justice Gabriel T. Ingles, with the concurrence of then Associate Justices Pampio A. Abarintos and Melchor Q. C. Sadang; *rollo,* pp. 26-35.

[2] *Rollo*, pp. 47-49.

a) CC No. 131157 dated June 9, 1989 in the name of Jose Ong Bun or Ma. Lourdes Ong for One Hundred Thousand Pesos;

b) CC No. 131200 dated July 25, 1989 in the name of Jose Ong Bun or Ma. Lourdes Ong for Five Hundred Thousand Pesos; and

c) CC No. 224826 dated November 8, 1989 in the name of Jose or Ma. Lourdes Ong Bun for One Hundred Fifty Thousand Pesos.

The three CCs have the following common provisions:

> This instrument is transferable only in the books of the Custodian by the holder, or in the event of transfer, by the transferee or buyer thereof in person or by a duly authorized attorney-in-fact upon surrender of this instrument together with an acceptable deed of assignment.
>
> The Holder hereof or transferee can withdraw at anytime during office hours his/her Silver Certificate of Deposit herein held in custody.
>
> This instrument shall not be valid unless duly signed by the authorized signatories of the Bank, and shall cease to have force and effect upon payment under the terms hereof.

Thereafter, FEBTC merged with BPI after about eleven years since the said CCs were purchased. After the death of Ma. Lourdes Ong in December 2002, petitioner discovered that the three CCs bought from FEBTC were still in the safety vault of his deceased wife and were not surrendered to FEBTC. As such, petitioner sent a letter dated August 12, 2003 to BPI, through the manager of its Trust Department Asset Management, to advise him on the procedure for the claim of the said certificates. BPI replied to petitioner and informed the latter that upon its merger with FEBTC in 2000, there were no Silver Certificates of Deposit outstanding, which meant that the certificates were fully paid on their respective participation's maturity dates which did not go beyond 1991. There were further exchanges of written communications between petitioner and BPI, but the latter still refused to pay petitioner's claim because his certificates were no longer outstanding in its records. Thus, petitioner, with the

assistance of counsel, made a final demand in writing for the payment of the certificates, to no avail.

After about three years from his discovery of the certificates, petitioner filed a complaint for collection of sum of money and damages against BPI on March 7, 2006 with the Regional Trial Court (*RTC*), Branch 33, Iloilo City (Civil Case No. 06-28822) praying that BPI be ordered to pay him ₱750,000.00 for the three CCs, legal interest, ₱75,000.00 for attorney's fees, ₱100,000.00 for moral damages, and an unspecified amount for exemplary damages as well as cost of suit.

BPI, in its Answer, insists that as early as 1991, all the Silver Certificates of Deposits, including those issued to petitioner and his wife, were already paid. It claimed that the CCs had terms of only 25 months and that by the year 2000, when it merged with FEBTC and when the Trust and Investments Group of FEBTC was no longer in existence, there were no longer any outstanding CCs in its books. It had checked and double-checked its records as well as those of FEBTC. It also claimed that FEBTC had fully paid all of its silver certificates of time deposit on their maturity dates. According to BPI, contrary to petitioner's assertion, the presentation or surrender of the certificates is not a condition precedent for its payment by FEBTC. It also argued that petitioner filed his claim for the first time only on August 12, 2003, or 12 years after the maturity of the CCs and under Article 1144 of the Civil Code, actions based on a written contract must be brought within 10 years from the time the right accrues. In this case, according to BPI, petitioner's right accrued upon the maturity of the CCs in 1991, and the same has prescribed by the time he filed his claim. As a counterclaim, BPI prayed that petitioner be ordered to pay it ₱75,000.00 as attorney's fees, ₱2,000.00 per court appearance, at least ₱20,000.00 for litigation expenses, and ₱1,000,000.00 for exemplary damages. It further prayed that the complaint be dismissed and that petitioner be ordered to pay for the cost of the suit.

After trial on the merits, the RTC found in favor of petitioner and disposed of the case as follows:

WHEREFORE, judgment is hereby rendered:

(a) Ordering defendant to pay plaintiff the sum of One Hundred Thousand Pesos (₱100,000.00) for the Custodian Certificate dated June 9, 1989 bearing Serial CC No. 13115; the sum of Five Hundred Thousand Pesos (₱500,000.00) for the Custodian Certificate dated July 25, 1989 bearing Serial CC No. 131200; and the sum of One Hundred Fifty Thousand Pesos (₱150,000.00) for the Custodian Certificate dated November 8, 1989 bearing Serial CC No. 224826, including their respective interests for twenty-five (25) months under the terms and conditions of the Silver Certificate of Deposit – entrusted for custody to defendant by plaintiff – that the said Custodian Certificates represent; plus legal interest thereon as regular savings deposit of the investments and their accrued interests from the time of their respective maturity up to the time of payment.

(b) Ordering defendant to pay the plaintiff ₱100,000.00 for moral damages and another ₱100,000.00 as exemplary damages; and

(c) Ordering the defendant to pay ₱75,000.00 as attorney's fees, plus costs of the suit.

SO ORDERED.[3]

As a consequence, BPI elevated the case to the CA wherein the latter granted the appeal of the former. The dispositive portion of the CA's decision reads as follows:

WHEREFORE, the appeal is hereby GRANTED. The 5 JUNE 2008 Decision rendered in Civil Case No. 06-28822 by Branch 33 of the Regional Trial Court in Iloilo City is hereby REVERSED and SET ASIDE and the complaint filed in the said case is hereby DISMISSED.

SO ORDERED.[4]

The CA ruled that petitioner failed to prove that the deposits, which he claims to be unpaid, are still outstanding. According to the appellate court, the custodian certificates, standing alone, do not prove an outstanding deposit with the bank, but merely certify that FEBTC had in its custody for and in behalf of either

---

[3] *Rollo*, p. 82.

[4] *Id*. at 35.

petitioner or his late wife the corresponding Silver Certificates of Deposit and nothing more. The CA further ruled that the surrender of the custodian certificates is not required for the withdrawal of the certificates of deposits themselves or for the payment of the Silver Certificates of Deposit, hence, even if the holder has in his possession the said custodian certificates, this does not *ipso facto* mean that he is an unpaid depositor of the bank.

Hence, the present petition.

Petitioner insists that the CCs are evidence that the Silver Certificates of Deposit in his name in varying amounts are in the possession of the Trust Investments Group of FEBTC and constitute an outstanding obligation of respondent with whom FEBTC merged. He adds that since it has been proved that the CCs remained in the possession of the petitioner and has not been controverted or shown to be non-existing, the said CCs remain incontrovertible and unrebutted evidence of indebtedness of the respondent because said CCs all openly admit that the Silver Certificates of Deposit in varying amounts owned by the petitioner are in its possession and has not been discharged by payment. Hence, according to petitioner, the CA erred in its conclusion that the CCs in his possession do not prove an outstanding deposit with the respondent simply because the CCs are not the Certificates of Deposit themselves.

The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45.[5] This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt"[6] when supported by substantial evidence.[7] Factual findings of the appellate courts

---

[5] Rules of Court, Rule 45, Sec. 1.

[6] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.,* 364 Phil. 541, 546 (1999).

[7] *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002); *Tabaco v. Court of Appeals*, 239 Phil. 485, 490 (1994); and *Padilla v. Court of Appeals,* 241 Phil. 776, 781 (1988).

will not be reviewed nor disturbed on appeal to this court.[8]

In *Chessman v. Intermediate Appellate Court,*[9] this Court distinguished questions of law from questions of fact, thus:

> As distinguished from a question of law — which exists "when the doubt or difference arises as to what the law is on a certain state of facts" — "there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts;" or when the "query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and the probabilities of the situation."[10]

However, these rules do admit of exceptions.[11] Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:[12]

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellate; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[13]

---

[8] *Bank of the Philippine Islands v. Leobrera,* 461 Phil. 461, 469 (2003).

[9] 271 Phil. 89 (1991).

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

[11] *Pascual v. Burgos, et al.*, 777 Phil. 167, 182 (2016).

[12] 269 Phil. 225 (1990).

[13] *Id.* at 232.

In the present case, the findings of facts of the RTC and the CA are apparently in contrast, hence, this Court deems it proper to rule on the issues raised in the petition.

After careful consideration, this Court finds the petition to be meritorious.

It is undisputed that petitioner is in possession of three (3) CCs from FEBTC in the following amounts: (a) Custodian Certificate of Silver Certificate of Deposit No. 131157 issued on June 9, 1989 in the amount of One Hundred Thousand Pesos (₱100,000.00); (b) Custodian Certificate of Silver Certificate of Deposit No. 131200 issued on July 25, 1989, in the amount of Five Hundred Thousand Pesos (₱500,000.00); (c) Custodian Certificate of Silver Certificate of Deposit No. 224826 issued on November 8, 1989 in the amount of One Hundred Fifty Thousand Pesos (₱150,000.00).

Simply put, the said CCs are proof that Silver Certificates of Deposits are in the custody of a custodian, which is, in this case, FEBTC. The CA therefore, erred in suggesting that the possession of petitioner of the same CCs does not prove an outstanding deposit because the latter are not the certificates of deposit themselves. What proves the deposits of the petitioner are the Silver Certificates of Deposits that have been admitted by the Trust Investments Group of the FEBTC to be in its custody as clearly shown by the wordings used in the subject CCs. Custodian Certificate of Silver Certificate of Deposit No. 131200 reads, in part:

> This is to certify that the TRUSTS INVESTMENTS GROUP of FAR EAST BANK AND TRUST COMPANY (Custodian) has in its custody for and in behalf of *****JOSE ONG BUN OR MA. LOURDES ONG***** (Holder) the Silver Certificate of Deposit in the amount of PESOS: Php500,000.00.
>
> This instrument is transferable only in the books of the Custodian by the holder, or in the event of transfer, by the transferee or buyer thereof in person or by a duly authorized attorney-in-fact upon surrender of this instrument together with an acceptable deed of assignment.

The Holder hereof or transferee can withdraw at anytime during office hours his/her Silver Certificate of Deposit herein held in custody.

This instrument shall not be valid unless duly signed by the authorized signatories of the Bank, and shall cease to have force and effect upon payment under the terms hereof.[14]

The other two custodian certificates are of the same tenor.

In its Comment, respondent argued that upon its merger with FEBTC, there were no longer any outstanding Silver Certificates of Deposits, thus:

As previously discussed, the nature of the Silver Custodian Certificates of Time Deposit was issued by then FEBTC on the occasion of its 25th year anniversary in the year 1989. Consequently, these certificates had a term/maturity of twenty-five (25) months from its issuance or in the year 1991. Further, these certificates should be accompanied by a Confirmation of Participation which provides for the details of each participant would have. Upon the merger of FEBTC and BPI sometime in the year 2000, there were no outstanding Silver Certificates of Deposit in its books of accounts; neither did the petitioner present the Confirmation of Participation which should have been attached to his Custodian Certificates.[15]

Such an argument does not prove that petitioner has already been paid or that his deposits have already been returned. Likewise, there was no proof or evidence that petitioner or his late wife withdrew the said Silver Certificates of Deposit. When the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such defense to the claim of the creditor.[16] Even where it is the plaintiff ([petitioner] herein) who alleges non-payment, the general rule is that the burden rests on the defendant ([respondent] herein) to prove payment, rather than on the plaintiff to prove

---

[14] *Rollo*, p. 62.

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

[16] See *BPI v. Sps. Royeca*, 581 Phil. 188 (2008).

non-payment.[17] Verily, an obligation may be extinguished by payment.[18] However, two requisites must concur: (1) identity of the prestation, and (2) its integrity. The first means that the very thing due must be delivered or released; and the second, that the prestation be fulfilled completely.[19] In this case, no acknowledgment nor proof of full payment was presented by respondent but merely a pronouncement that there are no longer any outstanding Silver Certificates of Deposits in its books of accounts. Thus, the RTC did not err in the following findings:

> A promise had been obtained by plaintiff from defendant bank that the custodian certificates would be paid upon maturity. Hence, the latter reneged on its promise when it refused payment thereof after demands were made by plaintiff for such payment considering that in 1989, his wife Ma. Lourdes Ong Bun acquired in their names three (3) certificates of deposits from FEBTC in various amounts, to wit: (a) Custodian Certificate of Silver Certificate of Deposit No. 131157 issued on June 9, 1989 in the amount of One Hundred Thousand Pesos (₱100,000.00), (Exhibit "A"); (b) Custodian Certificate of Silver Certificate of Deposit No. 131200 issued on July 25, 1989 in the amount of Five Hundred Thousand Pesos (₱500,000.00) (Exhibit "B"); (c) Custodian Certificate of Silver Certificate of Deposit No. 224826 issued on November 8, 1989 in the amount of One Hundred Fifty Thousand Pesos (₱150,000.00), (Exhibit "C"). His wife kept these certificates of deposits. The claim of defendant bank, through the Manager of its Trust Department Asset Management, that the aforementioned certificates had been paid, is not supported by credible evidence and, therefore, unsubstantiated. Its position that the Silver Certificates of Time Deposits in question and in the names of Jose Ong Bun or Ma. Lourdes Ong had been paid by the Far East Bank and Trust Company as early as the year 1991, when the same matured considering that at the time of the merger between Far East Bank and Trust Company

---

[17] See *Cham v. Atty. Paita-Moya*, 578 Phil. 566 (2008); *BPI v. Sps. Royeca, supra.*

[18] Article 1231 of The Civil Code; *CKH Industrial and Dev't. Corp v. Court of Appeals*, 338 Phil. 837, 852 (1997).

[19] *Alonzo, et al. v. Jaime and Perlita San Juan*, 491 Phil. 232, 245 (2005), citing Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. IV, 1991 Ed., p. 275.

and the Bank of Philippine Islands, no such Silver Certificates of Time Deposits were outstanding on the books of Far East Bank and Trust Company, is simply unconvincing.

The fact that the plaintiff still has [a] copy of the Custodian Certificate of the Silver Certificates of Time Deposit is material, contrary to the stance of defendant, as it is inconceivable that the bank would make payment without requiring the surrender thereof.[20]

Hence, the conclusion that the Silver Certificates of Deposit may have been withdrawn by the petitioner or his wife although they failed to surrender the custodian certificates is speculative and replete of any proof or evidence.

The CA further ruled that the surrender of the CCs is not required for the withdrawal of the certificates of deposit themselves or for the payment of the Silver Certificates of Deposit, hence, even if the holder has in his possession the said custodian certificates, this does not *ipso facto* mean that he is an unpaid depositor of the bank. Such conclusion is illogical because the very wordings contained in the CCs would suggest otherwise, thus:

This instrument is transferable only in the books of the Custodian by the holder, or in the event of transfer, by the transferee or buyer thereof in person or by a duly authorized attorney-in-fact upon surrender of this instrument together with an acceptable deed of assignment.

The Holder hereof or transferee can withdraw at anytime during office hours his/her Silver Certificate of Deposit herein held in custody.

This instrument shall not be valid unless duly signed by the authorized signatories of the Bank, and shall cease to have force and effect upon payment under the terms hereof.[21]

Furthermore, the surrender of such certificates would have promoted the protection of the bank and would have been more in line with the high standards expected of any banking institution.

---

[20] *Rollo*, p. 80.

[21] *Id*. at 62.

Banks, their business being impressed with public interest, are expected to exercise more care and prudence than private individuals in their dealings.[22] The Court is not unmindful of the fact that a bank owes great fidelity to the public it deals with, its operation being essentially imbued with public interest x x x.[23]

As to the issues of prescription and laches raised by the respondent in its Comment, the same were not passed upon by the CA and cannot be raised before this Court unless an appeal was filed by the same respondent raising such issues.

The award of moral and exemplary damages, however, must be deleted for failure of petitioner to show that respondent was in bad faith or acted in any wanton, fraudulent, reckless, oppressive or malevolent manner in its dealings with petitioner. "The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, serious anxiety as the result of the actuations of the other party. Invariably such action must be shown to have been willfully done in bad faith or with ill motive."[24] Also, in contracts and *quasi*-contracts, the Court has the discretion to award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.[25] In this case, it appears that respondent had an honest belief that before its merger with FEBTC, the subject CCs were already paid and cleared from its books, hence, belying any claim that it acted in any manner that would warrant the grant of moral and exemplary damages to the petitioner.

---

[22] *Consolidated Rural Bank, Inc. v. CA*, 489 Phil. 320, 337 (2005).

[23] *Philippine Commercial Industrial Bank v. Cabrera*, 494 Phil. 735, 745 (2005).

[24] *Francisco, et al. v. Ferrer, Jr.*, 405 Phil. 741, 749 (2001), citing *Ace Haulers Corporation v. Court of Appeals*, 393 Phil. 220, 230 (2000).

[25] *Sulpicio Lines, Inc. v. Sesante*, G.R. No. 172682, July 27, 2016, 798 SCRA 459, 485, citing Article 2232, Civil Code.

The award of attorney's fees must also be omitted. We have consistently held that an award of attorney's fees under Article 2208[26] demands factual, legal, and equitable justification to avoid speculation and conjecture surrounding the grant thereof.[27] Due to the special nature of the award of attorney's fees, a rigid standard is imposed on the courts before these fees could be granted. Hence, it is imperative that they clearly and distinctly set forth in their decisions the basis for the award thereof. It is not enough that they merely state the amount of the grant in the dispositive portion of their decisions.[28] It bears reiteration

---

[26] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded; and

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[27] *Philippine National Construction Corporation v. APAC Marketing Corporation*, 710 Phil. 389, 396 (2013), citing *Delos Santos v. Papa,* 605 Phil. 460, 473 (2009).

[28] *Philippine National Bank v. Court of Appeals,* 443 Phil. 351, 368 (2003), citing *Pimentel v. Court of Appeals,* 366 Phil. 494, 502 (1999).

that the award of attorney's fees is an exception rather than the general rule; thus, there must be compelling legal reason to bring the case within the exceptions provided under Article 2208 of the Civil Code to justify the award.[29] In this case, the RTC merely justified the grant of attorney's fees on the reasoning that petitioner was forced to litigate. Thus, the present case does not fall within the exception provided under Article 2208 of the Civil Code.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated May 22, 2014, of petitioner Jose T. Ong Bun, is **GRANTED**. Consequently, the Decision dated September 25, 2012 and Resolution dated March 19, 2014 of the Court of Appeals in CA-G.R. CV No. 02715 are **REVERSED** and **SET ASIDE**, and the Decision dated June 5, 2008 of the Regional Trial Court, Branch 33, Iloilo City is **AFFIRMED** and **REINSTATED**, with the **MODIFICATION** that the award of moral damages, exemplary damages and attorney's fees be **OMITTED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 212860. March 14, 2018]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **FLORIE GRACE M. COTE,** *respondent.*

---

[29] *Espino v. Spouses Bulut,* 664 Phil. 702, 711 (2011).

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

SYLLABUS

1. **CIVIL LAW; FAMILY CODE; MARRIAGE; THE FILIPINO SPOUSE WHO BENEFITS FROM THE EFFECTS OF THE DIVORCE OBTAINED ABROAD BY THE ALIEN SPOUSE MUST FILE A PETITION FOR JUDICIAL RECOGNITION OF THE FOREIGN DIVORCE BEFORE HE/SHE CAN REMARRY.—** It bears stressing that as of present, our family laws do not recognize absolute divorce between Filipino husbands and wives. Such fact, however, do not prevent our family courts from recognizing divorce decrees procured abroad by an alien spouse who is married to a Filipino citizen. The wordings of the second paragraph of Article 26 [of the Family Code] initially spawned confusion as to whether or not it covers even those marriages wherein both of the spouses were Filipinos at the time of marriage and then one of them eventually becomes a naturalized citizen of another country. In the landmark case of *Republic v. Orbecido III*, the Court ruled that the reckoning point is not the citizenship of the parties at the time of the celebration of the marriage, but their citizenship at the time a valid divorce is obtained abroad by the alien spouse capacitating the latter to remarry. Although the Court has already laid down the rule regarding foreign divorce involving Filipino citizens, the Filipino spouse who likewise benefits from the effects of the divorce cannot automatically remarry. Before the divorced Filipino spouse can remarry, he or she must file a petition for judicial recognition of the foreign divorce.

2. **REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION AND EFFECTS OF FOREIGN JUDGMENTS; THE RECOGNITION OF FOREIGN DIVORCE DECREE MAY BE MADE IN THE PROCEEDINGS FOR THE CANCELLATION OF ENTRIES IN THE CIVIL REGISTRY UNDER RULE 108 OF THE RULES OF COURT; RECOGNITION PROCEEDINGS *VIS-À-VIS* CANCELLATION OF ENTRIES UNDER RULE 108 OF THE RULES OF COURT, EXPLAINED.—** [R]espondent filed with the RTC a petition to recognize the foreign divorce decree procured by her naturalized (originally Filipino) husband in Hawaii, USA. By impleading the Civil Registry of Quezon City and the NSO, the end sought to be achieved was the cancellation and or correction of entries involving her marriage status. In *Corpuz v. Sto. Tomas, et al.*, the Court briefly explained

the nature of recognition proceedings *vis-a-vis* cancellation of entries under Rule 108 of the Rules of Court, *viz*.: Article 412 of the Civil Code declares that no entry in a civil register shall be changed or corrected, without judicial order. The Rules of Court supplements Article 412 of the Civil Code by specifically providing for a special remedial proceeding by which entries in the civil registry may be judicially cancelled or corrected. Rule 108 of the Rules of Court sets in detail the jurisdictional and procedural requirements that must be complied with before a judgment, authorizing the cancellation or correction, may be annotated in the civil registry. It also requires, among others, that the verified petition must be filed with the RTC of the province where the corresponding civil registry is located; that the civil registrar and all persons who have or claim any interest must be made parties to the proceedings; and that the time and place for hearing must be published in a newspaper of general circulation. x x x. We hasten to point out, however, that this ruling should not be construed as requiring two separate proceedings for the registration of a foreign divorce decree in the civil registry one for recognition of the foreign decree and another specifically for cancellation of the entry under Rule 108 of the Rules of Court. The recognition of the foreign divorce decree may be made in a Rule 108 proceeding itself, as the object of special proceedings (such as that in Rule 108 of the Rules of Court) is precisely to establish the status or right of a party or a particular fact. Moreover, Rule 108 of the Rules of Court can serve as the appropriate adversarial proceeding by which the applicability of the foreign judgment can be measured and tested in terms of jurisdictional infirmities, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

3. ID.; ID.; APPEALS; RULE 41 OF THE RULES OF COURT APPLIES TO THE CASE AT BAR AND NOT SECTION 20 OF A.M. NO. 02-11-10-SC; A MOTION FOR RECONSIDERATION IS NOT A CONDITION PRECEDENT TO THE FILING OF AN APPEAL. — The CA is correct when it ruled that the trial court misapplied Section 20 of A.M. No. 02-11-10-SC. A decree of absolute divorce procured abroad is different from annulment as defined by our family laws. A.M. No. 02-11-10-SC only covers void and voidable marriages that are specifically cited and enumerated in the Family Code of the Philippines. Void and voidable marriages contemplate a situation wherein the basis for the judicial declaration of absolute nullity or annulment of the

marriage exists before or at the time of the marriage. It treats the marriage as if it never existed. Divorce, on the other hand, ends a legally valid marriage and is usually due to circumstances arising after the marriage. It was error for the RTC to use as basis for denial of petitioner's appeal Section 20 of A.M. No. 02-11-10-SC. Since Florie followed the procedure for cancellation of entry in the civil registry, a special proceeding governed by Rule 108 of the Rules of Court, an appeal from the RTC decision should be governed by Section 3 of Rule 41 of the Rules of Court and not A.M. No. 02-11-10-SC. As culled from the records, petitioner received a copy of the RTC Decision on May 5, 2011. It filed a Notice of Appeal on May 17, 2011, thus complying with the 15-day reglementary period for filing an appeal. An appeal is a statutory right that must be exercised only in the manner and in accordance with the provisions of law. Having satisfactorily shown that they have complied with the rules on appeal, petitioners are entitled to the proper and just disposition of their cause.

4. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; TO PROSPER, THE PETITIONER MUST PROVE NOT MERELY REVERSIBLE ERROR ON THE PART OF PRIVATE RESPONDENT, BUT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION; GRAVE ABUSE OF DISCRETION, DEFINED.— Although the Court agrees with petitioner that the RTC erroneously misapplied A.M. No. 02-11-10-SC, such error does not automatically equate to grave abuse of discretion. The Court has ruled time and again that not all errors attributed to a lower court or tribunal fall under the scope of a Rule 65 petition for *certiorari*. Jurisprudence has defined grave abuse of discretion amounting to lack or excess of jurisdiction in this wise: Grave abuse of discretion is defined as capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. After a careful consideration of the evidence presented and Florie having sufficiently complied with the jurisdictional requirements, judgment was rendered by the lower court recognizing the decree of foreign divorce. It likewise declared Florie legally capacitated

to remarry citing the second paragraph of Article 26 of the Family Code. Thus, the CA is correct in denying the Rule 65 petition for *certiorari*, notwithstanding the RTC's dismissal of petitioner's appeal. The dismissal, albeit erroneous, is not tainted with grave abuse of discretion. The Court finds no indication from the records that the RTC acted arbitrarily, capriciously and whimsically in arriving at its decision. A petition for *certiorari* will prosper only if grave abuse of discretion is alleged and proved to exist. The burden is on the part of the petitioner to prove not merely reversible error on the part of private respondent, but grave abuse of discretion amounting to lack or excess of jurisdiction.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Bayobay Favila & Lee Law Offices for respondent.

D E C I S I O N

REYES, JR., *J.*:

This is a Petition for Review under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision[1] dated January 21, 2014 and Resolution[2] dated June 11, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 122313.

The Facts

As culled from the records, the antecedent facts are as follows:

On July 31, 1995, Rhomel Gagarin Cote (Rhomel) and respondent Florie Grace Manongdo-Cote (Florie) were married in Quezon City. At the time of their marriage, the spouses were both Filipinos and were already blessed with a son, Christian Gabriel Manongdo who was born in Honolulu, Hawaii, United States of America (USA).[3]

---

[1] *Rollo*, pp. 65-72.

[2] *Id*. at 73.

[3] *Id*. at 65.

On August 23, 2002, Rhomel filed a Petition for Divorce before the Family Court of the First Circuit of Hawaii on the ground that their marriage was irretrievably broken. This was granted on August 23, 2002 by the issuance of a decree that states among others:

> A decree of absolute divorce is hereby granted to [Rhomel], the bonds of matrimony between [Rhomel] and [Florie] are hereby dissolved and the parties hereto are restored to the status of single persons, and either party is permitted to marry from and after the effective date of this decree.[4]

Seven years later, Florie commenced a petition for recognition of foreign judgment granting the divorce before the Regional Trial Court (RTC). Florie also prayed for the cancellation of her marriage contract, hence, she also impleaded the Civil Registry of Quezon City and the National Statistics Office (NSO). The Office of the Solicitor General, representing Republic of the Philippines (petitioner), deputized the Office of the City Prosecutor to appear on behalf of the State during the trial.[5]

On April 7, 2011, the RTC granted the petition and declared Florie to be capacitated to remarry after the RTC's decision attained finality and a decree of absolute nullity has been issued. The RTC ruled, *inter alia*, that Rhomel was already an American citizen when he obtained the divorce decree,[6] *viz.*:

> [Florie] has sufficiently established that she is a Filipino citizen and married to an American citizen. Her husband obtained a Divorce Decree on 22 August 2002 and was authenticated and registered by the Consulate General to the Philippines in Honolulu, Hawaii, U.S.A. [Florie] being a Filipino citizen and is governed by Philippine laws, she is placed in an absurd, if not awkward situation where she is married to somebody who is no longer married to her. This is precisely the circumstances contemplated under Article 26, paragraph 2 of the Family Code which provides a remedy for Filipino spouses like [Florie].

---

[4] *Id*.

[5] *Id*.

[6] *Id*.

Under the above-cited provision, [Florie] is allowed to contract a subsequent marriage since the divorce had been validly obtained abroad by her American husband, capacitating her to remarry. In this line, the court holds that this petition be, as it is, hereby GRANTED.

WHEREFORE, in view of the foregoing, judgment is hereby rendered declaring [Florie] capacitated to remarry pursuant to Article 26 paragraph 2 of the Family Code, in view of the Divorce Decree which had been validly obtained abroad by her American spouse, dissolving their marriage solemnized on 31 July 1995 in Quezon City, Philippines.[7]

Petitioner filed a Notice of Appeal on May 17, 2011. However, the RTC, believing that the petition was covered by A.M. No. 02-11-10-SC or the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, applied Section 20 of said Rule and denied the appeal because the notice was not preceded by a motion for reconsideration.[8]

Petitioner then filed a petition for *certiorari* with the CA claiming that the RTC committed grave abuse of discretion.

In a Decision[9] dated January 21, 2014, the CA denied the petition. The pertinent portions read as follows:

The fact that even the Solicitor General and private respondent were confused as to the true nature of the petition and the procedure that must be followed only shows that We cannot attribute a whimsical and capricious exercise of judgment to the RTC.

x x x x x x x x x

Besides, petitioner's omission, by itself, is a ground for dismissing the petition. The last paragraph of Section 3, Rule 46 of the Rules of Court allows the dismissal of a petition for *certiorari* if the material parts of the records were not attached to the petition. "*Certiorari*, being an extraordinary remedy, the party seeking it must strictly observe the requirements for its issuance." Although it has been ruled that the better policy is for petitioner to be accorded, in the interest of substantial justice, "a chance to submit the same instead of dismissing

[7] *Id.* at 115.

[8] *Id.* at 65.

[9] *Id.* at 65-72.

the petition" We cannot allow petitioner to benefit from this rule because the need to submit the transcript of stenographic notes and all other pieces of evidence is quite obvious for petitioner which is questioning the sufficiency of the evidence presented. Hence, it would be bending the rules too far if We still allow petitioner to be excused from this lapse.[10]

Hence, this present petition.

The Issues

I. THE CA ERRED IN FINDING THAT THE TRIAL COURT JUDGE DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN APPLYING THE PROCEDURAL RULES FOR NULLITY OF MARRIAGE PROCEEDINGS UNDER A.M. NO. 02-11-10-SC IN A PROCEEDING FOR RECOGNITION OF FOREIGN DECREE OF DIVORCE;

II. THE CA GRAVELY ERRED IN RULING THAT THE STATE HAS NO PERSONALITY TO INTERVENE IN PROCEEDINGS FOR RECOGNITION OF FOREIGN DECREE OF DIVORCE;

III. THE CA ERRED IN FINDING THAT THE FAILURE OF THE PETITIONER TO APPEND COPIES OF THE TRANSCRIPT OF STENOGRAPHIC NOTES OF FLORIE'S DIRECT EXAMINATION AND HER JUDICIAL AFFIDAVIT IS FATAL, NOTWITHSTANDING THAT THE VERY SAME DOCUMENTS WERE INCORPORATED AND QUOTED BY FLORIE IN HER COMMENT; and

IV. THE CA ERRED IN AFFIRMING THE TRIAL COURT'S DECISION DATED APRIL 7, 2011 GRANTING FLORIE'S PETITION FOR RECOGNITION OF FOREIGN DECREE OF DIVORCE DESPITE LACK OF SHOWING THAT HER FORMER FILIPINO HUSBAND WAS ALREADY AN AMERICAN

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

CITIZEN AT THE TIME HE PROCURED THE DECREE OF DIVORCE.[11]

Ruling of the Court

The core issue for the Court's resolution is whether or not the provisions of A.M. No. 02-11-10-SC[12] applies in a case involving recognition of a foreign decree of divorce.

It bears stressing that as of present, our family laws do not recognize absolute divorce between Filipino husbands and wives. Such fact, however, do not prevent our family courts from recognizing divorce decrees procured abroad by an alien spouse who is married to a Filipino citizen.

Article 26 of the Family Code states:

> Art. 26. All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35(1), (4), (5) and (6), 36, 37 and 38.
>
> **Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.**

The wordings of the second paragraph of Article 26 initially spawned confusion as to whether or not it covers even those marriages wherein both of the spouses were Filipinos at the time of marriage and then one of them eventually becomes a naturalized citizen of another country.

In the landmark case of *Republic v. Orbecido III*,[13] the Court ruled that the reckoning point is not the citizenship of the parties

---

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

[12] Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages.

[13] 509 Phil. 108 (2005).

at the time of the celebration of the marriage, but their citizenship at the time a valid divorce is obtained abroad by the alien spouse capacitating the latter to remarry.[14]

Although the Court has already laid down the rule regarding foreign divorce involving Filipino citizens, the Filipino spouse who likewise benefits from the effects of the divorce cannot automatically remarry. Before the divorced Filipino spouse can remarry, he or she must file a petition for judicial recognition of the foreign divorce.

The starting point in any recognition of a foreign divorce judgment is the acknowledgment that our courts do not take judicial notice of foreign judgments and laws. Justice Herrera explained that, as a rule, "no sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country." This means that the foreign judgment and its authenticity must be proven as facts under our rules on evidence, together with the alien's applicable national law to show the effect of the judgment on the alien himself or herself. The recognition may be made in an action instituted specifically for the purpose or in another action where a party invokes the foreign decree as an integral aspect of his claim or defense.[15]

To clarify, respondent filed with the RTC a petition to recognize the foreign divorce decree procured by her naturalized (originally Filipino) husband in Hawaii, USA. By impleading the Civil Registry of Quezon City and the NSO, the end sought to be achieved was the cancellation and or correction of entries involving her marriage status.

In *Corpuz v. Sto. Tomas, et al.,*[16] the Court briefly explained the nature of recognition proceedings *vis-á-vis* cancellation of entries under Rule 108 of the Rules of Court, *viz.*:

---

[14] *Id*. at 115.

[15] *Corpuz v. Sto. Tomas, et al.*, 642 Phil. 420, 432-433 (2010).

[16] 642 Phil. 420 (2010).

Article 412 of the Civil Code declares that no entry in a civil register shall be changed or corrected, without judicial order. The Rules of Court supplements Article 412 of the Civil Code by specifically providing for a special remedial proceeding by which entries in the civil registry may be judicially cancelled or corrected. Rule 108 of the Rules of Court sets in detail the jurisdictional and procedural requirements that must be complied with before a judgment, authorizing the cancellation or correction, may be annotated in the civil registry. It also requires, among others, that the verified petition must be filed with the RTC of the province where the corresponding civil registry is located; that the civil registrar and all persons who have or claim any interest must be made parties to the proceedings; and that the time and place for hearing must be published in a newspaper of general circulation. x x x.

We hasten to point out, however, that this ruling should not be construed as requiring two separate proceedings for the registration of a foreign divorce decree in the civil registry one for recognition of the foreign decree and another specifically for cancellation of the entry under Rule 108 of the Rules of Court. The recognition of the foreign divorce decree may be made in a Rule 108 proceeding itself, as the object of special proceedings (such as that in Rule 108 of the Rules of Court) is precisely to establish the status or right of a party or a particular fact. Moreover, Rule 108 of the Rules of Court can serve as the appropriate adversarial proceeding by which the applicability of the foreign judgment can be measured and tested in terms of jurisdictional infirmities, want of notice to the party, collusion, fraud, or clear mistake of law or fact.[17]

The RTC, in its Decision[18] dated January 21, 2014 ruled that Florie had sufficiently established that she is married to an American citizen and having proven compliance with the legal requirements, is declared capacitated to remarry.

The confusion arose when the RTC denied petitioner's appeal on the ground that no prior motion for reconsideration was filed as required under Section 20 of A.M. No. 02-11-10-SC. Petitioner posits that A.M. No. 02-11-10-SC *do not* cover cases involving recognition of foreign divorce because the

---

[17] *Id.* at 436-437.

[18] *Rollo*, pp. 65-72.

wording of Section 1 thereof clearly states that it shall only apply to petitions for declaration of absolute nullity of void marriages and annulment of voidable marriages, *viz.*:

> **Section 1.** *Scope* - This Rule shall govern petitions for declaration of absolute nullity of void marriages and annulment of voidable marriages under the Family Code of the Philippines. [Underscoring Ours]

Rule 41 of the Rules of Court applies; Motion for Reconsideration not a condition precedent to the filing of an appeal

The CA is correct when it ruled that the trial court misapplied Section 20 of A.M. No. 02-11-10-SC.

A decree of absolute divorce procured abroad is different from annulment as defined by our family laws. A.M. No. 02-11-10-SC only covers void[19] and voidable[20] marriages that are specifically cited and enumerated in the Family Code of the Philippines. Void and voidable marriages contemplate a situation wherein the basis for the judicial declaration of absolute nullity or annulment of the marriage exists before or at the time of the marriage. It treats the marriage as if it never existed. Divorce, on the other hand, ends a legally valid marriage and is usually due to circumstances arising after the marriage.

It was error for the RTC to use as basis for denial of petitioner's appeal Section 20 of A.M. No. 02-11-10-SC. Since Florie followed the procedure for cancellation of entry in the civil registry, a special proceeding governed by Rule 108 of the Rules of Court, an appeal from the RTC decision should be governed by Section 3[21] of Rule 41 of the Rules of Court and not A.M. No. 02-11-10-SC.

---

[19] The void marriages are those enumerated under Articles 35, 36, 37, 38, 40, 41, 44, and 53 in relation to Article 52 of the Family Code.

[20] The voidable marriages are those enumerated under Article 45 of the Family Code.

[21] **Section 3.** *Period of ordinary appeal.* — The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed

As culled from the records, petitioner received a copy of the RTC Decision on May 5, 2011. It filed a Notice of Appeal[22] on May 17, 2011, thus complying with the 15-day reglementary period for filing an appeal.

An appeal is a statutory right that must be exercised only in the manner and in accordance with the provisions of law. Having satisfactorily shown that they have complied with the rules on appeal, petitioners are entitled to the proper and just disposition of their cause.[23]

This now brings the Court to the issue whether or not the RTC's denial of petitioner's appeal is tantamount to grave abuse of discretion. The Court rules in the negative.

No grave abuse of discretion

Although the Court agrees with petitioner that the RTC erroneously misapplied A.M. No. 02-11-10-SC, such error does not automatically equate to grave abuse of discretion. The Court has ruled time and again that not all errors attributed to a lower court or tribunal fall under the scope of a Rule 65 petition for *certiorari.*

Jurisprudence has defined grave abuse of discretion amounting to lack or excess of jurisdiction in this wise:

> Grave abuse of discretion is defined as capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is

---

from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

[22] *Rollo*, p. 116.

[23] *Republic of the Phils. (rep. by the Phil. Orthopedic Center) v. Spouses Luriz,* 542 Phil. 137, 137 (2007).

exercised in an arbitrary and despotic manner by reason of passion and hostility.[24]

After a careful consideration of the evidence presented and Florie having sufficiently complied with the jurisdictional requirements, judgment was rendered by the lower court recognizing the decree of foreign divorce. It likewise declared Florie legally capacitated to remarry citing the second paragraph of Article 26 of the Family Code. Thus, the CA is correct in denying the Rule 65 petition for *certiorari*, notwithstanding the RTC's dismissal of petitioner's appeal. The dismissal, albeit erroneous, is not tainted with grave abuse of discretion.

The Court finds no indication from the records that the RTC acted arbitrarily, capriciously and whimsically in arriving at its decision. A petition for *certiorari* will prosper only if grave abuse of discretion is alleged and proved to exist. The burden is on the part of the petitioner to prove not merely reversible error on the part of private respondent, but grave abuse of discretion amounting to lack or excess of jurisdiction.

WHEREFORE, premises considered, the petition is hereby **DENIED**. The Decision dated January 21, 2014 and Resolution dated June 11, 2014 of the Court of Appeals in CA-G.R. SP No. 122313 are hereby **AFFIRMED**.

SO ORDERED.

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

---

[24] *Ganaden, et al. v. The Hon. CA, et al.*, 665 Phil. 261, 267 (2011).

[*] Designated as Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

THIRD DIVISION

[G.R. No. 214744. March 14, 2018]

LA CONSOLACION COLLEGE OF MANILA, SR. IMELDA A. MORA, OSA, ALBERT D. MANALILI, and ALICIA MANABAT, *petitioners, vs.* **VIRGINIA PASCUA, M.D.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; RETRENCHMENT; AS AN AUTHORIZED CAUSE FOR TERMINATING EMPLOYMENT, RETRENCHMENT IS AN OPTION VALIDLY AVAILABLE TO AN EMPLOYER TO ADDRESS LOSSES IN THE OPERATION OF THE ENTERPRISE, LACK OF WORK, OR CONSIDERABLE REDUCTION ON THE VOLUME OF BUSINESS.— The Labor Code recognizes retrenchment as an authorized cause for terminating employment. It is an option validly available to an employer to address "losses in the operation of the enterprise, lack of work, or considerable reduction on the volume of business": Retrenchment is normally resorted to by management during periods of business reverses and economic difficulties occasioned by such events as recession, industrial depression, or seasonal fluctuations. It is an act of the employer of reducing the work force because of losses in the operation of the enterprise, lack of work, or considerable reduction on the volume of business. Retrenchment is, in many ways, a measure of last resort when other less drastic means have been tried and found to be inadequate.

2. ID.; ID.; ID.; ID.; MAY ONLY BE EXERCISED IN COMPLIANCE WITH SUBSTANTIVE AND PROCEDURAL REQUISITES; DISCUSSED.— While a legitimate business option, retrenchment may only be exercised in compliance with substantive and procedural requisites. As to the substantive requisites, an employer must first show "that the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are

reasonably imminent as perceived objectively and in good faith by the employer." Second, an employer must also show "that [it] exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure." Third, an employer must demonstrate "that [it] used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status (i.e., whether they are temporary, casual, regular or managerial employees), efficiency, seniority, physical fitness, age, and financial hardship for certain workers." Procedurally, employers must serve a "written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment." Likewise, they must pay "the retrenched employees separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher."

3. ID.; ID.; ID.; ID.; IT IS NOT ENOUGH THAT THE EMPLOYER PRESENTS ITS AUDITED FINANCIAL STATEMENT SHOWING SIGNIFICANT BUSINESS LOSSES OR REVERSES FOR THE YEAR THAT RETRENCHMENT WAS UNDERTAKEN, IT MUST ALSO SHOW THAT ITS LOSSES INCREASED THROUGH A PERIOD OF TIME AND THAT THE CONDITION OF THE COMPANY IS NOT LIKELY TO IMPROVE IN THE NEAR FUTURE.— Jurisprudence requires that the necessity of retrenchment to stave off genuine and significant business losses or reverses be demonstrated by an employer's independently audited financial statements. Documents that have not been the subject of an independent audit may very well be self-serving. Moreover, it is not enough that it presents its audited financial statement for the year that retrenchment was undertaken for even as it may be incurring losses for that year, its overall financial status may already be improving. Thus, it must "also show that its losses increased through a period of time and that the condition of the company is not likely to improve in the near future." The records indicate that La Consolacion suffered serious business reverses or an aberrant drop in its revenue and income, thus, compelling it to retrench employees. In its Petition, it explained the backdrop of a "sharp spike in enrollment of students in its College of Nursing" in 2008, only for "[t]he nursing bubble [to] burst." It further explained how its

comprehensive income nosedived by 96%: x x x. As acknowledged by Labor Arbiter Roque, this financial backdrop demonstrates the starkly difficult financial situation besetting La Consolacion. This also shows that La Consolacion proceeded with a modicum of good faith and not with a stratagem specifically intended to undermine certain employees' security of tenure.

4. ID.; ID.; ID.; ID.; SUBSTANTIVE REQUISITES; USE OF A FAIR AND REASONABLE CRITERIA IN CARRYING OUT THE RETRENCHMENT PROGRAM; THE EMPLOYER'S DISREGARD OF THE SENIORITY AND PREFERRED STATUS OF THE RETRENCHED EMPLOYEE SHOULD INVALIDATE THE RETRENCHMENT, AS THE SAME INDICATES THE EMPLOYER'S RESORT TO AN UNFAIR AND UNREASONABLE CRITERION FOR RETRENCHMENT.— La Consolacion's failure was non-compliance with the third substantive requisite of using fair and reasonable criteria that considered the status and seniority of the retrenched employee. x x x. In *Philippine Tuberculosis Society, Inc. v. National Labor Union*, this Court quoted with approval the following discussion by the National Labor Relations Commission: We noted with concern that the criteria used by the Society failed to consider the seniority factor in choosing those to be retrenched, a failure which, to our mind, should invalidate the retrenchment, as the omission immediately makes the selection process unfair and unreasonable. Things being equal, retaining a newly hired employee and dismissing one who had occupied the position for years, even if the scheme should result in savings for the employer, since he would be paying the newcomer a relatively smaller wage, is simply unconscionable and violative of the senior employee's tenurial rights. x x x. There is no dispute here about respondent's seniority and preferred status. Petitioners acknowledge that she had been employed by La Consolacion since January 2000, initially as a part-time physician then serving full-time beginning 2008. It is also not disputed that while respondent was a full-time physician, La Consolacion had another physician, Dr. Dimagmaliw, who served part-time. Precisely, respondent's preeminence is a necessary implication of the very criteria used by La Consolacion in retrenching her, i.e., that she was the highest paid employee in health services division. La Consolacion's disregard of respondent's seniority and

preferred status relative to a part-time employee indicates its resort to an unfair and unreasonable criterion for retrenchment.

5. ID.; ID.; ID.; ID.; WHEN RETRENCHMENT BECOMES NECESSARY, THE EMPLOYER MAY, IN THE EXERCISE OF ITS BUSINESS JUDGMENT, IMPLEMENT COST-SAVING MEASURES, BUT AT THE SAME TIME, SHOULD RESPECT LABOR RIGHTS; RETRENCHED EMPLOYEE CONSIDERED ILLEGALLY DISMISSED WHERE THE DISMISSAL WAS A RESULT OF A FLAWED STANDARD FOR RETRENCHMENT.— Indeed, it may have made mathematical sense to dismiss the highest paid employee first. However, appraising the propriety of retrenchment is not merely a matter of enabling an employer to augment financial prospects. It is as much a matter of giving employees their just due. Employees who have earned their keep by demonstrating exemplary performance and securing roles in their respective organizations cannot be summarily disregarded by nakedly pecuniary considerations. The Labor Code's permissiveness towards retrenchments aims to strike a balance between legitimate management prerogatives and the demands of social justice. Concern for the employer cannot mean a disregard for employees who have shown not only their capacity, but even loyalty. La Consolacion's pressing financial condition may invite commiseration, but its flawed standard for retrenchment constrains this Court to maintain that respondent was illegally dismissed. Besides, La Consolacion could have also modified respondent's status from full-time to part-time. When retrenchment becomes necessary, the employer may, in the exercise of its business judgment, implement cost-saving measures, but at the same time, should respect labor rights.

6. ID.; ID.; ID.; THE EMPLOYER'S LIABILITY FOR BACKWAGES MAY BE MITIGATED BY THE COURT WHERE GOOD FAITH IS EVIDENT; REINSTATEMENT OF RESPONDENT UPHELD BUT MODIFIED THE AWARD OF BACKWAGES.— While the impropriety of the termination of respondent's employment is settled, it is equally manifest that she "was not a victim of arbitrary and high handed action." Her dismissal was a result, not so much of purposeful malevolence, but of a flawed appreciation of circumstances. La Consolacion was contending with dire financial straits and wound up resorting to a monetarily logical, though legally faulty,

> course of action. In prior cases, this Court mitigated an employer's liability for backwages "where good faith is evident." x x x. La Consolacion's prohibitive financial condition and demonstrated, though imperfect, attempt at devising a reasonable mechanism for retrenching employees impel this Court to temper its liability for backwages. Accordingly, this Court upholds Labor Arbiter Roque's order for respondent to be reinstated, but modifies the amount of backwages. Respondent is deemed to be employed on a part-time basis from the effective date of her wrongful termination and is entitled to backwages corresponding to such status and period.

APPEARANCES OF COUNSEL

Padilla Law Office for petitioners.
Chaves Hechanova & Lim Law Offices for respondent.

D E C I S I O N

LEONEN, *J.*:

When termination of employment is occasioned by retrenchment to prevent losses, an employer must declare a reasonable cause or criterion for retrenching an employee. Retrenchment that disregards an employee's record and length of service is an illegal termination of employment.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure, praying that the assailed June 2, 2014 Decision[2] and October 8, 2014 Resolution[3] of the

---

[1] *Rollo*, pp. 14-32.

[2] *Id*. at 34-46. The Decision was penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Noel G. Tijam and Priscilla J. Baltazar-Padilla of the Seventh Division, Court of Appeals, Manila.

[3] *Id*. at 57-58. The Resolution was penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Noel G. Tijam and Priscilla J. Baltazar-Padilla of the Former Seventh Division, Court of Appeals, Manila.

Court of Appeals in CA-G.R. SP No. 130793 be reversed and set aside.

The assailed Court of Appeals June 2, 2014 Decision reversed the ruling of the National Labor Relations Commission which, in turn, reversed Labor Arbiter Luvina P. Roque's (Labor Arbiter Roque) January 8, 2013 Decision,[4] holding that Virginia Pascua's (Pascua) employment was illegally terminated. The assailed Court of Appeals October 8, 2014 Resolution denied the Motion for Reconsideration filed by herein petitioners La Consolacion College of Manila (La Consolacion), Sr. Imelda A. Mora (Sr. Mora), Albert Manalili (Manalili), and Alicia Manabat (Manabat).

On January 10, 2000, Pascua's services as school physician were engaged by La Consolacion.[5] She started working part-time before serving full-time from 2008.[6]

On September 29, 2011, Pascua was handed an Inter-Office Memo from Manalili, La Consolacion's Human Resources Division Director, inviting her to a meeting concerning her "working condition."[7] The meeting was set the following day, September 30, 2011, at the office of La Consolacion's President, Sr. Mora.[8]

In that meeting, Pascua was handed a termination of employment letter, explaining the reasons for and the terms of her dismissal, including payment of separation pay as follows:

> Due to the current financial situation of La Consolacion College Manila caused by the decrease in enrollment in our institution, the Board of Trustees in its last meeting of September 24, 2011 has advised the [La Consolacion College] to downsize the health services staff at the end of this 1st Semester of School Year 2011-2012.

---

[4] No copy annexed to the Petition. See *rollo*, p. 46.

[5] *Rollo*, p. 35.

[6] *Id.* at 37.

[7] *Id.* at 35.

[8] *Id.*

Accordingly, we were forced to eliminate your position as school physician who is rendering thirty-five (35) hours in a week.

It is really with regret that management has to take this decision, as a last resort, to prevent serious business losses.

Your last day of service with La Consolacion College Manila shall be one month after your receipt of this letter.

The payments that you shall be receiving are the computation of your one (1) month pay of the thirty (30) days notice, one-half (½) month of basic salary for every year of service as a regular employee (as of August 19, 2008), 13th month pay and tax refund.[9]

Not satisfied, Pascua wrote to Sr. Mora, pointing out that the part-time school physician, Dr. Venus Dimagmaliw (Dr. Dimagmaliw),[10] should have been considered for dismissal first. She also noted that rather than dismissing her outright, La Consolacion could have asked her to revert to part-time status instead. Pascua sought clarification specifically on the following points:

1. What were your criteria for retrenchment selection?
2. Why was I selected to be terminated (with the status of regular, ful[l-]time School Physician) over my counterpart who is merely a part-time School Physician without even giving me the option to rever[t] back to my part-time status?
3. How come I was the only one terminated among the health services staff?
4. Were there other cost-cutting measures done by the school to abate its alleged losses other than implementation of that drastic measure of termination of one (1) employee as in my case?[11]

In the meantime, Pascua underwent La Consolacion's clearance procedures and completed them on November 3, 2011.

---

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

[10] *Id*. at 45.

[11] *Id*. at 37.

However, Pascua made a handwritten note on her Exit Clearance, stating that she was reserving the right "to question the validity/legality of [her] termination . . . before any agency/court with appropriate jurisdiction over the case."[12] Following this, Pascua proceeded to file a complaint for illegal dismissal against La Consolacion, Sr. Mora, Manalili, and Manabat.[13]

On November 28, 2011, Sr. Mora replied to Pascua's letter. She indicated the futility of her response considering that Pascua had opted to file a complaint in the interim. She nevertheless answered Pascua's queries "as a matter of courtesy."[14] She explained that Pascua in particular was retrenched because her position, the highest paid in the health services division, was dispensable:

> One obvious measure to prevent serious business losses was to downsize the health services division, by eliminating your position as a full-time physician. As you may know, the monthly payroll of the health services division, which consists of five (5) personnel, came to ₱90,462.34 in basic salary and ₱5,550.00 in rice subsidy and transportation allowance. Your item in this payroll was ₱24,687.10 in basic salary and ₱850.00 in rice subsidy and transportation allowance, or about 26% of total payroll.
>
> Since the purpose of the downsizing was to reduce payroll costs, the employees with the highest rates of pay would be the first to be retrenched, if their services could be dispensed with. For this reason, you were the employee terminated. This same objective criteri[on] was used in downsizing the nursing faculty which resulted in the retrenchment of the six highest paid faculty members out of a faculty of eleven.[15]

On January 8, 2013, Labor Arbiter Roque[16] rendered a Decision holding that Pascua's employment was illegally terminated and noting that "[La Consolacion, Sr. Mora, Manalili, and Manabat]

---

[12] *Id*. at 38.

[13] Mrs. Alicia Manabat was the Finance Officer/Vice-President for Finance and Administrative Services of La Consolacion College Manila. See *rollo*, pp. 15 and 55.

[14] *Rollo*, p. 38.

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

[16] *Id*. at 46.

failed to justify the criteria used in terminating the employment of [Pascua]."[17] The dispositive portion of this Decision read:

> WHEREFORE, premise[s] considered, judgment is hereby rendered finding the dismissal of complainant Virginia R. Pascua as illegal. Respondent La Concolacion College, through its responsible officers, is directed to immediately reinstate said complainant to her former position as School Physician within ten (10) days from receipt of this Decision, and submit compliance top (sic) this Office.
>
> Moreover, respondent college is directed to pay complainant the following sums: (a) backwages from the time of illegal dismissal until actual reinstatement, which as of this date is computed at ₱387,225.56 pesos; (b) proportionate 13th month pay in the amount of ₱20,739.25 pesos; and attorney's fees in the amount of ₱40,796.48.
>
> SO ORDERED.[18]

On appeal, the National Labor Relations Commission reversed Labor Arbiter Roque's Decision. It explained the validity of the basis for dismissing Pascua, as follows:

> The primary criterion used in selecting complainant-appellee for termination was valid considering that they faced a substantial drop in income, and sought to directly address the problem by reducing the larger of the college expenses, such as salaries and allowances of its more expensive staff members including but not limited to complainant-appel[l]ee.[19]

In its assailed June 2, 2014 Decision,[20] the Court of Appeals reinstated Labor Arbiter Roque's January 8, 2013 Decision.

Following the denial[21] of their Motion for Reconsideration,[22] La Consolacion, Sr. Mora, Manalili, and Manabat filed the present Petition on January 12, 2015.[23]

---

[17] *Id*. at 39.

[18] *Id*. at 76.

[19] *Id*. at 40.

[20] *Id*. at 34-46.

[21] *Id*. at 57-58.

[22] *Id*. at 47-A-52.

[23] *Id*. at 14.

For resolution is the sole issue of whether or not respondent Virginia Pascua's retrenchment was valid. More specifically, this concerns the issue of whether or not the reason cited for her retrenchment—that she had the highest rate of pay—justified her dismissal.

I

The Labor Code recognizes retrenchment as an authorized cause for terminating employment.[24] It is an option validly available to an employer to address "losses in the operation of the enterprise, lack of work, or considerable reduction on the volume of business":[25]

> Retrenchment is normally resorted to by management during periods of business reverses and economic difficulties occasioned by such events as recession, industrial depression, or seasonal fluctuations. It is an act of the employer of reducing the work force because of losses in the operation of the enterprise, lack of work, or considerable reduction on the volume of business. Retrenchment is, in many ways, a measure of last resort when other less drastic means have been tried and found to be inadequate.[26] (Citations omitted)

---

[24] LABOR CODE, Art. 298 provides:

Article 298. [283] Closure of Establishment and Reduction of Personnel. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[25] *Edge Apparel, Inc. v. National Labor Relations Commission*, 349 Phil. 972, 982 (1998). [Per *J.* Vitug, First Division].

[26] *Id.* at 982-983.

While a legitimate business option, retrenchment may only be exercised in compliance with substantive and procedural requisites.

As to the substantive requisites, an employer must first show "that the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely de minimis, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer."[27] Second, an employer must also show "that [it] exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure."[28] Third, an employer must demonstrate "that [it] used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status (i.e., whether they are temporary, casual, regular or managerial employees), efficiency, seniority, physical fitness, age, and financial hardship for certain workers."[29]

Procedurally, employers must serve a "written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment."[30] Likewise, they must pay "the retrenched employees separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher."[31]

II

Jurisprudence requires that the necessity of retrenchment to stave off genuine and significant business losses or reverses

---

[27] *Asian Alcohol Corp. v. National Labor Relations Commission*, 364 Phil. 912, 926 (1999) [Per *J*. Puno, Second Division]. (Citation omitted)

[28] *Id*. at 927. (Citation omitted)

[29] *Id*.

[30] *Id*. at 926-927.

[31] *Id*. at 927. (Citation omitted)

be demonstrated by an employer's independently audited financial statements. Documents that have not been the subject of an independent audit may very well be self-serving. Moreover, it is not enough that it presents its audited financial statement for the year that retrenchment was undertaken for even as it may be incurring losses for that year, its overall financial status may already be improving. Thus, it must "also show that its losses increased through a period of time and that the condition of the company is not likely to improve in the near future."[32]

The records indicate that La Consolacion suffered serious business reverses or an aberrant drop in its revenue and income, thus, compelling it to retrench employees. In its Petition, it explained the backdrop of a "sharp spike in enrollment of students in its College of Nursing"[33] in 2008, only for "[t]he nursing bubble [to] burst."[34] It further explained how its comprehensive income nosedived by 96%:

> In this case, petitioners acted in response to an actual drop in enrollment as shown by their documentary attachments. The drop in enrollment and corresponding drop in income to cover basic operating expenses was not a mere figment of the imagination of the administration. Attached as Annex "C" of the Appeal at the NLRC which is Annex "I" of the Petition was a summary of the audited financial statements from 2006 to 2011 that show very clearly the deterioration of income due to decline in enrollment in a long period of time. Also attached were copies of the audited financial statements of the school from 2008-2012 Annexes "D", "E" and "F" . . . The 2010 audited financial report of SGV (2010 vs. 2009) clearly showed the decline in total tuition fee revenue from Php 210,355,192 million to Php 155,823,959 million or by a drop of Php 54,531,233 million or twenty-six [percent] (26%). Moreover the decline in comprehensive income from Php 19,133,158 to [Php] 738,671 or Php 18,394,487 or ninety-six percent (96%) was very alarming indeed.[35]

---

[32] *Id*. (Citation omitted)

[33] *Rollo*, p. 16.

[34] *Id*. at 17.

[35] *Id*. at 21-22.

As acknowledged by Labor Arbiter Roque,[36] this financial backdrop demonstrates the starkly difficult financial situation besetting La Consolacion. This also shows that La Consolacion proceeded with a modicum of good faith and not with a stratagem specifically intended to undermine certain employees' security of tenure.

III

La Consolacion's failure was non-compliance with the third substantive requisite of using fair and reasonable criteria that considered the status and seniority of the retrenched employee.

As early as 1987, this Court in *Asia World Publishing House, Inc. v. Ople*[37] considered seniority, along with efficiency rating and less-preferred status, as a crucial facet of a fair and reasonable criterion for effecting retrenchment.[38] *Emcor, Inc. v. Sienes*[39] was categorical, a "[r]etrenchment scheme without taking seniority into account rendered the retrenchment invalid":[40]

> Records do not show any criterion adopted or used by petitioner in dismissing respondent. Respondent was terminated without considering her seniority. Retrenchment scheme without taking seniority into account rendered the retrenchment invalid. While respondent was the third most senior employee among the 7 employees in petitioner's personnel department, she was retrenched while her other co-employees junior than her were either retained in the Personnel Department or were transferred to other positions in the company. There was no showing that respondent was offered to be transferred to other positions.[41] (Citations omitted)

---

[36] *Id*. at 39.

[37] 236 Phil. 236 (1987) [Per *J*. Guttierez, Jr., Third Division].

[38] See also *Villena v. National Labor Relations Commission*, 271 Phil. 718 (1991) [Per *J*. Grino-Aquino, First Division].

[39] 615 Phil. 33 (2009) [Per *J*. Peralta, Third Division].

[40] *Id*. at 52, citing *Philippine Tuberculosis Society Inc. v. NLRC*, 356 Phil. 63, 72 (1998) [Per *J*. Mendoza, Second Division].

[41] *Id*. at 52.

In *Philippine Tuberculosis Society, Inc. v. National Labor Union*,[42] this Court quoted with approval the following discussion by the National Labor Relations Commission:

> We noted with concern that the criteria used by the Society failed to consider the seniority factor in choosing those to be retrenched, a failure which, to our mind, should invalidate the retrenchment, as the omission immediately makes the selection process unfair and unreasonable. Things being equal, retaining a newly hired employee and dismissing one who had occupied the position for years, even if the scheme should result in savings for the employer, since he would be paying the newcomer a relatively smaller wage, is simply unconscionable and violative of the senior employee's tenurial rights. In *Villena vs. NLRC*, 193 SCRA 686. February 7, 1991, the Supreme Court considered the seniority factor an important ingredient for the validity of a retrenchment program. According to the Court, the following legal procedure should be observed for a retrenchment to be valid: (a) one-month prior notice to the employee as prescribed by Article 282 of the Labor Code; and b) use of a fair and reasonable criteria in carrying out the retrenchment program, such as 1) less preferred status (as in the case of temporary employees) 2) efficiency rating, 3) seniority, and 4) proof of claimed financial losses.[43]

There is no dispute here about respondent's seniority and preferred status. Petitioners acknowledge that she had been employed by La Consolacion since January 2000, initially as a part-time physician then serving full-time beginning 2008. It is also not disputed that while respondent was a full-time physician, La Consolacion had another physician, Dr. Dimagmaliw, who served part-time. Precisely, respondent's preeminence is a necessary implication of the very criteria used by La Consolacion in retrenching her, i.e., that she was the highest paid employee in health services division.

La Consolacion's disregard of respondent's seniority and preferred status relative to a part-time employee indicates its resort to an unfair and unreasonable criterion for retrenchment.

---

[42] 356 Phil. 63 (1998) [Per *J*. Mendoza, Second Division].

[43] *Id*. at 72. See also *Oriental Petroleum and Minerals Corp. v. Fuentes*, 509 Phil. 684 (2005) [Per *J*. Tinga, Second Division].

Indeed, it may have made mathematical sense to dismiss the highest paid employee first. However, appraising the propriety of retrenchment is not merely a matter of enabling an employer to augment financial prospects. It is as much a matter of giving employees their just due. Employees who have earned their keep by demonstrating exemplary performance and securing roles in their respective organizations cannot be summarily disregarded by nakedly pecuniary considerations. The Labor Code's permissiveness towards retrenchments aims to strike a balance between legitimate management prerogatives and the demands of social justice. Concern for the employer cannot mean a disregard for employees who have shown not only their capacity, but even loyalty. La Consolacion's pressing financial condition may invite commiseration, but its flawed standard for retrenchment constrains this Court to maintain that respondent was illegally dismissed.

Besides, La Consolacion could have also modified respondent's status from full-time to part-time. When retrenchment becomes necessary, the employer may, in the exercise of its business judgment, implement cost-saving measures, but at the same time, should respect labor rights.

IV

While the impropriety of the termination of respondent's employment is settled, it is equally manifest that she "was not a victim of arbitrary and high handed action."[44] Her dismissal was a result, not so much of purposeful malevolence, but of a flawed appreciation of circumstances. La Consolacion was contending with dire financial straits and wound up resorting to a monetarily logical, though legally faulty, course of action.

In prior cases, this Court mitigated an employer's liability for backwages "where good faith is evident."[45] In *Pepsi-Cola*

---

[44] *Pantranco North Express v. National Labor Relations Commission*, 211 Phil. 657 (1983) [Per *J*. Gutierrez, Jr., First Division].

[45] Solicitor General's Comment, quoted with approval in *Durabuilt Recapping Plant & Co. v. National Labor Relations Commission*, 236 Phil. 351 (1987) [Per *J*. Gutierrez, Jr., Third Division]. See *Findlay Millar Timber*

Products Philippines, Inc. v. Molon:[46]

An illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages. In certain cases, however, the Court has ordered the reinstatement of the employee without backwages considering the fact that (1) the dismissal of the employee would be too harsh a penalty; and (2) the employer was in good faith in terminating the employee. For instance, in the case of *Cruz v. Minister of Labor and Employment*[,] the Court ruled as follows:

> The Court is convinced that petitioner's guilt was substantially established. Nevertheless, we agree with respondent Minister's order of reinstating petitioner without backwages instead of dismissal which may be too drastic. Denial of backwages would sufficiently penalize her for her infractions. The bank officials acted in good faith. They should be exempt from the burden of paying backwages. The good faith of the employer, when clear under the circumstances, may preclude or diminish recovery of backwages. Only employees discriminately dismissed are entitled to backpay . . .

Likewise, in the case of *Itogon-Suyoc Mines, Inc. v. National Labor Relations Commission*, the Court pronounced that "[t]he ends of social and compassionate justice would therefore be served if private respondent is reinstated but without backwages in view of petitioner's good faith."[47] (Citations omitted)

La Consolacion's prohibitive financial condition and demonstrated, though imperfect, attempt at devising a reasonable mechanism for retrenching employees impel this Court to temper its liability for backwages. Accordingly, this Court upholds Labor Arbiter Roque's order for respondent to be reinstated, but modifies the amount of backwages. Respondent is deemed to be employed on a part-time basis from the effective date of

---

Co. v. Philippine Land-Air-Sea Labor Union, 116 Phil. 534 (1962) [Per *J.* Bautista Angelo, *En Banc*]; and *Pantranco North Express v. National Labor Relations Commission*, 211 Phil. 657 (1983) [Per *J.* Gutierrez, Jr., First Division].

[46] 704 Phil. 120 (2013) [Per *J.* Perlas-Bernabe, Second Division].

[47] *Id.* at 144-145.

her wrongful termination and is entitled to backwages corresponding to such status and period.

WHEREFORE, the Petition for Review on Certiorari is **PARTIALLY GRANTED** with respect to the award of backwages and proportionate thirteenth (13th) month pay. Labor Arbiter Luvina P. Roque's January 8, 2013 Decision is **MODIFIED** by awarding to respondent Virginia Pascua backwages corresponding to a part-time physician, reckoned from October 30, 2011.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 215202. March 14, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VILLARIN CLEMENO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE LONE UNCORROBORATED TESTIMONY OF THE VICTIM IS ENOUGH TO PROVE THE CRIME AS CHARGED, AS LONG AS THE TESTIMONY IS CLEAR, POSITIVE AND PROBABLE.— The Court finds no reason to reverse the conviction. Considering that only two persons are usually involved in rape cases, even the lone uncorroborated testimony of the victim is enough to prove the crime as charged, as long as the testimony is clear, positive and probable. Here, the trial court found AAA's

testimony to be clear, straightforward, and convincing, unflawed by any material or significant inconsistency.

2. **ID.; ID.; ID.; THE TRIAL COURT'S ASSESSMENT OF THE CREDIBILITY OF WITNESSES IS GIVEN GREAT WEIGHT AND IS DEEMED CONCLUSIVE AND BINDING, IF NOT TAINTED WITH ARBITRARINESS OR OVERSIGHT OF SOME FACT OR CIRCUMSTANCE OF WEIGHT AND INFLUENCE.—** A well-entrenched doctrine where the issue is one of credibility is that the trial court's assessment is given great weight and is deemed conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. This is because the trial court has the full opportunity to observe directly the witnesses' deportment and manner of testifying. It is in a better position than the appellate court to properly evaluate testimonial evidence.

3. **ID.; ID.; ID.; NO STANDARD FORM OF REACTION IS EXPECTED FROM A VICTIM IN THE FACE OF A HORRIFIC EVENT, BECAUSE THE WORKINGS OF THE HUMAN MIND PLACED UNDER EMOTIONAL STRESS ARE UNPREDICTABLE.—** On accused-appellant's contention that AAA put up insufficient resistance to warrant a finding that the sexual intercourse was against her will, the Court takes judicial notice that rape victims may have differing reactions to the shock and trauma of a sexual assault. No standard form of reaction is expected from a victim in the face of such a horrific event, because the workings of the human mind placed under emotional stress are unpredictable. Indeed, some may offer strong resistance while others none at all.

4. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENT OF FORCE AND INTIMIDATION; IN RAPE COMMITTED BY A FATHER AGAINST HIS OWN DAUGHTER, THE FATHER'S PARENTAL AUTHORITY AND MORAL ASCENDANCY OVER HIS DAUGHTER SUBSTITUTES FOR VIOLENCE AND INTIMIDATION.—** More importantly, however, this is a case of a father sexually assaulting his child. The force or violence necessary in rape depends on the age, size, and strength of the persons involved and their relationship to each other; and what is essential is that the act was accomplished against the will and despite the

resistance of the victim. The Court has ruled that "in rape committed by a father against his own daughter, the father's parental authority and moral ascendancy over his daughter substitutes for violence and intimidation." In *People v. Rodriguez*, the Court even had occasion to say that "it would be plain fallacy to say that the failure to shout or to offer tenacious resistance makes voluntary the victim's submission to the criminal act of the offender. It is quite enough that she has repeatedly tried, albeit unsuccessfully, to resist his advances." Here, AAA testified that she tried to push her father away but was overpowered. Moreover, in the face of her father's moral ascendancy and parental authority, it is not contrary to human experience that AAA would resign to her father's wicked deeds.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; LONG SILENCE AND DELAY IN REPORTING THE CRIME OF RAPE ARE NOT NECESSARILY INDICATIONS OF A FALSE ACCUSATION AND CANNOT BE TAKEN AGAINST THE VICTIM UNLESS THE DELAY OR INACTION IN REVEALING ITS COMMISSION IS UNREASONABLE AND UNEXPLAINED. — On the issue of delay in reporting the incident, accused-appellant's contention deserves scant consideration. It is settled that long silence and delay in reporting the crime of rape are not necessarily indications of a false accusation and cannot be taken against the victim unless the delay or inaction in revealing its commission is unreasonable and unexplained. Again, the delay may be owed to the observation that victims of a horrific crime tend to react differently. Here, AAA offered a reasonable explanation for her long silence—she was afraid that her father would carry out his threat to kill her family if she reported the incident. With her believing that the lives of her loved ones depend on her silence, it is not inconceivable that she would keep quiet about it, even at great cost to herself.

6. ID.; ID.; DEFENSE OF ALIBI AND DENIAL; INHERENTLY WEAK DEFENSES AND MUST BE BRUSHED ASIDE WHEN THE PROSECUTION HAS SUFFICIENTLY AND POSITIVELY ASCERTAINED THE IDENTITY OF THE ACCUSED.— As against AAA's positive and credible testimony, accused-appellant merely offered the defense of denial. The Court has held time and again that alibi and denial

are inherently weak defenses and "must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused." AAA confirmed, through her clear and credible testimony, the identity of the perpetrator, the accused-appellant. Such testimony is bolstered by DNA evidence showing the 99.999999% statistical probability that accused-appellant is the father of AAA's child.

7. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; PROOF OF PATERNITY OF A RAPE VICTIM'S CHILD ESTABLISHES THE FACT THAT THE ACCUSED-APPELLANT, WHO IS A BIOLOGICAL MATCH WITH THE VICTIM'S CHILD, HAD CARNAL KNOWLEDGE OF THE VICTIM, WHICH IS AN ELEMENT OF RAPE WHEN IT IS DONE AGAINST THE LATTER'S WILL AND WITHOUT HER CONSENT.—** Accused-appellant harps on case law saying that a rape victim's pregnancy and resultant childbirth are irrelevant in determining whether or not she was raped; therefore, the DNA test showing that accused-appellant fathered AAA's child is of no moment. While it is true that they are not essential elements to prove the fact of rape, proof of paternity of a rape victim's child establishes the fact that the accused-appellant, who is a biological match with the victim's child, had carnal knowledge of the victim, which is an element of rape when it is done against the latter's will and without her consent. Under the Rules on DNA evidence, if the value of the probability of paternity is 99.9% or higher, there shall be a disputable presumption of paternity. Notably, accused-appellant failed to dispute this presumption. This DNA result corroborates AAA's testimony that accused-appellant had carnal knowledge with her, and she sufficiently established that such was done by force, threat, and intimidation.

8. **REMEDIAL LAW; EVIDENCE; DEFENSE OF ALIBI; TO PROSPER, THE ACCUSED-APPELLANT MUST PROVE NOT ONLY THAT HE WAS SOMEWHERE ELSE WHEN THE CRIME WAS COMMITTED BUT HE MUST ALSO SATISFACTORILY ESTABLISH THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE CRIME SCENE AT THE TIME OF ITS COMMISSION.—** [F]or a defense of alibi to prosper, the accused-appellant must prove not only that he was somewhere else when the crime was committed but he must also satisfactorily establish that it

was physically impossible for him to be at the crime scene at the time of its commission. Since accused-appellant did not present even an iota of evidence proving physical impossibility that he committed the crime, his defense cannot prevail over AAA's categorical testimony.

9. CRIMINAL LAW; REVISED PENAL CODE; RAPE; CIVIL LIABILITY OF ACCUSED-APPELLANT.— [T]his Court modifies the award of damages, conformably with *People v. Jugueta*, where the Court ruled that "when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the Court rules that the proper amounts should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 exemplary damages." Thus, the Court increases the award of civil indemnity, moral damages, and exemplary damages to ₱75,000.00. In line with current policy, the Court also imposes interest at the legal rate of six percent (6%) per annum on all monetary awards for damages, from the date of finality of this Resolution until fully paid.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

MARTIRES, *J.*:

Before this Court is an Appeal filed by accused-appellant Villarin Clemeno (*accused-appellant*) assailing the Decision[1] dated 26 November 2012 of the Court of Appeals *(CA)* in CA-G.R. CR HC No. 04792.

The CA affirmed the decision of the Regional Trial Court *(RTC)* in Criminal Case No. 14007 and No. 14008, finding

---

[1] *Rollo*, pp. 2-13; penned by Associate Justice Eduardo B. Peralta, Jr., and concurred in by Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion.

accused-appellant guilty beyond reasonable doubt of two counts of rape, defined and penalized under Article 266-A, par. 1, in relation to Article 266-B of the Revised Penal Code *(RPC)*, committed against AAA.[2]

In Criminal Case No. 14007, accused-appellant was charged as follows:

> That [on] or about June 2003 at night at Brgy. [XXX], [XXX] City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd designs, through force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge on one [AAA], against the latter's will.
>
> That the aggravating circumstance of relationship, the victim being the daughter of the accused, is attendant in the commission of the offense.[3]

In Criminal Case No. 14008, accused-appellant was charged as follows:

> That [on] or about June 2004 at night at Brgy. [XXX], [XXX] City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd designs, through force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge on one [AAA], against the latter's will.
>
> That the aggravating circumstance of relationship, the victim being the daughter of the accused, is attendant in the commission of the offense.[4]

Upon arraignment, accused-appellant pleaded not guilty of the crimes charged.

Version of the prosecution

The prosecution presented the testimonies of AAA, social worker Charity Nuñez *(Nuñez)*, and forensic chemist Aida R. Viloria-Magsipoc *(Viloria-Magsipoc)*.

---

[2] The complete name of the victim in this case is replaced with fictitious initials, in compliance with Supreme Court Administrative Circular 83-2015.

[3] Records (Criminal Case No. 14007), p. 1.

[4] Records (Criminal Case No. 14008), p. 1.

AAA narrated that accused-appellant, her father, used to beat her and her siblings, sometimes chasing them with a bolo. Sometime in June 2003, at around 11:00 o'clock in the evening, AAA was sleeping on the bed while her two siblings slept on the floor. She was awakened when accused-appellant suddenly laid on top of her. Accused-appellant was able to remove AAA's shorts and panties despite her resistance. AAA tried to push him away with her hands, but accused-appellant overpowered her. AAA was afraid to do anything because she was afraid of him.[5]

Accused-appellant held AAA's hands, parted her legs, and inserted his penis into her vagina. Thereafter, accused-appellant threatened to kill the whole family if she reported the incident. AAA's mother was not around at the time because she was working as her sister's housemaid in San Juan, Batangas. AAA kept silent about the ordeal because she believed her father was capable of carrying out his threat.[6]

The same incident occurred in June 2004, when accused-appellant woke up AAA, laid on top of her, and made a push and pull motion, which caused AAA great pain. Because of this incident, AAA became pregnant and subsequently gave birth to a baby boy on 6 April 2005.[7]

AAA then revealed to her mother her ordeal with accused-appellant. Thereafter, a social worker, Nuñez, visited the house of AAA after receiving a call regarding the rape incident. Nuñez invited AAA to undergo a medical examination at the Batangas Regional Hospital.[8] Dr. Rex B. Rivamonte *(Dr. Rivamonte)*, who conducted a physical examination on AAA, concluded in his medico-legal certification that she had recently given birth because her uterus was still enlarged.[9]

---

[5] TSN, 13 February 2006, pp. 3-9 and 11-13.

[6] *Id*.

[7] *Id*. at 8-10.

[8] TSN, 24 November 2006, pp. 3-5.

[9] Records (Criminal Case No. 14007), p. 7.

Viloria-Magsipoc, Forensic Chemist III of the DNA Analysis Laboratory of the National Bureau of Investigation, conducted two DNA tests to determine the filiation of AAA's child. The tests confirmed a 99.999999% probability that accused-appellant was the biological father of AAA's child.[10]

Version of the defense

The defense presented accused-appellant as sole witness.

Accused-appellant denied the charge against him. He contended that he loved his children and was in good terms with them. He asserted that AAA was merely influenced by her uncle, accused-appellant's brother-in-law, to file the rape charges against him because of his long-standing feud with his brother-in-law involving a property.[11]

In his brief,[12] accused-appellant questioned AAA's credibility and posited that the following circumstances militate against a finding of rape: *first*, AAA's act of resistance was insufficient to prove that the sexual intercourse was against her will because she did not shout or ask for help; and live with accused-appellant without attempting to run away to seek help in order to prevent further abuse; *second*, AAA's delay in reporting the rape, despite several opportunities to do so, was unnatural and contrary to human experience. Consequently, AAA's rape charge is doubtful.

The RTC Ruling

After trial, the RTC found accused-appellant guilty beyond reasonable doubt of the crime of rape. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered finding accused **VILLARIN CLEMENO y LOZANO guilty beyond reasonable doubt of two counts of Rape** penalized under Article 266-A, par. 1 in relation to Article 266-B of the Revised Penal Code, under Criminal Case Nos. 14007 and 14008, and sentencing him **in each case** to

---

[10] TSN, 23 June 2010, pp. 3-14; *id*. at 259-260.

[11] TSN, 5 August 2008, pp. 13-15.

[12] *CA rollo*, pp. 69-80.

suffer the penalty of **reclusion perpetua without eligibility for parole** and to indemnify [AAA] **for each count of rape** the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

Costs of suit must also be paid by the accused.[13]

The CA Ruling

On appeal, the CA affirmed accused-appellant's conviction. According to the CA, with regard to appreciating the credibility of witnesses, "the trial court is in a better position than the appellate or reviewing court because the former had the full opportunity to observe directly the witness' deportment and manner of testifying."[14] Moreover, "delay in reporting an incident of rape is not necessarily an indication that the charge was fabricated, particularly when the delay can be attributed to fear instilled by threats from one who exercises ascendancy over the victim."[15] On the issue of the alleged influence exerted by his brother-in-law over AAA, the CA observed that such a reason was "too flimsy and insignificant for a daughter to falsely charge her father with a serious crime and to publicly disclose that she had been raped and then undergo the concomitant humiliation, anxiety, and exposure to public trial unless it was true."[16]

The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the **APPEAL** of accused-appellant Villarin L. Clemeno is hereby **DENIED**. Accordingly, the assailed Decision dated October 19, 2010, rendered by the Regional Trial Court, Fourth Judicial Region, Branch VII, Batangas City, in Criminal Cases No. 14007 and 14008 are hereby **AFFIRMED**.[17]

OUR RULING

The Court finds no reason to reverse the conviction.

---

[13] Records (Criminal Case No. 14007), p. 295.

[14] *Rollo*, p. 10.

[15] *Id.* at 11.

[16] *Id.*

[17] *Id.* at 12.

Considering that only two persons are usually involved in rape cases, even the lone uncorroborated testimony of the victim is enough to prove the crime as charged, as long as the testimony is clear, positive and probable.[18] Here, the trial court found AAA's testimony to be clear, straightforward, and convincing, unflawed by any material or significant inconsistency.

A well-entrenched doctrine where the issue is one of credibility is that the trial court's assessment is given great weight and is deemed conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. This is because the trial court has the full opportunity to observe directly the witnesses' deportment and manner of testifying. It is in a better position than the appellate court to properly evaluate testimonial evidence.[19]

On accused-appellant's contention that AAA put up insufficient resistance to warrant a finding that the sexual intercourse was against her will, the Court takes judicial notice that rape victims may have differing reactions to the shock and trauma of a sexual assault. No standard form of reaction is expected from a victim in the face of such a horrific event, because the workings of the human mind placed under emotional stress are unpredictable. Indeed, some may offer strong resistance while others none at all.[20]

More importantly, however, this is a case of a father sexually assaulting his child. The force or violence necessary in rape depends on the age, size, and strength of the persons involved and their relationship to each other; and what is essential is that the act was accomplished against the will and despite the resistance of the victim.[21] The Court has ruled that "in rape committed by a father against his own daughter, the father's

---

[18] *People v. Tubat*, 680 Phil. 730, 737 (2012).

[19] *People v. Bosi*, 689 Phil. 66, 73 (2012).

[20] *People v. Palanay*, G.R. No. 224583, 1 February 2017.

[21] *People v. Viajedor*, 449 Phil. 292, 317-318 (2003).

parental authority and moral ascendancy over his daughter substitutes for violence and intimidation."[22]

In *People v. Rodriguez*,[23] the Court even had occasion to say that "it would be plain fallacy to say that the failure to shout or to offer tenacious resistance makes voluntary the victim's submission to the criminal act of the offender. It is quite enough that she has repeatedly tried, albeit unsuccessfully, to resist his advances."

Here, AAA testified that she tried to push her father away but was overpowered. Moreover, in the face of her father's moral ascendancy and parental authority, it is not contrary to human experience that AAA would resign to her father's wicked deeds.

On the issue of delay in reporting the incident, accused-appellant's contention deserves scant consideration. It is settled that long silence and delay in reporting the crime of rape are not necessarily indications of a false accusation and cannot be taken against the victim unless the delay or inaction in revealing its commission is unreasonable and unexplained.[24] Again, the delay may be owed to the observation that victims of a horrific crime tend to react differently.

Here, AAA offered a reasonable explanation for her long silence – she was afraid that her father would carry out his threat to kill her family if she reported the incident. With her believing that the lives of her loved ones depend on her silence, it is not inconceivable that she would keep quiet about it, even at great cost to herself.

As against AAA's positive and credible testimony, accused-appellant merely offered the defense of denial. The Court has held time and again that alibi and denial are inherently weak defenses and "must be brushed aside when the prosecution has

---

[22] *Id*. at 318.

[23] 425 Phil. 848, 860 (2002).

[24] *People v. Cabungan*, 702 Phil. 177, 185 (2013).

sufficiently and positively ascertained the identity of the accused."[25] AAA confirmed, through her clear and credible testimony, the identity of the perpetrator, the accused-appellant. Such testimony is bolstered by DNA evidence showing the 99.999999% statistical probability that accused-appellant is the father of AAA's child.

Accused-appellant harps on case law saying that a rape victim's pregnancy and resultant childbirth are irrelevant in determining whether or not she was raped;[26] therefore, the DNA test showing that accused-appellant fathered AAA's child is of no moment. While it is true that they are not essential elements to prove the fact of rape, proof of paternity of a rape victim's child establishes the fact that the accused-appellant, who is a biological match with the victim's child, had carnal knowledge of the victim, which is an element of rape when it is done against the latter's will and without her consent.

Under the Rules on DNA evidence, if the value of the probability of paternity is 99.9% or higher, there shall be a disputable presumption of paternity.[27] Notably, accused-appellant failed to dispute this presumption. This DNA result corroborates AAA's testimony that accused-appellant had carnal knowledge with her, and she sufficiently established that such was done by force, threat, and intimidation.

Further, for a defense of alibi to prosper, the accused-appellant must prove not only that he was somewhere else when the crime was committed but he must also satisfactorily establish that it was physically impossible for him to be at the crime scene at the time of its commission. Since accused-appellant did not present even an iota of evidence proving physical impossibility that he committed the crime, his defense cannot prevail over AAA's categorical testimony.

---

[25] *People v. Manigo*, 725 Phil. 324, 334-335 (2014).

[26] CA *rollo*, p. 78 citing *People v. Bejic*, 552 Phil. 555, 573 (2007).

[27] A.M. No. 06-11-5-SC, or the Rule on DNA Evidence, Section 9(c).

However, this Court modifies the award of damages, conformably with *People v. Jugueta*,[28] where the Court ruled that "when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the Court rules that the proper amounts should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 exemplary damages."

Thus, the Court increases the award of civil indemnity, moral damages, and exemplary damages to ₱75,000.00. In line with current policy,[29] the Court also imposes interest at the legal rate of six percent (6%) per annum on all monetary awards for damages, from the date of finality of this Resolution until fully paid.

WHEREFORE, the appeal is **DISMISSED.** The 26 November 2012 Decision of the Court of Appeals in CA-G.R. CR HC No. 04792 is **AFFIRMED WITH MODIFICATION as to the amount of damages**. Accused-appellant Villarin Clemeno is **GUILTY BEYOND REASONABLE DOUBT** of two counts of rape as defined in Article 266-A and penalized in Article 266-B of the Revised Penal Code and is **ORDERED** to pay AAA the following amounts for each count of rape: civil indemnity of ₱75,000.00, moral damages of ₱75,000.00, and exemplary damages of ₱75,000.00. All monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Resolution until fully paid.

SO ORDERED.

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

---

[28] G.R. No. 202124, 5 April 2016, 788 SCRA 331, 383.

[29] *People v. Dion*, 668 Phil. 333, 353 (2011).

SECOND DIVISION

[G.R. No. 215314. March 14, 2018]

CENTRAL AZUCARERA DE BAIS and ANTONIO STEVEN L. CHAN, *petitioners, vs.* **HEIRS OF ZUELO APOSTOL**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE OR QUASI-JUDICIAL BODIES, INCLUDING LABOR TRIBUNALS, ARE ACCORDED MUCH RESPECT BY THE COURT AS THEY ARE SPECIALIZED TO RULE ON MATTERS FALLING WITHIN THEIR JURISDICTION ESPECIALLY WHEN THESE ARE SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTIONS; PRESENT.— The general rule is that only questions of law are reviewable by the Court. This is because it is not a trier of facts; it is not duty-bound to analyze, review, and weigh the evidence all over again in the absence of any showing of any arbitrariness, capriciousness, or palpable error. Thus, factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by the Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence. In labor cases, this doctrine applies with greater force as questions of fact presented therein are for the labor tribunals to resolve. The Court, however, permitted a relaxation of this rule whenever any of the following circumstances is present: (1) [W]hen the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when

the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Thus, in instances when the Labor Arbiter, the NLRC, and the CA made conflicting findings of fact, the Court is justified—*nay*, the Court is compelled—to issue its own determination. The case at hand calls for the resolution of several issues concerning the factual determination of the court *a quo*.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; PROCEDURAL DUE PROCESS IN TERMINATION CASES, GUIDING PRINCIPLES.— As early as 2009, in the case of *Perez vs. Philippine Telegraph and Telephone Company*, the Court has already laid down the guidelines in complying with the proper procedure in instances when termination of employees is called for. In reconciling the Labor Code and its Implementing Rules and Regulations, and in concluding that actual or formal hearing is not an absolute requirement, the Court interpreted and directed that: x x x. An employee's right to be heard in termination cases under Article 277(b) [now, Article 292(b)] as implemented by Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should be interpreted in broad strokes. **It is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof**. Thus, in *Perez*, the Court formulated the following guiding principles in connection with the hearing requirement in dismissal cases: (a) "**ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him** and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way. (b) a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it. (c) the "ample opportunity to be heard" standard in the Labor Code prevails over the "hearing or conference" requirement in

the implementing rules and regulations. In the present case, the petitioners furnished the respondent with two notices: one, the memorandum dated February 4, 2002 issued by CAB's resident manager which informed the respondent of the charges against him; and two, the letter of termination which, this time, notified the respondent of CAB's decision to dismiss him. In the interim, CAB, through the memorandum issued by its resident manager, sought the respondent's explanation on the incident. The confluence of these facts, in the Court's opinion, sufficiently complies with the respondent's right to be accorded ample opportunity to be heard.

3. ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE AS GROUND FOR DISMISSAL; AN EMPLOYER HAS A DISTINCT PREROGATIVE TO DISMISS AN EMPLOYEE IF THE FORMER HAS AMPLE REASON TO DISTRUST THE LATTER OR IF THERE IS SUFFICIENT EVIDENCE TO SHOW THAT THE EMPLOYEE HAS BEEN GUILTY OF BREACH OF TRUST.— Article 297(c) [formerly Article 282(c)] of the Labor Code provides that an employer may terminate the services of an employee for fraud or willful breach of the trust reposed in him. According to the case of *Top Form Mfg. Co., Inc. vs. NLRC*, an employer has a distinct prerogative to dismiss an employee if the former has ample reason to distrust the latter or if there is sufficient evidence to show that the employee has been guilty of breach of trust. This authority of the employer to dismiss an employee cannot be denied whenever acts of violation are noted by the employer.

4. ID.; ID.; ID.; REQUIREMENTS FOR VALIDITY THEREOF; EXIST IN CASE AT BAR.— In ruling that employers have a right to impose a penalty of dismissal on supervisors or personnel occupying positions of responsibility on the basis of loss of trust and confidence, the case of *Moya vs. First Solid Rubber Industries, Inc*. stated thus: Following the ruling in *The Coca-Cola Export Corporation v. Gacayan*, the employers have a right to impose a penalty of dismissal on employees by reason of loss of trust and confidence. **More so, in the case of supervisors or personnel occupying positions of responsibility, loss of trust, justifies termination of employment**. Loss of confidence as a just cause for termination of employment is premised on the fact that an employee concerned holds a position of trust and confidence. **This situation holds where a person is entrusted with confidence on delicate**

matters, such as the custody, handling, or care and protection of the employer's property. This discourse is further clarified in the recent case of *Alaska Milk Corporation, and the Estate of Wilfred Uytengsu vs. Ernesto L. Ponce* where the Court ruled that, in order to invoke this cause, certain requirements must be complied with, namely: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence. In addition to these, the case of *Juliet B. Sta. Ana vs. Manila Jockey Club, Inc*. included, as a requirement, that such loss of trust relates to the employee's performance of duties. In the case at hand, a perusal of the entirety of the records would reveal that all the requirements for the valid dismissal of the respondent exist.

5. **ID.; ID.; ID.; A VALIDLY DISMISSED EMPLOYEE IS NOT ENTITLED TO BACKWAGES AND SEPARATION PAY.—** [T]he respondent's action was successfully conducted precisely because of his position in the company. As CAB's motor pool over-all repairs supervisor, he was in the position to effect the repairs of his personal property in the company house which was assigned to him. It could not be emphasized further that this violation of company rules—from a supervisor no less—carries with it an impact to the operations and management of a company, and a company's decision to terminate an employee for these purposes is a decision that should be respected. To be sure, the petitioners herein validly dismissed their erring employee. Having thus ruled on the validity of the dismissal of the respondent, then it necessarily follows that he is not entitled to both backwages and separation pay.

6. **ID.; ID.; ID.; ID.; SOCIAL JUSTICE MAY MITIGATE THE PENALTY BUT IT CERTAINLY WILL NOT CONDONE THE OFFENSE, AS THE SAME CANNOT BE PERMITTED TO BE REFUGE OF SCOUNDRELS ANY MORE THAN CAN EQUITY BE AN IMPEDIMENT TO THE PUNISHMENT OF THE GUILTY.—** The Court has reiterated that the policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of

> scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioners.
Frederick E. Bustamante for respondents.

D E C I S I O N

REYES, JR., *J.*:

Time and again, the Court has put emphasis on the right of an employer to exercise its management prerogative in dealing with its company's affairs, including the right to dismiss erring employees. It is a general principle of labor law to discourage interference with an employer's judgment in the conduct of his business. Even as the law is solicitous of the welfare of the employees, it also recognizes employer's exercise of management prerogatives. As long as the company's exercise of judgment is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.[1]

The Case

Challenged before the Court *via* this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the Decision[2]

---

[1] *Philippine Auto Components, Inc. v. Ronnie B. Jumadla, et al.*, G.R. No. 218980, November 28, 2016, &, *Ronnie B. Jumadla, et al. v. Philippine Auto Components, Inc.*, G.R. No. 219124, November 28, 2016.

[2] Penned by Associate Justice Ramon Paul L. Hernando, and concurred in by Associate Justices Carmelita Salandanan-Manahan and Ma. Luisa Quijano-Padilla; *rollo*, pp. 59-70.

of the Court of Appeals (CA) in CA G.R. SP No. 06906, promulgated on May 22, 2013, which affirmed the Decision[3] and Resolution[4] of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000451-2002, dated October 28, 2011 and February 27, 2012, respectively. Likewise challenged is the subsequent Resolution[5] of the CA promulgated on October 29, 2014, which upheld the earlier decision.

The Antecedent Facts

The respondent Zuelo Apostol, now deceased and represented herein by his heirs, commenced his 20 years of employment with petitioner Central Azucarera de Bais (CAB) on March 1, 1982 when he was hired as the latter's Motor Pool Over-All Repairs Supervisor.[6] According to the petitioners, the respondent, as a supervisor, was in charge of repairing company vehicles, which necessarily included the responsibilities of (a) assigning the personnel and equipment for each and every repair job, and (b) taking custody of all repair equipment and materials owned by CAB.[7] Likewise, as a supervisor, one of the pre-requisites accorded to the respondent was the enjoyment of a company house where the respondent could live so long as he remains as a CAB employee.

On February 2, 2002, the parties' harmonious working relationship was disturbed when, during the inspection of Tomasito A. Rosel (Rosel), one of CAB's security guards, it was discovered that the respondent "was using his company house, as well as other company equipment to repair privately owned vehicles."[8] As reported by Rosel, he saw:

---

[3] *Id*. at 191-198.

[4] *Id*. at 214-215.

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

[6] *Id*. at 11.

[7] *Id*.

[8] *Id*. at 12.

1. That the right side of the house was brightly lighted (sic) and the light came from an electrical line (trouble light with a 100W bulb) extension coming from the house. The lighting connection was hanging some distance from the house to the left side of the LANCER car, color white, which was parked after a pick-up vehicle, color black. The LANCER CAR was undergoing repairs on its left side.

2. That Mr. Francisco Sabanal whom I personally know to be one of the regular workers of C.A.B. MOTOR POOL DEPARTMENT, hired as automotive mechanic, was the one actually doing the repair work on the LANCER CAR mentioned above. During the twenty minutes that I stayed in the premises of the house assigned to Mr. Apostol, I saw Mr. Sabanal cutting with scissors metal sheets from the sheets that were there at the place, to repair the LANCER CAR. He had with him on site, flattening tools and there was also an oxygen-acetylene outfit, which he also used.[9]

This then triggered the CAB management, through its resident manager, Roberty Y. Dela Rosa, to issue a memorandum addressed to the respondent for violating Rule 9 of CAB's Rules of Discipline, *viz:*

You will submit to this Office within 24 hours from receipt hereof your explanation in writing (to be placed on the space indicated at the bottom of the enclosed duplicate hereof) why you should not be subjected to our Rules of Discipline for the following acts:

For violating Rule 9 of the Rules of Discipline — for Utilizing material or equipment of the Company, including power for doing private work without permission. Inspection by Security has disclosed that you were having repairs done in CAB housing unit area assigned to you in Paper Village one car and one pick-up for body repairs using oxygen and acetylene tanks with cutting accessories as well as steel plates for the repairs, all of which are assumed to be company property there being no clearance or permit obtained form the Company to bring in personal equipment to undertake repairs in CAB village.

Bais Central, February 4, 2002

---

[9] *Id*. at 112.

Note: While giving you a chance to explain your side, within 24 hours from receipt hereof, you are put on preventive suspension effective immediately.

(Sgd.)
ROBERTO Y. DELA ROSA
Resident Manager[10]

In response, the respondent submitted a handwritten explanation in the local dialect, which when translated reads:

Dear Nonoy Steven,

First of all, I am asking for a thousand apologies because I undertook the repair of my personal vehicle without securing your permission.

Noy, I did not use electric welding, compressor and grinder. What I used was a trouble light and my personal acetylene and oxygen.

Noy, I am reiterating my asking for apology and excuse from you and I am really sorry that I have violated your rules.

Sincerely yours,
Sgd. Zuelo Apostol[11]

On February 9, 2002, the respondent received a copy of the termination letter dated February 8, 2002, which was signed by CAB's president, herein petitioner Antonio Steven L. Tan.

Thereafter, the respondent vacated the company house assigned to him, and on February 12, 2002, filed a Complaint before the Sub-Regional Arbitration Branch No. VII of Dumaguete City against the petitioners for constructive dismissal, illegal suspension, unfair labor practice, underpayment of overtime pay, premium pay for holiday, separation pay, holiday pay, service incentive leave, vacation/sick leave, recovery of actual, moral, and exemplary damages, and attorney's fees.

---

[10] *Id*. at 113.

[11] *Id*. at 113, 123.

The Ruling of the Labor Arbiter

On May 30, 2002, the Labor Arbiter dismissed the respondent's submissions on the following ratiocinations: (1) the allegations of unfair labor practice was not discussed in the respondent's position paper, let alone substantiated; (2) CAB was well within its rights to impose preventive suspension upon the respondent; (3) on the substantive aspect, CAB has reasonably shown that the complainant violated company rules for utilizing company-owned materials and equipment; and (4) on the procedural aspect, CAB complied with the twin requirements of notice.[12] Thus, the *fallo* of the decision states:

WHEREFORE, the complaint dated February 12, 2002 is dismissed for lack of merit.

SO ORDERED.[13]

The Ruling of the National Labor Relations Commission

Aggrieved, the respondent appealed the Labor Arbiter decision to the NLRC, which, after proper consideration, reversed the same. The NLRC ruled that: (1) the respondent should have been given the opportunity to be heard and to defend himself through a hearing;[14] (2) the respondent did not commit serious misconduct because his "contrite and remorseful explanation belies any willfulness and wrongful intent to violate the rules;"[15] and (3) while the respondent did indeed violate the company rules, the ultimate penalty of dismissal should not have been meted out to him.[16]

The dispositive portion of the NLRC decision reads:

---

[12] *Id*. at 124-125.

[13] *Id*. at 126.

[14] *Id*. at 194-196.

[15] *Id*. at 196.

[16] *Id*. at 196-197.

WHEREFORE, PREMISES CONSIDERED, the decision of the Labor Arbiter is, hereby, **SET ASIDE** and **VACATED** and a new one entered finding [herein respondent] to have been illegally dismissed. [Herein petitioner] Central Azucarera de Bais is, hereby, ordered to pay complainant the following:

Backwages	₱323,784.95
Separation Pay	₱230,345.00
TOTAL	**₱554,129.00**

SO ORDERED.[17]

The Ruling of the Court of Appeals

From the NLRC's reversal of the Labor Arbiter's decision, the petitioners elevated the case to the CA, which later on denied the petition and affirmed the NLRC decision. The CA averred that, while CAB was compliant with the twin notice requirement, the respondent's violation "cannot be considered as so grave as to be characterized either as serious misconduct or could lead to a loss of trust and confidence."[18] Thus, the CA concluded:

WHEREFORE, in view of the foregoing premises, the Petition for Certiorari is **DENIED.** The NLRC's Decision dated October 28, 2011 and its Resolution dated February 27, 2012, respectively, are hereby **AFFIRMED.** Costs on petitioners.

SO ORDERED.[19]

The Issues

After the CA's denial of the petitioners' motion for reconsideration, the latter now comes before the Court seeking the reversal of the assailed CA decision and resolution on the following grounds:

I— CONTRARY TO LAW AND JURISPRUDENCE, THE [CA] SERIOUSLY ERRED IN FINDING CAB GUILTY OF ILLEGAL DISMISSAL BECAUSE SUBSTANTIVE

---

[17] *Id*. at 198.

[18] *Id*. at 63.

[19] *Id*. at 69.

AND PROCEDURAL DUE PROCESS REQUIREMENTS WERE DULY COMPLIED WHEN MR. APOSTOL WAS TERMINATED.

II— CONTRARY TO LAW AND JURISPRUDENCE, THE [CA] USURPED PETITIONERS' MANAGEMENT PREROGATIVE TO DETERMINE THE PENALTY COMMENSURATE TO THE OFFENSE COMMITTED, WHICH HAD BEEN THE SUBJECT OF PRIOR NOTICE TO MR. APOSTOL, WHO KNEW THE CONSEQUENCES OF HIS VIOLATION.

III— SINCE MR. APOSTOL WAS DISMISSED FOR JUST CAUSE AND IN COMPLIANCE WITH THE REQUIREMENTS OF PROCEDURAL DUE PROCESS HE IS NOT ENTITLED TO BACKWAGES AND SEPARATION PAY. IN ANY CASE, JURISPRUDENCE PROVIDES THAT IN A WRONGFUL TERMINATION, GOOD FAITH MAY MITIGATE OR ABSOLVE THE PAYMENT OF BACKWAGES.[20]

In sum, the petitioners put forth the following issues for the resolution of the Court: (1) whether or not procedural and substantive due process was observed in the termination of the respondent's employment with CAB; (2) whether or not the penalty meted out was commensurate to the violation; and consequently, (3) whether or not the respondent is entitled to the payment of backwages and separation pay.

The Court's Ruling

After a careful perusal of the arguments presented and the evidence submitted, the Court finds merit in the petition.

The general rule is that only questions of law are reviewable by the Court. This is because it is not a trier of facts;[21] it is not

---

[20] *Id*. at 20.

[21] *Manotok Realty, Inc. v. CLT Realty Development Corp.,* 512 Phil. 679, 706 (2005), as cited in *Van Clifford Torres y Salera v. People of the Philippines*, G.R. No. 206627, January 18, 2017.

duty-bound to analyze, review, and weigh the evidence all over again in the absence of any showing of any arbitrariness, capriciousness, or palpable error.[22] Thus, factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by the Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[23] In labor cases, this doctrine applies with greater force as questions of fact presented therein are for the labor tribunals to resolve.[24]

The Court, however, permitted a relaxation of this rule whenever any of the following circumstances is present:

(1) [W]hen the findings are grounded entirely on speculations, surmises or conjectures;

(2) when the inference made is manifestly mistaken, absurd or impossible;

(3) when there is grave abuse of discretion;

(4) when the judgment is based on a misapprehension of facts;

(5) when the findings of fact are conflicting;

(6) when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;

(7) when the findings are contrary to that of the trial court;

(8) when the findings are conclusions without citation of specific evidence on which they are based;

(9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent;

---

[22] *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1168 (1997); *Bautista v. Puyat*, 416 Phil. 305, 308 (2001), as cited in *Van Clifford Torres y Salera v. People of the Philippines*, G.R. No. 206627, January 18, 2017.

[23] *Lamberto M. De Leon v. Maunlad Trans, Inc.*, *Seachest Associates, et al.*, G.R. No. 215293, February 8, 2017.

[24] *Id*.

(10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or

(11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[25]

Thus, in instances when the Labor Arbiter, the NLRC, and the CA made conflicting findings of fact, the Court is justified—*nay,* the Court is compelled—to issue its own determination.

The case at hand calls for the resolution of several issues concerning the factual determination of the court *a quo.*

First, on the matter of procedural due process, the Labor Arbiter and the CA were one in asseverating that CAB complied with the procedure required of it by the Labor Code, its implementing rules and regulations, and relevant jurisprudence. According to the Labor Arbiter,

> [T]he documents which are admitted by both parties clearly show that **CAB complied with the twin requirements of due process by furnishing the [respondent] two written notices:** first, a notice apprising the complainant of the particular acts for which his dismissal is sought xxx and second, a subsequent notice informing the complainant of the decision to dismiss him.[26] (Emphasis and underscoring supplied)

Likewise, the CA was categorical when it asserted that CAB complied with the twin notice requirement. It said:

> **Here, the twin notice requirement was substantially complied with by the petitioners.** It is undisputed that Apostol received two notices. The first notice informed him of his violation and required him to submit his written explanation on the matter. Thereafter, he received another notice communicating to him that his employment with CAB was being severed by the company due to his violation of its company's Rules of Discipline.[27] (Emphasis and underscoring supplied)

---

[25] *Id*.

[26] *Rollo*, p. 125.

[27] *Id*. at 66.

On the other hand, and contrary to the findings of both the Labor Arbiter and the CA, the NLRC found that procedural due process was not properly observed when CAB terminated the respondent. In ruling thus, the NLRC emphasized that, while there were actually two notices sent to the respondent, the lack of actual hearing on the violations of the latter prior to his termination constituted a ground by which the dismissal should be reversed. Thus,

> [W]hile as a general rule a hearing is not required to satisfy the demands of procedural due process, **we feel that the circumstances of this case required that a hearing should have been conducted to determine the ownership of the materials and equipment used.** That to us is vital in determining the gravity of [respondent's] violation. That would have been more in accord with the employer's duty "to afford the worker ample opportunity to be heard and defend himself with the assistance of his representative if he so desires, in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment."[28] (Emphasis and underscoring supplied)

In the backdrop of this contradiction among the decisions, the Court is of the opinion that the Labor Arbiter and the CA's findings are more in accord with established jurisprudence. The rights of the respondent to procedural due process was observed by CAB.

As early as 2009, in the case of *Perez vs. Philippine Telegraph and Telephone Company*,[29] the Court has already laid down the guidelines in complying with the proper procedure in instances when termination of employees is called for. In reconciling the Labor Code and its Implementing Rules and Regulations, and in concluding that actual or formal hearing is not an absolute requirement, the Court interpreted and directed that:

---

[28] *Id*. at 196.

[29] 602 Phil. 522, 538 (2009).

The test for the fair procedure guaranteed under Article 277(b) [now, Article 292(b)] cannot be whether there has been a formal pretermination confrontation between the employer and the employee. The "ample opportunity to be heard" standard is neither synonymous nor similar to a formal hearing. To confine the employee's right to be heard to a solitary form narrows down that right. It deprives him of other equally effective forms of adducing evidence in his defense. Certainly, such an exclusivist and absolutist interpretation is overly restrictive. The "very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation."

x x x x x x x x x

An employee's right to be heard in termination cases under Article 277(b) [now, Article 292(b)] as implemented by Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code should be interpreted in broad strokes. **It is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof.**[30] (Emphasis and underscoring supplied)

Thus, in *Perez,* the Court formulated the following guiding principles in connection with the hearing requirement in dismissal cases:

(a) **"ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him** and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way.

(b) a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.

(c) the "ample opportunity to be heard" standard in the Labor Code prevails over the "hearing or conference" requirement in the implementing rules and regulations.[31] (Emphasis and underscoring supplied)

---

[30] *Id*.

[31] *Id*.

In the present case, the petitioners furnished the respondent with two notices: one, the memorandum dated February 4, 2002 issued by CAB's resident manager[32] which informed the respondent of the charges against him; and two, the letter of termination which, this time, notified the respondent of CAB's decision to dismiss him.[33] In the interim, CAB, through the memorandum issued by its resident manager, sought the respondent's explanation on the incident.

The confluence of these facts, in the Court's opinion, sufficiently complies with the respondent's right to be accorded ample opportunity to be heard.

Second, on the matter of substantive due process, the Court accedes to the uniform findings of the Labor Arbiter, NLRC, and CA that the respondent did indeed violate company rules and regulations when he used company equipment and materials for his personal vehicles. According to the records of this case, this much is undisputed.

In ruling this way, the Labor Arbiter averred that "the [respondent] violated CAB's company rules for utilizing material or equipment of the company as well as the housing unit assigned to him in an improper manner, i.e., for the repair of privately owned vehicles to the expense and damage of the company."[34] The NLRC itself affirmed this finding by categorically saying that "it is not disputed that the complainant did violate the company rules."[35] More, interspersed in the CA decision are statements revealing this violation by the respondent. Hence, the certainty by which the Labor Arbiter, NLRC, and CA pronounced this fact requires no further disturbance—not even by the Court.

What is disputed, however, which the Court must rule upon, concerns the crux of the current controversy: whether or not

---

[32] *Rollo*, p. 113.

[33] *Id*. at 114-115.

[34] *Id*. at 124.

[35] *Id*. at 196.

the respondent's act, which is violative of CAB's rules and regulations, warrants the imposition of the ultimate penalty of dismissal. In this regard, the Court scoured once again the records of the case, and after a judicious study thereof, favors the submission of the petitioners.

Article 297(c) [formerly Article 282(c)] of the Labor Code provides that an employer may terminate the services of an employee for fraud or willful breach of the trust reposed in him.[36] According to the case of *Top Form Mfg. Co., Inc. vs. NLRC*,[37] an employer has a distinct prerogative to dismiss an employee if the former has ample reason to distrust the latter or if there is sufficient evidence to show that the employee has been guilty of breach of trust. This authority of the employer to dismiss an employee cannot be denied whenever acts of violation are noted by the employer.[38]

In ruling that employers have a right to impose a penalty of dismissal on supervisors or personnel occupying positions of responsibility on the basis of loss of trust and confidence, the

---

[36] ART. 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.

[37] 290-A Phil. 63, 67-68 (1992).

[38] *Id.*; See also *Moya v. First Solid Rubber Industries, Inc.*, 718 Phil. 77, 87, (2013), *Radio Philippines Network, Inc. v. Yap*, 692 Phil. 288, 304-305 (2012), citing *Association of Integrated Security Force of Bislig (AISFB)-ALU v. Court of Appeals*, 505 Phil. 10, 25 (2005), *San Miguel Corporation v. Layoc, Jr.*, 562 Phil. 670, 687 (2007), citing *San Miguel Brewery Sales Force Union (PTGWO) v. Hon. Ople*, 252 Phil. 27, 31 (1989).

case of *Moya vs. First Solid Rubber Industries, Inc.*[39] stated thus:

> Following the ruling in *The Coca-Cola Export Corporation v. Gacayan*, the employers have a right to impose a penalty of dismissal on employees by reason of loss of trust and confidence. **More so, in the case of supervisors or personnel occupying positions of responsibility, loss of trust, justifies termination of employment.** Loss of confidence as a just cause for termination of employment is premised on the fact that an employee concerned holds a position of trust and confidence. **This situation holds where a person is entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property.**[40] (Emphasis and underscoring supplied, citations omitted)

This discourse is further clarified in the recent case of *Alaska Milk Corporation, and the Estate of Wilfred Uytengsu vs. Ernesto L. Ponce*,[41] where the Court ruled that, in order to invoke this cause, certain requirements must be complied with, namely: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.[42] In addition to these, the case of *Juliet B. Sta. Ana vs. Manila Jockey Club, Inc.*[43] included, as a requirement, that such loss of trust relates to the employee's performance of duties.

In the case at hand, a perusal of the entirety of the records would reveal that all the requirements for the valid dismissal of the respondent exist.

To begin with, there is no doubt that the respondent, as CAB's motor pool over-all repairs supervisor, is in a position of trust and confidence. He was in charge of repairing company vehicles,

---

[39] 718 Phil. 77, 87 (2013).

[40] *Id*.

[41] G.R. No. 228412, July 26, 2017.

[42] *Supra*.

[43] G.R. No. 208459, February 15, 2017.

and was designated with the responsibility of (a) assigning the personnel and equipment for each and every repair job, and (b) taking custody of all repair equipment and materials owned by CAB.[44] In the language of *Moya,* the respondent herein occupies a position of responsibility, where he is entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of CAB's properties.

Secondly, the respondent's violation of CAB's rules and regulations relating to the use of company property for personal purposes was consistently held and upheld not only by the Labor Arbiter and the NLRC, respectively, but also by the CA itself. That the respondent committed this act could not be denied. What's more is that the respondent himself admitted to it.[45]

Finally, the respondent's action was successfully conducted precisely because of his position in the company. As CAB's motor pool over-all repairs supervisor, he was in the position to effect the repairs of his personal property in the company house which was assigned to him. It could not be emphasized further that this violation of company rules—from a supervisor no less—carries with it an impact to the operations and management of a company, and a company's decision to terminate an employee for these purposes is a decision that should be respected.

To be sure, the petitioners herein validly dismissed their erring employee.

Having thus ruled on the validity of the dismissal of the respondent, then it necessarily follows that he is not entitled to both backwages and separation pay.

The Court has reiterated that the policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only

---

[44] *Rollo*, p. 11.

[45] *Id*. at 113, 123.

when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.[46]

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA G.R. SP No. 06906, dated May 22, 2013 and the subsequent Resolution dated October 29, 2014, as well as the Decision and Resolution of the National Labor Relations Commission in NLRC Case No. V-000451-2002, dated October 28, 2011 and February 27, 2012 respectively, are hereby **REVERSED and SET ASIDE.** The Decision of the Labor Arbiter dated May 30, 2002 in SUB-RAB-VII-02-0039-2002-D is hereby **REINSTATED.**

SO ORDERED.

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

---

[46] *Moya v. First Solid Rubber Industries, Inc.*, *supra*, note 39, at 89, citing *Unilever Philippines, Inc. v. Rivera*, 710 Phil. 124, 133 (2013), *Philippine Long Distance Telephone Co. v. NLRC*, 247 Phil. 641, 650 (1988), *Toyota Motor Phils. Corp. Workers Association v. NLRC*, 562 Phil. 759, 810-811 (2002).

[*] Acting Chief Justice per Special Order No. 2539, dated February 28, 2018.

THIRD DIVISION

[G.R. No. 215749. March 14, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DANNY BANAYAT,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NO GIRL OF SOUND MIND WOULD FABRICATE A STORY OF DEFLORATION, ALLOW AN EXAMINATION OF HER PRIVATE PARTS, SUBJECT HERSELF TO HUMILIATION, RISK RIDICULE, AND GO THROUGH THE RIGORS OF PUBLIC TRIAL IF HER CLAIM WAS NOT TRUE.— Due to the nature of the crime, the lone testimony of the rape victim, when found to be credible, natural, and consistent with human nature, is enough to sustain a conviction. Both the trial court and the CA found no reason to disbelieve AAA's narration. Indeed, it is unlikely for AAA to feign her traumatic experience. No girl of sound mind would fabricate a story of defloration, allow an examination of her private parts, subject herself to humiliation, risk ridicule, and go through the rigors of public trial if her claim was not true.

2. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS THEREOF ESTABLISHED IN CASE AT BAR; ELEMENT OF FORCE AND INTIMIDATION, EXPLAINED.— Contrary to accused-appellant's position that the element of force or intimidation is wanting in the case at bar, AAA's testimony sufficiently establishes the existence of all the elements of rape required under Article 266-A of the RPC. x x x. On the matter of force and intimidation, particularly, this Court quotes with approval the ruling of the CA: In *People v. Bayan*, the Supreme Court explained force and intimidation as an element of rape, viz: "As to the finding of the trial court regarding the use of force and intimidation, it must be emphasized that **force as an element of rape need not be irresistible; it need but be presented, and so long as it brings about the desired result, all considerations of whether it was more or less irresistible is beside the point** x x x. **Intimidation includes the moral kind as the fear caused by threatening the girl**

with a knife or pistol. And where such intimidation exists and the victim is cowed into submission as a result thereof, thereby rendering resistance futile, it would be extremely unreasonable, to say the least, to expect the victim to resist with all her might and strength." x x x. It can be gleaned from AAA's testimony that accused-appellant's possession of a knife – coupled by the fact that he had covered her mouth when she attempted to shout for help, forcibly dragged her to an abandoned house, and AAA's observation that accused-appellant was strong even when drunk – instilled fear that he would kill or injure her if she did not yield to his demands, such that AAA need not categorically describe how he communicated fear to her, contrary to accused-appellant's insistence. The presence of force and intimidation is undeniable.

3. **ID.; ID.; ID.; HYMENAL LACERATIONS, WHETHER HEALED OR FRESH, ARE THE BEST EVIDENCE OF FORCIBLE DEFLORATION.—** [T]he medico-legal report issued after a physical examination of AAA revealed that she had fresh hymenal lacerations at the time of examination, and the attending physician's impressions indicated that "medical examination showed evidence of sexual abuse." This corroborates AAA's testimony of forcible defloration. In *People v. Sabal*, the Court ruled that "hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. And when the consistent and forthright testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established."

4. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; WHERE THE PROSECUTION HAS OVERCOME THE PRESUMPTION OF INNOCENCE BY PROVING THE ELEMENTS OF THE CRIME AND THE IDENTITY OF THE PERPETRATOR BEYOND THE REQUISITE QUANTUM OF PROOF, THE BURDEN OF EVIDENCE TO SHOW REASONABLE DOUBT SHIFTS TO THE DEFENSE.—** Since the prosecution has overcome the presumption of innocence by proving the elements of the crime and the identity of the perpetrator beyond the requisite quantum of proof, the burden of evidence to show reasonable doubt shifts to the defense. In this case, the Court finds that the defense failed to do so.

5. ID.; ID.; DEFENSE OF ALIBI; FOR ALIBI TO OVERCOME THE PROSECUTION'S EVIDENCE, THE DEFENSE MUST SUCCESSFULLY PROVE THE ELEMENT OF PHYSICAL IMPOSSIBILITY OF THE PRESENCE OF THE ACCUSED AT THE CRIME SCENE AT THE TIME THE OFFENSE WAS COMMITTED.— Accused-appellant claims that Garcia's testimony, revealing that AAA was with a male companion who left the store with her ahead of accused-appellant, should be considered in his favor. However, as alibis go, Garcia's testimony does not establish that accused-appellant did not perform the criminal act; but only that accused-appellant, AAA, and the latter's alleged male companion were at her store at some point on the night in question; and that AAA and the male companion left a few minutes ahead of accused-appellant. It does not in any way establish that it was physically impossible for accused-appellant to commit the rape. The Court has consistently ruled that "alibi is an inherently weak defense and should be rejected when the identity of the accused is sufficiently and positively established by the prosecution. Moreover, for alibi to overcome the prosecution's evidence, the defense must successfully prove the element of physical impossibility of the presence of the accused at the crime scene at the time the offense was committed. Physical impossibility in relation to alibi takes into consideration not only the geographical distance between the scene of the crime and the place where the accused maintains he was, but more importantly, the accessibility between these points."

6. CRIMINAL LAW; REVISED PENAL CODE; RAPE; CIVIL LIABILITY OF ACCUSED-APPELLANT.— In *People* v. *Jugueta*, the Court held that "when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the Court rules that the proper amounts should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages." In conformity with *Jugueta*, the Court increase the award of civil indemnity, moral damages, and exemplary damages to ₱75,000.00 each. In line with current policy, the Court also impose interest at the legal rate of 6% per annum on all monetary awards for damages, 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.*:

Before this Court is an appeal filed by accused-appellant Danny Banayat *(accused-appellant)* assailing the Decision[1] of the Court of Appeals *(CA)* dated 23 April 2014 in CA-G.R. CR HC No. 05969.

The CA affirmed the decision of the Regional Trial Court *(RTC)* in Criminal Case No. U-15922, finding accused-appellant guilty beyond reasonable doubt of rape, defined and penalized under Article 266-a, par. 1, in relation to Article 266-B of the Revised Penal Code *(RPC)*, committed against AAA.[2]

Accused-appellant was charged as follows:

> That on or about 10:00 o'clock in the evening of November 11, 2008 at [redacted], Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence, and intimidation, while armed with a knife, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, a minor, sixteen (16) years old, against her will and without her consent, to her damage and prejudice.
>
> CONTRARY to Article 266-A, paragraph 1(a) in relation to Article 266-B, paragraph 2 of the Revised Penal Code as amended by R.A. No. 8353 (The Anti-Rape Law of 1997).[3]

---

[1] *Rollo* pp. 2-13; penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Vicente S.E. Veloso and Nina G. Antonio-Valenzuela concurring.

[2] The complete name of the victim in this case is replaced with fictitious initials, in compliance with Supreme Court Administrative Circular 83-2015.

[3] *Rollo*, p. 3.

Upon arraignment, accused-appellant pleaded not guilty to the crime charged.

Version of the prosecution

On 11 November 2008 at around 8:00 o'clock in the evening, AAA attended the wake of one Benigna Velora, her friend's grandmother. At around 10:00 o'clock p.m., she went to a store to buy some snacks because she was hungry.[4]

At the store, she saw accused-appellant, a longtime neighbor, drinking beer. Accused-appellant, armed with a knife, then forcibly dragged her towards an abandoned house and there she was ordered to remove her clothes. Accused-appellant then placed his body on top of her and forcibly inserted his penis repeatedly into her vagina. Thereafter, accused-appellant's threat to kill her if she reported the incident to anyone prevented her from informing her parents.[5]

The next day, however, AAA revealed it to her grandmother because she was not feeling well. They reported the incident to Brgy. Captain Benjamin Castillo. AAA then underwent medical examination at the Region I Medical Center in Dagupan City.[6] The medico-legal report revealed that she had "fresh erythematous abrasion of perihymenal area, 10 o'clock position" and "fresh erythematous abrasion at 4 o'clock position, fresh lacerations at 6 o'clock and 10 o'clock position."[7]

Version of the defense

On 11 November 2008, accused-appellant claimed he was at his grandmother's wake and never saw AAA there.

Around 10:00 o'clock in the evening of that day, the storekeeper Magdalena Garcia *(Magdalena)*, was at her store when accused-appellant came and drank two (2) bottles of beer.

---

[4] Records, p. 6 (Sworn Statement); pp. 11-13 (Social Study Case Report).

[5] *Id*.

[6] *Id*. at 8.

[7] *Id*.

After a while, a girl with a male companion arrived and they bought beer. Magdalena recognized the girl to be AAA and observed that she and her male companion were amorous towards each other. After the pair finished drinking, they left. A few minutes later, accused-appellant also left.[8]

Accused-appellant denied the allegation that he dragged AAA to an abandoned house and raped her. He could not fathom any reason why he was charged with rape when he did not have any misunderstanding with AAA prior to 11 November 2008. To his knowledge, it was his uncle who had a misunderstanding with AAA's father.[9]

In his brief,[10] accused-appellant contended that his guilt was not proven beyond reasonable doubt because the element of force or intimidation was not established; that AAA "merely narrated that the accused was armed with a bladed weapon which was a knife, but as to how the knife was used to threaten her, was not revealed." Moreover, AAA "failed to categorically describe how accused-appellant communicated fear to her." According to accused-appellant, further casting doubt on the rape charge is Garcia's testimony that AAA exhibited intimacy with a male companion at around the same time as the incident.

After trial, the RTC found accused-appellant guilty beyond reasonable doubt of the crime of rape. The dispositive portion of the decision reads:

> WHEREFORE, this Court finds the accused Danny Banayat y Zamora guilty beyond reasonable doubt of the crime of rape under Article 266-A of Republic Act 8353.
>
> Accordingly, he is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole. Accused is ordered to indemnify the offended party AAA, the amount of Fifty Thousand Pesos (₱50,000.00) and to pay her Fifty Thousand Pesos (₱50,000.00) as moral damages.

---

[8] TSN, 16 June 2011, pp. 4-7.

[9] TSN, 3 June 2010, pp. 6-7.

[10] CA *rollo*, pp. 45-54.

Accused is ordered committed to the Bureau of Corrections, Muntinlupa City, for the service of his sentence without unnecessary delay.

SO ORDERED.[11]

On appeal, the CA affirmed accused-appellant's conviction. According to the CA, the prosecution was able to establish all the elements of rape with the requisite quantum of proof. Intimidation includes the moral kind as the fear caused by threatening the girl with a knife or pistol and accused-appellant's act of holding a knife "clearly produced fear in AAA's mind that the former would kill her if she would not submit to his sexual design."

The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The Judgment dated 02 February 2012 of the Regional Trial Court of [redacted], Pangasinan, Branch 49 in Criminal Case No. U-15922, finding accused-appellant Danny Banayat y Zamora guilty beyond reasonable doubt of the crime of Rape is **AFFIRMED** with **MODIFICATION** in that accused-appellant is further ordered to pay AAA exemplary damages in the amount of Thirty Thousand Pesos (₱30,000.00).

SO ORDERED.[12]

THE COURT'S RULING

The Court upholds the conviction of accused-appellant.

Due to the nature of the crime, the lone testimony of the rape victim, when found to be credible, natural, and consistent with human nature, is enough to sustain a conviction.[13] Both the trial court and the CA found no reason to disbelieve AAA's narration.

---

[11] *Id*. at 96-97.

[12] *Id*. at 106-107.

[13] *People v. Olimba*, 645 Phil. 468, 480 (2010).

Indeed, it is unlikely for AAA to feign her traumatic experience. No girl of sound mind would fabricate a story of defloration, allow an examination of her private parts, subject herself to humiliation, risk ridicule, and go through the rigors of public trial if her claim was not true.[14]

Contrary to accused-appellant's position that the element of force or intimidation is wanting in the case at bar, AAA's testimony sufficiently establishes the existence of all the elements of rape required under Article 266-A of the RPC.

In AAA's sworn statement,[15] which was stipulated to be part of her direct testimony, AAA stated that she was "forcibly dragged by the suspect with a bladed weapon (knife) to the abandoned house and then immediately removed my pants and panty and placed his body and [sic] top of me then forcibly inserted his penis repeatedly into my vagina. That after the incident, he told me not to tell anybody what he had done to me or else he will kill me, ma'am."

In the Social Case Study Report issued by the Municipal Social Welfare and Development Officer,[16] based on an interview with AAA, she detailed that she was on her way back to the wake when somebody pulled her arm, and when she was about to call for help, the assailant covered her mouth and brought her to an abandoned house. AAA identified the assailant as accused-appellant, who, though drunk, was "so strong that she could not fight back."

The foregoing establishes that accused-appellant had carnal knowledge of AAA through force and intimidation. On the matter of force and intimidation, particularly, this Court quotes with approval the ruling of the CA:

In *People v. Bayani*,[17] the Supreme Court explained force and intimidation as an element of rape, viz:

---

[14] *People v. Frias,* 718 Phil. 173, 184 (2013).

[15] Records, p. 6.

[16] *Id*. at 12-13.

[17] 331 Phil. 169, 193 (1996) as cited by the CA in its decision.

"As to the finding of the trial court regarding the use of force and intimidation, it must be emphasized that **force as an element of rape need not be irresistible; it need but be present, and so long as it brings about the desired result, all considerations of whether it was more or less irresistible is beside the point**. So must it likewise be for intimidation which is addressed to the mind of the victim and is therefore subjective. Intimidation must be viewed in light of the woman's perception and judgment at the time of the commission of the crime and not by any hard and fast rule; it is therefore enough that it produces fear – 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. And where such intimidation exists and the victim is cowed into submission as a result thereof, thereby rendering resistance futile, it would be extremely unreasonable, to say the least, to expect the victim to resist with all her might and strength**." (emphasis supplied)

Hence, the act of accused-appellant holding a knife clearly produced fear in AAA's mind that the former would kill her if she would not submit to his sexual design. The act of holding a knife by itself is strongly suggestive of force or, at least, intimidation, and threatening the victim with a knife is sufficient to bring a woman into submission.[18]

It can be gleaned from AAA's testimony that accused-appellant's possession of a knife — coupled by the fact that he had covered her mouth when she attempted to shout for help, forcibly dragged her to an abandoned house, and AAA's observation that accused-appellant was strong even when drunk — instilled fear that he would kill or injure her if she did not yield to his demands, such that AAA need not categorically describe how he communicated fear to her, contrary to accused-appellant's insistence. The presence of force and intimidation is undeniable.

Moreover, the medico-legal report[19] issued after a physical examination of AAA revealed that she had fresh hymenal

---

[18] *Rollo,* pp. 11-12, citing *People v. Esteves*, 438 Phil. 687, 698 (2002).

[19] *Supra* note 6.

lacerations at the time of examination, and the attending physician's impressions indicated that "medical examination showed evidence of sexual abuse." This corroborates AAA's testimony of forcible defloration.

In *People v. Sabal*,[20] the Court ruled that "hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. And when the consistent and forthright testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established."

Since the prosecution has overcome the presumption of innocence by proving the elements of the crime and the identity of the perpetrator beyond the requisite quantum of proof, the burden of evidence to show reasonable doubt shifts to the defense.[21] In this case, the Court finds that the defense failed to do so.

Accused-appellant claims that Garcia's testimony, revealing that AAA was with a male companion who left the store with her ahead of accused-appellant, should be considered in his favor. However, as alibis go, Garcia's testimony does not establish that accused-appellant did not perform the criminal act; but only that accused-appellant, AAA, and the latter's alleged male companion were at her store at some point on the night in question; and that AAA and the male companion left a few minutes ahead of accused-appellant. It does not in any way establish that it was physically impossible for accused-appellant to commit the rape.

The Court has consistently ruled that "alibi is an inherently weak defense and should be rejected when the identity of the accused is sufficiently and positively established by the prosecution. Moreover, for alibi to overcome the prosecution's evidence, the defense must successfully prove the element of

---

[20] 734 Phil. 742, 746 (2014); citing *People v. Perez,* 595 Phil. 1232, 1258 (2008).

[21] *People v. Santos*, 562 Phil. 458, 467 (2007).

physical impossibility of the presence of the accused at the crime scene at the time the offense was committed. Physical impossibility in relation to alibi takes into consideration not only the geographical distance between the scene of the crime and the place where the accused maintains he was, but more importantly, the accessibility between these points."[22]

Accused-appellant failed to show with clear and convincing evidence that he was not at the scene of the crime when the rape happened. In fact, Garcia's testimony places him at the store where AAA went on the night in question and at around the same time AAA had testified she had seen him; Garcia also confirmed the existence of an abandoned house near her store, consistent with AAA's claim that she was brought by the perpetrator to an abandoned house nearby.

Since the identity of accused-appellant as the perpetrator had been sufficiently established by the prosecution, his weak alibi must necessarily be rejected and his conviction upheld.

In *People v. Jugueta*,[23] the Court held that "when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the Court rules that the proper amounts should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages."

In conformity with *Jugueta*, the Court increases the award of civil indemnity, moral damages, and exemplary damages to ₱75,000.00 each. In line with current policy,[24] the Court also imposes interest at the legal rate of 6% per annum on all monetary awards for damages, from the date of finality of this decision until fully paid.

WHEREFORE, the appeal is **DISMISSED.** The 23 April 2014 Decision of the Court of Appeals in CA-G.R. CR HC No. 05969

---

[22] *People v. Baroquillo*, 671 Phil. 771, 786 (2011).

[23] 783 Phil. 806, 840 (2016).

[24] *People v. Dion*, 668 Phil. 333, 353 (2011).

is **AFFIRMED WITH MODIFICATION** as to the amount of damages. Accused-appellant Danny Banayat is **GUILTY BEYOND REASONABLE DOUBT** of the crime of Rape as defined in Article 266-A and penalized in Article 266-B of the Revised Penal Code. Accused-appellant is ordered to pay AAA the following amounts: civil indemnity of Seventy-Five Thousand Pesos (₱75,000.00); moral damages of Seventy-Five Thousand Pesos (₱75,000.00); and exemplary damages of Seventy-Five Thousand Pesos (₱75,000.00). All monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the 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. 216014. March 14, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDWIN SANCHEZ *y* SALVO** *a.k.a.* **"DADA,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED.— The sale of dangerous drugs is punished under Section 5 of the Comprehensive Dangerous Drugs Act x x x. The elements of the crime of selling dangerous drugs are: first, "the identity[ies] of the buyer and the seller, the object, and the consideration;

and [second,] the delivery of the thing sold and the payment therefor." As for the sale of dangerous drugs, IO1 Diocampo recounted how she posed as "Kat-Kat" and bought a sachet of shabu from accused-appellant Sanchez in exchange for a total of ₱1,000.00. Thus, her testimony establishes the elements of: the identities of the buyer, the seller, and the object and the consideration; and the delivery of the shabu and the payment for it.

2. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED.—** [P]ossession of dangerous drugs is punished under Section 11 of the same Comprehensive Dangerous Drugs Act x x x. The elements of possession of dangerous drugs are: first, "the actual possession of an item or object which is identified to be a prohibited drug"; second, "such possession is not authorized by law"; and third, "the accused freely or consciously possessed the said drug." IO1 Diocampo further testified that apart from the sachet sold to her, another sachet containing 0.211 grams of methamphetamine hydrochloride was obtained from accused-appellant Sanchez, establishing the prosecution's case for possession of dangerous drugs. Accused-appellant Sanchez had no authority to possess shabu, a dangerous drug he freely and consciously possessed.

3. **ID.; ID.; DEFENSES OF DENIAL AND FRAME-UP, NOT PROVED.—** The defenses of denial and "frame up" do not convince. Accused-appellant Sanchez failed to prove any ill motive on the part of the apprehending officers so as to incriminate him for such heinous crimes of sale and possession of dangerous drugs. To prove that he was not doing anything illegal when he was arrested, accused-appellant Sanchez could have presented in court the persons he was allegedly drinking with when agents of the Philippine Drug Enforcement Agency supposedly came, yet he did not.

4. **ID.; ID.; CHAIN OF CUSTODY RULE; COMPLIED WITH IN CASE AT BAR.—** [A]lthough the testimonies differed on where the seized items were marked, the prosecution has sufficiently demonstrated that this discrepancy did not affect the integrity or evidentiary value of the *corpus delicti*. IO1 Diocampo testified that she marked the items with "1KCD" and "2KCD" in the presence of accused-appellant Sanchez. This testimony was corroborated by IO1 Riñopa. The inventory of

the items was done in the presence of Punong Barangay Mendoza and Department of Justice representative Magnaye. IO1 Diocampo then personally brought the seized items to the Philippine National Police Crime Laboratory where the items tested positive for methamphetamine hydrochloride. The apprehending officers *more than* substantially complied with the chain of custody rule under Section 21 of Republic Act No. 9165 x x x.

5. ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; ACCUSED-APPELLANT FOUND GUILTY THEREOF; PENALTY OF LIFE IMPRISONMENT AND FINE, IMPOSED.— [T]he prosecution has established beyond reasonable doubt the guilt of accused-appellant Sanchez. There was no error in his conviction for the crime of sale of dangerous drugs with a corresponding penalty of life imprisonment and fine of ₱500,000.00.

6. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ACCUSED-APPELLANT FOUND GUILTY THEREOF; PENALTY OF IMPRISONMENT AND FINE, AFFIRMED.— As for the crime of possession of dangerous drugs, the Comprehensive Dangerous Drugs Act provides that it is punishable with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine of at least ₱300,000.00 if the weight of the dangerous drug found in the accused's possession is less than five (5) grams. A sachet with 0.211 grams of methamphetamine hydrochloride was found in the possession of accused-appellant Sanchez. The 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 a fine of ₱300,000.00 meted on accused-appellant Edwin Sanchez y Salvo is in order.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

LEONEN, *J.*:

This resolves the appeal[1] assailing the Court of Appeals July 14, 2014 Decision[2] in CA-G.R. CR-HC No. 05387 that affirmed the conviction of accused-appellant Edwin Sanchez y Salvo (Sanchez) for illegal sale and possession of dangerous drugs. He was found to have sold 0.215 grams and possessed an additional 0.211 grams of methamphetamine hydrochloride or "shabu."[3]

Two (2) Informations for violation of the Comprehensive Dangerous Drugs Act were filed against Sanchez before the Regional Trial Court, Calapan City, Oriental Mindoro. The accusatory portion of the Information for illegal sale of dangerous drugs punished under Section 5[4] of the Comprehensive Dangerous Drugs Act provides:

That on or about the 10th day of August 2008, at around 3:30 in the afternoon, more or less, at Sitio Calawang, Barangay Lumangbayan, City of Calapan[,] Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any legal

---

[1] CA *rollo*, pp. 117-119.

[2] *Rollo,* pp. 2-11. The Decision was penned by Associate Justice Manuel M. Barrios and was concurred in by Associate Justices Pedro B. Corales and Maria Elisa Sempio Diy of the Special Seventeenth Division, Court of Appeals, Manila.

[3] CA *rollo*, pp. 18-19.

[4] Rep. Act No. 9165, Sec. 5 partly provides:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

authority, nor corresponding license or prescription, did then and there willfully, unlawfully and feloniously sell, deliver, transport or distribute to a poseur-buyer, methamp[het]amine hydrochloride (shabu), a dangerous drug, weighing 0.215 [grams], more or less.

CONTRARY TO LAW.[5]

On the other hand, the accusatory portion of the Information for the possession of dangerous drugs punished under Section 11[6] of the Comprehensive Dangerous Drugs Act states:

That on or about the 10th day of August 2008, at around 3:30 in the afternoon, more or less, at Sitio Calawang, Barangay Lumangbayan, City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any legal authority nor corresponding license or prescription, did then and there wil[l]fully, unlawfully, and feloniously has in his possession, custody and control, one (1) small heat-sealed plastic sachet containing methamp[het]amine hydrochloride (shabu), a dangerous drug, weighing 0.211 [grams], more or less.

CONTRARY TO LAW.[7]

During arraignment, accused Sanchez pleaded not guilty to both charges. Trial then ensued.[8]

---

[5] CA *rollo*, pp. 11-12. Joint Decision dated November 8, 2011.

[6] Rep. Act No. 9165, Sec. 11 partly provides**:**

Section 11**.** *Possession of Dangerous Drugs.* — . . .

. . . . . .

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

. . . . . .

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of . . . methamphetamine hydrochloride or "shabu", or other dangerous drugs[.]

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

[8] *Id.*

Police Senior Inspector Rhea Fe dela Cruz Alviar (P/S Insp. Alviar), Punong Barangay Cresente Mendoza, Jr. (Punong Barangay Mendoza), Intelligence Officer 1 Kathleen Diocampo (IO1 Diocampo), Intelligence Officer 1 Mario Riñopa (IO1 Riñopa), and Department of Justice representative Pedro Magnaye (Magnaye) testified for the prosecution.[9] Taken together, their testimonies tended to prove the following version of the facts.

On August 10, 2008, the Philippine Drug Enforcement Agency Regional Office IV-B organized a buy-bust operation after receiving a tip that a certain "Dada" from Laguna was selling "shabu" in Barangay Lumangbayan, Calapan City. Under the plan of action, IO1 Diocampo would act as the poseur-buyer and IO1 Riñopa would be the arresting officer. Two (2) ₱500.00 bills with the poseur-buyer's initials, "KCD," were then prepared as marked money.[10]

IO1 Diocampo and the confidential informant then boarded a tricycle while the rest of the buy-bust team rode a Toyota Revo that closely followed them. At the target area in Sitio Calawang, Barangay Lumangbayan, IO1 Diocampo and the confidential informant positioned themselves in front of a bungalow. The rest of the buy-bust team were in the nearby parked Toyota Revo.[11]

At about 3:30 p.m., a man in a brown shirt and khaki pants arrived and approached the confidential informant and IO1 Diocampo, disguised as the poseur-buyer, who was introduced as "Kat-Kat."[12] The man then asked for the money first and so IO1 Diocampo reached for her pocket and showed the man the marked ₱500.00 bills.[13]

---

[9] *Id*.

[10] *Rollo*, p. 5.

[11] *Id*.

[12] CA *rollo*, pp. 13-14.

[13] *Rollo*, p. 5.

The man then handed IO1 Diocampo a heat-sealed transparent plastic sachet containing a white crystalline substance, saying, "*Okay yan. Panalo yan! Kung gusto mo kunin mo na rin yung isa pa rito at magdagdag ka ng isang libo*."[14]

IO1 Diocampo then paid the man with the marked money and executed the pre-arranged signal to the buy-bust team by putting on sunglasses.[15]

IO1 Riñopa and the rest of the buy-bust team rushed to the scene and arrested the man who turned out to be accused Sanchez. After informing Sanchez of his constitutional rights, IO1 Riñopa conducted a body search and retrieved the marked money from him. Another plastic sachet was likewise retrieved from the accused.[16]

Accused Sanchez was then brought to the barangay hall where the seized items were marked "1KCD" and "2KCD"[17] by IO1 Diocampo,[18] "KCD" being her initials. The seized items were then inventoried in the presence of Punong Barangay Mendoza of Barangay Lumangbayan and Magnaye.[19]

IO1 Diocampo personally delivered the seized items to the Regional Crime Laboratory. P/S Insp. Alviar examined the specimen, confirming that the seized items contained methamphetamine hydrochloride or "shabu."[20]

The lone witness for the defense was accused Sanchez, who testified to the following version of the facts.

---

[14] CA *rollo*, p. 14.

[15] *Rollo*, pp. 5-6.

[16] *Id*. at 6.

[17] CA *rollo*, p. 55.

[18] *Rollo*, p. 8.

[19] CA *rollo,* p. 49.

[20] *Id*. at 13.

Accused Sanchez was a native of Laguna and was brought to Calapan City, Oriental Mindoro by an unnamed live-in partner to visit the latter's parents.[21]

By August 10, 2008, he and his live-in partner had been in Calapan City for eight (8) days. In the afternoon of the same day, he was having a drinking session with five (5) other men[22] in a "kubol" by the roadside when armed persons approached him and invited him to the office of the Philippine Drug Enforcement Agency.[23]

Accused Sanchez voluntarily went with the agents to the office of the Philippine Drug Enforcement Agency where he filled out forms and provided some basic personal information.[24]

After about an hour, after showing Sanchez two (2) ₱500.00 bills and two (2) small plastic sachets, an agent declared accused Sanchez to be under arrest, and he was taken to the barangay hall of Lumangbayan where the documents he earlier filled out were signed by Punong Barangay Mendoza and Magnaye.[25]

The agents returned accused Sanchez to the office of the Philippine Drug Enforcement Agency. Later that night, accused Sanchez was brought to the provincial police camp where he and the agents stayed for about two (2) hours.[26]

Accused Sanchez was again returned to the office of the Philippine Drug Enforcement Agency where he was detained for 16 days before he was finally transferred to the provincial jail.[27]

---

[21] *Rollo*, p. 6.

[22] CA *rollo*, p. 15.

[23] *Rollo*, p. 6.

[24] CA *rollo*, p. 15.

[25] *Rollo*, p. 6.

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

[27] *Id*. at 7.

In the Joint Decision[28] dated November 8, 2011, Branch 39 of the Regional Trial Court of Calapan City, Oriental Mindoro found for the prosecution and convicted accused Sanchez of the crimes charged. The trial court found that the prosecution proved the elements of the crime of illegal sale of dangerous drugs, i.e., the identity of the buyer and the seller, the object of the sale, and the consideration; and the delivery of the thing sold and payment for it.[29] The trial court believed IO1 Diocampo's testimony on how she acted as poseur-buyer, paying the marked money to accused Sanchez in exchange for a sachet of methamphetamine hydrochloride.[30]

The trial court likewise found that the elements of possession of dangerous drugs were duly proven, i.e., "(1) the accused [was] in possession of an item or object . . . identified to be a prohibited drug; (2) such possession [was] not authorized by law; and (3) the accused freely and consciously possessed the said drug."[31] In addition to the sachet sold to IO1 Diocampo, another sachet containing methamphetamine hydrochloride was recovered from accused Sanchez after he was frisked. Accused Sanchez had no authority to possess the prohibited drug, which he freely and consciously carried in his pocket.[32]

With respect to the chain of custody of the seized item, the trial court found that an unbroken chain was established. Upon confiscation by IO1 Riñopa, the sachets were turned over to IO1 Diocampo, who marked the sachets with her initials. IO1 Diocampo then personally delivered the items to the crime laboratory for testing.[33] Finally, the trial court disregarded

---

[28] CA *rollo*, pp. 11-19. The Joint Decision, docketed as Crim. Case No. CR-08-9262 and Crim. Case No. CR-08-9263, was penned by Judge Manuel C. Luna, Jr.

[29] *Id*. at 15, citing *People of the Philippines v. Cruz*, 667 Phil. 420 (2011) [Per *J.* Perez, First Division].

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

[31] *Id*. at 16, citing *People v. Castro*, 667 Phil. 526 (2011) [Per *J*. Velasco, Jr., First Division].

[32] *Id*. at 16.

[33] *Id*. at 16-17.

accused Sanchez's defense of denial and "frame up" given the positive testimonies of the prosecution witnesses.[34]

The dispositive portion of the trial court's November 8, 2011 Decision read:

A C C O R D I N G L Y, in view of the foregoing, judgment is hereby rendered as follows:

1. In CR-08-9262, this Court finds accused EDWIN SANCHEZ y SALVO ***GUILTY*** beyond reasonable doubt as principal of the crime [of sale of dangerous drugs] and in default of any modifying circumstances attendant, hereby sentences him 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 for preventive imprisonment undergone, if any. The 0.215 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.

2. In CR-08-9263, this Court finds the accused EDWIN SANCHEZ y SALVO ***GUILTY*** beyond reasonable doubt as principal of the crime [of possession of dangerous drugs] 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 0.211 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.

SO ORDERED.[35] (Emphasis in the original)

---

[34] *Id*. at 17.

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

Accused-appellant Sanchez filed before the Court of Appeals an appeal,[36] which, however, was denied in its July 14, 2014 Decision.[37]

The Court of Appeals focused on the issue of chain of custody and echoed the trial court's finding of an unbroken chain. Despite the alleged inconsistencies in the testimonies on where the seized items were marked, the Court of Appeals said that these inconsistencies "[did] not impair the credibility of the police witnesses."[38] What is important is that, as adequately established, there was an "unbroken and continuous possession of the . . . *shabu*, from the moment of seizure up to the time they were delivered to the laboratory and later presented in court."[39]

The dispositive portion of the Court of Appeals July 14, 2014 Decision read:

> **WHEREFORE,** premises considered, the appeal is **DENIED**. The Decision dated 08 November 2011 of the Regional Trial Court, Branch 39, Calapan, Oriental Mindoro is hereby **AFFIRMED.**
>
> **SO ORDERED.**[40]

Accused-appellant Sanchez filed a Notice of Appeal[41] to which the Court of Appeals gave due course in its August 19, 2014 Resolution.[42]

In its February 25, 2015 Resolution,[43] this Court noted the records forwarded by the Court of Appeals. The parties were then ordered to file their supplemental briefs, if they so desired, within 30 days from notice.

---

[36] *Id*. at 20.

[37] *Rollo*, pp. 2-11.

[38] *Id*. at 8.

[39] *Id*. at 9.

[40] *Id*. at 10.

[41] CA *rollo*, pp. 117-119.

[42] *Id*. at 122.

[43] *Rollo*, p. 17.

In their respective manifestations, the People of the Philippines[44] and accused-appellant Sanchez[45] informed this Court that they would no longer file supplemental briefs.

Accused-appellant Sanchez maintains that the prosecution failed to prove his guilt beyond reasonable doubt. He specifically assails the inconsistent testimonies of IO1 Diocampo and IO1 Riñopa on where the seized items were marked. IO1 Diocampo testified that the sachets were marked at the barangay hall, while IO1 Riñopa recalled marking the sachets at the place of the arrest. With this discrepancy, the prosecution allegedly failed to establish the "very crucial first link in the chain of custody"[46] of the *corpus delicti*, impairing its integrity and evidentiary value.[47]

The People of the Philippines counters that the discrepancy of testimonies on where the seized items were marked is a "minor" detail that "does not change the fact that . . . accused-appellant [Sanchez] was positively identified as the seller of prohibited drugs; and . . . the chain of custody of the seized drugs was established by the prosecution."[48]

The principal issue for resolution is whether or not the prosecution has established the elements of the crimes of sale and possession of dangerous drugs. Subsumed in this issue is whether or not an unbroken chain of custody of the seized items was established considering the differing testimonies on where the items were marked.

This appeal must be dismissed.

The sale of dangerous drugs is punished under Section 5 of the Comprehensive Dangerous Drugs Act, thus:

---

[44] *Id*. at 18-22, Manifestation dated April 21, 2015.

[45] *Id*. at 23-27, Manifestation (In Lieu of Supplemental Brief) dated April 29, 2015.

[46] CA *rollo*, p. 56.

[47] *Id*. at 52-60, Brief for the Accused-Appellant.

[48] *Id*. at 94, Brief for the Plaintiff-Appellee.

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 elements of the crime of selling dangerous drugs are: first, "the identity[ies] of the buyer and the seller, the object, and the consideration; and [second,] the delivery of the thing sold and the payment therefor."[49]

On the other hand, possession of dangerous drugs is punished under Section 11 of the same Comprehensive Dangerous Drugs Act, which partly provides:

Section 11. *Possession of Dangerous Drugs*. —

. . . . . .

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

. . . . . .

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of . . . 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.

The elements of possession of dangerous drugs are: first, "the actual possession of an item or object which is identified

---

[49] *People v. Dilao*, 555 Phil. 394, 409 (2007) [Per *J*. Garcia, First Division].

to be a prohibited drug";[50] second, "such possession is not authorized by law";[51] and third, "the accused freely or consciously possessed the said drug."[52]

The prosecution has established beyond reasonable doubt all the elements of both crimes charged.

As for the sale of dangerous drugs, IO1 Diocampo recounted how she posed as "Kat-Kat" and bought a sachet of shabu from accused-appellant Sanchez in exchange for a total of ₱1,000.00.[53] Thus, her testimony establishes the elements of: the identities of the buyer, the seller, and the object and the consideration; and the delivery of the shabu and the payment for it.

IO1 Diocampo further testified that apart from the sachet sold to her, another sachet containing 0.211 grams of methamphetamine hydrochloride was obtained from accused-appellant Sanchez,[54] establishing the prosecution's case for possession of dangerous drugs. Accused-appellant Sanchez had no authority to possess shabu, a dangerous drug he freely and consciously possessed.

The defenses of denial and "frame up" do not convince. Accused-appellant Sanchez failed to prove any ill motive on the part of the apprehending officers so as to incriminate him for such heinous crimes of sale and possession of dangerous drugs.[55] To prove that he was not doing anything illegal when he was arrested, accused-appellant Sanchez could have presented in court the persons he was allegedly drinking with when agents of the Philippine Drug Enforcement Agency supposedly came, yet he did not.

---

[50] *People v. Lagman*, 593 Phil. 617, 625 (2008) [Per *J*. Carpio Morales, *En Banc*].

[51] *Id*.

[52] *Id*.

[53] CA *rollo*, pp. 13-14.

[54] *Rollo*, p. 6.

[55] See *People v. De Leon*, 624 Phil. 786, 804 (2010) [Per *J*. Velasco, Jr. Third Division].

In addition, although the testimonies differed on where the seized items were marked, the prosecution has sufficiently demonstrated that this discrepancy did not affect the integrity or evidentiary value of the *corpus delicti*.[56] IO1 Diocampo testified that she marked the items with "1KCD" and "2KCD" in the presence of accused-appellant Sanchez.[57] This testimony was corroborated by IO1 Riñopa. The inventory of the items was done in the presence of Punong Barangay Mendoza and Department of Justice representative Magnaye. IO1 Diocampo then personally brought the seized items to the Philippine National Police Crime Laboratory where the items tested positive for methamphetamine hydrochloride. The apprehending officers *more than* substantially complied with the chain of custody rule under Section 21 of Republic Act No. 9165, which, before amendment by Republic Act No. 10640, provided:

> 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

---

[56] Implementing Rules and Regulations of the Comprehensive Dangerous Drugs Act, Sec. 21(a) partly states:

> [N]on-compliance with [the] requirements [of Section 21] 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[.]

See *People v. Quiamanlon*, 655 Phil. 695, 716-717 (2011) [Per *J.* Velasco, Jr. First Division].

[57] CA *rollo*, p. 55.

(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[.]

In sum, the prosecution has established beyond reasonable doubt the guilt of accused-appellant Sanchez. There was no error in his conviction for the crime of sale of dangerous drugs with a corresponding penalty of life imprisonment and fine of ₱500,000.00.[58]

As for the crime of possession of dangerous drugs, the Comprehensive Dangerous Drugs Act[59] provides that it is

---

[58] Rep. Act No. 9165, Sec. 5 partly provides;

Section 5**.** *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[59] Rep. Act No. 9165, Sec. 11 partly provides**:**

punishable with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine of at least ₱300,000.00 if the weight of the dangerous drug found in the accused's possession is less than five (5) grams. A sachet with 0.211 grams of methamphetamine hydrochloride was found in the possession of accused-appellant Sanchez. The penalty of imprisonment ranging from twelve (12) years and one (1) day as minimum to fifteen (15) years and one (1) day as maximum[60] and a fine of ₱300,000.00 meted on accused-appellant Edwin Sanchez y Salvo is in order.

WHEREFORE, the appeal is **DISMISSED**. The Court of Appeals July 14, 2014 Decision in CA-G.R. CR-HC No. 05387 is **AFFIRMED**.

SO ORDERED.

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

Section 11. *Possession of Dangerous Drugs.* — . . .

. . . . . .

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

. . . . . .

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of . . . methamphetamine hydrochloride or "shabu", or other dangerous drugs[.]

[60] Act No. 4103, as amended by Act No. 4225, Sec. 1, also known as Indeterminate Sentence Law provides:

Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and to a minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

FIRST DIVISION

[G.R. No. 217887. March 14, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CLOVER A. VILLARTA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE RULE THAT THE TRIAL COURT'S FINDINGS OF FACT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE ENTITLED TO GREAT WEIGHT DOES NOT APPLY WHERE FACTS OF WEIGHT AND SUBSTANCE HAVE BEEN OVERLOOKED, MISAPPREHENDED OR MISAPPLIED IN A CASE UNDER APPEAL.—** "[G]enerally, the trial court's findings of fact, especially when affirmed by the CA, are entitled to great weight and will not be disturbed on appeal." However, it is also settled that "an appeal in a criminal case opens the whole case for review on all questions including those not raised by the parties." Additionally, "[t]h[e] rule [that the trial court's findings of fact, especially when affirmed by the CA, are entitled to great weight], however, does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal," as in this case.

2. **ID.; CRIMINAL PROCEDURE; RIGHTS OF ACCUSED; PRESUMPTION OF INNOCENCE; IF THE PROSECUTION FAILS TO MEET THE REQUIRED EVIDENCE, THE DEFENSE DOES NOT NEED TO PRESENT EVIDENCE ON ITS BEHALF, FOR THE PRESUMPTION OF INNOCENCE PREVAILS AND THE ACCUSED SHOULD BE ACQUITTED.—** "[O]ur Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies with the prosecution to overcome this presumption of innocence by presenting the required quantum of evidence; the prosecution must rest on its own merits and must not rely on the weakness of the defense." Furthermore, "[i]f the prosecution fails to meet the required evidence, the defense does not need to present evidence on its behalf, [for] the presumption prevails and the accused should be acquitted."

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; THE DANGEROUS DRUG SEIZED FROM THE ACCUSED CONSTITUTES THE *CORPUS DELICTI* OF THE OFFENSE; THUS, IT IS OF UTMOST IMPORTANCE THAT THE INTEGRITY AND IDENTITY OF THE SEIZED DRUGS MUST BE SHOWN TO HAVE BEEN DULY PRESERVED.— In the instant case, the CA's affirmance of the RTC's finding that appellant is guilty of the crimes penalized under Sections 5 and 11, Article II of RA 9165 seems to fly in the face of the principles governing the resolution of cases involving said crimes as enunciated in well-established jurisprudence, to wit: To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused. On the other hand, for illegal possession of dangerous drugs, 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.' In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of **utmost importance** that the integrity and identity of the seized drugs must be shown to have been duly preserved. 'The **chain of custody** rule performs this function as it **ensures that unnecessary doubts concerning the identity of the evidence are removed**.'

4. ID.; ID.; SECTION 21 THEREOF; CHAIN OF CUSTODY RULE; DISCUSSED.— The term chain of custody pertains to 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." "In prosecuting both illegal sale and illegal possession of dangerous drugs, conviction **cannot** be sustained **if doubt persists** on the identity of said drugs." In this connection, it is settled that: x x x The identity of the dangerous drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the dangerous drug illegally possessed and sold is the same drug offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict. Because it is **indispensable** that the substance confiscated from the accused be the very same substance offered in court, the Court has adopted the chain of custody rule, a method of authenticating evidence which 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. The chain of custody is established by 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 be able to describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received, and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. As a general rule, the prosecution must endeavour to establish four links in the chain of custody of the confiscated item: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

5. ID.; ID.; ID.; ID.; REQUIREMENT OF MARKING OF THE SEIZED DRUGS, DISCUSSED; FAILURE TO MARK THE DRUGS IMMEDIATELY AFTER THEY WERE SEIZED FROM THE ACCUSED CASTS DOUBT ON THE PROSECUTION EVIDENCE WARRANTING AN ACQUITTAL ON REASONABLE DOUBT.— In the case under review, this Court finds that the CA erred in affirming

the RTC's finding that appellant is guilty beyond reasonable doubt of the crimes charged. Indeed, this Court finds that the prosecution miserably failed to establish an unbroken chain of custody of the confiscated items. To start with, in regard to the first link in the chain of custody in the instant case, PO2 Bugtai testified that he seized the illegal drugs from appellant at the *locus criminis*, and did not mark them immediately, but marked the same only after he got to the police station. In fact, he suggested that the reason for the non-marking of the prohibited drugs at the crime scene was because he failed to bring a marking pen at the place of arrest and seizure x x x. Given the foregoing admission by the only witness to testify for the prosecution, "[i]t is evident that there was a break [a gap, or an interval] in the very first link of the chain when [this police officer] failed to mark the sachets of *shabu* immediately upon seizing them from the appellant." Quite clearly, this does not accord with the mandatory requirement of the law. Thus it has been held that: The first link in the chain is the marking of the seized drug. We have previously held that: x x x Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimen will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, 'planting,' or contamination of evidence. It is important that the seized drugs be immediately marked, if possible, as soon as they are seized from the accused.

6. ID.; ID.; ID.; ID.; REQUIREMENT OF PHYSICAL INVENTORY AND PHOTOGRAPH-TAKING OF THE SEIZED DRUGS; THE INEXCUSABLE FAILURE TO OBSERVE THE REQUIREMENTS REGARDING THE PHYSICAL INVENTORY AND PHOTOGRAPHS JUSTIFIED THE ACQUITTAL OF THE ACCUSED-APPELLANT BASED ON REASONABLE DOUBT.— In the case at bench, a perusal of the buy-bust team's exhibit entitled Inventory Receipt signed by SPO1 Petallar reveals that the same was undated and did not contain the requisite signatures 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 [DOJ], and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof" as to signify that such physical inventory was done in their presence. PO2 Bugtai's testimony also confirmed this fact x x x. x x x. In *People v. Del Mundo*, the Court acquitted the appellant thereon because of the undated inventory presented by the prosecution x x x. Furthermore, in *People v. Miranda, Jr.*, the Court ruled that the inexcusable failure to observe the requirements regarding the physical inventory and photographs justified the acquittal of the appellant based on reasonable doubt x x x.

7. ID.; ID.; ID.; ID.; WHILE THE SUPREME COURT IN CERTAIN CASES HAS TEMPERED THE MANDATE OF STRICT COMPLIANCE WITH THE REQUISITE UNDER SECTION 21 OF RA 9165, SUCH LIBERALITY CAN BE APPLIED ONLY WHEN THE EVIDENTIARY VALUE AND INTEGRITY OF THE ILLEGAL DRUG ARE PROPERLY PRESERVED.— [I]t has been ruled that there is a gap or break in the fourth link of the chain of custody where there is absence of "evidence to show how the seized *shabu* were handled, stored, and safeguarded pending its presentation in court," as in this case. We reiterate that "while this Court in certain cases has tempered the mandate of strict compliance with the requisite under Section 21 of RA 9165, such liberality, as stated in the Implementing Rules and Regulations can be applied only when the evidentiary value and integrity of the illegal drug are properly preserved x x x," which is, however, not present in the instant case. "The campaign against drugs deserves the full support and encouragement from this Court. However, compliance with the procedures laid down by law, such as that involving the chain of custody of the illegal drugs, must be complied with."

8. ID.; ID.; ACQUITTAL OF ACCUSED-APPELLANT FOR VIOLATION THEREOF, WARRANTED.— [T]his Court is constrained to acquit appellant based on reasonable doubt in view of the prosecution's failure to "(1) overcome the presumption of innocence x x x; (2) prove the *corpus delicti* of the crime: (3) establish an unbroken chain of custody of the seized drugs; and [(4)] offer any explanation why the provisions of Section 21, RA 9165 were not complied with".

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal from the October 22, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC [No.] 01629, which affirmed the January 31, 2013 Decision[2] of the Regional Trial Court (RTC), Branch 13 of Cebu City in Criminal Case Nos. CBU-88596 and CBU-88597 finding Clover A. Villarta (appellant) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and sentencing him to life imprisonment and to pay a fine of ₱500,000.00 for the illegal sale of *shabu*, and to an indeterminate sentence of twelve (12) years and one (1) day to thirteen (13) years and to pay a fine of ₱300,000.00 for illegal possession of *shabu*.

Factual Antecedents

Appellant was charged with violation of Sections 5 and 11, Article II of RA 9165, for selling and for possessing, respectively, methamphetamine hydrochloride, locally known as *shabu*. The Information[3] in Criminal Case No. CBU-88596 alleged:

That on or about the 3rd day of April, 2010 at about 12:30 A.M., in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, [appellant], with deliberate intent, and without

---

[1] CA *rollo*, pp. 69-86; 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. 87-92; penned by Judge Meinado P. Paredes (also referred to as Judge Meinrado P. Paredes in some parts of the records).

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

authority of law, did then and there sell, deliver or give away to poseur[-]buyer one (1) staple-sealed transparent plastic sachet of white crystalline substance weighing 0.01 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.

And the Information[4] in Criminal Case No. CBU-88597 alleged—

That on or about the 3rd day of April, 2010 at about 12:30 A.M., in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, [appellant], with deliberate intent, did then and there have in his possession and control two (2) heat[-]sealed transparent plastic sachets of white crystalline substance x x x weighing 0.02 and 0.01 gram, or a total of 0.03 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.

Appellant pleaded not guilty to both Informations.[5]

Version of the Prosecution

The prosecution built its cases chiefly upon the testimonial evidence[6] furnished by PO2[7] Joseph Bugtai (PO2 Bugtai). This witness testified that on April 2, 2010 at the Investigation and Detective Management Branch (IDMB) Office, Camp Sotero Cabahug, Gorordo Avenue, Cebu City, a confidential agent told him and his fellow police officers, namely, PO3 Regalado Dela Victoria (PO3 Dela Victoria), PO3 Melbert Dio,[8] PO1 Alain Dignos, PO3 Almer Maglinte, and SPO1 Alfredo Petallar (SPO1 Petallar) that a certain Jake was engaged in illegal drug activities

---

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

[5] *Id*. at 16-17 and 30-31.

[6] TSN, October 11, 2012, pp. 3-32.

[7] Also referred to as PO1 Bugtai and PO3 Bugtai in some parts of the records.

[8] Also referred to as PO3 Deo in some parts of the records.

in Sanciangko[9] Street, near the Sugo Hotel,[10] hence he and his fellow police officers planned a buy-bust operation.

PO2 Bugtai narrated that they coordinated first with the Philippine Drug Enforcement Agency (PDEA) as evidenced by a Coordination Form and a Pre-Operation Report; that he was designated as poseur-buyer; that the confidential agent had already made a pre-arranged deal with Jake; that the buy-bust money consisting of two pieces of ₱100.00 carried SPO1 Petallar's initials and had been photographed; that he and the confidential agent arrived at Sanciangko Street riding in a motorcycle, while the rest of the buy-bust team followed on board an unmarked service vehicle; that when they reached Sanciangko Street at around 12:30 a.m. of April 3, 2010, Jake approached them and asked the confidential agent if he (PO2 Bugtai) was the buyer to which the confidential agent answered in the affirmative; that Jake said that the "item" was worth ₱200.00; that upon his request, Jake showed the same to him; that he said, "Okay, we're good," which meant that he was willing to buy the item; that Jake delivered the item to him and he gave Jake the buy-bust money; that after the exchange and as agreed upon during the buy-bust team's briefing, he flashed the pre-arranged signal by touching his hair with his left hand; that his companions then rushed towards them; that he held Jake and tried to recover the buy-bust money from him; that a scuffle ensued but he eventually recovered the buy-bust money with the help of his companions; that at that point, he arrested Jake and informed the latter of the offense he had committed and the rights of an accused; that as a matter of procedure, he conducted a body search upon Jake for any deadly weapon; and that as a result of said search, he recovered two packs of *shabu* from the right pocket of Jake's short pants.

PO2 Bugtai further recounted that he was in custody of the subject dangerous drugs from the place of the incident and back to the IDMB office; that the buy-bust team failed to bring a

---

[9] Also referred to as Sanciangco in some parts of the records.

[10] Also referred to as Sogo Hotel in some parts of the records.

container to seal the seized dangerous drugs; that as the buy-bust team had no marking paraphernalia at the time, he marked at the police station the dangerous drugs subject of the sale as CAV-BB, while the two items recovered during the body search were marked as CAV and CAV-1; that after the marking, they made a request for laboratory examination of the subject seized dangerous drugs; that he also delivered the subject seized dangerous drugs to the crime laboratory; that he came to know the true name of Jake, the appellant herein; that PO3 Dela Victoria took pictures of the subject seized dangerous drugs; that it was SPO1 Petallar who signed the inventory that he (PO2 Bugtai) prepared, with a notation stating that "no *barangay* official available to sign the inventory receipt"; and that no representative from the media and from the Department of Justice (DOJ) signed the inventory because of difficulty in getting their presence early in the morning.

The prosecution and the defense entered into a stipulation regarding the testimonies of SPO1 Petallar and the Philippine National Police's (PNP's) Forensic Chemist.

Thus, the RTC's Order of May 10, 2012[11] stated:

> In view of the fact that the prosecution and the defense stipulated that if SPO1 Petallar would testify[, then] the gist of his testimony would be, as follows:
>
> 1. That he was one of the back-ups in the buy-bust operation;
>
> x x x x x x x x x
>
> 4. That he rushed up after seeing the pre-arranged signal to assist the poseur[-]buyer in arresting the accused;
>
> 5. The buy[-bust] money was recovered by [PO2] Bugtai and that the same could be identified by him through the marking he [had] made; and
>
> 6. That he has no personal knowledge with [regard] to the actual exchange of money for shabu.[12]

---

[11] Records, p. 63.

[12] *Id*.

With respect to the testimony of the Forensic Chemist, the prosecution and the defense likewise entered into a stipulation, to wit:

> [Assistant City Prosecutor Jose Nathaniel S. Andal (Pros. Andal) and appellant's counsel, Public Attorney's Office Lawyer Atty. Benison Harayo (PAO), to the RTC]
>
> Pros. Andal:
>
> My next witness will be the forensic chemist, Ryan Sala [Sala], Your Honor. May we know from the defense, Your Honor, if they will admit that [Sala] is an expert in the field of forensic chemistry?
>
> [PAO]:
>
> Yes, Your Honor.
>
> Pros. Andal:
>
> That he was the one who examined the evidence.
>
> [PAO]:
>
> Yes, Your Honor.
>
> Pros. Andal:
>
> That he prepared Chemistry Report No. D-307-2010.
>
> [PAO]:
>
> Yes, Your Honor.
>
> Pros. Andal:
>
> We will admit also, Your Honor, that [Sala] has **no** knowledge as to the source of the evidence and that he has **no** knowledge whether there was tampering, if any, of the evidence prior to the delivery of the same to the Crime Laboratory.
>
> COURT:
>
> ORDER: In view of the fact that the defense admitted the expertise of [Sala], the existence of the documentary and object evidence, that he examined the object evidence and that in connection therewith he prepared a chemistry report, and the fact that the prosecution admitted that [Sala] had **no** knowledge with respect to the source of the object evidence he examined and that he has **no** knowledge also if the evidence was tampered before the same was examined, the prosecution

therefore is dispensing with his testimony.[13] (Emphasis supplied.)

The prosecution formally offered the following exhibits,[14] *viz*. a Coordination Form signed by SPO1 Petallar, Police Chief Inspector George V. Ylanan and Police Superintendent Pablo G. Labra II with time/date indicated as 2339H April 2, 2010 (Exhibit "A"),[15] a Pre-Operational Report signed by SPO1 Petallar (Exhibit "B"),[16] two ₱100.00 bills used as buy-bust money (Exhibit "C"),[17] object evidence (Exhibit "D"),[18] a letter-request for laboratory examination (Exhibit "E"),[19] a print-out of the photographs (Exhibit "F"),[20] an Inventory Receipt (Exhibit "G"),[21] the pertinent page of the relevant police blotter (Exhibit "H"),[22] and Chemistry Report No. D-307-2010 (Exhibit "I").[23] The RTC admitted all of these pieces of evidence.[24]

Version of the Defense

Appellant presented himself as the sole witness for the defense.[25] He testified that he was in his sister's house on April

---

[13] TSN, October 11, 2012, pp. 32-34.

[14] *Id*. at 34-36.

[15] Records, p. 7.

[16] *Id*. at 8.

[17] *Id*. at 10.

[18] Ordered to be confiscated and destroyed in the January 31, 2013 RTC Decision (*Id*. at 92).

[19] Records (separate folder designated as containing the State's exhibits), 2nd unpaginated page.

[20] Records, p. 11.

[21] *Id*. at 9.

[22] *Id*. at 12-13.

[23] Records (separate folder designated as containing the State's exhibits), 3rd unpaginated page.

[24] TSN, October 11, 2012, p. 37; RTC Order dated October 11, 2012 (records, p. 80).

[25] TSN, January 24, 2013, pp. 1-27.

2, 2010; that he texted his acquaintance, one named Mark, for them to go out on a date; that he arrived at the Sogo Hotel at about 10:30 p.m. or 11:00 p.m. and waited for Mark; that Mark arrived at said place around 12:30 a.m. of April 3, 2010; that after telling Mark that they will go inside the Sogo Hotel, around four people in civilian attire suddenly told him that he was under arrest; that he was shocked, hence he resisted; that he saw one of those trying to arrest him slip something into his pocket because at that time he was wearing a six-pocket shorts; that he asked the reason for his arrest; that he was beaten up instead when he said that the evidence was planted; that he did not see anymore the person who had slipped something into his pocket; that Mark was present when he was arrested; that Mark then told him that what happened was "just fair" as he did not immediately give them money; that Mark probably set him up; that he only knew Mark a month before his arrest; that he was certain that he was transferred from one police station to another but he could not exactly recall whether he was brought first to the Mabolo police station, and then to the Gorordo police station; that Mark was no longer present when we was brought to the police station; that he was punched in his stomach at the police station when he shouted aloud that the prohibited substance was planted by the police; that the only police officer who was present during his arrest was SPO1 Petallar; that the persons who arrested him were strangers to him; that he believed that Mark was in league with the policemen who planted the drug on him; that the reason why Mark became angry with him was because he (appellant) did not readily share his money with him (Mark); that during his previous meeting with Mark, the latter was already hinting that he wanted money but he (appellant) had to leave suddenly to attend to a client's inquiry about a certain property in Collinwood Subdivision; that he really did not know much about Mark except for unverified information that Mark was a Criminology graduate and that his father was a Colonel; that the policemen never returned his bag and its contents; and that it was only two days after his arrest that he learned that cases for illegal possession and for illegal sale of dangerous drugs had been filed against him.

Appellant further claimed that the charges against him were fabricated; that the alleged poseur-buyer, PO2 Bugtai, was never present during the arrest as shown by the latter's incorrect statements regarding the location of his fellow police officers during the arrest; that there was no transaction at all involving drugs; that he did not file a case against the policemen because he was in jail and because he knew that no case against said policemen would prosper; that before his arrest, he was a licensed real estate consultant and not a drug peddler; that as a licensed real estate consultant, he was earning good income and had won the top seller award five times prior to his arrest; and that he, however, did not hire a private lawyer because he has no more income and his savings were to be used for his needs in jail and the payments for his house where his parents also lived.

Appellant offered in evidence the Identification Card issued to him by Primary Homes, Inc. (Exhibit "1").[26] It was admitted in evidence by the RTC.[27]

Ruling of the Regional Trial Court

In its Decision of January 31, 2013,[28] the RTC found appellant guilty beyond reasonable doubt of the crimes charged. The dispositive part thereof reads:

> WHEREFORE, judgment is hereby rendered finding the accused CLOVER A. VILLARTA GUILTY beyond reasonable doubt for Violation of Section 5, Art. 2, RA 9165 in CBU-88596 and sentences him to a penalty of LIFE IMPRISONMENT, plus fine in the amount of ₱500,000.00.
>
> In CBU-88597, he is also found GUILTY beyond reasonable doubt for possession of the two (2) sachets of shabu which [are] found positive for the presence of methamphetamine hydrochloride. The court imposes an imprisonment of TWELVE (12) YEARS AND ONE

---

[26] Records (separate folder designated as containing the accused's exhibits), 2nd unpaginated page.

[27] TSN, January 24, 2013, pp. 27-28; RTC Order dated January 24, 2013 (records, p. 85).

[28] Records, pp. 87-92.

(1) DAY TO THIRTEEN (13) YEARS, plus fine in the amount of ₱300,000.00.

The one (1) staple[-]sealed transparent plastic pack of shabu weighing 0.01 gram mentioned in the information and marked as Exhibit D for the prosecution is hereby ordered CONFISCATED AND DESTROYED.

The two plastic sachets of shabu with a total weight of 0.03 gram mentioned in the information are also ordered CONFISCATED AND DESTROYED.

SO ORDERED.[29]

The RTC ruled that Section 21, Article II of RA 9165 had been substantially complied with; that the chain of custody of the subject dangerous drugs had been proved; and that the movement of the subject dangerous drugs from the crime scene to the police station, then to the PNP Crime Laboratory, and thereafter to the court had also been established. In particular, the RTC found that the subject dangerous drugs had been marked, had been photographed, and presented in court; that the buy-bust money had been produced and identified; that there was no evidence of tampering or alteration of the subject dangerous drugs; and that an inventory thereof was made, and a receipt therefor issued.

Regarding appellant's uncorroborated claim that the subject dangerous drugs had been "planted" to incriminate him, the RTC declared that there was no reason why the policemen would do that; that PO2 Bugtai had no ill motive to testify falsely against appellant; that PO2 Bugtai's testimony was straightforward; and that appellant's allegation that his male date, Mark, set him up, was not believable.

The RTC added that the prosecution had sufficiently proved the presence of all the elements of both crimes of selling and possession of dangerous drugs, because the seller and the buyer had been identified, and because the object evidence and the buy-bust money had been presented in court, as indeed, there

---

[29] *Id*. at 92.

was a clear exchange of money between the appellant and PO2 Bugtai for packets of *shabu*. The RTC likewise noted that there was also a search incidental to a lawful arrest; that the police found two heat-sealed transparent plastic sachets of white crystalline substance in one of appellant's pockets; that these plastic sachets had been marked prior to their delivery to the PNP Crime Laboratory; that these were moreover presented in court and were admitted as evidence; and that intent to possess can be gathered from the fact that the two sachets were found in one of appellant's pockets.

Ruling of the Court of Appeals

In its October 22, 2014 Decision,[30] the CA disposed as follows:

> WHEREFORE, the appeal is hereby DENIED. The Decision of the RTC, Branch 13, Cebu City dated January 31, 2013 in Criminal Cases Nos. CBU-88596 and CBU-88597 is hereby AFFIRMED *in toto*.
>
> SO ORDERED.[31]

The CA held that the prosecution had successfully established all the elements of illegal sale of *shabu* as well as all the elements of illegal possession of *shabu*.

Dismissing appellant's claim that his guilt was not proven beyond reasonable doubt, the CA ruled that the non-recording of the marked money would not necessarily result in acquittal as long as the sale of the prohibited drug is adequately proven; that appellant failed to adduce clear and convincing evidence to overcome the presumption that government officials had performed their duties in a regular manner; that the chain of custody of the subject dangerous drugs had been observed as "[t]his can be deduced from the time the police officers arrested the [appellant] and confiscated the two (2) plastic packets containing *shabu* from [appellant's] pocket, the issuance of an inventory receipt, the transport of the specimen[s] to the police

---

[30] CA *rollo*, pp. 69-86.

[31] *Id*. at 85.

station and up to the time said specimen[s] were submitted to [the] PNP Crime Laboratory for laboratory examination";[32] and that the fact that the subject dangerous drugs were marked at the police station instead of at the crime scene and that the prosecution failed to show that the buy-bust team complied with the required inventory and photographs did not *ipso facto* render inadmissible in evidence the items seized in view of the proviso in Section 21(a) of the Implementing Rules and Regulations (IRR) of RA 9165 which allow non-compliance provided there are justifiable grounds shown therefor and that the integrity and evidentiary value of the evidence are proven to have been preserved.

From the CA's Decision, appellant filed his Notice of Appeal which was given due course by the CA.[33]

In his Manifestation (in lieu of Supplemental Brief) before this Court,[34] appellant adopted the Brief[35] that he had filed with the CA wherein he submitted the following errors:

I

THE [RTC] ERRED IN CONVICTING THE [APPELLANT] OF VIOLATION OF SECTION 5, ARTICLE II, [RA] 9165 DESPITE THE FA[I]LURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT[.]

II

THE [RTC] ALSO ERRED IN CONVICTING THE [APPELLANT] OF VIOLATION OF SECTION 5 AND SECTION 11, ARTICLE II, [RA] 9165 DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE CORPUS DELICTI OF THE CRIME AS THE CHAIN OF CUSTODY [WAS] UNRELIABLE[.][36]

---

[32] *Id*. at 82.

[33] *Id*. at 90-91 and 94-95.

[34] *Rollo*, pp. 31-34.

[35] CA *rollo*, pp. 16-31.

[36] *Id*. at 18.

On the other hand, the Office of the Solicitor General insisted that the prosecution had proven appellant's culpability beyond reasonable doubt; and that appellant's plea for the reversal of his conviction lacked merit.

Our Ruling

This Court resolves to acquit the appellant on the ground that his guilt has not been proved beyond reasonable doubt.

"[G]enerally, the trial court's findings of fact, especially when affirmed by the CA, are entitled to great weight, and will not be disturbed on appeal."[37] However, it is also settled that "an appeal in a criminal case opens the whole case for review on all questions including those not raised by the parties."[38] Additionally, "[t]h[e] rule [that the trial court's findings of fact, especially when affirmed by the CA, are entitled to great weight], however, does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal,"[39] as in this case.

Moreover, "[o]ur Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies with the prosecution to overcome this presumption of innocence by presenting the required quantum of evidence; the prosecution must rest on its own merits and must not rely on the weakness of the defense."[40] Furthermore, "[i]f the prosecution fails to meet the required evidence, the defense does not need to present evidence on its behalf, [for] the presumption prevails and the accused should be acquitted."[41]

---

[37] *People v. Havana*, G.R. No. 198450, January 11, 2016, 778 SCRA 524, 532.

[38] *Id*.

[39] *People v. Del Mundo*, G.R. No. 208095, September 20, 2017.

[40] *People v. Miranda, Jr.*, G.R. No. 206880, June 29, 2016, 795 SCRA 227, 235.

[41] *Id*.

In the instant case, the CA's affirmance of the RTC's finding that appellant is guilty of the crimes penalized under Sections 5[42] and 11,[43] Article II of RA 9165 seems to fly in the

---

[42] SEC. 5. *Sale*, *Trading*, *Administration*, *Dispensation*, *Delivery*, *Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[43] SEC. 11. *Possession of Dangerous Drugs*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos

face of the principles governing the resolution of cases involving said crimes as enunciated in well-established jurisprudence, to wit:

(₱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,

To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.

On the other hand, for illegal possession of dangerous drugs, 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.'

In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of **utmost importance** that the integrity and identity of the seized drugs must be shown to have been duly preserved. 'The **chain of custody** rule performs this function as it **ensures that unnecessary doubts concerning the identity of the evidence are removed**.'[44] (Emphasis supplied.)

The term chain of custody pertains to 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."[45] "In prosecuting both illegal sale and illegal possession of dangerous drugs, conviction **cannot** be sustained **if doubt persists** on the identity of said drugs."[46] In this connection, it is settled that:

---

without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[44] *People v. Ismael*, G.R. No. 208093, February 20, 2017.

[45] *People v. Havana*, *supra* note 37 at 534, citing Section 1(b) Dangerous Drugs Board Regulation No. 1, Series of 2002.

[46] *People v. Del Mundo*, *supra* note 39. Emphasis supplied.

x x x The identity of the dangerous drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the dangerous drug illegally possessed and sold is the same drug offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.

Because it is **indispensable** that the substance confiscated from the accused be the very same substance offered in court, the Court has adopted the chain of custody rule, a method of authenticating evidence which 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.

The chain of custody is established by 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 be able to describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received, and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

As a general rule, the prosecution must endeavour to establish four links in the chain of custody of the confiscated item: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[47] (Emphasis supplied.)

In the case under review, this Court finds that the CA erred in affirming the RTC's finding that appellant is guilty beyond reasonable doubt of the crimes charged. Indeed, this Court finds that the prosecution miserably failed to establish an unbroken chain of custody of the confiscated items.

---

[47] *Id*.

To start with, in regard to the first link in the chain of custody in the instant case, PO2 Bugtai testified that he seized the illegal drugs from appellant at the *locus criminis*, and did not mark them immediately, but marked the same only after he got to the police station. In fact, he suggested that the reason for the non-marking of the prohibited drugs at the crime scene was because he failed to bring a marking pen at the place of arrest and seizure, *viz.*:

> [Pros. Andal to the witness, PO2 Bugtai]
>
> Q: If I show to you the pack of shabu you bought from [appellant], would you be able to identify it, Mr. Witness?
> A: Yes, Sir.
>
> Q: How?
> A: Through the marking.
>
> Q: What is the marking?
> A: CAV-BB.
>
> Q: What about the two packs of shabu you recovered after the arrest?
> A: CAV and the other one is CAV-1.
>
> Q: Who marked the evidence?
> A: I was the one, Sir.
>
> Q: At the crime scene or at the police station?
> A: **At the police station, Sir**.
>
> Q: Why **not** at the crime scene?
> A: At that time we failed to bring a container where we can seal the evidence **as well as marking paraphernalia**.[48] (Emphasis supplied.)

Given the foregoing admission by the only witness to testify for the prosecution, "[i]t is evident that there was a break [a gap, or an interval] in the very first link of the chain when [this police officer] failed to mark the sachets of *shabu* immediately upon seizing them from the appellant."[49] Quite clearly, this

---

[48] TSN, October 11, 2012, pp. 19-20.

[49] *People v. Ismael*, *supra* note 44.

does not accord with the mandatory requirement of the law. Thus it has been held that:

> The first link in the chain is the marking of the seized drug. We have previously held that:
>
> > x x x Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimen will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, 'planting,' or contamination of evidence.
>
> It is important that the seized drugs be immediately marked, if possible, as soon as they are seized from the accused.
>
> [The reason for this marking immediately upon arrest or seizure is set forth] in *People v. Gonzales*, [thus—]
>
> > The first stage in the chain of custody rule is the marking of the dangerous drugs or related items. Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest. The importance of the prompt marking cannot be denied, because succeeding handlers of dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence. In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.[50]

The inevitable consequences of failure to observe this unflagging strictness and rigor in the law is emphasized in the

---

[50] *Id*.

case of *People v. Ismael*,[51] thus "there was already a significant break such that there can be no assurance against switching, planting, or contamination. The Court has previously held that, 'failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence warranting an acquittal on reasonable doubt.'"[52]

Of course, the following case law rulings drew their breath of life from Section 21, Article II of RA 9165, which in part, provides that:

> 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

---

[51] *Id*.

[52] *Id*.

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;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: *Provided*, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: *Provided*, *further*, That a representative sample, duly weighed and recorded is retained;

x x x x x x x x x[53]

---

[53] Section 21 of RA 9165 has been amended by RA 10640, to wit:

SECTION 1. Section 21 of [RA 9165], 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:

In the case at bench, a perusal of the buy-bust team's exhibit entitled Inventory Receipt[54] signed by SPO1 Petallar reveals that the same was undated and did not contain the requisite signatures 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 [DOJ], and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof"[55] as to signify that such physical inventory was done in their presence. PO2 Bugtai's testimony also confirmed this fact:

---

(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 [with] these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures and custody over said items.

x x x x x x x x x

(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued immediately upon completion of the said examination and certification;

x x x x x x x x x

[54] Records, p. 9.

[55] See Section 21, Article II, RA 9165.

[Pros. Andal to the witness, PO2 Bugtai]

Q: Who prepared the inventory, Mr. Witness?
A: Me, Sir.

Q: Here is an inventory attached to the record, is this the one you prepared?
A: Yes, Sir.

Q: Why is it that it was SPO1 Petallar who affixed his signature in the inventory?
A: He was the deputy and at the same time our investigator.

Q: I read some notes here. It says, "no barangay official available to sign the inventory receipt." Is this correct?
A: Yes, Sir.

Q: What about personnel from the media, were there any?
A: None, Sir.

Q: From the DOJ?
A: None, Sir.

Q: It was early in the morning, at dawn, can you expect to get the presence of the media personnel and the DOJ?
A: No, Sir.

Q: It was not easy for you to do that?
A: Yes, Sir

Your Honor, may we ask that the inventory be marked Exhibit "G" and the note "no barangay officials arrived to sign the inventory" be marked Exhibit "G-1."[56]

Needless to say, the lower courts overlooked the fact that the foregoing testimony of PO2 Bugtai revealed that he had no actual personal knowledge regarding the preparation of the Inventory Receipt as this was clearly signed by SPO1 Petallar and not by him. And, as earlier mentioned, SPO1 Petallar did not testify relative to this matter and no stipulation pertaining to this was mentioned in the RTC Order dated May 10, 2012.[57]

---

[56] TSN, October 11, 2012, pp. 24-25.

[57] Records, p. 63.

In addition, the following cross-examination of PO2 Bugtai showed non-compliance with the required photographing of the evidence:

> [PAO, to the witness, PO2 Bugtai]
>
> Q: And also [PO3] Dela Victoria took pictures of the evidence?
> A: Yes, Sir.
>
> Q: But you cannot tell this Honorable Court the model of the camera and model of the cell phone that was used by [PO3] Dela Victoria?
> A: It was a cellular phone but I cannot just tell what model of cellular phone it was.
>
> Q: Also, Mr. Witness, you said you are familiar with Section 21. Aside from this picture, you cannot see pictures attached to the record that will depict the evidence together with the accused?
> A: Yes, Sir.
>
> Q: Also you cannot show any picture of the evidence together with the representative of the barangay or anything?
> A: Yes, Sir.[58]

In *People v. Del Mundo*,[59] the Court acquitted the appellant thereon because of the undated inventory presented by the prosecution, to wit:

> While the prosecution was able to present the inventory of the confiscated items, which was apparently prepared by PO3 Rodil, and attested to by Ocampo, Sr., of Kill Droga, the Court opines that the same could not be given any credence. Readily apparent from the said inventory is the fact that it is undated. Hence, the requirement that the inventory must be made immediately after seizure was not satisfied.[60]

Furthermore, in *People v. Miranda, Jr.*,[61] the Court ruled that the inexcusable failure to observe the requirements regarding

---

[58] TSN, October 11, 2012, pp. 28-29.

[59] *Supra* note 39.

[60] *Id*.

[61] *Supra* note 40.

the physical inventory and photographs justified the acquittal of the appellant based on reasonable doubt:

The Court has emphasized the import of Section 21 as a matter of substantive law that mandates strict compliance. The Congress laid it down as a safety precaution against potential abuses by law enforcement agents who might fail to appreciate the gravity of the penalties faced by those suspected to be involved in the sale, use or possession of illegal drugs. Only by such strict compliance may the grave mischiefs of planting or substitution of evidence and the unlawful and malicious prosecution of the weak and unwary that the law intended to prevent may be eliminated. Under the principle that penal laws are strictly construed against the government and liberally in favor of the accused, stringent compliance therewith is fully justified.

Herein, the requirements of physical inventory and photograph-taking of the seized drugs were not observed. This noncompliance raises doubts whether the illegal drug items used as evidence in both the cases for violation of Section 5 and Section 11 of [RA] 9165 were the same ones that were allegedly seized from appellants. PO1 Yang significantly testified as follows:

Q: Have you issued any receipt regarding what was allegedly seized from the accused?
A: The inventory sheet? Only the request which we brought there at the Crime Laboratory Office, sir.

Q: So you have not prepared any inventory?
A: None, Sir.

Q: For how long have you been a police officer Mr. witness?
A: For almost five (5) years now.

x x x x x x x x x

Q: So, was there any elected officials present during that operation Mr. witness?
A: None, Sir.

Q: So, there were also no media present at that time?
A: None.

Q: You have not also photographed what you have seized from the accused?
A: No, Sir.

x x x x x x x x x

Q: x x x Why were you not able to make photograph during the inventory and you failed to make any inventory?

A: Because it was already nighttime and there is no available camera and during that time I was just new in the service and I am not familiar with the inventory.

[There is hardly any doubt that] the apprehending team never conducted an inventory nor did they photograph the seized drugs in the presence of the appellants or their counsel, a representative from the media and the Department of Justice, or an elective official either at the place of the seizure, or at the police station. In *People v. Gonzales*, this Court acquitted the accused based on reasonable doubt for failure of the police to conduct an inventory and to photograph the seized plastic sachet. We explained therein that 'the omission of the inventory and the photographing exposed another weakness of the evidence of guilt, considering that the inventory and photographing — to be made in the presence of the accused or his representative, or within the presence of any representative from the media, Department of Justice or any elected official, who must sign the inventory, or be given a copy of the inventory, were really significant stages of the procedures outlined by the law and its IRR.[62]

More than that, the defense registered its vigorous objections to the admission of the prosecution's exhibits, thus —

[PAO to the Court]

x x x First of all, we object to Exhibit ["D",] Your Honor, the pieces of evidence, considering that there was no clear showing of the consummated transaction of record. So the alleged evidence recovered is considered by the defense, Your Honor, as fruits of the poisonous tree.

We object, Your Honor, [to] the Coordination Form, the Pre-Operation Report, the laboratory request, the blotter[,] and the chemistry report for being self-serving.

We object [to] Exhibit "C", the buy-bust money, considering that it was not recorded in any record or document prior to the operation, Your Honor.

---

[62] *Id*. at 236-238.

We object [to] Exhibit "F"[,] the photograph attached to the record/ expediente of this Honorable Court based on the best evidence rule considering that what are attached in the expediente are all photocopies, Your Honor, because they are just in bond paper, Your Honor, reflected in bond paper. Meaning, they are not developed evidence of photograph. Also[,] we are objecting [to] its admissibility considering that the person who photographed the picture was not presented[, thus] the photograph was not properly authenticated.

We object also [to] the certificate of inventory for non-compliance [with the] requirement[s] set forth in Section 21.

Yes, Sir. That's all, Your Honor,

COURT:

ORDER:
Exhibits "A" to "I" are all admitted in evidence.

SO ORDERED.[63]

We have held that:

[RA] 9165 and its implementing rules and regulations both state that non-compliance with the procedures thereby delineated and set would not necessarily invalidate the seizure and custody of the dangerous drugs provided there were justifiable grounds for the non-compliance, and provided that the integrity of the evidence of the *corpus delicti* was preserved. Herein, the proffered excuses were that it was night-time, there was no available camera and that the police officer who had initial custody of the seized drugs was new in the service and was not familiar with the inventory requirement. The Court finds that these explanations do not justify non-compliance with the required procedures of [RA] 9165. These will not do. It is well to recall that the informant first reported about appellant Miranda's illegal drug activities in the morning of the day of the alleged buy-bust operation and came back around five o'clock in the afternoon. The operation was set around 7:30-8:00 p.m. There were seven (7) men in the team, including the informant. There was sufficient time to obtain a camera and they had the human resources to scout for one. That PO1 Yang was new in the service does not excuse non-compliance as there were other members of the team who could have

---

[63] TSN, October 11, 2012, pp. 36-37.

initiated the conduct of the inventory and photograph-taking. Besides, the team had been briefed before the entrapment operation which would reasonably include a run-through of the procedures outlined in the law for the handling of the seized drugs. The excuses are lame if not downright unacceptable.

Considering that the non-compliance with the requirements of Section 21 in the case at bar is inexcusable, the identity and integrity of the drugs used as evidence against appellants are necessarily tainted. *Corpus delicti* is the actual commission by someone of the particular crime charged. In illegal drugs cases, it refers to illegal drug itself. When the courts are given reason to entertain reservations about the identity of the illegal drug item alleged seized from the accused, the actual crime charged is put into serious question. Courts have no alternative but to acquit on the ground of reasonable doubt. Unexplained non-compliance with the procedures for preserving the chain of custody of the dangerous drugs has frequently caused the Court to absolve those found guilty by the lower courts.[64]

RA 9165 and its IRR had been in effect since 2002 while the incident in the case at bar happened years after in 2010. In this light, it is judicious to conclude the possibility of seizure or arrest at nighttime and dawn had been anticipated including the likelihood of sudden receipt of information from confidential agents, hence it is reasonable for the persons charged with the implementation thereof to have put a system in place to ensure compliance with the pertinent laws and regulations during such situations. In this case, however, the prosecution failed to show that they even at least tried to contact "a representative from the media and the [DOJ], and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof"[65] as to signify that such physical inventory was done in their presence. Moreover, the prosecution failed to authenticate the alleged Inventory Receipt and photographs that it had presented. And the fact that the inventory and photographs are still required by RA 10640, which amended RA 9165, buttresses the indispensability of these requisites.

---

[64] *People v. Miranda, Jr., supra* note 40 at 238-239.

[65] See Section 21, Article II, RA 9165.

On the third and fourth links in the chain of custody, the Court notes that the RTC stated in its January 31, 2013 Decision that the testimony of the Forensic Chemist "was dispensed with because the defense admitted his expertise; that he was the one who examined the object evidence; and that in connection therewith, he issued a chemistry report".[66] The RTC mentioned that "the prosecution also admitted that [said] forensic chemical officer has no personal knowledge with respect to the origin and source of the dangerous drug he [had] examined".[67] Such stipulations with respect to the forensic chemical officer failed to help the prosecution. As held in *People v. Havana*:[68]

> Nor can the prosecution gain from the testimony of the forensic chemist PCI Salinas. The records show that there is nothing positive and convincingly clear from the testimony of PCI Salinas. She did not at all categorically and straightforwardly assert that the alleged chemical substance that was submitted for laboratory examination and thereafter presented in court was the very same substance allegedly recovered from the appellant. If anything, the sum and substance of her testimony is that the alleged pack of *shabu* submitted to her for laboratory examination showed that it was positive for methamphetylane hydrochloride or *shabu.* She never testified where the substance came from. Her testimony was limited only on the result of the examination she conducted and not on the source of the substance.[69]

In addition, it has been ruled that there is a gap or break in the fourth link of the chain of custody where there is absence of "evidence to show how the seized *shabu* were handled, stored, and safeguarded pending its presentation in court,"[70] as in this case.

We reiterate that "while this Court in certain cases has tempered the mandate of strict compliance with the requisite under Section 21 of RA 9165, such liberality, as stated in the Implementing

---

[66] Records, p. 33; TSN, October 11, 2010, pp. 32-33.

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

[68] *Supra* note 37.

[69] *Id*. at 536-537.

[70] *People v. Prudencio*, G.R. No. 205148, November 16, 2016, 809 SCRA 204, 219.

Rules and Regulations can be applied only when the evidentiary value and integrity of the illegal drug are properly preserved x x x,"[71] which is, however, not present in the instant case.

"The campaign against drugs deserves the full support and encouragement from this Court. However, compliance with the procedures laid down by law, such as that involving the chain of custody of the illegal drugs, must be complied with."[72]

In brief, this Court is constrained to acquit appellant based on reasonable doubt in view of the prosecution's failure to "(1) overcome the presumption of innocence x x x; (2) prove the *corpus delicti* of the crime; (3) establish an unbroken chain of custody of the seized drugs; and [(4)] offer any explanation why the provisions of Section 21, RA 9165 were not complied with".[73] As such, all other issues need not be resolved as the result will not be altered.

WHEREFORE, the appeal is **GRANTED**. The assailed October 22, 2014 Decision of the Court of Appeals in CA-G.R. CR HC [No.] 01629, which affirmed the January 31, 2013 Decision of Branch 13 of the Regional Trial Court of Cebu City in Criminal Case Nos. CBU-88596 and CBU-88597, is **REVERSED** and **SET ASIDE**. Accordingly, appellant Clover A. Villarta is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause. Let a copy of this Decision be **FURNISHED** to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five days from receipt of this Decision, the action he has taken. Copies shall also be **FURNISHED** to the Director General of the Philippine National Police and the Director General of the

---

[71] *People v. Havana, supra* note 37 at 538-539.

[72] *People v. Prudencio*, *supra* at 221.

[73] *People v. Ismael, supra* note 44.

Philippine Drug Enforcement Agency **FOR THEIR INFORMATION**.

SO ORDERED.

Leonardo-de Castro, Peralta, and *Tijam, JJ.,* concur.

Sereno, C.J., on leave.

THIRD DIVISION

[G.R. No. 217889. March 14, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RITZ BARING MORENO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY; WITNESSES; WHEN THE ISSUES INVOLVE MATTERS OF CREDIBILITY OF WITNESSES, THE FINDINGS OF THE TRIAL COURT, ITS CALIBRATION OF THE TESTIMONIES, AND ITS ASSESSMENT OF THE PROBATIVE WEIGHT THEREOF, AS WELL AS ITS CONCLUSIONS ANCHORED ON SAID FINDINGS, ARE ACCORDED HIGH RESPECT, IF NOT CONCLUSIVE EFFECT; RATIONALE.— Time and again, this Court has held that when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. The reviewing court is bound by the findings of the trial court, more so when the same is affirmed by the appellate court on appeal. The justification for this ruling was discussed in *People v. Macaspac* as follows: It is settled that the assessment of the credibility of the witnesses

and their testimonies is best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grueling examination. These factors are the most significant in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its personal observations during the entire proceedings, the trial court can be expected to determine whose testimonies to accept and which witnesses to believe. Accordingly, the findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight were overlooked, misapprehended, or misinterpreted as to materially affect the disposition of the case. In this case, the Court adopts the finding of the RTC and the CA that Reanne's testimony identifying the accused-appellant as the one responsible for the killing of Kyle was convincing and credible especially in the absence of evidence from the defense that would refute his testimony.

2. ID.; ID.; ID.; WHERE THERE IS NOTHING TO INDICATE THAT A WITNESS FOR THE PROSECUTION WAS ACTUATED BY IMPROPER MOTIVE, HE IS PRESUMED NOT SO ACTUATED AND HIS TESTIMONY IS ENTITLED TO FULL FAITH AND CREDIT.— To cast doubt on the identity of the person who shot Kyle, the accused-appellant asserted that Reanne could not have seen who shot Kyle as Reanne had run away for his safety after the first shot. The assertion of the accused-appellant expectedly dwindles into nothing in view of the credible and categorical testimony of Reanne identifying the accused-appellant as the one who shot Kyle, coupled with the admission of the accused-appellant that he indeed shot Kyle twice. Reanne explained that he was able to clearly see that it was the accused-appellant who shot Kyle because of the sodium light that illuminated the place. Moreover, the records do not show that Reanne had any ill motive in identifying the accused-appellant as the one responsible for the death of Kyle; hence, the well-settled rule that where there is nothing to indicate that a witness for the prosecution was actuated by improper motive, the presumption that he was not so actuated and his testimony is entitled to full faith and credit, truly finds meaning in this case.

3. CRIMINAL LAW; REVISED PENAL CODE; MURDER; THE ABSENCE OF ANY MOTIVE ON THE PART OF THE

ACCUSED TO KILL THE VICTIM IS IRRELEVANT AS MOTIVE IS NOT AN ELEMENT OF MURDER.— [T]he absence of any motive on the part of the accused-appellant to kill Kyle is irrelevant in this case since motive is not even an element of murder. The Court had ruled in *People v. Buenafe* that, as a general rule, proof of motive for the commission of the offense charged does not show guilt; and the absence of proof of such motive does not establish the innocence of accused for the crime charged such as murder. The Court further held in *Buenafe, viz*: x x x motive is irrelevant when the accused has been positively identified by an eyewitness. Intent is not synonymous with motive. Motive alone is not a proof and is hardly ever an essential element of a crime.

4. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; IN CRIMINAL CASES, AN APPEAL THROWS THE ENTIRE CASE WIDE OPEN FOR REVIEW AND THE REVIEWING TRIBUNAL CAN CORRECT ERRORS, THOUGH UNASSIGNED IN THE APPEALED JUDGMENT, OR EVEN REVERSE THE TRIAL COURT'S DECISION BASED ON GROUNDS OTHER THAN THOSE THAT THE PARTIES RAISED AS ERRORS.—** The Court is aware that jurisprudence instructs it to rigidly review the records of the case since the appeal confers upon it full jurisdiction over the case, *viz*: At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law. In view of this legal teaching, the Court has meticulously examined the records of this case and found that there were substantial facts that both the RTC and the CA had overlooked and which, if considered, may affect the outcome of the case.

5. **CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS.—** The accused-appellant was charged with murder which, under Article (*Art.*) 248 of the Revised Penal Code (*RPC*), is committed by any person who, not falling within the

provisions of Art. 246 of the same Code, shall kill another with treachery, taking advantage of superior strength, with the aid of armed men, employing means to weaken the defense; or employing means or persons to insure or afford impunity.

6. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; WHENEVER ALLEGED IN THE INFORMATION AND COMPETENTLY AND CLEARLY PROVED, TREACHERY QUALIFIES THE KILLING AND RAISES IT TO THE CATEGORY OF MURDER; REQUISITES.— Treachery is present when the offender commits any of the crimes against a person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. For the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender. Treachery, whenever alleged in the information and competently and clearly proved, qualifies the killing and raises it to the category of murder. The evidence of showing treachery must be as conclusive as the fact of killing itself and its existence cannot be presumed.

7. ID.; ID.; ID.; ID.; THE ESSENCE OF TREACHERY IS THAT THE ATTACK COMES WITHOUT A WARNING AND IN A SWIFT, DELIBERATE, AND UNEXPECTED MANNER, AFFORDING THE HAPLESS, UNARMED, AND UNSUSPECTING VICTIM NO CHANCE TO RESIST OR ESCAPE THE SUDDEN BLOW.— On the first requisite, the legal teaching must be stressed that the essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape the sudden blow. The records will confirm that neither Kyle nor Reanne had a misunderstanding nor had engaged in a fight with the accused-appellant, thus negating any provocation on the part of the Capsa siblings. Indeed, prior to the shooting, Reanne and Kyle were merely talking inside the Capsa compound when the accused-appellant suddenly appeared. Since Kyle's

back was towards the gate of the compound he did not see that the accused-appellant, who was then armed, was already at the gate and about five meters away from him. Reanne, on the one hand, was facing the gate; thus, with the accused-appellant firing the first shot, Reanne was able to seek cover. It was unfortunate for Kyle who, unaware where the first shot came from, failed to avoid the trajectory of the second shot which hit him in the chest and caused his death.

8. ID.; ID.; ID.; ID.; THE INTENT TO KILL MAY BE PROVED BY THE MEANS USED, THE NATURE, LOCATION AND NUMBER OF WOUNDS SUSTAINED BY THE VICTIM, AND THE CONDUCT OF THE MALEFACTORS BEFORE, AT THE TIME OF, OR IMMEDIATELY AFTER THE KILLING OF THE VICTIM.— In *Escamilla v. People*, the Court ruled that the evidence to prove intent to kill may consist of, *inter alia*, the means used; the nature, location and number of wounds sustained by the victim; and the conduct of the malefactors before, at the time of, or immediately after the killing of the victim. The fact that the accused-appellant used a gun and successively fired twice at Kyle and hit his chest proved accused-appellant's intent to kill his victim. In murder or homicide, the offender must have the intent to kill. If there is no intent to kill on the part of the offender, he or she is liable only for physical injuries.

9. ID.; ID.; ID.; ID.; UNEXPECTEDNESS OF THE ATTACK DOES NOT ALWAYS EQUATE TO TREACHERY, AS THERE MUST BE EVIDENCE TO SHOW THAT THE ACCUSED DELIBERATELY OR CONSCIOUSLY ADOPTED THE MEANS OF EXECUTION TO ENSURE ITS SUCCESS.— On the second requisite, jurisprudence maintains that "treachery as a qualifying circumstance must be deliberately sought to ensure the safety of the accused from the defensive acts of the victim. Unexpectedness of the attack does not always equate to treachery." There must be evidence to show that the accused deliberately or consciously adopted the means of execution to ensure its success. x x x. In his sworn statement, the accused-appellant recounted that he was merely pulled by Tyke towards the Capsa compound and thereafter instructed to shoot Kyle. The accused-appellant was not aware of Tyke's reason for choosing him to shoot Kyle. As the accused-appellant came near, he borrowed Alexander Pala's

gun, and when he spotted Kyle, he shot him twice. The accused-appellant's narration of the facts confirmed that the attack he made on Kyle was not preconceived nor deliberately adopted; or that he reflected on the means, method, or form of the attack to secure his unfair advantage. The accused-appellant acted on impulse or at the spur of the moment, i.e., there was simply a directive from Tyke to kill Kyle. For sure, Kyle was not even armed when he was on his way to the Capsa compound as he merely borrowed Pala's gun. To reiterate, it was simply regrettable that at the time the accused-appellant arrived at the compound, Kyle's back was towards the gate and so was not able to see his assailant.

10. ID.; ID.; ID.; ID.; THE EXISTENCE OF TREACHERY SHOULD BE BASED ON CLEAR AND CONVINCING EVIDENCE; SUCH EVIDENCE MUST BE AS CONCLUSIVE AS THE FACT OF KILLING ITSELF AND ITS EXISTENCE CANNOT BE PRESUMED.— "The unexpectedness of an attack cannot be the sole basis of a finding of treachery even if the attack was intended to kill another as long as the victim's position was merely accidental. The means adopted must have been a result of a determination to ensure success in committing the crime" which was unmistakably absent in this case. It would be well to note that the existence of treachery should be based on clear and convincing evidence. Such evidence must be as conclusive as the fact of killing itself and its existence cannot be presumed.

11. ID.; ID.; ID.; EVIDENT PREMEDITATION; REQUISITES IN ORDER TO BE APPRECIATED AGAINST THE ACCUSED.— On evident premeditation, in order that this qualifying circumstance may be appreciated, the following requisites must be present, *viz*: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused had clung to his determination to commit the crime; and (3) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act.

12. ID.; ID.; ID.; ID.; THE ESSENCE OF EVIDENT PREMEDITATION IS THAT THE EXECUTION OF THE CRIMINAL ACT BE PRECEDED BY COOL THOUGHT AND REFLECTION UPON THE RESOLVE TO CARRY OUT THE CRIMINAL INTENT DURING THE SPACE OF

TIME SUFFICIENT TO ARRIVE AT A CALM JUDGMENT; NOT ESTABLISHED.— It is emphasized that the essence of this circumstance of evident premeditation is that the execution of the criminal act be preceded by cool thought and reflection upon the resolve to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment. Noteworthy, the prosecution failed to show the lapse of time when the accused-appellant had intended to kill Kyle to the point of his actual commission thereof, and which period of time would have allowed the accused-appellant to contemplate on the outcome of his crime. It cannot be disputed, therefore, that the qualifying circumstance of evident premeditation had not been securely established through the prosecution's evidence.

13. **ID.; ID.; HOMICIDE; COMMITTED ABSENT THE QUALIFYING CIRCUMSTANCE OF TREACHERY OR EVIDENT PREMEDITATION.—** Considering the absence of the qualifying circumstance of treachery or evident premeditation, the crime committed is *Homicide*, defined in Article 249 of the Revised Penal Code, and not murder.

14. **ID.; ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; REQUISITES IN ORDER TO BE APPRECIATED IN FAVOR OF THE ACCUSED; PRESENT.—** The CA was correct in appreciating the mitigating circumstance of voluntary surrender which requisites are as follows: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary. The joint affidavit executed by Dacua and the three other members of the CCPO stated that PSupt. Pablo Labra, Chief of the Criminal Investigation Division, surrendered the accused-appellant to the CCPO after he voluntarily surrendered to Nalzaro. The fact of the accused-appellant's voluntary surrender was affirmed by him in the sworn statement he gave before the police. The accused-appellant's voluntary surrender was spontaneous indicating his intent to unconditionally submit himself to the authorities, either because he acknowledged his guilt or he wished to save them the trouble and expenses necessary for his search and capture.

15. **ID.; ID.; HOMICIDE; PROPER IMPOSABLE PENALTY WHERE THE MITIGATING CIRCUMSTANCE OF**

VOLUNTARY SURRENDER IS APPRECIATED IN FAVOR OF THE ACCUSED-APPELLANT.— Art. 249 of the RPC provides that the imposable penalty for homicide is *reclusion temporal*. In view of the appreciation of the mitigating circumstance of voluntary surrender, the penalty to be imposed, pursuant to Art. 64(2) of the RPC, is the minimum period of *reclusion temporal*, that is, from 12 years and one day to 14 years and eight months. The range of the indeterminate penalty under the Indeterminate Sentence Law is *prision mayor* in any of its periods, as minimum, to the minimum period of *reclusion temporal* minimum, as maximum. Accordingly, the indeterminate penalty of eight years and one day of *prision mayor*, as minimum, to 14 years of *reclusion temporal*, as maximum, shall be imposed upon the accused-appellant.

16. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— Following the jurisprudence laid down by the Court in *People v. Jugueta*, the accused-appellant shall be held liable for civil indemnity of ₱50,000.00; moral damages of ₱50,000.00; and temperate damages of ₱50,000.00. In addition, 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.

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.*:

For resolution is the appeal of accused-appellant Ritz Baring Moreno seeking the reversal and setting aside of the 29 October 2014 Decision[1] rendered by the Court of Appeals (*CA*), Twentieth Division which affirmed, with modification as to the award of

[1] *Rollo*, pp. 4-12; penned by Associate Justice Ramon Paul L. Hernando and concurred in by Associate Justices Ma. Luisa C. Quijano-Padilla and Marie Christine Azcarraga-Jacob.

monetary damages, the 17 August 2012 Decision[2] of the Regional Trial Court (*RTC*), Branch 20, Cebu City, finding him guilty of Murder.

THE FACTS

The accused-appellant was charged with murder in an Information docketed as Crim. Case No. CBU-74770, *viz*:

> That on or about the 3rd day of October 2005, at about 10:45 p.m., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a .38 cal. revolver with deliberate intent, with intent to kill, and with treachery and evident premeditation, did then and there suddenly and unexpectedly shoot one KYLE KALES CAPSA y LOMIBAO hitting him on the vital part of his body, thereby inflicting upon him physical injuries as a consequence of said injuries, said KYLE KALES CAPSA y LOMIBAO died minutes later.
>
> CONTRARY TO LAW.

When arraigned, the accused-appellant, with the assistance of counsel, pleaded not guilty; trial on the merits thereafter ensued.

Version of the Prosecution

The prosecution tried to prove its case against the accused-appellant through the testimony of Vicente Capsa (*Vicente*), Reanne Vincent Kerby Capsa (*Reanne*), and Atty. Rene Bautista *(Atty. Bautista).*

The testimony of SPO4 Alex Dacua (*Dacua*) of the Cebu City Police Office (*CCPO*) was dispensed with after the parties agreed to stipulate on the following: that the witness was assigned at the Criminal Investigation and Intelligence Bureau (*CIIB*) Homicide Section, CCPO, on 3 October 2005; that the witness responded to a shooting incident at the Capsa compound, Sitio Maharlika, Barangay Sambag II, Cebu City, where one Kyle Kales Capsa (*Kyle*), the victim, was shot and declared dead on arrival at the Vicente Sotto Memorial Hospital (*VSMH*); that

---

[2] Records, pp. 71-78; penned by Judge Bienvenido R. Saniel, Jr.

there was a hot pursuit operation; that the accused voluntarily surrendered to Bobby Nalzaro of DYSS Radio Station; that Bobby Nalzaro turned over the accused who voluntarily surrendered to the police authorities at the CIIB; that the police officers voluntarily conducted a custodial investigation on the accused; that the accused voluntarily executed an extrajudicial confession before the police officers; that it was Insp. Monilar who typed the extrajudicial confession; that the accused was assisted by counsel Atty. Bautista; and that the witness saw Atty. Bautista at the premises of the Homicide Section of CIIB.[3]

Likewise, the record custodian of the National Bureau of Investigation and Dr. Gil Macato were no longer called to the witness stand after the defense admitted the records of Kyle and the existence of Kyle's certificate of death[4] and the findings therein.[5]

The unrefuted facts established by the prosecution, in view of the manifestation of the accused-appellant that he would no longer present evidence on his behalf, were as follows:

On the night of 3 October 2005, Reanne, the younger brother of Kyle, had a fistfight with his cousin, Tyke Philip Lomibao (*Tyke*), after Tyke hit Reanne with a cue stick. Kyle, who saw the incident, sided with Reanne; thus, the fistfight continued, but neighbors were subsequently able to separate the three.[6]

At around 10:45 p.m. that same night, inside their compound, while Reanne and Kyle were discussing what happened earlier to Tyke, Ivan Sala (*Sala*) and Alexander Pala (*Pala*) passed by and looked at the Capsa brothers. Shortly, the accused-appellant arrived, positioned himself five meters away from Reanne and Kyle and fired at them twice with a .38 caliber revolver, the second shot hitting Kyle in the chest. The accused-appellant

---

[3] *Id*. at 50.

[4] Id. at 13; Exh. "A".

[5] *Id*. at 58.

[6] TSN, 18 February 2009, pp. 4-5; TSN, 20 February 2009, pp. 8-9.

ran away because there were neighbors who saw him fire the shots. Since Reanne was still in shock after the shooting, a neighbor brought Kyle, then twenty-three years old and a nautical graduate, to the VSMH where he was pronounced dead on arrival.[7]

Vicente, the father of Reanne and Kyle, was awakened by his daughter-in-law informing him that Kyle was shot. Vicente proceeded to the VSMH where he was told that Kyle had already died.[8]

The following day, when Vicente went to the police station to report the incident, he was told that the person who shot Kyle was the accused-appellant, upon Tyke's order. Vicente filed a complaint against Tyke, which was subsequently dismissed.[9] At the police station, the accused-appellant confessed to Reanne that it was Tyke who ordered him to shoot them.[10]

Atty. Bautista also went to the police station on 4 October 2005, upon the advice of Vice-Mayor Michael Rama, the Chairman of the Peace and Order Council, to observe and ascertain whether the investigation on the shooting of Kyle was above board. Because the accused-appellant had no counsel during the investigation, Atty. Bautista was asked to assist him. Present during the investigation, Atty. Bautista observed that the police neither coerced nor threatened the accused-appellant. He explained to the accused-appellant and his mother, Dolores Baring Moreno, the consequences of signing the sworn statement[11] executed at the police station.[12]

---

[7] TSN, 18 February 2009, pp. 4-10.

[8] TSN, 3 September 2008, pp. 7-8.

[9] *Id*. at 8-13.

[10] TSN, 18 February 2009, pp. 13-14.

[11] Records, p. 6; Exh. "B".

[12] TSN, 4 November 2009, pp. 4-10.

The Ruling of the RTC

The RTC held that the lone testimony of Reanne identifying the accused-appellant as the one who shot Kyle sufficed to convict. Considering that there was no evidence offered by the defense to refute the testimony of Reanne, his credibility as a witness stood on firm and solid ground. The RTC considered the following facts in appreciating the qualifying circumstance of treachery in this case, *viz*: no prior warning or indication as to the presence of the accused-appellant; there was no previous altercation between the accused-appellant and the Capsa siblings; and the accused-appellant and the Capsa siblings hardly knew each other. Additionally, the accused-appellant executed an extrajudicial confession freely and voluntarily. The RTC ruled that because the accused-appellant was criminally liable for the death of Kyle, he should also be held civilly liable.[13]

The RTC resolved the case as follows:

> WHEREFORE, in view of the foregoing, the court finds accused RITZ BARING MORENO GUILTY beyond reasonable doubt of the crime of Murder, qualified by treachery, and hereby sentences him to a prison term of *Reclusion Perpetua*.
>
> Accused Ritz Baring Moreno is also hereby ordered to pay the heirs of Kyle Kales Lomibao Capsa the sum of ₱75,000.00 as civil indemnity *ex delicto* and moral damages of ₱50,000.00.
>
> SO ORDERED.[14]

Aggrieved with the decision of the RTC, the accused-appellant appealed before the CA.

The Ruling of the CA

The CA found Reanne's testimony as credible considering the following: he was facing the gate where the accused-appellant was at the time of the incident; he was merely five meters away

---

[13] Records, pp. 77-78.

[14] *Id*. at 78.

from the accused-appellant; and the face of the accused-appellant was visible even at night since the sodium light was very bright.[15]

The CA ruled that the RTC properly appreciated the qualifying circumstance of treachery in the killing of Kyle. In the same manner, the CA agreed with the finding of the RTC that evident premeditation was not established by the prosecution.[16]

The CA held that the RTC failed to appreciate the mitigating circumstance of accused-appellant's voluntary surrender, a fact which had been expressly stipulated on by the parties. The CA, however, found that the RTC imposed the correct penalty of *reclusion perpetua* upon the accused-appellant but ruled that there was a need to modify the monetary awards to the heirs of Kyle as follows: ₱50,000.00 as civil indemnity*;* ₱50,000.00 as moral damages; and ₱25,000.00 as temperate damages.[17]

The dispositive portion of the CA decision reads:

> WHEREFORE, the appeal is DENIED. The August 17, 2012 *Decision* of the Regional Trial Court, Branch 20 of Cebu City in Crim. Case No. CBU-74770 is AFFIRMED WITH MODIFICATION that accused appellant Ritz Baring Moreno is ordered to pay the victim's heirs the following amounts: (a) ₱50,000.00 as civil indemnity *ex delicto;* (b) ₱50,000.00 as moral damages; and (c) ₱25,000.00 as temperate damages in lieu of actual damages.
>
> SO ORDERED.[18]

ISSUE

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

---

[15] *Rollo*, p. 9.

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

[17] *Id*. at 11-12.

[18] *Id*. at 12.

OUR RULING

The appeal is partly meritorious.

The findings of the trial court relative to the credibility of witnesses are accorded respect.

Time and again, this Court has held that when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect.[19] The reviewing court is bound by the findings of the trial court, more so when the same is affirmed by the appellate court on appeal.[20] The justification for this ruling was discussed in *People v. Macaspac*[21] as follows:

> It is settled that the assessment of the credibility of the witnesses and their testimonies is best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grueling examination. These factors are the most significant in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its personal observations during the entire proceedings, the trial court can be expected to determine whose testimonies to accept and which witnesses to believe. Accordingly, the findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight were overlooked, misapprehended, or misinterpreted as to materially affect the disposition of the case.

In this case, the Court adopts the finding of the RTC and the CA that Reanne's testimony identifying the accused-appellant as the one responsible for the killing of Kyle was convincing and credible especially in the absence of evidence from the

---

[19] *People v. Dayaday*, G.R. No. 213224, 17 January 2017.

[20] *Nieva v. People*, G.R. No. 188751, 16 November 2016.

[21] G.R. No. 198954, 22 February 2017.

defense that would refute his testimony. The pertinent portions of Reanne's testimony are as follows:

Q. During that time that you were talking with your brother what happened?

A. At about 10:00 o'clock going to 11:00 o'clock RJ arrived.

Q. Who is this RJ?

A. Ritz Baring.

Q. Are you referring to Ritz Baring Moreno, the accused in this case?

A. Yes.

Q. Do you know him personally before or during the incident?

A. Yes because I have a "kumpare" who is his neighbor and also a classmate who is also his neighbor.

x x x x x x x x x

Q. You said that this RJ Moreno arrived at your place, did he enter the gate of the compound?

A. At the door of the gate because we have no door it was broken and it is always open.

Q. If you are the person outside can you see the person inside that gate?

A. Yes.

Q. When you said that RJ Moreno entered and was in your gate at the door what happened?

A. He suddenly shoot us.

Q. You said shot us. Who are you referring to? You and?

A. Me and my brother.

Q. How many shots did you hear that time?

A. 2.

Q. To whom did RJ Moreno aimed and fired his firearm?

A. He shot me first because I was in front.

Q. Were you hit by the shot of RJ Moreno?

A. No.

Q. Was it the first shot or the second shot that was aimed at you?

A. The first shot.

Q. What happened to the second shot?

A. I noticed that my brother was hit.

Q. When RJ Moreno was at your gate and started shooting at you, did he say anything during that incident?

A. No, he just shoot us.

Q. You said that your brother was hit, where was your brother hit?

A. On the chest.

Q. How did you know that your brother was hit during that time?

A. He fell down.

x x x x x x x x x

Q. After your brother fell down after he was shot, what happened to RJ Moreno?

A. He ran because there were neighbors who saw him.

Q. Was RJ Moreno alone at that time?

A. No, there were lookouts.

Q. Who were these persons who acted as lookouts?

A. Ivan Sala and Alexander.

x x x x x x x x x

Q. How far was RJ Moreno when he shot you and your brother?

A. About 5 meters.

Q. Can you recall what was the firearm used by RJ Moreno. If you know?

A. Yes.

Q. Could you tell the court what kind of firearm [was used] and the color?

A. A .38 caliber firearm, grey.

Q. I recalled that this happened at 10:30 in the evening, were you able to see RJ Moreno considering that it was already night time?

A. I saw his face because the sodium light was very bright.

Q. Are you certain that it was RJ Moreno who shot you and your brother?

A. Yes.[22]

Likewise there is the sworn statement[23] of the accused-appellant taken at the police station on 4 October 2005, at 2:30 p.m., wherein he admitted, with the assistance of Atty. Bautista and his mother Dolores and after his constitutional rights were explained to him, that he shot Kyle twice. The sworn statement, which was signed by the accused-appellant and Atty. Bautista, pertinently provides:

QUESTION: DO YOU KNOW WHY YOU ARE HERE OR DO YOU KNOW WHY YOU ARE UNDER INVESTIGATION?

ANSWER: YES, SIR. I'M HERE AFTER I VOLUNTARILY SURRENDERED TO MR. BOBBY NALZARO OF DYSS IN BRGY. BUSAY, CEBU CITY FOR MY SAFETY.

QUESTION: WHY ARE YOU ASKING FOR SAFETY?

ANSWER: **BECAUSE OF THE CRIME I COMMITTED BY SHOOTING KYLE KALES CAPSA IN THE EVENING OF OCTOBER 3, 2005, INSIDE THEIR COMPOUND IN SITIO MAHARLIKA, BRGY. SAMBAG II, CEBU CITY.**

QUESTION: **CAN YOU REMEMBER WHAT TIME WHEN YOU SHOT KYLE KALES CAPSA?**

ANSWER: **PAST 10:00 IN THE EVENING OF OCTOBER 3, 2005.**

---

[22] TSN, 18 February 2009, pp. 6-10.

[23] Records, pp. 6-8; Exh. "B".

QUESTION: **WHY DID YOU SHOOT HIM?**

ANSWER: **BECAUSE OF HIS COUSIN (TYKE) WHO PULLED ME TOWARDS THE COMPOUND AND IN THE PROCESS TYKE INSTRUCTED ME TO SHOOT KYLE KALES CAPSA.**

QUESTION: **WHY DID TYKE INSTRUCT YOU TO SHOOT KYLE KALES CAPSA?**

ANSWER: **BECAUSE KYLE KALES CAPSA AND TYKE WERE QUARRELING.**

QUESTION: **WHY WERE YOU THE ONE INSTRUCTED BY TYKE TO SHOOT KYLE KALES CAPSA AND WHY DO YOU HAVE A FIREARM?**

ANSWER: **I DON'T KNOW WHY I WAS THE ONE ORDERED BY HIM TO SHOOT CAPSA AND WHILE NEARING IN THE COMPOUND ONE OF MY FRIENDS, ALEXANDER PALA ALIAS "SANDER" LET ME BORROW HIS FIREARM A CAL .38 REVOLVER.**

QUESTION: **AFTER ALEXANDER PALA HANDED HIS FIREARM TO YOU, WHAT HAPPENED NEXT?**

ANSWER: **TOGETHER WITH ALEXANDER PALA AND EVAN SALA WE DIRECTLY WENT TO THE COMPOUND AND WHILE THEY WERE OUTSIDE ACTING AS BACKUP AND WHILE I WAS IN THE GATE, I SAW KYLE KALES CAPSA WHO WAS STANDING WITH THE OTHER PERSONS AND THEN I SHOT HIM TWO (2) TIMES AND IMMEDIATELY THEREAFTER I RAN AWAY TOGETHER WITH ALEXANDER PALA AND EVAN SALA**.

QUESTION: WHERE DID YOU GO AS WELL AS YOUR COMPANIONS ALEXANDER PALA AND EVAN SALA?

ANSWER: I DO NOT KNOW WHERE THEY WENT BUT FOR ME I HID IN ONE OF MY NEIGHBORS/RELATIVES.

QUESTION: WHERE IS NOW THE FIREARM THAT YOU USED IN SHOOTING THE VICTIM?

ANSWER: I WAS ABLE TO THROW IT AWAY.

QUESTION: BY THE WAY, WHO WERE WITH YOU WHEN YOU SURRENDERED TO MR. BOBBY NALZARO x x x.

ANSWER: WITH ME WERE MY MOTHER AND MY TWO AUNTIES, ROWENA POSADAS AND CORAZON BARING.

x x x x x x x x x

INVESTIGATOR: ARE YOU WILLING TO SIGN THE STATEMENT OF YOURS CONSISTING OF THREE (3) PAGES INCLUDING THIS ONE IN YOUR OWN FREE WILL AND VOLITION, FREE OF ANY INFLUENCE, THREATS, OR INTIMIDATION OR ANY CONSIDERATION WHATSOEVER?

ANSWER: YES, SIR.[24] (emphasis supplied)

To cast doubt on the identity of the person who shot Kyle, the accused-appellant asserted that Reanne could not have seen who shot Kyle as Reanne had run away for his safety after the first shot.[25]

The assertion of the accused-appellant expectedly dwindles into nothing in view of the credible and categorical testimony of Reanne identifying the accused-appellant as the one who shot Kyle, coupled with the admission of the accused-appellant that he indeed shot Kyle twice. Reanne explained that he was able to clearly see that it was the accused-appellant who shot Kyle because of the sodium light that illuminated the place. Moreover, the records do not show that Reanne had any ill motive in identifying the accused-appellant as the one responsible for the death of Kyle; hence, the well-settled rule that where there is nothing to indicate that a witness for the prosecution was actuated by improper motive, the presumption that he was not so actuated and his testimony is entitled to full faith and credit,[26] truly finds meaning in this case.

The accused-appellant proffers the defense that, granting that he fired the shot on that fateful night, the shot was nevertheless aimed at Reanne who earlier that day had a fight with Tyke.

---

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

[25] CA *rollo,* p. 18.

[26] *People v. Maglente*, G.R. No. 201445, 27 November 2013.

The accused-appellant argues that Kyle merely intervened during the fight between Tyke and Reanne, and that it was Reanne who Tyke was really after.[27]

The defense offered by the accused-appellant fails to convince. The fact that the fight was between Reanne and Tyke becomes immaterial in this case since records firmly confirm that the accused-appellant aimed his shot at Kyle, and that the accused-appellant successfully hit Kyle which caused his death. It is significant to note that the accused-appellant trenchantly maintained in his sworn statement taken before the police station that Tyke's alleged instruction was for him to shoot Kyle and, as he himself admitted, he indeed shot Kyle twice. Granting for the sake of argument therefore that the accused-appellant was merely following the instruction of Tyke, then it logically follows that his target was no other than Kyle.

In the same vein, the absence of any motive on the part of the accused-appellant to kill Kyle is irrelevant in this case since motive is not even an element of murder. The Court had ruled in *People v. Buenafe*[28] that, as a general rule, proof of motive for the commission of the offense charged does not show guilt; and the absence of proof of such motive does not establish the innocence of accused for the crime charged such as murder. The Court further held in *Buenafe*, *viz*:

> x x x motive is irrelevant when the accused has been positively identified by an eyewitness. Intent is not synonymous with motive. Motive alone is not a proof and is hardly ever an essential element of a crime.

The prosecution was not able to prove beyond reasonable doubt that the offense committed by the accused-appellant was murder.

---

[27] CA *rollo*, p. 18.

[28] G.R. No. 212930, 3 August 2016.

The Court is aware that jurisprudence instructs it to rigidly review the records of the case since the appeal confers upon it full jurisdiction over the case, *viz*:

> At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[29]

In view of this legal teaching, the Court has meticulously examined the records of this case and found that there were substantial facts that both the RTC and the CA had overlooked and which, if considered, may affect the outcome of the case.

The accused-appellant was charged with murder which, under Article (*Art.*) 248[30] of the Revised Penal Code (*RPC*), is committed by any person who, not falling within the provisions

---

[29] *Ramos v. People*, G.R. No. 218466, 23 January 2017.

[30] Article 248. *Murder.* - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion temporal* in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward, or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

of Art. 246[31] of the same Code, shall kill another with treachery, taking advantage of superior strength, with the aid of armed men, employing means to weaken the defense; or employing means or persons to insure or afford impunity.

The qualifying circumstances of treachery and evident premeditation were alleged in the information. The RTC and the CA, however, found that only the qualifying circumstance of treachery attended the killing of Kyle.

a. Treachery

Treachery is present when the offender commits any of the crimes against a person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[32] For the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender.[33] Treachery, whenever alleged in the information and competently and clearly proved, qualifies the killing and raises it to the category of murder.[34] The evidence of showing treachery must be as conclusive as the fact of killing itself and its existence cannot be presumed.[35]

---

[31] Art. 246. Parricide. — Any person who shall kill his father, mother, or child, whether legitimate of illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

[32] *People v. Sibbu*, G.R. No. 214757, 29 March 2017.

[33] *People v. Bugarin*, G.R. No. 224900, 15 March 2017.

[34] *People v. Macaspac*, *supra* note 21.

[35] *People v. Bugarin, supra* note 33.

On the first requisite, the legal teaching must be stressed that the essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape the sudden blow.[36]

The records will confirm that neither Kyle nor Reanne had a misunderstanding nor had engaged in a fight with the accused-appellant, thus negating any provocation on the part of the Capsa siblings. Indeed, prior to the shooting, Reanne and Kyle were merely talking inside the Capsa compound when the accused-appellant suddenly appeared. Since Kyle's back was towards the gate of the compound he did not see that the accused-appellant, who was then armed, was already at the gate and about five meters away from him. Reanne, on the one hand, was facing the gate; thus, with the accused-appellant firing the first shot, Reanne was able to seek cover. It was unfortunate for Kyle who, unaware where the first shot came from, failed to avoid the trajectory of the second shot which hit him in the chest and caused his death.

In *Escamilla v. People,*[37] the Court ruled that the evidence to prove intent to kill may consist of, *inter alia*, the means used; the nature, location and number of wounds sustained by the victim; and the conduct of the malefactors before, at the time of, or immediately after the killing of the victim.[38] The fact that the accused-appellant used a gun and successively fired twice at Kyle and hit his chest proved accused-appellant's intent to kill his victim. In murder or homicide, the offender must have the intent to kill. If there is no intent to kill on the part of the offender, he or she is liable only for physical injuries.[39]

On the second requisite, jurisprudence maintains that "treachery as a qualifying circumstance must be deliberately

---

[36] *Id*.

[37] 705 Phil. 188 (2013).

[38] *Id*. at 196-197.

[39] *Cirera v. People,* 739 Phil. 25, 39 (2014).

sought to ensure the safety of the accused from the defensive acts of the victim. Unexpectedness of the attack does not always equate to treachery."[40] There must be evidence to show that the accused deliberately or consciously adopted the means of execution to ensure its success.[41]

The fact is underscored that the prosecution adopted as its Exh. "B" the sworn statement of the accused-appellant taken at the police station. The sworn statement provided the details on what happened right before the accused-appellant shot Kyle. In comparison, the highlight of the testimony of the prosecution's main witness Reanne, centered on the actual shooting of Kyle.

In his sworn statement, the accused-appellant recounted that he was merely pulled by Tyke towards the Capsa compound and thereafter instructed to shoot Kyle. The accused-appellant was not aware of Tyke's reason for choosing him to shoot Kyle. As the accused-appellant came near, he borrowed Alexander Pala's gun, and when he spotted Kyle, he shot him twice.

The accused-appellant's narration of the facts confirmed that the attack he made on Kyle was not preconceived nor deliberately adopted; or that he reflected on the means, method, or form of the attack to secure his unfair advantage. The accused-appellant acted on impulse or at the spur of the moment, i.e., there was simply a directive from Tyke to kill Kyle. For sure, Kyle was not even armed when he was on his way to the Capsa compound as he merely borrowed Pala's gun. To reiterate, it was simply regrettable that at the time the accused-appellant arrived at the compound, Kyle's back was towards the gate and so was not able to see his assailant.

"The unexpectedness of an attack cannot be the sole basis of a finding of treachery even if the attack was intended to kill another as long as the victim's position was merely accidental. The means adopted must have been a result of a determination

---

[40] *Id*. at 28.

[41] *People v. Oloverio*, 756 Phil. 435, 449 (2015).

to ensure success in committing the crime"[42] which was unmistakably absent in this case. It would be well to note that the existence of treachery should be based on clear and convincing evidence. Such evidence must be as conclusive as the fact of killing itself and its existence cannot be presumed.[43]

b. Evident premeditation

On evident premeditation, in order that this qualifying circumstance may be appreciated, the following requisites must be present, *viz:* (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused had clung to his determination to commit the crime; and (3) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act.[44]

It is emphasized that the essence of this circumstance of evident premeditation is that the execution of the criminal act be preceded by cool thought and reflection upon the resolve to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.[45] Noteworthy, the prosecution failed to show the lapse of time when the accused-appellant had intended to kill Kyle to the point of his actual commission thereof, and which period of time would have allowed the accused-appellant to contemplate on the outcome of his crime. It cannot be disputed, therefore, that the qualifying circumstance of evident premeditation had not been securely established through the prosecution's evidence.

In a catena of cases, evident premeditation had been amply discussed as follows:

x x x The qualifying circumstance of premeditation can be satisfactorily established only if it could be proved that the defendant had ample and sufficient time to allow his conscience to overcome

---

[42] *Cirera v. People, supra* note 39 at 45.

[43] *People v. Bugarin, supra* note 33.

[44] *People v. Macaspac, supra* note 21.

[45] *Id.*

the determination of his will, if he had so desired, after meditation and reflection, following his plan to commit the crime. *(United States v. Abaigar,* 2 Phil., 417; *United States v. Gil,* 13 Phil., 530.) In other words, the qualifying circumstance of premeditation can be taken into account only when there had been a cold and deep meditation, and a tenacious persistence in the accomplishment of the criminal act. *(United States v. Cunanan,* 37 Phil. 777.) But when the determination to commit the crime was immediately followed by execution, the circumstance of premeditation cannot be legally considered. *(United States v. Blanco,* 18 Phil. 206.) x x x[46]

Considering the absence of the qualifying circumstance of treachery or evident premeditation, the crime committed is *Homicide,* defined in Article 249[47] of the Revised Penal Code, and not murder.

The proper penalty to be imposed upon the accused-appellant

The CA was correct in appreciating the mitigating circumstance of voluntary surrender which requisites are as follows: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary.[48]

The joint affidavit executed by Dacua and the three other members of the CCPO stated that PSupt. Pablo Labra, Chief of the Criminal Investigation Division, surrendered the accused-appellant to the CCPO after he voluntarily surrendered to Nalzaro. The fact of the accused-appellant's voluntary surrender was affirmed by him in the sworn statement he gave before the police. The accused-appellant's voluntary surrender was spontaneous indicating his intent to unconditionally submit himself to the

---

[46] *Id*.

[47] Art. 249. Homicide. – Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusión temporal.*

[48] *De Vera v. De Vera*, 602 Phil. 877, 886 (2009).

authorities, either because he acknowledged his guilt or he wished to save them the trouble and expenses necessary for his search and capture.[49]

Art. 249 of the RPC provides that the imposable penalty for homicide is *reclusion temporal*. In view of the appreciation of the mitigating circumstance of voluntary surrender, the penalty to be imposed, pursuant to Art. 64(2)[50] of the RPC, is the minimum period of *reclusion temporal*, that is, from 12 years and one day to 14 years and eight months. The range of the indeterminate penalty under the Indeterminate Sentence Law is *prision mayor* in any of its periods, as minimum, to the minimum period of *reclusion temporal* minimum, as maximum. Accordingly, the indeterminate penalty of eight years and one day of *prision mayor*, as minimum, to 14 years of *reclusion temporal*, as maximum,[51] shall be imposed upon the accused-appellant.

Following the jurisprudence laid down by the Court in *People v. Jugueta*,[52] the accused-appellant shall be held liable for civil indemnity of ₱50,000.00; moral damages of ₱50,000.00; and temperate damages of ₱50,000.00.[53] In addition, interest at the

---

[49] *People v. Placer*, 719 Phil. 268, 282 (2013).

[50] Art. 64. Rules for the application of penalties which contain three periods. – In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

1. x x x

2. When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.

3. x x x

[51] *People v. Placer*, *supra* note 49 at 282-283.

[52] 783 Phil. 806 (2016).

[53] *Id*. at 856.

rate of six percent (6%) per annum shall be imposed on all monetary awards from date of finality of this decision until fully paid.[54]

WHEREFORE, the accused-appellant Ritz Baring Moreno is hereby found **GUILTY** beyond reasonable doubt of the crime of **Homicide**, and is sentenced to suffer the indeterminate penalty of eight years and one day of *prision mayor*, as minimum, to 14 years of *reclusion temporal*, as maximum; and to pay the heirs of Kyle Kales Capsa civil indemnity of ₱50,000.00; moral damages of ₱50,000.00; and temperate damages of ₱50,000.00. 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.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 221356. March 14, 2018]

MARIA CARMELA P. UMALI, *petitioner, vs.* **HOBBYWING SOLUTIONS, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON CERTIORARI; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN, BECAUSE THE SUPREME COURT IS NOT A TRIER OF

---

[54] *Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*, 716 Phil. 267, 283 (2013).

FACTS AND DOES NOT NORMALLY UNDERTAKE THE RE-EXAMINATION OF THE EVIDENCE PRESENTED BY THE CONTENDING PARTIES DURING THE TRIAL; EXCEPTIONS; PRESENT.— Time and again, the Court has reiterated that, as a rule, it does not entertain questions of facts in a petition for review on *certiorari*. In *Pedro Angeles vs. Estelita B. Pascual*, the Court emphasized, thus: Section 1, Rule 45 of the *Rules of Court* explicitly states that the petition for review on *certiorari* shall raise only questions of law, which must be distinctly set forth. In appeal by *certiorari*, therefore, only questions of law may be raised, because the Supreme Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial. There are, however, recognized exceptions to this rule, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; **(4) when the judgment is based on a misapprehension of facts;** (5) when the findings of facts are conflicting; (6) When in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record: and **(11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion**. In the instant case, the Court finds that the CA misapprehended facts and overlooked details which are crucial and significant that they can warrant a change in the outcome of the case.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; PROBATIONARY EMPLOYMENT; A PROBATIONARY EMPLOYEE ENGAGED TO WORK BEYOND THE PROBATIONARY PERIOD OF SIX MONTHS, OR FOR ANY LENGTH OF TIME SET FORTH BY THE EMPLOYER, SHALL BE CONSIDERED A REGULAR EMPLOYEE, A STATUS WHICH ACCORDED HER/HIM

PROTECTION FROM ARBITRARY TERMINATION.— [T]he petitioner commenced working for the respondent on June 19, 2012 until February 18, 2013. By that time, however, she has already become a regular employee, a status which accorded her protection from arbitrary termination. In *Dusit Hotel vs. Gatbonton*, the Court reiterated, thus: It is an elementary rule in the law on labor relations that a probationary employee engaged to work beyond the probationary period of six months, as provided under Article 281 of the Labor Code, or for any length of time set forth by the employer (in this case, three months), shall be considered a regular employee. This is clear in the last sentence of Article 281. Any circumvention of this provision would put to naught the State's avowed protection for labor.

3. ID.; ID.; ID.; NO VALID EXTENSION OF THE PROBATIONARY PERIOD WHERE THE EMPLOYEE CONCERNED HAD A COMMENDABLE PERFORMANCE ALL THROUGHOUT THE PROBATIONARY PERIOD, AND THERE IS NO MORE PERIOD TO BE EXTENDED SINCE THE PROBATIONARY PERIOD HAD ALREADY LAPSED.— The CA, however, believes that the probationary period of employment was validly extended citing *Mariwasa vs. Leogardo*. x x x. The mentioned case, however, finds no application in the instant case for two reasons: (1) there was no evaluation upon the expiration of the period of probationary employment; (2) the supposed extension of the probationary period was made after the lapse of the original period agreed by the parties. Based on the evidence on record, the respondent only evaluated the performance of the petitioner for the period of June 2012 to November 2013 on February 1, 2013, wherein she garnered a rating of 88.3%, which translates to a satisfactory performance according to company standards. At the time of the evaluation, the original period of probationary employment had already lapsed on November 18, 2012 and the petitioner was allowed to continuously render service without being advised that she failed to qualify for regular employment. Clearly then, there is no reason to justify the extension since the petitioner had a commendable rating and, apart from this, there is no more period to be extended since the probationary period had already lapsed. It bears stressing that while in a few instances the Court recognized as valid the extension of the probationary period, still the general rule remains that an employee who was suffered

to work for more than the legal period of six (6) months of probationary employment or less shall, by operation of law, become a regular employee. In *Buiser vs. Leogardo*, the Court stated, thus: Generally, the probationary period of employment is limited to six (6) months. The exception to this general rule is when the parties to an employment contract may agree otherwise, such as when the same is established by company policy or when the same is required by the nature of work to be performed by the employee.

4. ID.; ID.; ID.; ID.; AN EXTENSION OF THE PROBATIONARY PERIOD IS THE EXCEPTION, RATHER THAN THE RULE, THUS, THE EMPLOYER HAS THE BURDEN OF PROOF TO SHOW THAT THE EXTENSION IS WARRANTED AND NOT SIMPLY A STRATAGEM TO PRECLUDE THE WORKER'S ATTAINMENT OF REGULAR STATUS. — Since extension of the period is the exception, rather than the rule, the employer has the burden of proof to show that the extension is warranted and not simply a stratagem to preclude the worker's attainment of regular status. Without a valid ground, any extension of the probationary period shall be taken against the employer especially since it thwarts the attainment of a fundamental right, that is, security of tenure. In the instant case, there was no valid extension of the probationary period since the same had lapsed long before the company thought of extending the same. More significantly, there is no justifiable reason for the extension since, on the basis of the Performance Evaluation dated February 1, 2013, the petitioner had a commendable performance all throughout the probationary period.

5. ID.; ID.; ID.; AN EMPLOYEE WHO RENDERS SERVICE EVEN AFTER THE LAPSE OF THE PROBATIONARY PERIOD ATTAINS REGULAR EMPLOYMENT WITH ALL THE RIGHTS AND PRIVILEGES PERTAINING THERETO.— Having rendered service even after the lapse of the probationary period, the petitioner had attained regular employment, with all the rights and privileges pertaining thereto. Clothed with security of tenure, she may not be terminated from employment without just or authorized cause and without the benefit of procedural due process. Since the petitioner's case lacks both, she is entitled to reinstatement with payment of full backwages, as correctly held by the NLRC.

6. ID.; ID.; TERMINATION OF EMPLOYMENT; AN EMPLOYEE WHO IS ILLEGALLY DISMISSED IS ENTITLED TO REINSTATEMENT AND FULL BACKWAGES.— The well-settled rule in this regard was reiterated in *Peak Ventures Corporation vs. Heirs of Villareal*, to wit: Under Article 279 of the Labor Code, as amended by Republic Act No. 6715, an employee who is unjustly dismissed shall be entitled to (1) reinstatement without loss of seniority rights and other privileges; and, (2) full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of actual reinstatement. If reinstatement is no longer viable, separation pay is granted. The Court therefore finds it proper to reinstate the decision of the NLRC which ruled that the petitioner was illegally dismissed and held her entitled to the twin relief of reinstatement and backwages.

APPEARANCES OF COUNSEL

Aldrin R. Cabiles for petitioner

The Law Firm of Perlas De Guzman & Partners for respondent.

D E C I S I O N

REYES, JR., *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated May 29, 2015 and Resolution[2] dated November 4, 2015 of the Court of Appeals (CA) in CA- G.R. SP No. 136194.

Antecedent Facts

The instant case stemmed from a complaint for illegal dismissal filed by Maria Carmela P. Umali (petitioner) against Hobbywing

---

[1] Penned by Associate Justice Fiorito S. Macalino with Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles concurring; *rollo*, pp. 191-203.

[2] *Id.* at 214-216.

Solutions, Inc. (respondent) and its general manager, Pate Tan (Tan).

In her position paper, the petitioner alleged that she started working for the respondent, an online casino gaming establishment, on June 19, 2012, as a Pitboss Supervisor. Her main duties and responsibilities involve, among others, supervising online casino dealers as well as the operations of the entire gaming area or studio of the respondent company. She, however, never signed any employment contract before the commencement of her service but regularly received her salary every month.[3]

Sometime in January 2013, after seven (7) months since she started working for the respondent, the petitioner was asked to sign two employment contracts. The first employment contract was for a period of five (5) months, specifically from June 19, 2012 to November 19, 2012. On the other hand, the second contract was for a period of three (3) months, running from November 19, 2012 to February 18, 2013. She signed both contracts as directed.[4]

On February 18, 2013, however, the petitioner was informed by the respondent that her employment has already ended and was told to just wait for advice whether she will be rehired or regularized. She was also required to sign an exit clearance from the company apparently to clear her from accountabilities. She was no longer allowed to work thereafter.[5] Thus, the filing of a complaint for illegal dismissal against the respondent.

For its part, the respondent admitted that it hired the petitioner as Pitboss Supervisor on probationary basis beginning June 19, 2012 to November 18, 2012. With the conformity of the petitioner, the probationary period was extended for three (3) months from November 19, 2012 to February 18, 2013.[6] The

---

[3] *Id*. at 25.

[4] *Id*.

[5] *Id*. at 26

[6] *Id*. at 38.

respondent claimed that the engagement of the petitioner's service as a probationary employee and the extension of the period of probation were both covered by separate employment contracts duly signed by the parties. After receiving a commendable rating by the end of the extended probationary period, the petitioner was advised that the company will be retaining her services as Pitboss Supervisor. Surprisingly, the petitioner declined the offer for the reason that a fellow employee, her best friend, will not be retained by the company. Thereafter, on February 18, 2013, she processed her exit clearance to clear herself of any accountability and for the purpose of processing her remaining claims from the company. As a sign of good will, the company signed and issued a Waiver of Non- Competition Agreement in her favor and a Certificate of Employment, indicating that she demonstrated a commendable performance during her stint. Thus, the respondent was surprised to receive the summons pertaining to the complaint for illegal dismissal filed by the petitioner.[7]

Ruling of the Labor Arbiter (LA)

On October 7, 2013, the LA rendered a Decision,[8] dismissing the complaint for lack of merit, the dispositive portion of which reads as follows:

> ACCORDINGLY, the cause of action for illegal dismissal is **DENIED** for lack of merit.
>
> Respondent *Hobbywing Solutions, Inc.* is ordered to pay complainant here NIGHT SHIFT DIFFERENTIALS of [₱]21,232.58 subject to 5% withholding tax upon execution **whenever applicable**. All other claims are **DENIED** for lack of merit.
>
> Respondent Pate Tan is **EXONERATED** from all liabilities.
>
> SO ORDERED.[9]

---

[7] *Id.* at 39.

[8] *Id.* at 93-97.

[9] *Id.* at 97.

The LA ruled that the petitioner failed to substantiate her claim that she was dismissed from employment. As it is, she opted not to continue with her work out of her own volition. Further, it noted that the respondent did not commit any overt act to sever employer-employee relations with the petitioner as, in fact, it even offered the petitioner a regular employment but she turned it down.[10]

Unyielding, the petitioner filed an appeal with the National Labor Relations Commission (NLRC), reiterating her claim of illegal dismissal.

Ruling of the NLRC

On January 15, 2014, the NLRC rendered a Decision,[11] holding that the petitioner was illegally dismissed, disposing thus:

> WHEREFORE, premises considered, the appeal of complainant is partly **GRANTED**. The assailed Decision of the Labor Arbiter dated October 7, 2013 is hereby **MODIFIED**. It is hereby declared that complainant is a regular employee of respondent Hobbywing Solutions, Inc. We also find complainant to have been illegally dismissed from employment and respondent Hobbywing Solutions, Inc. is hereby ordered to:
>
> 1. reinstate complainant to her former position without loss of seniority rights and other privileges;
> 2. pay complainant her full backwages, inclusive of allowances, and to her other benefits or their monetary equivalent computed from the date of dismissal up to her actual reinstatement; and
> 3. pay complainant an amount equivalent to 10% of the total judgment award as and for attorney's fees.
>
> All other awards of the Labor Arbiter **STAND**.
>
> The Computation Division of this Office is hereby directed to make the necessary computation of the monetary award granted to complainant, which computation shall form an integral part of this decision.

---

[10] *Id*. at 95.

[11] *Id*. at 106-118.

SO ORDERED.[12]

The NLRC held that the petitioner attained the status of a regular employee by operation of law when she was allowed to work beyond the probationary period of employment. From that point, she enjoys security of tenure and may not be terminated except on just or authorized causes. The respondent's claim that the petitioner's probationary period of employment was extended cannot be given credence since the records are bereft of proof that the latter's performance was ever evaluated based on reasonable standards during the probationary period and that there was a need to extend the same.[13]

The respondent filed a motion for reconsideration but the NLRC denied the same in its Resolution[14] dated April 30, 2014.

Dissatisfied, the respondent filed a petition for *certiorari* with the CA, imputing grave abuse of discretion on the part of the NLRC for ruling that there was an illegal dismissal. It argued that the petitioner did not become a regular employee by operation of law since the probationary period of her employment was extended by agreement of the parties so as to give her a chance to improve her performance. There was also no illegal dismissal since the petitioner was never terminated since she was the one who refused to accept the offer of the company to retain her services. It pointed out that the petitioner even processed her Exit Clearance Form and requested for a Certificate of Employment and Waiver of the Non-Competition Agreement.[15]

Ruling of the CA

On May 29, 2015, the CA rendered a Decision,[16] reversing the decision of the NLRC, the dispositive portion of which reads, as follows:

---

[12] *Id*. at 117

[13] *Id*. at 114.

[14] *Id*. at 136-139.

[15] *Id*. at 146-148.

[16] *Id*. at 191.

WHEREFORE, based on the foregoing, the petition is **GRANTED**. The 15 January 2014 Decision and the 30 April 2014 Resolution of the NLRC in NLRC NCR Case No. (M) 04-06101-13 [NLRC LAC No. 10-003040-13] are **REVERSED and SET ASIDE**. The 07 October 2013 Decision of the Labor Arbiter dismissing the Complaint for lack of merit is **REINSTATED**.

SO ORDERED.[17]

The CA agreed with the LA that the petitioner failed to prove the fact of her dismissal. It held that aside from bare allegations, no evidence was ever submitted by the petitioner that she was refused or was not allowed to work after the period of extension. There was no letter of termination given to the petitioner but only an exit clearance form which she personally processed, which therefore proved that the severance of her employment was her choice.[18]

The petitioner filed a motion for reconsideration but the CA denied the same in Resolution[19] dated November 4, 2015, the dispositive portion of which reads, thus:

WHEREFORE, based on the foregoing, the Motion for Reconsideration is **DENIED**.

SO ORDERED.[20]

The petitioner filed the instant petition for review on *certiorari*, questioning the issuances of the CA. She claims that she had already attained the status of regular employment after she was suffered to work for more than six months of probationary employment. She also reiterates that she was only belatedly asked to sign two employment contracts on January 19, 2013 after she had rendered seven (7) months of service.[21] She claims

---

[17] *Id*. at 202.

[18] *Id*. at 201.

[19] *Id*. at 214.

[20] *Id*. at 216.

[21] *Id*. at 16.

that she was terminated without cause on February 18, 2013 when she was informed that the period of her probationary employment had already ended and her services were no longer needed.

Ruling of the Court

The petition is meritorious.

Time and again, the Court has reiterated that, as a rule, it does not entertain questions of facts in a petition for review on *certiorari*. In *Pedro Angeles vs. Estelita B. Pascual*,[22] the Court emphasized, thus:

> Section 1, Rule 45 of the *Rules of Court* explicitly states that the petition for review on *certiorari* shall raise only questions of law, which must be distinctly set forth. In appeal by *certiorari*, therefore, only questions of law may be raised, because the Supreme Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial.[23]

There are, however, recognized exceptions to this rule, to wit:

> (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; **(4) when the judgment is based on a misapprehension of facts;** (5) when the findings of facts are conflicting; (6) When in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record: and **(11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties,**

---

[22] 673 Phil. 499 (2011).

[23] *Id*. at 504-505.

which, if properly considered, would justify a different conclusion.[24]

In the instant case, the Court finds that the CA misapprehended facts and overlooked details which are crucial and significant that they can warrant a change in the outcome of the case.

In finding that there was no illegal dismissal, the CA echoed the ruling of the LA that the petitioner failed to establish the fact of dismissal. It held that the petitioner failed to present evidence manifesting the intention of the respondent to sever relations with her. Absent any overt act on the part of the respondent, it ruled that there can be no dismissal to speak of. It also found credible the respondent's claim that it was the petitioner who refused to accept the offer of continued employment with the company.

The CA missed the point that the respondent employed a scheme in order to obscure the fact of the petitioner's dismissal. The CA would have recognized this ploy if it only delved deeper into the records and facts of the case.

It is beyond dispute that the petitioner started working for the respondent on June 19, 2012 as a probationary employee and that there were two (2) employment contracts signed by the parties. The parties, however, held conflicting claims with respect to the time when the contracts were signed. The petitioner is claiming that there was no contract before the commencement of her employment and that she was only asked to sign two employment contracts on January 19, 2013, after having rendered seven months of service. On the other hand, the respondent maintains that there was a contract of probationary employment signed at the beginning of the petitioner's service and another one signed on November 18, 2012, extending the probationary period purportedly to give the petitioner a chance to improve her performance and qualify for regular employment. The LA and the CA, however, opted to believe the respondent's claim

---

[24] *New City Builders, Inc. v. National Labor Relations Commission*, 499 Phil. 207, 213 (2005).

that the contract of probationary employment was signed and extended on time. Having taken this theory, it is easy to dispose the case by concluding that no dismissal had taken place.

There was, however, a single detail which convinced this Court to take a second look at the facts of case. Contradicting the respondent's claim, the petitioner consistently reiterates that she was made to sign two contracts of probationary employment, one covering the period from June 19, 2012 to November 18, 2012, and the other purportedly extending the probationary employment from November 19, 2012 to February 18, 2013, only on **January 19, 2013**. To support her claim, she alleged that she was able to note the actual date when she signed the contracts, right beside her signature. And indeed, attached with the position paper submitted by the respondent itself, copies of the two contracts of employment signed by the petitioner clearly indicates the date "**01.19.13**" beside her signature.[25] This substantiates the petitioner's claim that the documents were signed on the same day, that is, on January 19, 2013. Further, while the first contract was undated,[26] the Probation Extension Letter was dated January 10, 2013,[27] which was way beyond the end of the supposed probationary period of employment on November 18, 2013, therefore validating the petitioner's claim that she had already worked for more than six months when she was asked to sign an employment contract and its purported extension. Surprisingly, the respondent never explained the disparity in the dates on the actual copies of the contracts which were submitted as annexes and that alleged in its position paper as the time they were signed by the petitioner.

This brings to the conclusion that the contracts were only made up to create a semblance of legality in the employment and severance of the petitioner. Unfortunately for the respondent, the significant details left unexplained only validated the

---

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

[26] *Id*. at 48.

[27] *Id*. at 52.

petitioner's claim that she had served way beyond the allowable period for probationary employment and therefore has attained the status of regular employment.

Article 281 of the Labor Code is pertinent. It provides:

> ART. 281. **Probationary Employment.** - Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

In this case, the petitioner commenced working for the respondent on June 19, 2012 until February 18, 2013. By that time, however, she has already become a regular employee, a status which accorded her protection from arbitrary termination.

In *Dusit Hotel vs. Gatbonton*,[28] the Court reiterated, thus:

> It is an elementary rule in the law on labor relations that a probationary employee engaged to work beyond the probationary period of six months, as provided under Article 281 of the Labor Code, or for any length of time set forth by the employer (in this case, three months), shall be considered a regular employee. This is clear in the last sentence of Article 281. Any circumvention of this provision would put to naught the State's avowed protection for labor.[29]

The CA, however, believes that the probationary period of employment was validly extended citing *Mariwasa vs. Leogardo*.[30] In the said case, the Court upheld as valid the extension of the probationary period for another three (3) months in order to give the employee a chance to improve his performance and qualify for regular employment, upon agreement of the

---

[28] 523 Phil. 338 (2006).

[29] *Id*. at 346.

[30] 251 Phil. 417 (1989).

parties. Upon conclusion of the period of extension, however, the employee still failed to live up to the work standards of the company and was thereafter terminated.

The mentioned case, however, finds no application in the instant case for two reasons: (1) there was no evaluation upon the expiration of the period of probationary employment; (2) the supposed extension of the probationary period was made after the lapse of the original period agreed by the parties. Based on the evidence on record, the respondent only evaluated the performance of the petitioner for the period of June 2012 to November 2013 on February 1, 2013, wherein she garnered a rating of 88.3%, which translates to a satisfactory performance according to company standards.[31] At the time of the evaluation, the original period of probationary employment had already lapsed on November 18, 2012 and the petitioner was allowed to continuously render service without being advised that she failed to qualify for regular employment. Clearly then, there is no reason to justify the extension since the petitioner had a commendable rating and, apart from this, there is no more period to be extended since the probationary period had already lapsed.

It bears stressing that while in a few instances the Court recognized as valid the extension of the probationary period, still the general rule remains that an employee who was suffered to work for more than the legal period of six (6) months of probationary employment or less shall, by operation of law, become a regular employee. In *Buiser vs. Leogardo*,[32] the Court stated, thus:

> Generally, the probationary period of employment is limited to six (6) months. The exception to this general rule is when the parties to an employment contract may agree otherwise, such as when the same is established by company policy or when the same is required by the nature of work to be performed by the employee.[33]

---

[31] *Rollo*, pp. 53-54.

[32] 216 Phil. 145 (1984).

[33] *Id*. at 150.

Since extension of the period is the exception, rather than the rule, the employer has the burden of proof to show that the extension is warranted and not simply a stratagem to preclude the worker's attainment of regular status. Without a valid ground, any extension of the probationary period shall be taken against the employer especially since it thwarts the attainment of a fundamental right, that is, security of tenure.

In the instant case, there was no valid extension of the probationary period since the same had lapsed long before the company thought of extending the same. More significantly, there is no justifiable reason for the extension since, on the basis of the Performance Evaluation dated February 1, 2013, the petitioner had a commendable performance all throughout the probationary period.

Having rendered service even after the lapse of the probationary period, the petitioner had attained regular employment, with all the rights and privileges pertaining thereto. Clothed with security of tenure, she may not be terminated from employment without just or authorized cause and without the benefit of procedural due process. Since the petitioner's case lacks both, she is entitled to reinstatement with payment of full backwages, as correctly held by the NLRC.

The well-settled rule in this regard was reiterated in *Peak Ventures Corporation vs. Heirs of Villareal*,[34] to wit:

> Under Article 279 of the Labor Code, as amended by Republic Act No. 6715, an employee who is unjustly dismissed shall be entitled to (1) reinstatement without loss of seniority rights and other privileges; and, (2) full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of actual reinstatement. If reinstatement is no longer viable, separation pay is granted.[35]

---

[34] 747 Phil. 320 (2014).

[35] *Id*. at 335.

The Court therefore finds it proper to reinstate the decision of the NLRC which ruled that the petitioner was illegally dismissed and held her entitled to the twin relief of reinstatement and backwages.

WHEREFORE, the Decision dated May 29, 2015 and Resolution dated November 4, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 136194 are **REVERSED and SET ASIDE**. The Decision dated January 15, 2014 of the National Labor Relations Commission in NLRC NCR Case No. 04-06101-13 is **REINSTATED**.

SO ORDERED.

Carpio[*] (*Chairperson*), *Peralta, Jardeleza*,[**] and *Caguioa, JJ.*, concur.

FIRST DIVISION

[G.R. No. 223451. March 14, 2018]

ANTONIO F. TRILLANES IV, *petitioner, vs.* **HON. EVANGELINE C. CASTILLO-MARIGOMEN, IN HER CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, QUEZON CITY, BRANCH 101 and ANTONIO L. TIU,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*, PROHIBITION AND *MANDAMUS*; THE PETITIONS FOR THE ISSUANCE OF EXTRAORDINARY WRITS AGAINST FIRST LEVEL COURTS SHOULD BE FILED

---

[*] Acting Chief Justice per Special Order No. 2539, dated February 28, 2018.

[**] Additional member per Raffle dated March 12, 2018.

WITH THE REGIONAL TRIAL COURT, AND THOSE AGAINST THE LATTER, WITH THE COURT OF APPEALS, AND A DIRECT INVOCATION OF THE SUPREME COURT'S ORIGINAL JURISDICTION TO ISSUE THESE WRITS SHOULD BE ALLOWED ONLY WHEN THERE ARE SPECIAL AND IMPORTANT REASONS THEREFOR, CLEARLY AND SPECIFICALLY SET OUT IN THE PETITION.— The power to issue writs of *certiorari*, prohibition, and *mandamus* is not exclusive to this Court. The Court shares the jurisdiction over petitions for these extraordinary writs with the Court of Appeals and the Regional Trial Courts. The hierarchy of courts serves as the general determinant of the appropriate forum for such petitions. The established policy is that "petitions for the issuance of extraordinary writs against first level (inferior) courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals," and "[a] direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition." The parties, therefore, do not have an unfettered discretion in selecting the forum to which their application will be directed. Adherence to the doctrine on hierarchy of courts ensures that every level of the judiciary performs its designated role in an effective and efficient manner. This practical judicial policy is established to obviate "inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction," and to prevent the congestion of the Court's docket. The Court must remain as a court of last resort if it were to satisfactorily perform its duties under the Constitution. After all, trial courts are not limited to the determination of facts upon evaluation of the evidence presented to them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution.

2. ID.; ID.; *CERTIORARI*; DIRECT APPLICATION TO THE SUPREME COURT FOR A WRIT OF *CERTIORARI* IS ALLOWED WHEN THERE ARE GENUINE ISSUES OF CONSTITUTIONALITY THAT MUST BE ADDRESSED AT THE MOST IMMEDIATE TIME; ISSUE OF PARLIAMENTARY IMMUNITY NOT EXCEPTIONALLY COMPELLING REASON TO JUSTIFY DIRECT

APPLICATION FOR A WRIT OF *CERTIORARI* WITH THE COURT, AS SETTLED JURISPRUDENCE PROVIDES SUFFICIENT STANDARDS AND GUIDELINES FOR THE RESOLUTION THEREOF.— It is true that the doctrine of hierarchy of courts is not an iron-clad rule, and this Court has allowed a direct application to this Court for a writ of *certiorari* when there are genuine issues of constitutionality that must be addressed at the most immediate time. However, the issue of what parliamentary immunity encompasses, in relation to a lawmaker's speech or words spoken in debate in Congress, has been addressed as early as 1966 in the case of *Nicanor T. Jimenez v. Bartolome Cabangbang*, where the Court succinctly held: The determination of the first issue depends on whether or not the aforementioned publication falls within the purview of the phrase "speech or debate therein"—that is to say, in Congress used in this provision. Said expression refers to utterances made by Congressmen **in the performance of their official functions**, such as speeches delivered, statements made, or votes cast in the halls of Congress, while the same is in session, as well as bills introduced in Congress, whether the same is in session or not, and other acts performed by Congressmen, either in Congress or outside the premises housing its offices, in the **official discharge of their duties as members of Congress and of Congressional Committees duly authorized to perform its functions as such**, at the time of the performance of the acts in question. x x x. Clearly, settled jurisprudence provides sufficient standards and guidelines by which the trial and appellate courts can address and resolve the issue of parliamentary immunity raised by petitioner. The Court is, thus, unconvinced that petitioner has presented an "exceptionally compelling reason" to justify his direct application for a writ of *certiorari* with this Court.

3. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; LEGISLATIVE DEPARTMENT; SPEECH OR DEBATE CLAUSE; PARLIAMENTARY NON-ACCOUNTABILITY CANNOT BE INVOKED WHEN THE LAWMAKER'S SPEECH OR UTTERANCE IS MADE OUTSIDE SESSIONS, HEARINGS OR DEBATES IN CONGRESS, EXTRANEOUS TO THE DUE FUNCTIONING OF THE LEGISLATIVE PROCESS; A LAWMAKER'S PARTICIPATION IN MEDIA INTERVIEWS IS NOT A LEGISLATIVE ACT, BUT IS "POLITICAL IN

NATURE," OUTSIDE THE AMBIT OF THE IMMUNITY CONFERRED UNDER THE SPEECH OR DEBATE CLAUSE.— Petitioner admits that he uttered the questioned statements, describing private respondent as former VP Binay's "front" or "dummy" in connection with the so-called *Hacienda* Binay, in response to media interviews during gaps and breaks in plenary and committee hearings in the Senate. With *Jimenez* as our guidepost, it is evident that petitioner's remarks fall outside the privilege of speech or debate under Section 11, Article VI of the 1987 Constitution. The statements were clearly not part of any speech delivered in the Senate or any of its committees. They were also not spoken in the course of any debate in said fora. It cannot likewise be successfully contended that they were made in the official discharge or performance of petitioner's duties as a Senator, as the remarks were not part of or integral to the legislative process. xxx. [P]arliamentary non-accountability cannot be invoked when the lawmaker's speech or utterance is made outside sessions, hearings or debates in Congress, extraneous to the "due functioning of the (legislative) process." To participate in or respond to media interviews is not an official function of any lawmaker; it is not demanded by his sworn duty nor is it a component of the process of enacting laws. Indeed, a lawmaker may well be able to discharge his duties and legislate without having to communicate with the press. A lawmaker's participation in media interviews is not a legislative act, but is "political in nature," outside the ambit of the immunity conferred under the Speech or Debate Clause in the 1987 Constitution. Contrary to petitioner's stance, therefore, he cannot invoke parliamentary immunity to cause the dismissal of private respondent's Complaint. The privilege arises not because the statement is made by a lawmaker, but because it is uttered in furtherance of legislation.

4. **ID.; ID.; ID.; ID.; THE PRIVILEGE OF SPEECH OR DEBATE IS NOT A CLOAK OF UNQUALIFIED IMPUNITY; ITS INVOCATION MUST BE AS A MEANS OF PERPETUATING INVIOLATE THE FUNCTIONING PROCESS OF THE LEGISLATIVE DEPARTMENT.—** The Speech or Debate Clause in our Constitution did not turn our Senators and Congressmen into "super-citizens" whose spoken words or actions are rendered absolutely impervious to prosecution or civil action. The Constitution conferred the privilege on members of Congress "not for their private indulgence, but for the public

good." It was intended to protect them against government pressure and intimidation aimed at influencing their decision-making prerogatives. Such grant of legislative privilege must perforce be viewed according to its purpose and plain language. Indeed, the privilege of speech or debate, which may "(enable) reckless men to slander and even destroy others," is not a cloak of unqualified impunity; its invocation must be "as a means of perpetuating inviolate the functioning process of the legislative department." As this Court emphasized in *Pobre*, "the parliamentary non-accountability thus granted to members of Congress is not to protect them against prosecutions **for their own benefit**, but to enable them, as the people's representatives, **to perform the functions of their office** without fear of being made responsible before the courts or other forums outside the congressional hall."

5. ID.; ID.; ID.; ID.; STATEMENTS FALLING OUTSIDE THE PRIVILEGED SPEECH OR DEBATE AND GIVING RISE TO CIVIL INJURY OR CRIMINAL RESPONSIBILITY WILL NOT FORECLOSE JUDICIAL REVIEW.— Petitioner argues that the RTC had no jurisdiction over the case, and citing *Pobre*, asserts that the authority to discipline a member of Congress lies in the assembly or the voters and not the courts. Petitioner's reliance on *Pobre* is misplaced. The statements questioned in said disbarment case were part of a lawyer-Senator's privilege speech delivered on the Senate floor professedly with a view to future remedial legislation. By reason of the Senator's parliamentary immunity, the Court held that her speech was "not actionable criminally or in a disciplinary proceeding under the Rules of Court." The questioned statements in this case, however, were admittedly made in response to queries from the media during gaps in the Senate's plenary and committee hearings, thus, beyond the purview of privileged speech or debate under Section 11, Article VI of the Constitution. x x x. Clearly, the Court's pronouncement that the legislative body and the voters, not the courts, would serve as the disciplinary authority to correct abuses committed in the name of parliamentary immunity, was premised on the questionable remarks being made in the performance of legislative functions, on the legislative floor or committee rooms where the privilege of speech or debate may be invoked. Necessarily, therefore, statements falling outside the privilege and giving rise to civil injury or criminal responsibility will not foreclose judicial review.

6. REMEDIAL LAW; CIVIL PROCEDURE; COURTS; JURISDICTION; AN ACTION FOR DAMAGES ON ACCOUNT OF DEFAMATORY STATEMENTS NOT CONSTITUTING PROTECTED OR PRIVILEGED "SPEECH OR DEBATE" IS A CONTROVERSY WITHIN THE COURTS' AUTHORITY TO SETTLE.— [I]t is well-settled that jurisdiction over the subject matter of a case is conferred by law. An action for damages on account of defamatory statements not constituting protected or privileged "speech or debate" is a controversy well within the courts' authority to settle. The Constitution vests upon the courts the power and duty "to settle actual controversies involving rights which are legally demandable and enforceable." Batas Pambansa Blg. 129, as amended, conferred jurisdiction over actions for damages upon either the RTC or the Municipal Trial Court, depending on the total amount claimed. So also, Article 33 of the Civil Code expressly provides that in cases of defamation, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party, and such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

7. ID.; ID.; MOTION TO DISMISS; PLEADING GROUNDS AS AFFIRMATIVE DEFENSE; A PRELIMINARY HEARING OF AFFIRMATIVE DEFENSES IS NOT ALLOWED ONCE A MOTION TO DISMISS HAS BEEN FILED BECAUSE SUCH DEFENSES SHOULD HAVE ALREADY BEEN RESOLVED.— Under Section 6, Rule 16 of the Rules of Court, a preliminary hearing on the affirmative defenses may be allowed only when no motion to dismiss has been filed. Section 6, however, must be construed in the light of Section 3 of the same Rule, which requires courts to resolve a motion to dismiss and prohibits deferment of such resolution on the ground of indubitability. Thus, Section 6 disallows a preliminary hearing of affirmative defenses once a motion to dismiss has been filed because such defenses should have already been resolved. In this case, however, petitioner's motion to dismiss had not been resolved when petitioner moved for a preliminary hearing. As public respondent stated in the assailed May 19, 2015 Order, the motion did not contain a notice of hearing and was not actually heard. Even so, a preliminary hearing is not warranted.

8. ID.; ID.; ID.; FAILURE TO STATE A CAUSE OF ACTION; IN DETERMINING WHETHER A COMPLAINT DID OR DID NOT STATE A CAUSE OF ACTION, ONLY THE STATEMENTS IN THE COMPLAINT MAY PROPERLY BE CONSIDERED; THE COURT CANNOT TAKE COGNIZANCE OF EXTERNAL FACTS OR HOLD PRELIMINARY HEARINGS TO DETERMINE ITS EXISTENCE.— In his Answer with Motion to Dismiss, petitioner averred that private respondent failed to state and substantiate his cause of action, arguing that the statement he made before the media, in which he described private respondent as a "front" or "dummy" of former VP Binay for the so-called *Hacienda* Binay, was one of fact. By raising failure to state a cause of action as his defense, petitioner is regarded as having hypothetically admitted the allegations in the Complaint. The test of the sufficiency of the facts stated in a complaint as constituting a cause of action is whether or not, admitting the facts so alleged, the court can render a valid judgment upon the same in accordance with the plaintiff's prayer. Inquiry is into the sufficiency not the veracity of the facts so alleged. If the allegations furnish sufficient basis by which the complaint may be maintained, the same should not be dismissed regardless of the defenses that may be raised by the defendants. Accordingly, in determining whether a complaint did or did not state a cause of action, only the statements in the complaint may properly be considered. The court cannot take cognizance of external facts or hold preliminary hearings to determine its existence. For the court to do otherwise would be a procedural error and a denial of the plaintiff's right to due process.

9. CRIMINAL LAW; REVISED PENAL CODE; LIBEL; ELEMENTS.— As defined in Article 353 of the Revised Penal Code, a libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead. For an imputation to be libelous, the following requisites must concur: a) it must be defamatory; b) it must be malicious; c) it must be given publicity and d) the victim must be identifiable. Any of the imputations covered by Article 353 is defamatory, and every defamatory imputation is presumed malicious.

10. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; FAILURE TO STATE A CAUSE OF ACTION; PRIVATE RESPONDENT'S COMPLAINT SUFFICIENTLY MAKES OUT A CAUSE OF ACTION FOR DAMAGES.— Private respondent filed his Complaint for moral and exemplary damages pursuant to Article 33 of the Civil Code which authorizes an injured party to file a civil action for damages, separate and distinct from the criminal action, in cases of defamation, fraud and physical injuries. The Civil Code provides that moral damages include mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury, and may be recovered in cases of libel, slander or any other form of defamation, while exemplary damages may be recovered in addition to moral damages, by way of correction or example for the public good, as determined by the court. Measured against the foregoing requisites and considerations, including the scope of parliamentary non-accountability, private respondent's Complaint, on its face, sufficiently makes out a cause of action for damages. In his Complaint, private respondent alleged that petitioner gave statements during interviews by the media, describing him as the "dummy" of former VP Binay in connection with the so-called *Hacienda* Binay. Private respondent averred that such imputation, unprivileged as it was uttered outside of petitioner's legislative functions, actually discredited him and tarnished his reputation as a legitimate businessman, and caused him sleepless nights, wounded feelings, serious anxiety, mental anguish and social humiliation. The statements, presumed to be malicious and so described by private respondent, were also alleged to have been made public through broadcast and print media, and identified private respondent as their subject. Hypothetically admitting these allegations as true, as is required in determining whether a complaint fails to state a cause of action, private respondent may be granted his claim. The Complaint, therefore, cannot be dismissed on the ground of failure to state a cause of action.

11. ID.; ID.; ID.; FAILURE TO STATE A CAUSE OF ACTION DISTINGUISHED FROM LACK OF CAUSE OF ACTION; LACK OF CAUSE OF ACTION IS NOT ONE OF THE GROUNDS FOR A MOTION TO DISMISS; HENCE, NOT PROPER FOR RESOLUTION DURING A PRELIMINARY

HEARING.— A perusal of petitioner's defenses and arguments, x x x at once reveals that the averments were grounded on lack of cause of action. In fact, by pleading in his Answer that private respondent failed to "substantiate" his cause of action, petitioner effectively questioned its existence, and would have the trial court inquire into the veracity and probative value of private respondent's submissions. Distinguished from failure to state a cause of action, which refers to the insufficiency of the allegations in the pleading, lack of cause of action refers to the insufficiency of the factual basis for the action. Petitioner, in his Answer with Motion to Dismiss, clearly impugned the sufficiency of private respondent's basis for filing his action for damages. Section 6, Rule 16 allows the court to hold a preliminary hearing on affirmative defenses pleaded in the answer based on grounds for dismissal under the same rule. The ground of "lack of cause of action," however, is not one of the grounds for a motion to dismiss under Rule 16, hence, not proper for resolution during a preliminary hearing held pursuant to Section 6 thereof.

12. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; SHALL BE DISMISSED WHERE THE RESOLUTION THEREOF REQUIRES THE CONSIDERATION AND EVALUATION OF EVIDENTIARY MATTERS; AN AFFIRMATIVE DEFENSE, RAISING THE GROUND THAT THERE IS NO CAUSE OF ACTION AS AGAINST THE DEFENDANT, POSES A QUESTION OF FACT THAT SHOULD BE RESOLVED AFTER A FULL-BLOWN HEARING.— [*A*]*quino* teaches that the existence of a cause of action "goes into the very crux of the controversy and is a matter of evidence for resolution after a full-blown hearing." An affirmative defense, raising the ground that there is no cause of action as against the defendant, poses a question of fact that should be resolved after the conduct of the trial on the merits. Indeed, petitioner, in asking for the outright dismissal of the Complaint, has raised evidentiary matters and factual issues which this Court cannot address or resolve, let alone at the first instance. The proof thereon cannot be received in *certiorari* proceedings before the Court, but should be established in the RTC. Thus, even granting that the petition for *certiorari* might be directly filed with this Court, its dismissal must perforce follow because its consideration and resolution would inevitably

require the consideration and evaluation of evidentiary matters. The Court is not a trier of facts, and cannot accept the petition for *certiorari* for that reason.

APPEARANCES OF COUNSEL

The Law Firm of Chan Robles & Associates for petitioner.
Villanueva Gabionza & Dy for private respondent.

D E C I S I O N

TIJAM, *J.*:

This is a Petition for *Certiorari*[1] under Rule 65 of the Rules of Court over public respondent's Order[2] dated May 19, 2015 which denied petitioner's motion to dismiss premised on the special and affirmative defenses in his Answer, and public respondent's Order[3] dated December 16, 2015 which denied petitioner's Motion for Reconsideration, both issued in Civil Case No. R-QZN-14-10666-CV entitled "Antonio L. Tiu v. Antonio F. Trillanes IV."

The Facts

Petitioner, as a Senator of the Republic of the Philippines, filed Proposed Senate Resolution No. 826 (P.S. Resolution No. 826) directing the Senate's Committee on Accountability of Public Officials and Investigations to investigate, in aid of legislation, the alleged ₱1.601 Billion overpricing of the new 11-storey Makati City Hall II Parking Building, the reported overpricing of the 22-storey Makati City Hall Building at the average cost of ₱240,000.00 per square meter, and related anomalies purportedly committed by former and local government officials.[4]

---

[1] *Rollo*, pp. 3-34.

[2] *Id.* at 41-42-A.

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

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

Petitioner alleged that at the October 8, 2014 Senate Blue Ribbon Sub-Committee (SBRS) hearing on P.S. Resolution No. 826, former Makati Vice Mayor Ernesto Mercado (Mercado) testified on how he helped former Vice President Jejomar Binay (VP Binay) acquire and expand what is now a 350-hectare estate in Barangay Rosario, Batangas, which has been referred to as the *Hacienda* Binay, about 150 hectares of which have already been developed, with paved roads, manicured lawns, a mansion with resort-style swimming pool, man-made lakes, Japanese gardens, a horse stable with practice race tracks, an extensive farm for fighting cocks, green houses and orchards.[5]

According to petitioner, Mercado related in said hearing that because VP Binay's wife would not allow the estate's developer, Hillmares' Construction Corporation (HCC), to charge the development expenses against VP Binay's 13% share in kickbacks from all Makati infrastructure projects, HCC was compelled to add the same as "overprice" on Makati projects, particularly the Makati City Hall Parking Building.[6]

Petitioner averred that private respondent thereafter claimed "absolute ownership" of the estate, albeit asserting that it only covered 145 hectares, through his company called Sunchamp Real Estate Corporation (Sunchamp), which purportedly entered into a Memorandum of Agreement (MOA) with a certain Laureano R. Gregorio, Jr. (Gregorio, Jr.), the alleged owner of the consolidated estate and its improvements.[7]

Petitioner further averred that private respondent testified before the SBRS on the so-called *Hacienda* Binay on October 22 and 30, 2014, and at the October 30, 2014 hearing, the latter presented a one-page Agreement[8] dated January 18, 2013 between Sunchamp and Gregorio.[9] On its face, the Agreement covered

---

[5] *Id.* at 8.

[6] *Id.*

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

[8] *Id.* at 142.

[9] *Id.* at 11-13.

a 150-hectare property in Rosario, Batangas and showed a total consideration of ₱400 Million, payable in tranches and in cash and/or listed shares, adjustable based on the fair market value. The Agreement likewise ostensibly showed that Gregorio is obligated to cause the registration of improvements in the name of Sunchamp and within two years, to deliver titles/documents evidencing the real and enforceable rights of Sunchamp, and the latter, in the interim, shall have usufruct over the property, which is extendible.

Petitioner admitted that during media interviews at the Senate, particularly during gaps and breaks in the plenary hearings as well as committee hearings, and in reply to the media's request to respond to private respondent's claim over the estate, he expressed his opinion that based on his office's review of the documents, private respondent appears to be a "front" or "nominee" or is acting as a "dummy" of the actual and beneficial owner of the estate, VP Binay.[10]

On October 22, 2014, private respondent filed a Complaint for Damages[11] against petitioner, docketed as Civil Case No. R-QZN-14-10666-CV, for the latter's alleged defamatory statements before the media from October 8 to 14, 2014, specifically his repeated accusations that private respondent is a mere "dummy" of VP Binay.

Private respondent alleged that he is a legitimate businessman engaged in various businesses primarily in the agricultural sector, and that he has substantial shareholdings, whether in his own name or through his holding companies, in numerous corporations and companies, globally, some of which are publicly listed. He averred that because of petitioner's defamatory statements, his reputation was severely tarnished as shown by the steep drop in the stock prices of his publicly listed companies, AgriNurture, Inc. (AgriNurture), of which he is the Executive Chairman, and Greenergy Holdings, Inc. (Greenergy), of which

---

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

[11] *Id*. at 67-79.

he is the Chairman, President and Chief Executive Officer. To illustrate this, private respondent alleged that on October 7, 2014, the price of a share of stock of Greenergy was ₱0.011 per share and the volume of trading was at 61 Million, while on October 8, 2014, the price dropped to ₱0.0099 per share (equivalent to a 10% reduction) and the volume of trading increased by more than seven times (at 475.7 Million), with the price continuing to drop thereafter. Similarly, private respondent alleged that on October 8, 2014, AgriNurture experienced a six percent (6%) drop from its share price of October 7, 2014 (from 2.6 to 2.45) and an increase of more than six times in the volume of trading (from 68,000 to 409,000), with the share price continuing to drop thereafter. According to private respondent, the unusual drop in the share price and the drastic increase in trading could be attributed to the statements made by petitioner, which caused the general public to doubt his capability as a businessman and to unload their shares, to the detriment of private respondent who has substantial shareholdings therein through his holding companies.

Denying that he is a "dummy," private respondent alleged that he possesses the requisite financial capacity to fund the development, operation and maintenance of the "Sunchamp Agri-Tourism Park." He averred that petitioner's accusations were defamatory, as they dishonored and discredited him, and malicious as they were intended to elicit bias and prejudice his reputation. He further averred that such statements were not absolutely privileged since they were not uttered in the discharge of petitioner's functions as a Senator, or qualifiedly privileged under Article 354 of the Revised Penal Code,[12] nor constitutive

---

[12] Art. 354. *Requirement for publicity*. - Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:

1. A private communication made by any person to another in the performance of any legal, moral or social duty; and

2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered

of fair commentaries on matters of public interest. He added that petitioner's statement that he was willing to apologize if proven wrong, showed that he spoke without a reasonable degree of care and without regard to the gravity of his sweeping accusation.

Claiming that petitioner's statements besmirched his reputation, and caused him sleepless nights, wounded feelings, serious anxiety, mental anguish and social humiliation, private respondent sought to recover ₱4 Million as moral damages, ₱500,000.00 as exemplary damages and attorney's fees in the amount of ₱500,000.00.

In his Answer with Motion to Dismiss,[13] petitioner raised the following Special and Affirmative Defenses:

First, petitioner averred that private respondent failed to state and substantiate his cause of action since petitioner's statement that private respondent was acting as a "front," "nominee" or "dummy" of VP Binay for his *Hacienda* Binay is a statement of fact.[14]

Petitioner asserted that private respondent was unable to prove his alleged ownership of the subject estate, and that Mercado had testified that VP Binay is the actual and beneficial owner thereof, based on his personal knowledge and his participation in the consolidation of the property. Petitioner noted that the titles covering the estate are in the names of persons related to or identified with Binay. He argued that the one-page Agreement submitted by private respondent hardly inspires belief as it was unnotarized and lacked details expected in a legitimate document such as the technical description of the property, the certificates of title, tax declarations, the area of the property and its metes and bounds, schedule of payments, list of deliverables with their due dates, warranties and undertakings and closing date. He also pointed out that while the total consideration for the

---

in said proceedings, or of any other act performed by public officers in the exercise of their functions

[13] *Rollo*, pp. 105-133.

[14] *Id*. at 116.

Agreement was ₱446 Million, the downpayment was only ₱5 Million. With a yearly ₱30 Million revenue from the orchard, petitioner questioned why Gregorio would agree to part with his possession for a mere one percent (1%) of the total consideration.[15] Petitioner likewise disputed private respondent's supposed claim that Sunchamp had introduced improvements in the estate amounting to ₱50 Million, stressing that it took over the estate only in July 2014 and that it did not own the property and probably never would given the agrarian reform issues. Petitioner claimed that it was based on the foregoing and the report of his legal/legislative staff that he made his statement that private respondent is a front, nominee or dummy of VP Binay.[16]

Second, petitioner posited that his statements were part of an ongoing public debate on a matter of public concern, and private respondent, who had freely entered into and thrust himself to the forefront of said debate, has acquired the status of a public figure or quasi-public figure. For these reasons, he argued that his statements are protected by his constitutionally guaranteed rights to free speech and freedom of expression and of the press.[17]

Third, petitioner contended that his statements, having been made in the course of the performance of his duties as a Senator, are covered by his parliamentary immunity under Article VI, Section 11 of the 1987 Constitution.[18]

Citing *Antero J. Pobre v. Sen. Miriam Defensor-Santiago*,[19] petitioner argued that the claim of falsity of statements made by a member of Congress does not destroy the privilege of parliamentary immunity, and the authority to discipline said member lies in the assembly or the voters and not the courts.

---

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

[16] *Id*. at 119.

[17] *Id*.

[18] *Id*. at 124.

[19] 613 Phil. 352, 360 (2009).

Petitioner added that he never mentioned private respondent's two companies in his interviews and it was private respondent who brought them up. Petitioner pointed out that private respondent only had an eight percent (8%) shareholding in one of said companies and no shareholding in the other, and that based on the records of the Philippine Stock Exchange, the share prices of both companies had been on a downward trend long before October 8, 2014. Petitioner described the Complaint as a mere media ploy, noting that private respondent made no claim for actual damages despite the alleged price drop. This, according to petitioner, showed that private respondent could not substantiate his claim.[20]

Petitioner prayed for the dismissal of the Complaint and for the award of his Compulsory Counterclaims consisting of moral and exemplary damages and attorney's fees.[21]

Petitioner subsequently filed a Motion (to Set Special and Affirmative Defenses for Preliminary Hearing)[22] on the strength of Section 6, Rule 16 of the Rules of Court, which allows the court to hold a preliminary hearing on any of the grounds for dismissal provided in the same rule, as may have been pleaded as an affirmative defense in the answer.[23]

Private respondent opposed the motion on the grounds that the motion failed to comply with the provisions of the Rules of Court on motions, and a preliminary hearing on petitioner's special and affirmative defenses was prohibited as petitioner had filed a motion to dismiss.

---

[20] *Rollo*, pp. 127-128.

[21] Petitioner asked for ₱5 Million in moral damages, ₱1 Million in exemplary damages, and ₱500,000.00 as attorney's fees.

[22] *Id*. at 43-56.

[23] Section 6. *Pleading grounds as affirmative defenses*. - If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

On May 19, 2015, public respondent issued the Order[24] denying petitioner's motion to dismiss premised on the special and affirmative defenses in his Answer. The Order, in pertinent part, states:

> FIRST ISSUE: The Complaint failed to state a cause of action.
>
> Whether true or false, the allegations in the complaint, would show that the same are sufficient to enable the court to render judgment according to the prayer/s in the complaint.
>
> SECOND ISSUE: The defendant's parliamentary immunity.
>
> The defense of parliamentary immunity may be invoked only on special circumstances such that the special circumstance becomes a factual issue that would require for its establishment the conduct of a full blown trial.
>
> With the defense invoking the defendant's parliamentary immunity from suit, it claims that this Court has no jurisdiction over the instant case. Again, whether or not the courts have jurisdiction over the instant case is determined based on the allegations of the complaint.
>
> x x x x x x x x x
>
> Subject to the presentation of evidence, the complaint alleged that the libelous or defamatory imputations (speech) committed by the defendant against the plaintiff were made not in Congress or in any committee thereof. This parliamentary immunity, again, is subject to special circumstances which circumstances must be established in a full blown trial.
>
> x x x x x x x x x
>
> FOURTH. Whether or not a motion to dismiss was filed to prevent a preliminary hearing on the defendant's special and affirmative defenses.
>
> x x x x x x x x x
>
> Said 'answer with motion to dismiss' of the defendant did not contain any notice of hearing and was not actually heard. To the mind of the Court, the use of the phrase 'with motion to dismiss' highlights the allegations of special and affirmative defenses which

[24] *Supra* note 2.

are grounds for a motion to dismiss. Thus, absent any motion to dismiss as contemplated by law, the preliminary hearing on the special and affirmative defenses of the defendant may be conducted thereon.

Petitioner's motion for reconsideration was denied in public respondent's Order[25] dated December 16, 2015. Public respondent held that:

x x x x x x x x x

To reiterate the ruling in the assailed order, parliamentary immunity is subject to special circumstances which must be established in a full blown trial.

In the complaint, the plaintiff stated that the defamatory statements were made in broadcast and print media, not during a Senate hearing. Hence, between the allegations in the complaint and the affirmative defenses in the answer, the issue on whether or not the alleged defamatory statements were made in Congress or in any committee thereof arises. It would be then up to the Court to determine whether the alleged defamatory statements are covered by parliamentary immunity after trial.

Petitioner subsequently filed the instant Petition for *Certiorari*, assailing public respondent's May 19, 2015 and December 16, 2015 Orders on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction. In ascribing grave abuse of discretion against public respondent, petitioner reiterates the special and affirmative defenses in his Answer with Motion to Dismiss, and asks that the assailed Orders be nullified, reversed and set aside and a new one be issued dismissing the Complaint.

In his Comment,[26] private respondent points out that the petition violates the doctrine of hierarchy of courts. He contends that petitioner cannot invoke parliamentary immunity as his utterances were made in various media interviews, beyond the scope of his official duties as Senator, and that the constitutional right to free speech can be raised only against the government, not against private individuals.

---

[25] *Supra* note 3 at 39.

[26] *Rollo*, pp. 212-245.

Private respondent asserts that his Complaint sufficiently stated a cause of action as petitioner's imputations, as alleged therein, were defamatory, malicious and made public, and the victim was clearly identifiable. According to him, petitioner's claim that his imputations were statements of fact, covered by his parliamentary immunity and not actionable under the doctrine of fair comment, are irrelevant as his motion to dismiss, based on failure to state a cause of action, hypothetically admitted the allegations in the Complaint. At any rate, he argues that truth is not a defense in an action for defamation.

Private respondent further contends that he is not a public figure as to apply the doctrine of fair comment, and that it was petitioner who brought up his name, out of nowhere, at the October 8, 2014 SBRS hearing. He asserts that contrary to petitioner's claim, the Courts, not the Senate, has jurisdiction over the case. Finally, he avers that because failure to state a cause of action and lack of jurisdiction over the subject matter are determined solely by the allegations of the complaint, a preliminary hearing is unnecessary.

The Court's Ruling

Hierarchy of courts should have been observed

In justifying his direct recourse to the Court, petitioner alleges that there is a clear threat to his parliamentary immunity as well as his rights to freedom of speech and freedom of expression, and he had no other plain, speedy and adequate remedy in the ordinary course of law that could protect him from such threat. Petitioner argues that the doctrine of hierarchy of courts is not an iron-clad rule, and direct filing with the Court is allowed when there are genuine issues of constitutionality that must be addressed at the most immediate time. Petitioner asserts that the case encompasses an issue which would require an interpretation of Section 11, Article VI of the 1987 Constitution.

The Court is not persuaded.

The power to issue writs of *certiorari*, prohibition, and *mandamus* is not exclusive to this Court.[27] The Court shares the jurisdiction over petitions for these extraordinary writs with the Court of Appeals and the Regional Trial Courts.[28] The hierarchy of courts serves as the general determinant of the appropriate forum for such petitions.[29] The established policy is that "petitions for the issuance of extraordinary writs against first level (inferior) courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals," and "[a] direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition."[30] The parties, therefore, do not have an unfettered discretion in selecting the forum to which their application will be directed.[31]

Adherence to the doctrine on hierarchy of courts ensures that every level of the judiciary performs its designated role in an effective and efficient manner.[32] This practical judicial policy is established to obviate "inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction," and to prevent the congestion of the Court's docket.[33] The Court must remain as a court of

---

[27] *Aala, et al. v. Uy, et al.*, G.R. No. 202781, January 10, 2017, *United Claimants Association of NEA (UNICAN), et al. v. National Electrification Administration (NEA), et al.*, 680 Phil. 506 (2012), citing *Mendoza, et al. v. Mayor Villas, et al.*, 659 Phil. 409, 414 (2011).

[28] *Id*.

[29] *Id*.

[30] *United Claimants Association of NEA (UNICAN), et al. v. NEA*, *supra* note 27 at 514.

[31] *Id*. *Aala, et al. v. Uy, et al.*, *supra* note 27.

[32] *Maza v. Turla*, G.R. No. 187094, February 15, 2017, citing *The Diocese of Bacolod, et al. v. COMELEC*, 751 Phil. 301, 329 (2015).

[33] *Aala, et al. v. Uy, et al.*, *supra* note 27. *United Claimants Association of NEA (UNICAN), et al. v. NEA*, *supra* note 27 at 514.

last resort if it were to satisfactorily perform its duties under the Constitution.[34]

After all, trial courts are not limited to the determination of facts upon evaluation of the evidence presented to them.[35] They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution.[36]

It is true that the doctrine of hierarchy of courts is not an iron-clad rule, and this Court has allowed a direct application to this Court for a writ of *certiorari* when there are genuine issues of constitutionality that must be addressed at the most immediate time.[37]

However, the issue of what parliamentary immunity encompasses, in relation to a lawmaker's speech or words spoken in debate in Congress, has been addressed as early as 1966 in the case of *Nicanor T. Jimenez v. Bartolome Cabangbang*,[38] where the Court succinctly held:

> The determination of the first issue depends on whether or not the aforementioned publication falls within the purview of the phrase "speech or debate therein"-that is to say, in Congress— used in this provision.
>
> Said expression refers to utterances made by Congressmen **in the performance of their official functions**, such as speeches delivered, statements made, or votes cast in the halls of Congress, while the same is in session, as well as bills introduced in Congress, whether the same is in session or not, and other acts performed by Congressmen, either in Congress or outside the premises housing its offices, in the **official discharge of their duties as members of Congress and of**

---

[34] *Aala, et al. v. Uy, et al.*, *supra* note 27.

[35] *Maza v. Turla*, *supra* note 32, citing *The Diocese of Bacolod, et al. v. COMELEC*, *supra* note 32.

[36] *Id.*

[37] *Id. Aala, et al. v. Uy, et al.*, *supra* note 27.

[38] 124 Phil. 296 (1966).

Congressional Committees duly authorized to perform its functions as such, at the time of the performance of the acts in question. (Citations omitted and emphasis ours.)[39]

In *Jimenez*, a civil action for damages was filed against a member of the House of Representatives for the publication, in several newspapers of general circulation, of an open letter to the President which spoke of operational plans of some ambitious officers of the Armed Forces of the Philippines (AFP) involving a "massive political build-up" of then Secretary of National Defense Jesus Vargas to prepare him to become a presidential candidate, a *coup d'etat*, and a speech from General Arellano challenging Congress' authority and integrity to rally members of the AFP behind him and to gain civilian support. The letter alluded to the plaintiffs, who were members of the AFP, to be under the control of the unnamed "planners," "probably belong(ing) to the Vargas-Arellano clique," and possibly "unwitting tools" of the plans.

Holding that the open letter did not fall under the privilege of speech or debate under the Constitution, the Court declared:

> The publication involved in this case does *not* belong to this category. According to the complaint herein, it was an open letter to the President of the Philippines, dated November 14, 1958, when Congress presumably was *not* in session, and defendant caused said letter to be published in several newspapers of general circulation in the Philippines, on or about said date. It is obvious that, in thus causing the communication to be so published, he was **not performing his official duty, either as a member of Congress or as officer or any Committee thereof**. Hence, contrary to the finding made by His Honor, the trial Judge, said communication is **not absolutely privileged**. (Emphasis ours.)

Albeit rendered in reference to the 1935 constitutional grant of parliamentary immunity, the *Jimenez* pronouncement on what constitutes privileged speech or debate in Congress still applies. The same privilege of "speech or debate" was granted under the 1973 and 1987 Philippine Constitutions, with the latter Charters specifying that the immunity extended to lawmakers'

---

[39] *Rollo*, pp. 298-299.

speeches or debates in any committee of the legislature. This is clear from the "speech or debate" clauses in the parliamentary immunity provisions of the 1935, 1973 and 1987 Constitutions which respectively provide:

> Section 15. The Senators and Members of the House of Representatives shall in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of the Congress, and in going to and returning from the same; and **for any speech or debate therein, they shall not be questioned in any other place**.[40] (Emphasis ours.)

> Section 9. A Member of the National Assembly shall, in all offenses punishable by not more than six years imprisonment, be privileged from arrest during his attendance at its sessions, and in going to and returning from the same; but the National Assembly shall surrender the Member involved to the custody of the law within twenty-four hours after its adjournment for a recess or its next session, otherwise such privilege shall cease upon its failure to do so. **A Member shall not be questioned or held liable in any other place for any speech or debate in the Assembly or in any committee thereof.**[41] (Emphasis ours.)

> Section 11. A Senator or Member of the House of Representatives shall, in all offenses punishable by not more than six years imprisonment, be privileged from arrest while the Congress is in session. **No Member shall be questioned nor be held liable in any other place for any speech or debate in the Congress or in any committee thereof.**[42] (Emphasis ours.)

Clearly, settled jurisprudence provides sufficient standards and guidelines by which the trial and appellate courts can address and resolve the issue of parliamentary immunity raised by petitioner. The Court is, thus, unconvinced that petitioner has presented an "exceptionally compelling reason"[43] to justify his direct application for a writ of *certiorari* with this Court.

---

[40] Article VI on the Legislative Department.

[41] Article VIII on The National Assembly.

[42] Article VI on The Legislative Department.

[43] *The Diocese of Bacolod, et al. v. COMELEC*, *supra* note 32.

Even assuming *arguendo* that direct recourse to this Court is permissible, the petition must still be dismissed.

Petitioner's statements in media interviews are not covered by the parliamentary speech or debate" privilege

Petitioner admits that he uttered the questioned statements, describing private respondent as former VP Binay's "front" or "dummy" in connection with the so-called *Hacienda* Binay, in response to media interviews during gaps and breaks in plenary and committee hearings in the Senate.[44] With *Jimenez* as our guidepost, it is evident that petitioner's remarks fall outside the privilege of speech or debate under Section 11, Article VI of the 1987 Constitution. The statements were clearly not part of any speech delivered in the Senate or any of its committees. They were also not spoken in the course of any debate in said fora. It cannot likewise be successfully contended that they were made in the official discharge or performance of petitioner's duties as a Senator, as the remarks were not part of or integral to the legislative process.

The Speech or Debate Clause under the 1935 Constitution "was taken or is a copy of Sec. 6, clause 1 of Art. 1 of the Constitution of the United States."[45] Such immunity has come to this country from the practices of the Parliamentary as construed and applied by the Congress of the United States.[46]

The U.S. Supreme Court's disquisition in *United States v. Brewster*[47] on the scope of the privilege is of jurisprudential significance:

Johnson thus stand as a unanimous holding that a Member of Congress may be prosecuted under a criminal statute provided that the Government's case does not rely on legislative acts or the

---

[44] *Rollo*, pp. 10-11 and 119.

[45] *Osmeña, Jr. v. Pendatun, et al.*, G.R. No. L-17144, October 28, 1960.

[46] *Id*.

[47] 408 U.S. 501 (1972).

motivation for legislative acts. **A legislative act has consistently been defined as an act generally done in Congress in relation to the business before it.** In sum, the Speech or Debate Clause prohibits inquiry only into those things generally said or done in the House or the Senate in the performance of official duties and into the motivation for those acts.

It is well known, of course, that Members of the Congress engage in many activities other than the purely legislative activities protected by the Speech or Debate Clause. These include a wide range of legitimate "errands" performed for constituents, the making of appointments with Government agencies, assistance in securing Government contracts, preparing so-called "news letters" to constituents, news releases, and speeches delivered outside the Congress. The range of these related activities has grown over the years. **They are performed in part because they have come to be expected by constituents, and because they are a means of developing continuing support for future elections. Although these are entirely legitimate activities, they are political in nature, rather than legislative**, in the sense that term has been used by the Court in prior cases. But it has never been seriously contended that these political matters, however appropriate, have the protection afforded by the Speech or Debate Clause. Careful examination of the decided cases reveals that the Court has regarded the protection as reaching **only those things "generally done in a session of the House by one of its members in relation to the business before it,"** *Kilbourn v. Thompson, supra*, at 204, or things "said or done by him, as a representative, in the exercise of the functions of that office," *Coffin v. Coffin*, 4 Mass. 1, 27 (1808).

x x x x x x x x x

xxx In stating that those things "in no wise related to the due functioning of the legislative process" were *not* covered by the privilege, the Court did not in any sense imply as a corollary that everything that "related" to the office of a Member was shielded by the Clause. Quite the contrary, in *Johnson* we held, cit-ing *Kilbourn v. Thompson, supra*, that **only acts generally done in the course of the process of enacting legislation were protected**.

x x x x x x x x x

In no case has this Court ever treated the Clause as protecting all conduct *relating* to the legislative process. In every case thus far before this Court, **the Speech or Debate Clause has been limited**

to an act which was clearly a part of the legislative process - the due functioning of the process. xxx

x x x x x x x x x

(c) We would not think it sound or wise, simply out of an abundance of caution to doubly insure legislative independence, to extend the privilege beyond its intended scope, its literal language, and its history, to include all things in any way related to the legislative process. Given such a sweeping reading, we have no doubt that there are few activities in which a legislator engages that he would be unable somehow to "relate" to the legislative process. Admittedly, the Speech or Debate Clause must be read broadly to effectuate its purpose of protecting the independence of the Legislative Branch, but **no more than the statutes we apply, was its purpose to make Members of Congress super-citizens**, immune from criminal responsibility. In its narrowest scope, the Clause is a very large, albeit essential, grant of privilege. It has enabled reckless men to slander and even destroy others with impunity, but that was the conscious choice of the Framers.

x x x x x x x x x

xxx.The authors of our Constitution were well aware of the history of both the need for the privilege and the abuses that could flow from too sweeping safeguards. In order to preserve other values, they wrote the privilege so that it tolerates and protects behavior on the part of Members not tolerated and protected when done by other citizens. but **the shield does not extend beyond what is necessary to preserve the integrity of the legislative process**. Moreover, unlike England, with no formal written constitutional limitations on the monarch, we defined limits on the coordinate branches, providing other checks to protect against abuses of the kind experienced in that country. (Emphasis ours.)

x x x x x x x x x

In *Gravel v. United States*,[48] the U.S. Supreme Court ruled that a Senator's private publication of certain classified documents (popularly known as the Pentagon Papers), which the latter had taken up at a Senate subcommittee hearing and placed in the legislative record, did not constitute "protected

[48] 408 U.S. 606 (1972).

speech or debate," holding that it "was in no way essential to the deliberations of the Senate," and was "not part and parcel of the legislative process." Explaining the scope of the Speech or Debate Clause, the U.S. Supreme Court declared:

> But **the Clause has not been extended beyond the legislative sphere**. That Senators generally perform certain acts in their official capacity as Senators does not necessarily make all such acts legislative in nature. Members of Congress are constantly in touch with the Executive Branch of the Government and with administrative agencies - they may cajole, and exhort with respect to the administration of a federal statute - but such conduct, though generally done, is not protected legislative activity. xxx
>
> x x x x x x x x x
>
> Legislative acts are not all-encompassing. **The heart of the Clause is speech or debate in either House. Insofar as the Clause is construed to reach other matters, they must be an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.** xxx (Emphasis ours.)

It is, thus, clear that parliamentary non-accountability cannot be invoked when the lawmaker's speech or utterance is made outside sessions, hearings or debates in Congress, extraneous to the "due functioning of the (legislative) process."[49] To participate in or respond to media interviews is not an official function of any lawmaker; it is not demanded by his sworn duty nor is it a component of the process of enacting laws. Indeed, a lawmaker may well be able to discharge his duties and legislate without having to communicate with the press. A lawmaker's participation in media interviews is not a legislative act, but is "political in nature,"[50] outside the ambit of the immunity conferred under the Speech or Debate Clause in the 1987 Constitution. Contrary to petitioner's stance, therefore, he cannot

---

[49] *U.S. v. Brewster*, *supra* note 47.

[50] *Id*.

invoke parliamentary immunity to cause the dismissal of private respondent's Complaint. The privilege arises not because the statement is made by a lawmaker, but because it is uttered in furtherance of legislation.

The Speech or Debate Clause in our Constitution did not turn our Senators and Congressmen into "super-citizens"[51] whose spoken words or actions are rendered absolutely impervious to prosecution or civil action. The Constitution conferred the privilege on members of Congress "not for their private indulgence, but for the public good."[52] It was intended to protect them against government pressure and intimidation aimed at influencing their decision-making prerogatives.[53] Such grant of legislative privilege must perforce be viewed according to its purpose and plain language. Indeed, the privilege of speech or debate, which may "(enable) reckless men to slander and even destroy others,"[54] is not a cloak of unqualified impunity; its invocation must be "as a means of perpetuating inviolate the functioning process of the legislative department."[55] As this Court emphasized in *Pobre*,[56] "the parliamentary non-accountability thus granted to members of Congress is not to protect them against prosecutions **for their own benefit**, but to enable them, as the people's representatives, **to perform the functions of their office** without fear of being made responsible before the courts or other forums outside the congressional hall."

Jurisdiction lies with the courts, not the Senate

Petitioner argues that the RTC had no jurisdiction over the case, and citing *Pobre*, asserts that the authority to discipline

---

[51] *Id*.

[52] *Pobre v. Sen. Santiago*, *supra* note 19 at 359, citing *Tenney v. Brandhove*, 341 US 367, 71 S. Ct. 783 (1951).

[53] *Pobre v. Sen. Santiago*, *supra* at 365.

[54] *U.S. v. Brewster*, *supra* note 47.

[55] *Pobre v. Sen. Santiago*, *supra* note 19.

[56] *Id*.

a member of Congress lies in the assembly or the voters and not the courts.

Petitioner's reliance on *Pobre* is misplaced. The statements questioned in said disbarment case were part of a lawyer-Senator's privilege speech delivered on the Senate floor professedly with a view to future remedial legislation. By reason of the Senator's parliamentary immunity, the Court held that her speech was "not actionable criminally or in a disciplinary proceeding under the Rules of Court." The questioned statements in this case, however, were admittedly made in response to queries from the media during gaps in the Senate's plenary and committee hearings, thus, beyond the purview of privileged speech or debate under Section 11, Article VI of the Constitution.

The Court held in *Pobre*:

> **Courts do not interfere with the legislature or its members in the manner they perform their functions in the legislative floor or in committee rooms.** Any claim of an unworthy purpose or of the falsity and *mala fides* of the statement uttered by the member of the Congress does not destroy the privilege. The disciplinary authority of the assembly and the voters, not the courts, can properly discourage or correct such abuses committed in the name of parliamentary immunity. (Citations omitted and emphasis ours.)[57]

Clearly, the Court's pronouncement that the legislative body and the voters, not the courts, would serve as the disciplinary authority to correct abuses committed in the name of parliamentary immunity, was premised on the questionable remarks being made in the performance of legislative functions, on the legislative floor or committee rooms where the privilege of speech or debate may be invoked. Necessarily, therefore, statements falling outside the privilege and giving rise to civil injury or criminal responsibility will not foreclose judicial review.

Furthermore, it is well-settled that jurisdiction over the subject matter of a case is conferred by law.[58] An action for damages

---

[57] *Pobre v. Sen. Santiago*, *supra* at 360.

[58] *Tumpag v. Tumpag*, 744 Phil. 423, 429 (2014).

on account of defamatory statements not constituting protected or privileged "speech or debate" is a controversy well within the courts' authority to settle. The Constitution vests upon the courts the power and duty "to settle actual controversies involving rights which are legally demandable and enforceable."[59] Batas Pambansa Blg. 129, as amended, conferred jurisdiction over actions for damages upon either the RTC or the Municipal Trial Court, depending on the total amount claimed.[60] So also, Article 33 of the Civil Code expressly provides that in cases of defamation, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party, and such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

In fine, petitioner cannot successfully invoke parliamentary non-accountability to insulate his statements, uttered outside the "sphere of legislative activity,"[61] from judicial review.

Preliminary hearing was not warranted

Petitioner argues that a preliminary hearing on his special and affirmative defenses is necessary to allow him to present evidence that will warrant the immediate dismissal of the Complaint.

The Court is not persuaded.

Under Section 6, Rule 16 of the Rules of Court, a preliminary hearing on the affirmative defenses may be allowed only when no motion to dismiss has been filed. Section 6, however, must be construed in the light of Section 3 of the same Rule, which requires courts to resolve a motion to dismiss and prohibits deferment of such resolution on the ground of indubitability.

---

[59] Second paragraph, Section 1, Article VIII, 1987 Constitution.

[60] Pursuant to Section 5 of Republic Act No. 7691, which amended Section 19(8) of Batas Pambansa Blg. 129, the jurisdictional amount for RTC in Metro Manila was adjusted to exceeding ₱400,000.00.

[61] *Tenney v. Brandhove*, *supra* note 52.

Thus, Section 6 disallows a preliminary hearing of affirmative defenses once a motion to dismiss has been filed because such defenses should have already been resolved.[62]

In this case, however, petitioner's motion to dismiss had not been resolved when petitioner moved for a preliminary hearing. As public respondent stated in the assailed May 19, 2015 Order, the motion did not contain a notice of hearing and was not actually heard. Even so, a preliminary hearing is not warranted.

In his Answer with Motion to Dismiss, petitioner averred that private respondent failed to state and substantiate his cause of action, arguing that the statement he made before the media, in which he described private respondent as a "front" or "dummy" of former VP Binay for the so-called *Hacienda* Binay, was one of fact.

By raising failure to state a cause of action as his defense, petitioner is regarded as having hypothetically admitted the allegations in the Complaint.[63]

The test of the sufficiency of the facts stated in a complaint as constituting a cause of action is whether or not, admitting the facts so alleged, the court can render a valid judgment upon the same in accordance with the plaintiff's prayer.[64] Inquiry is into the sufficiency not the veracity of the facts so alleged.[65] If the allegations furnish sufficient basis by which the complaint may be maintained, the same should not be dismissed regardless of the defenses that may be raised by the defendants.[66]

---

[62] *California and Hawaiian Sugar Co. v. Pioneer Ins. and Surety Corp.*, 399 Phil. 795, 804 (2000).

[63] *Aquino, et al. v. Quiazon, et al.*, 755 Phil. 793, 810 (2015), citing *Insular Investment and Trust Corp. v. Capital One Equities Corp., et al.*, 686 Phil. 819, 847 (2012) and *Evangelista v. Santiago*, 497 Phil. 269, 290 (2005).

[64] *Aquino, et al. v. Quiazon, et al.*, *supra* at 810, citing *Insular Investment and Trust Corp. v. Capital One Equities Corp., et al.*, *supra* at 847.

[65] *Zuñiga-Santos v. Santos-Gran, et al.*, 745 Phil. 171, 180 (2014).

[66] *Aquino, et al. v. Quiazon, et al.*, *supra* at 810, citing *Insular Investment and Trust Corp. v. Capital One Equities Corp., et al.*, *supra* at 847.

Accordingly, in determining whether a complaint did or did not state a cause of action, only the statements in the complaint may properly be considered.[67] The court cannot take cognizance of external facts or hold preliminary hearings to determine its existence.[68] For the court to do otherwise would be a procedural error and a denial of the plaintiff's right to due process.[69]

As this Court, in *Aquino, et al. v. Quiazon, et al.*[70] instructs:

> The trial court may indeed elect to hold a preliminary hearing on affirmative defenses as raised in the answer under Section 6 of Rules 16 of the Rules of Court. It has been held, however, that **such a hearing is not necessary when the affirmative defense is failure to state a cause of action, and that it is, in fact, error for the court to hold a preliminary hearing to determine the existence of external facts outside the complaint**. The reception and the consideration of evidence on the ground that the complaint fails to state a cause of action, has been held to be improper and impermissible. Thus, in a preliminary hearing on a motion to dismiss or on the affirmative defenses raised in an answer, the parties are allowed to present evidence except when the motion is based on the ground of insufficiency of the statement of the cause of action which must be determined on the basis only of the facts alleged in the complaint and no other. **Section 6, therefore, does not apply to the ground that the complaint fails to state a cause of action.** The trial court, thus, erred in receiving and considering evidence in connection with this ground. (Citations omitted and emphasis ours.)

Complaint sufficiently states a cause of action

Private respondent filed his Complaint for moral and exemplary damages pursuant to Article 33 of the Civil Code[71]

---

[67] *Id*.

[68] *Id*.

[69] *Aquino, et al. v. Quiazon, et al.*, *supra* at 810.

[70] *Supra* at 816-817.

[71] Article 33. In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed

which authorizes an injured party to file a civil action for damages, separate and distinct from the criminal action, in cases of defamation, fraud and physical injuries.

As defined in Article 353 of the Revised Penal Code, a libel[72] is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.

For an imputation to be libelous, the following requisites must concur: a) it must be defamatory; b) it must be malicious; c) it must be given publicity and d) the victim must be identifiable.[73] Any of the imputations covered by Article 353 is defamatory,[74] and every defamatory imputation is presumed malicious.[75]

The Civil Code provides that moral damages include mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury, and may be recovered in cases of libel, slander or any other form of defamation,[76] while exemplary damages may be recovered in addition to moral damages, by way of correction or example for the public good, as determined by the court.[77]

Measured against the foregoing requisites and considerations, including the scope of parliamentary non-accountability, private

---

independently of the criminal prosecution, and shall require only a preponderance of evidence.

[72] Should be *difamacion [Filipinas Broadcasting Network, Inc. v. Ago Medical & Educational Center-Bicol Christian College of Medicine*, 489 Phil. 380, 393 (2005), citing *Lu Chu Sing and Lu Tian Chiong v. Lu Tiong Gui*, 76 Phil. 669, 675 (1946)].

[73] *Lopez v. People, et al.*, 658 Phil. 20, 30 (2011).

[74] *Dr. Alonzo v. CA*, 311 Phil. 60, 71 (1995).

[75] *Filipinas Broadcasting Network, Inc. v. Ago Medical and Educational Center-Bicol Christian College of Medicine*, *supra* note 72 at 394.

[76] Articles 2217 and 2219 (7).

[77] Articles 2229 and 2233.

respondent's Complaint, on its face, sufficiently makes out a cause of action for damages.

In his Complaint, private respondent alleged that petitioner gave statements during interviews by the media, describing him as the "dummy" of former VP Binay in connection with the so-called *Hacienda* Binay. Private respondent averred that such imputation, unprivileged as it was uttered outside of petitioner's legislative functions, actually discredited him and tarnished his reputation as a legitimate businessman, and caused him sleepless nights, wounded feelings, serious anxiety, mental anguish and social humiliation. The statements, presumed to be malicious and so described by private respondent, were also alleged to have been made public through broadcast and print media, and identified private respondent as their subject. Hypothetically admitting these allegations as true, as is required in determining whether a complaint fails to state a cause of action, private respondent may be granted his claim.[78]

The Complaint, therefore, cannot be dismissed on the ground of failure to state a cause of action. As the RTC held, whether true or false, the allegations in the Complaint are sufficient to enable the court to render judgment according to private respondent's prayer.

Defense of lack of cause of action requires a full-blown trial

In moving for the outright dismissal of the Complaint, petitioner averred that private respondent failed to prove his alleged ownership of the subject estate. To establish this, petitioner pointed to Mercado's testimony that former VP Binay is the actual and beneficial owner thereof, the certificates of title covering the estate purportedly in the names of persons related to or identified with former VP Binay, and the one-page Agreement between Sunchamp and Gregorio which, according to petitioner, hardly inspires belief because it was not notarized and lacked details expected in a legitimate

---

[78] *Aquino, et al. v. Quiazon, et al.*, *supra* note 63.

document, and because the transaction, which required Gregorio to give up possession, entailed a measly downpayment of ₱5 Million, out of the ₱446 Million total consideration, for an estate with a yearly ₱30 Million revenue from its orchard.

For these reasons, petitioner asserted that when he remarked before the media that private respondent was acting as former VP Binay's "front" or "dummy," he was simply making a statement of fact which he had based on documents, reports and information available to him, and which was never intended to be an insult or a derogatory imputation.

Petitioner also argued that because private respondent had thrust himself into the public debate on the so-called *Hacienda* Binay, he should be deemed a "public figure" and the questioned statements consequently qualify for the constitutional protection of freedom of expression.

Private respondent, however, has notably denied being a "dummy," and rebuffed petitioner's claim that he had thrust himself into the public debate, alleging that it was petitioner who brought up his name, out of nowhere, at the October 8, 2014 SBRS hearing.

Petitioner's Answer likewise repudiated private respondent's claim that the questioned statements had brought about a steep drop in the share prices of two listed companies he was managing, to the detriment of his substantial shareholdings therein. Petitioner countered that said prices had been on a downward trend long before he uttered the questioned statements; that he never mentioned said companies in his interviews; and that far from substantial, private respondent only had an 8% stake in one of the companies and none in the other.

A perusal of petitioner's defenses and arguments, as above outlined, at once reveals that the averments were grounded on lack of cause of action. In fact, by pleading in his Answer that private respondent failed to "substantiate" his cause of action, petitioner effectively questioned its existence, and would have the trial court inquire into the veracity and probative value of private respondent's submissions.

Distinguished from failure to state a cause of action, which refers to the insufficiency of the allegations in the pleading, lack of cause of action refers to the insufficiency of the factual basis for the action.[79] Petitioner, in his Answer with Motion to Dismiss, clearly impugned the sufficiency of private respondent's basis for filing his action for damages.

Section 6, Rule 16 allows the court to hold a preliminary hearing on affirmative defenses pleaded in the answer based on grounds for dismissal under the same rule.[80]The ground of "lack of cause of action," however, is not one of the grounds for a motion to dismiss under Rule 16, hence, not proper for resolution during a preliminary hearing held pursuant to Section 6 thereof.[81]

Furthermore, *Aquino* teaches that the existence of a cause of action "goes into the very crux of the controversy and is a matter of evidence for resolution after a full-blown hearing." An affirmative defense, raising the ground that there is no cause of action as against the defendant, poses a question of fact that should be resolved after the conduct of the trial on the merits.[82]

Indeed, petitioner, in asking for the outright dismissal of the Complaint, has raised evidentiary matters and factual issues which this Court cannot address or resolve, let alone at the first instance. The proof thereon cannot be received in *certiorari* proceedings before the Court, but should be established in the RTC.[83]

Thus, even granting that the petition for *certiorari* might be directly filed with this Court, its dismissal must perforce follow because its consideration and resolution would inevitably require

---

[79] *Aquino, et al. v. Quiazon, et al.*, *supra* note 63 at 808, citing *Dabuco v. Court of Appeals*, 379 Phil. 939, 944-945 (2000).

[80] *Aquino, et al. v. Quiazon, et al.*, *supra* note 63.

[81] *Aquino, et al. v. Quiazon, et al.*, *supra* at 809.

[82] *Id*.

[83] *Banez, Jr. v. Judge Concepcion, et al.*, 693 Phil. 399, 412 (2012).

the consideration and evaluation of evidentiary matters. The Court is not a trier of facts, and cannot accept the petition for *certiorari* for that reason.[84]

All told, for its procedural infirmity and lack of merit, the petition must be dismissed.

WHEREFORE, the petition is **DISMISSED**. Public respondent's Orders dated May 19, 2015 and December 16, 2015 in Civil Case No. R-QZN-14-10666-CV are affirmed insofar as they are consistent with this decision.

SO ORDERED.

Leonardo-de Castro,[*] *del Castillo*, and *Jardeleza, JJ.*, concur.

Sereno, C.J., on leave.

SECOND DIVISION

[G.R. No. 228945. March 14, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HESSON CALLAO *y* MARCELINO and JUNELLO AMAD,** *accused,* **HESSON CALLAO *y* MARCELINO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TESTIMONY OF A SINGLE WITNESS, IF STRAIGHTFORWARD AND CATEGORICAL, IS

---

[84] *Id.* at 414.

[*] Designated Acting Chairperson, First Division per Special Order No. 2540 dated February 28, 2018.

SUFFICIENT TO CONVICT.— [T]he testimony of Sario, the lone witness for the prosecution, suffices to establish the culpability of Hesson for Murder qualified by treachery. Sario clearly narrated the details of the incident and positively identified Hesson as one of the assailants. In a simple, spontaneous and straightforward manner, Sario recounted the disturbing manner by which the victim was killed and his body violated, x x x Well-settled is the principle that the testimony of a single witness, if straightforward and categorical, is sufficient to convict. x x x [Further,] [i]n the absence of proof to the contrary, the presumption is that the witness was not moved by ill-will and was untainted by bias, and thus worthy of belief and credence.

2. **ID.; ID.; FLIGHT FROM THE SCENE OF THE CRIME AND FAILURE TO IMMEDIATELY SURRENDER MILITATE AGAINST THE CONTENTION OF INNOCENCE.—** Hesson's immediate departure from the scene of the crime and successful effort to elude arrest until his apprehension almost two (2) years after is hardly consistent with his claim of innocence. Flight from the scene of the crime and failure to immediately surrender militate against Hesson's contention of innocence "since an innocent person will not hesitate to take prompt and necessary action to exonerate himself of the crime imputed to him."

3. **ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.—** [T]he Court finds no reason to disturb the findings of the trial court on the credibility of the witnesses, which findings were likewise affirmed by the CA. Indeed, there is no showing that said findings are tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. When it comes to credibility, the trial court's assessment deserves great weight, and may even be conclusive and binding, as it is in the best position to make such determination, being the one who has personally heard the accused and the witnesses.

4. **ID.; ID.; DENIAL, UNSUBSTANTIATED BY ANY CREDIBLE EVIDENCE, DESERVES NO WEIGHT IN LAW.—** Hesson's defense of denial cannot prevail over Sario's positive identification of Hesson as one of the assailants. To be believed, denial must be buttressed by strong evidence of non-culpability. Otherwise, it is purely self-serving and without

merit. Greater weight is given to the categorical identification of the accused by the prosecution witness than to the accused's plain denial of participation in the commission of the crime. In the instant case, Hesson failed to adduce evidence to support his denial and overcome the testimony of the prosecution witness. Denial, unsubstantiated by any credible evidence, deserves no weight in law.

5. CRIMINAL LAW; IMPOSSIBLE CRIME; REQUISITES; INHERENT IMPOSSIBILITY OF ACCOMPLISHING THE CRIME OCCURS WHEN THE INTENDED ACTS, EVEN IF COMPLETED, WOULD NOT AMOUNT TO A CRIME.— Impossible crime is defined and penalized under paragraph 2, Article 4 in relation to Article 59, both of the RPC x x x Thus, the requisites of an impossible crime are: (1) that the act performed would be an offense against persons or property; (2) that the act was done with evil intent; and **(3) that its accomplishment was inherently impossible, or the means employed was either inadequate or ineffectual.** x x x [I]n the case of *Intod v. Court of Appeals* x x x **Legal impossibility occurs where the intended acts, even if completed, would not amount to a crime.** x x x **The impossibility of killing a person already dead falls in this category.**

6. ID.; CONSPIRACY; THE ESSENCE OF CONSPIRACY IS THE UNITY OF ACTION AND PURPOSE.— Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Its elements, like the physical acts constituting the crime itself, must be proved beyond reasonable doubt. The essence of conspiracy is the unity of action and purpose. Direct proof is not essential to prove conspiracy for it may be deduced from the acts of the accused before, during and after the commission of the crime charged, from which it may be indicated that there is common purpose to commit the crime. x x x [And] [w]ith conspiracy attending, collective liability attaches to the conspirators (Hesson and Junello) and the Court shall not speculate on the extent of their individual participation in the Murder.

7. ID.; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; ATTENDANT DUE TO THE SUDDENNESS

OF THE ATTACK AND THE ABSENCE OF OPPORTUNITY TO REPEL THE SAME.— Treachery was proven by the prosecution and the same qualifies the killing to Murder under Article 248 of the RPC, the elements of which are: (1) that a person was killed; (2) that the accused killed him; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) the killing is not parricide or infanticide. On the qualifying circumstance of treachery, the same was established. The essence of treachery is a swift and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim. It is deemed present in the commission of the crime, when two conditions concur, namely, that the means, methods, and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and that such means, methods, and forms of execution were deliberately and consciously adopted by the accused without danger to his person. In this case, x x x Treachery was attendant not only because of the suddenness of the attack but likewise due to the absence of opportunity to repel the same.

8. **ID.; ID.; PENALTY AND AWARD OF DAMAGES.—** Under Article 248 of the RPC, the penalty for the crime of Murder qualified by treachery is *reclusion perpetua* to death. As there were no aggravating or mitigating circumstances that attended the commission of the crime, the Court affirms the penalty of *reclusion perpetua* imposed by the trial court and affirmed by the CA. Finally, with respect to the award of damages, the Court affirms and finds correct and in accordance with prevailing jurisprudence, the amounts adjudged by the CA, to wit: (1) civil indemnity at Seventy Five Thousand Pesos (₱75,000.00); (2) moral damages at Seventy Five Thousand Pesos (₱75,000.00); (3) exemplary damages at Thirty Thousand Pesos (₱30,000.00); and funeral expenses at the parties' stipulated amount of Fifteen Thousand Pesos (₱15,000.00). All monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* 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

CAGUIOA, *J.*:

This is an Appeal[1] under Section 13, Rule 124 of the Rules of Court from the Decision[2] dated August 31, 2016 (assailed Decision) of the Court of Appeals, Eighteenth (18th) Division (CA) in CA-G.R. CEB-CR-HC No. 02007. The assailed Decision, affirmed with modification the Judgment[3] dated January 26, 2015 rendered by the Regional Trial Court of Bais City, Branch 45 (trial court), in Criminal Case No. 07-25-T, which found accused-appellant Hesson Callao y Marcelino (Hesson) guilty beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code (RPC).

The accusatory portion of the Information[4] reads:

That on or about the 15th day of July, 2006 in the Municipality [of] Tayasan, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, did then and there willfully, unlawfully and feloniously, by means of treachery, suddenly attack and strike the forehead of Fernando Adlawan with the use of an iron rod and thereafter, with the use of a knife, opened the stomach of the (sic) said Fernando Adlawan and took out his liver and throw (sic) it to the pig which ate it and proceeded to slice the flesh of the thigh of said victim and again throw (sic) the same to the pig which also ate it, which injuries caused the immediate death of victim Fernando Adlawan, to the damage and prejudice of his heirs.[5] (Italics in the original)

---

[1] *Rollo*, pp. 16-18.

[2] *Id*. at 4-15. Penned by Associate Justice Germano Francisco D. Legaspi with Executive Justice Gabriel T. Ingles and Associate Justice Marilyn B. Lagura-Yap concurring.

[3] CA *rollo*, pp. 44-49. Penned by Executive Judge Candelario V. Gonzalez.

[4] Records, pp. 2-3.

[5] *Id*. at 2.

On February 14, 2007, when this case was filed, Hesson and fellow accused Junello Amad (Junello) were at large causing the case to be sent to archives.[6] On February 18, 2008, Hesson was arrested and the case was revived as to him.[7] On March 17, 2008, upon arraignment, Hesson entered a plea of "not guilty."[8]

The Facts

Version of the Prosecution:

The prosecution presented its lone witness, Sario Joaquin (Sario), who testified that on July 15, 2006, he was at the flea market of Guincalaban, Tayasan, Negros Oriental together with his friends Hesson, Junello and one Remmy[9] Casello (Remmy). While in the market, Hesson and Junello discussed a plan to kill the victim, Fernando Adlawan (Fernando) as ordered by one Enrile Yosores (Enrile). Sario was not part of the planning and did not know why Enrile wanted to have Fernando killed.[10]

At 8:00 in the evening of the same day, Hesson, Junello, Remmy and Sario left the flea market and went to the house of Fernando.[11] Sario tagged along because Hesson threatened to kill him if he separated from the group.[12]

When the group reached Fernando's house, Junello, upon seeing Fernando, approached the latter and asked for a cigarette lighter. After Fernando gave Junello the lighter, the latter struck Fernando on the nape with a piece of firewood. Junello then took a bolo and hacked Fernando's body on the side. Fernando lost consciousness[13] and as he laid motionless on the ground,

---

[6] CA *rollo*, p. 44.

[7] *Id*

[8] *Id*.

[9] Spelled as "Remie" in some parts of the CA *rollo*.

[10] CA *rollo*, pp. 45-46.

[11] *Id*. at 45.

[12] *Id*.

[13] *Id*.

Hesson stabbed him twice in the chest using a knife.[14] Hesson then sliced open Fernando's chest and took out the latter's heart using the same knife.[15] Junello followed and took out Fernando's liver using a bolo.[16]

Hesson and Junello then fed Fernando's organs to a nearby pig after which they cut Fernando's neck and sliced his body into pieces.[17] Thereafter, the two (2) accused left the crime scene, followed by Sario and Remmy.[18]

Sario was on the opposite side watching the incident. He and Remmy did not attempt to stop the two (2) accused or run away for fear that the latter would kill them.[19] Sario went home from the crime scene[20] and did not tell anyone about the incident because Hesson and Junello threatened to kill him if he did so.[21]

After the incident, Remmy was killed by Enrile during the town fiesta of Guincalaban.[22]

The testimony of Florencio Adlawan, Fernando's father, was dispensed with after the defense admitted the accused's civil liability and the funeral expenses incurred by the family. Likewise, the testimony of Dr. Myrasol Zuniega, who examined the victim's body, was not presented because the defense admitted the existence of the death certificate[23] indicating that the immediate cause of death is internal hemorrhage and the underlying cause is multiple stab wounds.[24]

---

[14] *Id*.

[15] TSN, May 5, 2009, p. 7.

[16] *Id*.

[17] *Id*. at 8.

[18] *Id*.

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

[20] *Id*. at 8-9.

[21] *Id*. at 9.

[22] *Id*.

[23] *Rollo*, p. 6.

[24] Records, p. 10.

Version of the Defense:

Hesson put forth the defense of denial. He testified that he was resting in his house on the night of the incident when Fernando arrived and invited him to the latter's house.[25] While Hesson was cooking rice inside Fernando's house, he heard a loud sound from the yard so he looked through the window and saw Junello hacking Fernando on the chest.[26] Enrile approached and stabbed Fernando as the latter was lying on the ground.[27] Hesson then shouted, "what did you do to him[?]"[28] at which point Enrile remarked, "So this Hesson is here. We better also kill him because he might reveal this."[29] Scared, Hesson jumped through the window and ran towards a bushy area where he hid until morning.[30] Hesson denied that Sario was present during the incident[31] but admitted that Remmy was there.[32] He said he could not have stabbed the victim because the latter was the son of his godfather.[33]

On cross-examination, Hesson again recounted the incident but this time, he testified that he saw Junello hack Fernando in the chest,[34] once[35] after which Enrile hacked him on the left side of his body[36] twice.[37]

---

[25] TSN, July 19, 2010, pp. 3-4.

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

[27] *Id*. at 6.

[28] *Id*.

[29] *Id*. at 7.

[30] *Rollo*, p. 6.

[31] CA *rollo*, p. 46.

[32] *Id*.

[33] *Rollo*, p. 6.

[34] TSN, July 19, 2010, p. 11.

[35] *Id*. at 12.

[36] *Id*. at 11-12.

[37] *Id*. at 12.

Hesson told no one about the incident because of fear.[38] He and his parents left their house and transferred to Lag-it one (1) day after the incident.[39] Upon further probing, though, Hesson testified that he and his family transferred six (6) months after the incident.[40] In the meantime that they stayed in Guincalaban, no threats were received by him or his family.[41]

Hesson testified that he knew Remmy and Sario and that he was not friends with them but neither did they have any misunderstanding or quarrel.[42]

Ruling of the trial court

In the Judgment dated January 26, 2015, the trial court found Hesson guilty beyond reasonable doubt of the crime of Murder qualified by treachery. The trial court gave credence to the testimony of lone prosecution witness Sario, stating that he testified in a straightforward manner and categorically identified Hesson. Likewise, there is nothing that indicates any improper motive on Sario's part to falsely impute an offense as grave as murder to Hesson. The dispositive portion of the Judgment reads:

> *WHEREFORE*, premises considered, the court finds accused HESSON CALLAO guilty beyond reasonable doubt as principal for the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code and is accordingly sentenced to *Reclusion Perpetua* and to pay the cost.
>
> Accused is also ordered to pay the amount of ₱15,000.00 as funeral expenses; ₱50,000.00 for loss of life and ₱50,000.00 [as] moral damages.
>
> Considering that accused JUNELLO AMAD has remained at large[,] send this case as to him to the ARCHIVES and let there be issued

---

[38] *Id*. at 13.

[39] *Id*.

[40] *Id*. at 14.

[41] *Id*. at 15.

[42] CA *rollo*, p. 47.

an Alias Warrant of Arrest addressed to the Chief of Police, PNP, Tayasan, Negros Oriental; Provincial Director, PNP, Agan-an, Sibulan, Negros Oriental and to the Chief, NBI of Dumaguete, Bacolod, Cebu and Manila for the arrest of the said JUNELLO AMAD in the event he is sighted.

SO PROMULGATED in open Court this 26th day of January 2015 at Bais City, Philippines.[43] (Italics in the original)

Hesson appealed to the CA *via Notice of Appeal*.[44] Hesson filed his *Brief*[45] dated August 26, 2015, while the People, through the Office of the Solicitor General (OSG), filed its *Brief*[46] dated January 22, 2016. In a Resolution[47] dated June 15, 2016, the CA considered Hesson to have waived his right to file a Reply Brief.[48]

Ruling of the CA

In the assailed Decision, the CA affirmed the trial court's conviction with modification only as to the damages awarded, to wit:

WHEREFORE, the instant appeal is **DENIED**. The assailed Judgment dated January 26, 2015 of Branch 45 of the Regional Trial Court of Bais City in Crim. Case No. 07-25-T is hereby **AFFIRMED with MODIFICATION**. Civil indemnity and moral damages awarded to the heirs of Fernando Adlawan are **INCREASED** to ₱75,000.00 each. Exemplary damages are also **AWARDED** in the amount of ₱30,000.00. The grant of funeral expenses in the amount of ₱15,000.00 is **RETAINED**. The aggregate amount of the monetary awards stated herein shall earn interest at the rate of six percent (6%) per annum from the finality of this Decision until the same is fully paid.[49] (Emphasis in the original)

---

[43] *Id*. at 49.

[44] Records, p. 77.

[45] CA *rollo*, pp. 27-43.

[46] *Id*. at 69-92.

[47] *Id*. at 93.

[48] *Id*. at 93-94.

[49] *Rollo*, p. 14.

Hence, this Appeal.

In lieu of filing supplemental briefs, Hesson and plaintiff-appellee filed separate *Manifestations* dated July 18, 2017[50] and July 17, 2017,[51] respectively, foregoing their right to file the supplemental briefs and adopting the arguments in their respective *Briefs* filed before the CA.

Issues

In his *Brief,* Hesson assigns the following errors:

The trial court gravely erred in convicting the accused based solely on uncorroborated testimony of the witness;[52]

The trial court gravely erred in making a finding of conspiracy to commit murder without proving the elements thereof beyond reasonable doubt;[53] and

The trial court inadvertently erred in failing to rule that the crime committed was not murder but an impossible crime.[54]

The Court's Ruling

The Appeal is totally without merit. The issues, being interrelated, shall be jointly discussed below.

The evidence sufficiently establishes Hesson's guilt beyond reasonable doubt for the crime of Murder.

The prosecution was able to adequately establish the guilt of Hesson of the crime charged.

---

[50] *Id*. at 35-38.

[51] *Id*. at 32-34.

[52] CA *rollo*, p. 33.

[53] *Id*. at 36.

[54] *Id*. at 37.

First, the testimony of Sario, the lone witness for the prosecution, suffices to establish the culpability of Hesson for Murder qualified by treachery. Sario clearly narrated the details of the incident and positively identified Hesson as one of the assailants. In a simple, spontaneous and straightforward manner, Sario recounted the disturbing manner by which the victim was killed and his body violated, thus:

[Pros. Yuseff YC Ybañez][55] Did you arrive at the house of Fernando?

[Witness] Yes.

Q When you arrived there, what happened then if any?

A This Junello asked of a lighter from Fernando.

Q Did this Fernando give the lighter to Junello?

A Yes.

Q After Fernando gave the lighter to Junello, what happened then?

A This Junello struck with a piece of firewood.

Q Where was Fernando hit?

A (witness pointing at the nape).

Q What happened to Fernando when he was hit at the nape?

A After that he was hacked by Junello.

Q And did you see where was Fernando hit when he was hacked by Junello?

A At the side.

Q What did Junello use in hacking Fernando?

A Bolo.

Q What happened to Fernando after he was hacked by Junello?

A He was stabbed by Hesson.

---

[55] Counsel for the Government. TSN, May 5, 2009, p. 1.

Q And who was stabbed by Hesson, Fernando or this Junello?

A Fernando.

Q And was Fernando hit by the stab of Hesson?

A Yes.

Q What was the position of Fernando when he was stabbed by Hesson?

A He was lying on the ground faced (sic) up.

Q How many times did Hesson stab Fernando?

A Twice.

Q And where was Fernando hit by the stab of Hesson?

A On the chest.

Q After that, what happened then, if any?

A He took out the heart of Fernando.

Q After taking out the heart of Fernando, what happened if any?

A He also took the liver of Fernando.

Q What did he do with the heart and the liver of Fernando?

A He gave it to the pig.

Q Did you know particularly who took the heart of Fernando?

A It was Hesson.

Q And what about the liver of Fernando, who took the liver of Fernando?

A It was Junello.

Court:

Q What did Hesson use in getting the heart of Fernando?

A Knife.

Q How about Junello?

A He was using a bolo.

Q Where were you at that time?

A I was opposite in their location.

Q You were watching then when they were taking the internal organ?

A Yes.[56]

The Court has carefully and assiduously examined the testimony of Sario and has found no reason whatsoever to disturb the conclusion reached by the trial court that Sario's testimony was straightforward, guileless and very credible.

Second, Sario's testimony, although uncorroborated, can be relied upon. Well-settled is the principle that the testimony of a single witness, if straightforward and categorical, is sufficient to convict.[57] As clearly put by the Court in the case of *People v. Hillado*,[58]

xxx Thus, the testimony of a lone eyewitness, if found positive and credible by the trial court, is sufficient to support a conviction especially when the testimony bears the earmarks of truth and sincerity and had been delivered spontaneously, naturally and in a straightforward manner. Witnesses are to be weighed, not numbered. Evidence is assessed in terms of quality and not quantity. **Therefore, it is not uncommon to reach a conclusion of guilt on the basis of the testimony of a lone witness.** For although the number of witnesses may be considered a factor in the appreciation of evidence, preponderance is not necessarily with the greatest number and conviction can still be had on the basis of the credible and positive testimony of a single witness. Corroborative evidence is deemed necessary "only when there are reasons to warrant the suspicion that the witness falsified the truth or that his observation had been inaccurate." xxx[59] (Emphasis supplied)

---

[56] TSN, May 5, 2009, pp. 5-7.

[57] *People v. Navarro*, 357 Phil. 1010 (1998); *People v. Pat. Cruz*, 348 Phil. 539, 547 (1998); *People v. Hayahay*, 345 Phil. 69, 81 (1997).

[58] 367 Phil. 29 (1999).

[59] *Id.* at 45.

Moreover, the Certificate of Death of Fernando stating that he died of multiple stab wounds corroborates Sario's testimony.

Third, there is no showing that the lone witness Sario was motivated by ill-will which could have impelled him to falsely testify against Hesson. Hesson's own testimony points to the absence of such ill-motive, thus:

Q What about you and Sario, are you friends or acquaintance?

A We are not friends.

Q Before July 15, 2006 do you have any quarrel or misunderstanding with Sario Joaquin?

A No.

Q What about your family and the family of Sario?

A None.[60]

In the absence of proof to the contrary, the presumption is that the witness was not moved by ill-will and was untainted by bias, and thus worthy of belief and credence.[61]

Fourth, Hesson's immediate departure from the scene of the crime and successful effort to elude arrest until his apprehension almost two (2) years after is hardly consistent with his claim of innocence. Flight from the scene of the crime and failure to immediately surrender militate against Hesson's contention of innocence "since an innocent person will not hesitate to take prompt and necessary action to exonerate himself of the crime imputed to him."[62]

Fifth, the Court finds no reason to disturb the findings of the trial court on the credibility of the witnesses, which findings were likewise affirmed by the CA. Indeed, there is no showing that said findings are tainted with arbitrariness or oversight of

---

[60] TSN, July 19, 2010, p. 16.

[61] *People v. Jalbonian*, 713 Phil. 93, 104 (2013), citing *People v. Manulit*, 649 Phil. 715, 726 (2010).

[62] *Id.*, citing *People v. Agacer*, 678 Phil. 704, 724 (2011).

some fact or circumstance of weight and influence. When it comes to credibility, the trial court's assessment deserves great weight, and may even be conclusive and binding, as it is in the best position to make such determination, being the one who has personally heard the accused and the witnesses. In *People v. Gabrino*,[63] the Court ruled:

> We have held time and again that "**the trial court's assessment of the credibility of a witness is entitled to great weight, sometimes even with finality**." As We have reiterated in the recent *People v. Combate*, **where there is no showing that the trial court overlooked or misinterpreted some material facts or that it gravely abused its discretion, then We do not disturb and interfere with its assessment of the facts and the credibility of the witnesses. This is clearly because the judge in the trial court was the one who personally heard the accused and the witnesses, and observed their demeanor as well as the manner in which they testified during trial**. Accordingly, the trial court, or more particularly, the RTC in this case, is in a better position to assess and weigh the evidence presented during trial.
>
> xxx To reiterate this time-honored doctrine and well-entrenched principle, We quote from *People v. Robert Dinglasan*, thus:
>
> > In the matter of credibility of witnesses, we reiterate the familiar and well-entrenched rule that the factual findings of the trial court should be respected.**The judge *a quo* was in a better position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying.** It is doctrinally settled that the evaluation of the testimony of the witnesses by the trial court is received on appeal with the highest respect, **because it had the direct opportunity to observe the witnesses on the stand and detect if they were telling the truth. This assessment is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily or that the trial court had plainly overlooked certain facts of substance or value that if considered might**

---

[63] 660 Phil. 485 (2011).

affect the result of the case. (Emphasis Ours)[64] (Additional emphasis supplied)

Sixth, Hesson's defense of denial cannot prevail over Sario's positive identification of Hesson as one of the assailants. To be believed, denial must be buttressed by strong evidence of non-culpability. Otherwise, it is purely self-serving and without merit. Greater weight is given to the categorical identification of the accused by the prosecution witness than to the accused's plain denial of participation in the commission of the crime.[65] In the instant case, Hesson failed to adduce evidence to support his denial and overcome the testimony of the prosecution witness. Denial, unsubstantiated by any credible evidence, deserves no weight in law.[66]

In sum, the prosecution more than sufficiently established the participation of Hesson in the crime charged.

Hesson is liable for Murder, not for an impossible crime.

Without admitting his guilt, Hesson argues that he should only be convicted of committing an impossible crime. Allegedly, he cannot be held liable for Murder because it was legally impossible for him to kill Fernando as the latter was already dead when Hesson stabbed him.

The Court is not convinced.

Impossible crime is defined and penalized under paragraph 2, Article 4 in relation to Article 59, both of the RPC to wit:

ART. 4. *Criminal liability*.— Criminal liability shall be incurred:

x x x x x x x x x

---

[64] *Id*. at 493-494, citing *People v. Combate*, 653 Phil. 487, 499 (2010); *People v. Agudez*, 472 Phil. 761, 776 (2004); and *People v. Dinglasan*, 334 Phil. 691, 704 (1997).

[65] *People v. Diaz*, 612 Phil. 692, 719 (2009).

[66] *Id*. at 720.

2. By any person performing an act which would be an offense against persons or property, were it not for the **inherent impossibility of its accomplishment** or on account of the employment of inadequate to ineffectual means.

x x x x x x x x x

ART. 59. *Penalty to be imposed in case of failure to commit the crime because the means employed or the aims sought are impossible*. —When the person intending to commit an offense has already performed the acts for the execution of the same but nevertheless the crime was not produced by reason of the fact that the act intended was by its nature one of impossible accomplishment or because the means employed by such person are essentially inadequate to produce the result desired by him, the court, having in mind the social danger and the degree of criminality shown by the offender, shall impose upon him the penalty of *arresto mayor* or a fine from 200 to 500 pesos. (Emphasis supplied; italics in the original)

Thus, the requisites of an impossible crime are: (1) that the act performed would be an offense against persons or property; (2) that the act was done with evil intent; and **(3) that its accomplishment was inherently impossible, or the means employed was either inadequate or ineffectual**.[67]

The third element, inherent impossibility of accomplishing the crime, was explained more clearly by the Court in the case of *Intod v. Court of Appeals*[68] in this wise:

Under this article, the act performed by the offender cannot produce an offense against persons or property because: (1) the commission of the offense is inherently impossible of accomplishment; or (2) the means employed is either (a) inadequate or (b) ineffectual.

That the offense cannot be produced because the commission of the offense is inherently impossible of accomplishment is the focus of this petition. To be impossible under this clause, the act intended by the offender must be by its nature one impossible of accomplishment. There must be either (1) legal impossibility, or (2) physical

---

[67] *Jacinto v. People*, 610 Phil. 100, 109 (2009); emphasis supplied.

[68] 289 Phil. 485 (1992).

impossibility of accomplishing the intended act in order to qualify the act as an impossible crime.

Legal impossibility occurs where the intended acts, even if completed, would not amount to a crime. xxx

x x x x x x x x x

The impossibility of killing a person already dead falls in this category.

On the other hand, factual impossibility occurs when extraneous circumstances unknown to the actor or beyond his control prevent the consummation of the intended crime. xxx[69] (Emphasis supplied)

To support his theory that what was committed was an impossible crime, Hesson cites the following testimony of Sario:

Q And it was followed by the stab using a bolo?[70]

A Yes.

Q And he was hit at the side of the body?

Q Yes.

Q And you saw Fernando did not move anymore with that blow?

A Not anymore.

Q And you think that he is already dead?

A Yes.

Q About how many minutes when Hesson delivered the stabbing blow?

A About five (5) minutes.

Q So five minutes after he is motionless. You testified that Hesson stab (sic) Fernando and he was already dead when Hesson stabbed Fernando, right?

A Yes.[71]

---

[69] *Id*. at 490-491.

[70] Referring to the alleged initial hacking by accused Junello.

[71] TSN, May 5, 2009, p. 12.

The Court agrees with the CA and the People: the victim's fact of death before he was stabbed by Hesson was not sufficiently established by the defense. While Sario testified that he thought Fernando was already dead after he was hacked by Junello because the former was already lying on the ground motionless, this statement cannot sufficiently support the conclusion that, indeed, Fernando was already dead when Hesson stabbed him. Sario's opinion of Fernando's death was arrived at by merely looking at the latter's body. No other act was done to ascertain this, such as checking of Fernando's pulse, heartbeat or breathing.

Likewise, considering that Sario was in the middle of a surely stressful and frightful event, he cannot be expected to have focused enough and be fit to determine if Fernando was indeed dead when Sario thought he was. In other words, Sario's opinion of Fernando's death at that point in time could have easily been just an erroneous estimation coming from a very flustered witness.

More importantly, even assuming that it was Junello who killed Fernando and that the latter was already dead when he was stabbed by Hesson, Hesson is still liable for murder because of the clear presence of conspiracy between Hesson and Junello. As such, Junello's acts are likewise, legally, Hesson's acts.

Hesson, however, challenges the trial court's finding of conspiracy, arguing that the elements of the same were not established with proof beyond reasonable doubt.

The argument is untenable.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Its elements, like the physical acts constituting the crime itself, must be proved beyond reasonable doubt.[72] The essence of conspiracy is the unity of action and purpose.[73] Direct proof is not essential to prove conspiracy for it may be deduced from the acts of the accused before, during and after

---

[72] *Quidet v. People*, 632 Phil. 1, 11 (2010).

[73] *People v. Jesalva*, G.R. No. 227306, June 19, 2017, p. 4.

the commission of the crime charged, from which it may be indicated that there is common purpose to commit the crime.[74]

In this case, conspiracy is evident from the series of acts of accused Hesson and Junello, which, when taken together, reveal a commonality and unity of criminal design. The Court quotes, in agreement, the brief narration of events by the CA which clearly shows unity of criminal action and purpose between the two accused:

> xxx First, Amad and Callao hatched the plan to kill Fernando in the flea market; thereafter, they went to Fernando's house in Colasisi. Amad pretended to borrow a lighter from Fernando who, after handing out a lighter, was unknowingly struck on the nape. Then, Amad hacked Fernando. After Fernando fell on the ground, Callao jumped in and stabbed Fernando's chest with a knife. Thereafter, Callao sliced open Fernando's chest and took out his heart. Amad then took his turn and sliced up Fernando's body to take out his liver. All these acts clearly reveal conspiracy. Amad and Callao committed what they agreed to do – Fernando's to kill Fernando.[75]

With conspiracy attending, collective liability attaches to the conspirators Hesson and Junello and the Court shall not speculate on the extent of their individual participation in the Murder. Hesson's defense of impossible crime is thus completely unavailing. As extensively explained by the Court in the landmark case of *People v. Peralta*:[76]

> **Once an express or implied conspiracy is proved, all of the conspirators are liable as co-principals regardless of the extent and character of their respective active participation in the commission of the crime or crimes perpetrated in furtherance of the conspiracy because in contemplation of law *the act of one is the act of all.*** The foregoing rule is anchored on the sound principle that "when two or more persons unite to accomplish a criminal object,

---

[74] *People v. Campos*, 668 Phil. 315, 330 (2011).

[75] *Rollo*, p. 13.

[76] 134 Phil. 703 (1968).

whether through the physical volition of one, or all, proceeding severally or collectively, each individual whose evil will actively contributes to the wrong-doing is in law responsible for the whole, the same as though performed by himself alone." Although it is axiomatic that no one is liable for acts other than his own, "when two or more persons agree or conspire to commit a crime, each is responsible for all the acts of the others, done in furtherance of the agreement or conspiracy." The imposition of collective liability upon the conspirators is clearly explained in one case where this Court held that

> ". . . it is impossible to graduate the separate liability of each (conspirator) without taking into consideration the close and inseparable relation of each of them with the criminal act, for the commission of which they all acted by common agreement. . . The crime must therefore in view of the solidarity of the act and intent which existed between the . . . accused, be regarded as the act of the band or party created by them, and they are all equally responsible. . ."

Verily, the moment it is established that the malefactors conspired and confederated in the commission of the felony proved, collective liability of the accused conspirators attaches by reason of the conspiracy, and the court shall not speculate nor even investigate as to the actual degree of participation of each of the perpetrators present at the scene of the crime.[77] (Emphasis supplied; italics in the original)

The Court, therefore, sustains the findings of the trial court, as affirmed by the CA, that Hesson is guilty beyond reasonable doubt for the killing of Fernando. Treachery was proven by the prosecution and the same qualifies the killing to Murder under Article 248[78] of the RPC, the elements of which are: (1) that a person was killed; (2) that the accused killed him; (3)

---

[77] *Id*. at 718-719.

[78] ART. 248. *Murder*. - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

that the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) the killing is not parricide or infanticide.

On the qualifying circumstance of treachery, the same was established. The essence of treachery is a swift and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim. It is deemed present in the commission of the crime, when two conditions concur, namely, that the means, methods, and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and that such means, methods, and forms of execution were deliberately and consciously adopted by the accused without danger to his person.[79] In this case, Fernando was unarmed and totally unaware of the imminent danger to his life. Junello asked for a lighter deliberately to catch Fernando off guard. When Fernando handed the lighter, he was suddenly hacked and thereafter stabbed to death. Fernando had no foreboding of any danger, threat or harm upon his life at the time and occasion that he was attacked. Treachery was attendant not only because of the suddenness of the attack but likewise due to the absence of opportunity to repel the same.

---

1. With **treachery**, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

2. In consideration of a price, reward or promise.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (Emphasis supplied)

[79] *People v. Dela Cruz*, 626 Phil. 631, 639-640 (2010).

Thus, considering all the foregoing, Hesson's conviction of the crime of murder must stand.

Under Article 248 of the RPC, the penalty for the crime of Murder qualified by treachery is *reclusion perpetua* to death. As there were no aggravating or mitigating circumstances that attended the commission of the crime, the Court affirms the penalty of *reclusion perpetua* imposed by the trial court and affirmed by the CA.[80]

Finally, with respect to the award of damages, the Court affirms and finds correct and in accordance with prevailing jurisprudence,[81] the amounts adjudged by the CA, to wit: (1) civil indemnity at Seventy Five Thousand Pesos (₱75,000.00); (2) moral damages at Seventy Five Thousand Pesos (₱75,000.00); (3) exemplary damages at Thirty Thousand Pesos (₱30,000.00); and funeral expenses at the parties' stipulated amount of Fifteen Thousand Pesos (₱15,000.00). All monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

WHEREFORE, premises considered, the instant Appeal is **DISMISSED** for lack of merit. The Decision dated August 31, 2016 of the Court of Appeals, Eighteenth (18th) Division in CA-G.R. CEB-CR-HC. No. 02007, finding accused-appellant Hesson Callao y Marcelino guilty beyond reasonable doubt of the crime of Murder is hereby **AFFIRMED**.

SO ORDERED.

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

---

[80] Art. 63 (2) of the RPC states that when the law prescribes 2 indivisible penalties, and there are neither mitigating nor aggravating circumstances attending, the lesser penalty shall be applied.

[81] *People v. Roxas*, 780 Phil. 874, 887-888 (2016).

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

SECOND DIVISION

[G.R. No. 228955. March 14, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appelleee, vs.* **AL SHIERAV AHMAD *y* SALIH,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** In proving the guilt of the accused charged with illegal sale and possession of dangerous drugs, the following elements must be established: To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that **the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused**.

2. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** [F]or illegal possession of dangerous drugs, 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."

3. **ID.; ID.; ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; THE DANGEROUS DRUG SEIZED FROM THE ACCUSED CONSTITUTES THE *CORPUS DELICTI* OF THE OFFENSE; THUS, THE PROSECUTION BEARS THE BURDEN OF PROVING THAT THE DANGEROUS DRUGS PRESENTED BEFORE THE TRIAL COURT ARE THE SAME ITEMS CONFISCATED FROM THE ACCUSED.— In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense.** Thus, it is of utmost importance that the

integrity and identity of the seized drugs must be shown to have been duly preserved. "The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed." [T]he prosecution bears the burden of proving that the dangerous drugs presented before the trial court are the same items confiscated from the accused.

4. ID.; ID.; SECTION 21 THEREOF; CHAIN OF CUSTODY RULE; PROCEDURE FOR THE CUSTODY AND DISPOSITION OF SEIZED DANGEROUS DRUGS TO PRESERVE THE INTEGRITY AND IDENTITY THEREOF.— Section 21 of R.A. No. 9165, particularly paragraph 1, provides the procedure for the custody and disposition of confiscated, seized, or surrendered dangerous drugs x x x. The requirements of the law are clear. The apprehending officers must *immediately* conduct a physical inventory and to photograph the seized items in the presence of the following: (a) the accused or the person from whom the items were confiscated, or his representative or counsel; (b) a representative from the media; (c) a representative from the Department of Justice (DOJ); and (d) any elected public official. They should also sign the inventory and be given a copy thereof. Requiring the presence of these persons during the inventory serves to prevent switching, planting, or contaminating the seized evidence, which taints the integrity and evidentiary value of the confiscated dangerous drugs. In line with this, jurisprudence requires the apprehending officers to immediately mark the seized items upon its confiscation, or at the "earliest reasonably available opportunity," because this serves as the fundamental reference point in establishing the chain of custody.

5. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE PRESCRIBED PROCEDURE FOR THE HANDLING OF THE SEIZED ILLEGAL DRUGS IS EXCUSABLE ONLY WHEN THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS WERE PROPERLY PRESERVED, AND THE PROSECUTION PROVIDES A CREDIBLE JUSTIFICATION FOR THE ARRESTING OFFICERS' NON-COMPLIANCE THEREOF.— While non-compliance with these requirements is excusable, this only applies when the integrity and the evidentiary value of the seized items were properly preserved. The prosecution must also provide

a credible justification for the arresting officers' failure to comply with the procedure under Section 21 of R.A. No. 9165. It is readily apparent from the records that the arresting officers committed several lapses in the prescribed procedure for the handling of the seized illegal drugs. IO Aguilar, the poseur-buyer, testified that the marking and inventory of the items confiscated from Ahmad were not conducted immediately after Ahmad's arrest. IO Orcales, the team leader of the buy-bust team, justified this failure by stating that the target area was dangerous x x x. Indeed, lapses may be excused under exceptional circumstances. But it should be borne in mind that this remains as an exception to the rule requiring the immediate marking and inventory of the seized dangerous drugs. There must be adequate explanation, proven as a fact, for the arresting officers' failure to follow the prescribed procedure in Section 21 of R.A. No. 9165. **The court can neither presume what these justifiable grounds are, nor assume its existence.** As such, the prosecution cannot simply bypass the requirements under Section 21 of R.A. No. 9165 through a bare and unsupported allegation that the area was dangerous.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ANY REASONABLE DOUBT ON THE CREDIBILITY OF THE PROSECUTION WITNESSES DUE TO INCONSISTENCIES IN THE TESTIMONIES THEREOF WHICH GOES INTO THE INTEGRITY OF THE *CORPUS DELICTI* NECESSARILY CASTS DOUBT ON THE GUILT OF THE ACCUSED BECAUSE IT NEGATES THE EXISTENCE OF AN ESSENTIAL ELEMENT OF THE CRIMES CHARGED.— IO Orcales' unsubstantiated allegation also rests on conflicting testimony. He initially stated that the decision to mark and inventory the items in their office was due to another agent's advice. But he further went on to state that the media representative, who they asked to proceed to the target area for the conduct of the buy-bust operation, also advised them to conduct the inventory in the PDEA office. However, the media representative from ABS-CBN Network, Arnulfo Saniel (Arnulfo), testified that at about 5:00 p.m., he received a call from PDEA requesting him to go to the PDEA office — not the target area of the buy-bust operation. This directly contradicts IO Orcales' testimony that the media representative was asked to directly proceed to the

target area. More importantly, Arnulfo was told during this call that "they have arrested the suspect" but notably, the PDEA officers were just about to proceed to the target area around the same time Arnulfo received the call from PDEA. These inconsistencies in the testimonies of the prosecution witnesses are hardly minor and irrelevant because it goes into the integrity of the *corpus delicti*. Any reasonable doubt on its credibility necessarily casts doubt on the guilt of the accused because it negates the existence of an essential element of the crimes charged.

7. ID.; ID.; BURDEN OF PROOF AND PRESUMPTIONS; THE PRESUMPTION THAT THE POLICE OFFICERS HAVE REGULARLY PERFORMED THEIR DUTY ONLY APPLIES WHEN THERE IS NOTHING TO SUGGEST THAT THEY DEVIATED FROM THE STANDARD CONDUCT OF OFFICIAL DUTY REQUIRED BY LAW.— While the PDEA officers are presumed to have regularly performed their duty, the presumption only applies when there is nothing to suggest that the police officers deviated from the standard conduct of official duty required by law. This presumption is inapplicable to the present case because the record is replete with evidence showing the arresting officers' failure to comply with the mandatory language of Section 21 of R.A. No. 9165. x x x. Simply put, this presumption — gratuitously invoked in instances such as this — does not serve to cure the lapses and deficiencies on the part of the arresting officers. It cannot likewise overcome the constitutional presumption of innocence accorded the accused. Part of the prosecution's duty in overturning this presumption of innocence is to establish that the requirements under Section 21 of R.A. No. 9165 were strictly observed. It should be emphasized that Section 21 of R.A. No. 9165 is a matter of substantive law, which should not be disregarded as a procedural technicality.

8. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT (REPUBLIC ACT NO. 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ACQUITTAL OF ACCUSED-APPELLANT BASED ON REASONABLE DOUBT, WARRANTED.— In light of the prosecution's failure to justify its non-compliance with the mandatory requirements under the law, which in the process, tainted the integrity and evidentiary value of the seized

illegal drugs, the acquittal of Ahmad based on reasonable doubt is 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

REYES, JR., *J.*:

This is an appeal[1] from the Decision[2] dated September 13, 2016 of the Court of Appeals (CA), rendered in CA-G.R. CR HC No. 01376-MIN, affirming the Consolidated Judgment[3] dated December 4, 2014 of the Regional Trial Court (RTC) of Cagayan de Oro City. The RTC found accused Al Shierav Ahmad *y* Salih (Ahmad) guilty of violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act.

Factual Antecedents

Ahmad was charged with the illegal sale and possession of dangerous drugs, punishable under Sections 5 and 11, Article II of R.A. No. 9165. The two (2) separate Informations respectively docketed as Criminal Case Nos. 2012-338 and 2012-340, alleged the following:

Criminal Case No. 2012-338

That on or about the 16th of April, 2012 at around 5:30 in the afternoon, at Barangay Barra, Municipality of Opol, Province of Misamis Oriental and within the jurisdiction of this Honorable [C]ourt, the above-named accused, not being lawfully authorized, did then and there

---

[1] CA *rollo*, pp. 80-81.

[2] Penned by Associate Justice Oscar V. Badelles, with Associate Justices Romulo V. Borja and Ronaldo B. Martin, concurring; *id.* at 69-77.

[3] *Id.* at 32-42.

willfully, unlawfully, and knowingly sell, deliver and give away to a poseur-buyer in a buy-bust operation, 0.05 grams of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which was found positive to the test for Methamphetamine Hydrochloride known as "shabu", a dangerous drug, after receipt of one (1) ₱500.00 bill marked money with serial [N]o. CK 651130.

Contrary to and in violation of Art. II Section 5 of RA 9165.[4]

Criminal Case No. 2012-340

That on or about the 16th of April, 2012 at around 5:30 o'clock in the afternoon, at Barangay Barra, Municipality of Opol, Province of Misamis Oriental and within the jurisdiction of this Honorable [C]ourt, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, custody, and control, one (1) heat-sealed plastic packets containing white crystalline substance with a total weight of 0.04 grams; which when subjected to laboratory examination gave positive result for the presence of methamphetamine hydrochloride, a dangerous drug.

Contrary to and in violation of Art. II Section 11 of RA 9165.[5]

Ahmad pleaded not guilty to both charges during his arraignment.[6]

According to the prosecution, on April 16, 2012, at around 3:00 p.m., a confidential informant went to the Philippine Drug Enforcement Agency (PDEA) Regional Office X. The confidential informant allegedly told Intelligence Officer 3 (IO) Rubietania L. Aguilar (IO Aguilar), who was on duty at that time, that a certain Love-Love was selling *shabu* in Vamenta Subdivision, Barra, Opol, Misamis Oriental.[7]

On the instruction of the PDEA Regional Director, a team of officers was organized to conduct a buy-bust operation. IO 2

---

[4] Records (Crim. Case No. 2012-338), p. 1.

[5] Records (Crim. Case No. 2012-340), p. 1.

[6] Records (Crim. Case No. 2012-338), p. 18; Records (Crim. Case No. 2012-340), p. 17.

[7] *Rollo*, p. 4; Records (Crim. Case Nos. 2012-338 and 2012-340), p. 3.

Vincent Cecil Orcales (IO Orcales) was designated as the team leader, while IO Aguilar was chosen to act as the poseur-buyer. Four other PDEA agents were included in the team.[8]

IO Aguilar was provided with the marked money—a Php 500.00 bill with serial number CK651130. At around 5:00 p.m., the buy-bust team proceeded to Barra, Opol, Misamis Oriental on board the PDEA service vehicle.[9]

When they were near the area, IO Aguilar and the confidential informant approached the house of Love-Love on foot, while the rest of the team positioned themselves near the target area.[10]

Upon the arrival of IO Aguilar and the confidential informant at the house, the confidential informant called Love-Love from outside. A man wearing a white sleeveless shirt and a pair of shorts came out to invite them in. He was later identified as Ahmad, who also goes by the name Love-Love.[11]

They proceeded to the second floor of the house, and entered the room where Ahmad was. The confidential informant introduced IO Aguilar to Ahmad, and told him that IO Aguilar intends to buy *shabu* for Php 500.00. Ahmad asked for the money first, before handing over to IO Aguilar a sachet of suspected *shabu* from his pocket.[12] IO Aguilar briefly examined the sachet and determined that it contained a prohibited drug she believed was *shabu*. She placed this sachet inside her own jean pocket and excused herself. Ahmad allowed them to leave.[13]

As IO Aguilar and the confidential informant were walking downstairs, IO Aguilar gave the pre-arranged signal by dropping a call on IO Orcales' phone. They then met with the rest of the

---

[8] *Id*.

[9] *Id*. at 5.

[10] *Id*.; TSN, September 5, 2012, p. 4.

[11] TSN, September 5, 2012, p. 4; TSN; June 4, 2014, p. 20.

[12] *Rollo*, p. 5.

[13] TSN, September 5, 2012, p. 4.

team outside of the house, at which point IO Aguilar directed them towards the supposed house of Ahmad.[14] The buy-bust team went inside the house and introduced themselves as PDEA officers. Ahmad and the two (2) other individuals in the house were subsequently arrested. IO Orcales frisked them and recovered the following items: (a) the buy-bust money; (b) another sachet of suspected *shabu*; (c) .45 caliber gun; (d) .38 caliber revolver; and (e) aluminum foil strips.[15]

The area was allegedly dangerous so the PDEA team decided to conduct the inventory and marking in their office. In their office, IO Aguilar marked the sachet she received from Ahmad during the buy-bust operation with her initials, "RLA-BB," then turned the evidence over to IO Orcales. IO Orcales also marked the sachet obtained from Ahmad with his initials, "VCMO-R1." The aluminum foil strips taken from the two (2) other individuals in the house were also marked by IO Orcales with his initials, "VCMO-R2." The marking and the inventory were made in the presence of Ahmad, the other PDEA agents, and a representative of the ABS-CBN Network.[16]

The marked items were sent to the Philippine National Police (PNP) Crime Laboratory for examination. The items seized from Ahmad, which were marked as "RLA-BB" and "VCMO-R1," tested positive for the presence of methamphetamine hydrochloride, a dangerous drug.[17] But the aluminum foil strips marked as "VCMO-R2" tested negative for methamphetamine hydrochloride.[18]

Ahmad denied the allegations against him.

He testified that he worked as a mechanic, and he resided in Villa, Candida, Bulua, Cagayan de Oro City. Ahmad did not

---

[14] *Id*.

[15] *Rollo*, p. 5; Records, p. 2.

[16] *Id*.

[17] *Rollo*, pp. 5-6.

[18] Records (Crim. Case No. 2012-340), p. 10.

work on April 16, 2012. Instead, he decided to rest in the house of his then girlfriend, who was living at that time in Vamenta, Barra, Opol, Misamis Oriental.[19] On that same day, at about 5:30 p.m., the door of the room where he was resting was kicked open. Several people entered and introduced themselves as PDEA agents. They accused Ahmad of selling drugs, which he denied. Ahmad also told the PDEA agents that he does not have any *shabu* in his possession, to which they allegedly replied that if he had none, then they had some.[20]

Ahmad claimed that under the threat of electrocution, he was forced to admit that he sold drugs. He was not shown a warrant of arrest but he was shoved, together with the two (2) other individuals in the house, inside the PDEA agents' vehicle. Ahmad further claimed that they were beaten and struck with .45 caliber guns inside the vehicle until they reached the PDEA office.[21]

In his testimony, Ahmad identified the two (2) other individuals in the house as mechanics like himself, who were there to collect spare parts for their shop. He also revealed that there was an occasion previous to his arrest, where he got into an argument with a PDEA or PNP asset who asked the younger sibling of his then girlfriend to purchase *shabu*.[22]

Ruling of the RTC

In the Consolidated Judgment[23] dated December 4, 2014, which the RTC promulgated on January 21, 2015, Ahmad was found guilty of both crimes. The dispositive portion of the judgment reads:[24]

---

[19] TSN, June 4, 2014, pp. 3-4.

[20] *Rollo*, p. 6.

[21] *Id*.

[22] *Id*.; TSN, June 4, 2014, pp. 18-20.

[23] CA *rollo*, pp. 32-42.

[24] Records (Crim. Case No. 2012-338), pp. 84-85; Records (Crim. Case No. 2012-340), pp. 78-79.

WHEREFORE, all the foregoing premises considered, the court hereby finds accused Al Shierav S. Ahmad:

1. In Crim. Case No. 2012-338, GUILTY beyond reasonable doubt of having committed the offense charged in the information (violation of Section 5, Article II of R.A. 9165). He is hereby sentenced to suffer the penalty of *life imprisonment* and to pay a fine in the amount of FIVE HUNDRED THOUSAND PESOS (₱500,000.00), without subsidiary imprisonment in case of insolvency; and

2. In Crim. Case No. 2012-340, GUILTY beyond reasonable doubt of the crime of Violation of Section 11, Par. 2(3), Article II of R.A. No. 9165. He is hereby sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum to twelve (12) years and two (2) days as maximum and to pay a fine of ₱300,000.00, with no subsidiary imprisonment in case of non-payment thereof.

The period of his preventive detention shall be credited in his favor. The sachets of *shabu* are hereby ordered forfeited in favor of the government for proper disposal in accordance with the rules.

SO ORDERED.[25]

Aggrieved, Ahmad filed a Notice of Appeal with the RTC on January 22, 2015.[26] This was granted in the Order[27] dated February 2, 2015 of the RTC.

In his Appellant's Brief, Ahmad argued that the prosecution failed to prove his guilt beyond reasonable doubt. Ahmad pointed out that the integrity and identity of the *corpus delicti* was not proven in this case because of the lapses in the prescribed procedure under Section 21 of R.A. No. 9165. Ahmad specifically cited the failure of the arresting officers to process the inventory and marking at the place of arrest, and the absence of an elected

---

[25] CA *rollo,* p. 23.

[26] Records (Crim. Case No. 2012-338), pp. 88-90; Records (Crim. Case No. 2012-340), pp. 82-84.

[27] Records (Crim. Case No. 2012-338), p. 96; Records (Crim. Case No. 2012-340), p. 89.

public official who should witness the inventory at the PDEA office.[28]

The People of the Philippines (petitioner) refuted Ahmad's argument and insisted on the integrity and identity of the seized illegal drugs. Invoking the presumption of regularity in the performance of official duties, the petitioner argued that the PDEA officers are presumed to have handled the seized items regularly and discharged their duties properly.[29] The petitioner further argued that the place of Ahmad's arrest was dangerous, thus justifying the marking and inventory of the evidence at the PDEA office.[30]

Ruling of the CA

The CA affirmed the RTC's finding of guilt and denied Ahmad's appeal in its Decision[31] dated September 13, 2016, the dispositive of which reads:

> WHEREFORE, premises considered, the appeal is hereby DENIED. The 4 December 2014 Consolidated Judgment of the trial court is AFFIRMED.
>
> SO ORDERED.[32]

The CA held that the prosecution was able to establish the chain of custody of the seized illegal drugs. The CA also ruled that the impending danger in the place of Ahmad's arrest was considered sufficient justification for the PDEA agents to conduct the marking and inventory in their office.[33]

In light of this unfavorable ruling, Ahmad filed the present appeal to this Court.

---

[28] CA *rollo*, pp. 27-29.

[29] *Id*. at 59-61.

[30] *Id*. at 62.

[31] *Id*. at 76.

[32] *Id*.

[33] *Id*. at 74-75.

Ruling of the Court

The Court now resolves whether the guilt of Ahmad was proven beyond reasonable doubt. Relevant to the resolution of this issue is the identity and integrity of the confiscated illegal drugs, which are the *corpus delicti* of the crimes charged against Ahmad.

A thorough examination of the records reveals that the prosecution was unable to establish an unbroken chain of custody. The available evidence did not prove the arresting officers' compliance with the requirements of Section 21 of R.A. No. 9165. Neither was the prosecution able to provide a justifiable ground for this non-compliance.

The Court therefore grants the appeal.

The prosecution failed to establish the identity and integrity of the *corpus delicti*.

In proving the guilt of the accused charged with illegal sale and possession of dangerous drugs, the following elements must be established:

> To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that **the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused**.
>
> On the other hand, for illegal possession of dangerous drugs, 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."

In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly

preserved. "The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed."[34] (Citations omitted and emphases Ours)

In other words, the prosecution bears the burden of proving that the dangerous drugs presented before the trial court are the same items confiscated from the accused. Section 21 of R.A. No. 9165, particularly paragraph 1, provides the procedure for the custody and disposition of confiscated, seized, or surrendered dangerous drugs:[35]

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;
>
> x x x x x x x x x[36]

---

[34] *People of the Philippines v. Salim Ismael y Radang*, G.R. No. 208093, February 20, 2017.

[35] See Implementing Rules and Regulations of R.A. No. 9165, Section 21(a); See *also* PDEA Guidelines on the Implementing Rules and Regulations of Section 21 of R.A. No. 9165, as Amended by R.A. No. 10640 (May 28, 2015).

[36] This has been amended by R.A. No. 10640, An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending For the Purpose Section 21 of R.A. No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002" to read:

The requirements of the law are clear. The apprehending officers must *immediately* conduct a physical inventory and to photograph the seized items in the presence of the following: (a) the accused or the person from whom the items were confiscated, or his representative or counsel; (b) a representative from the media; (c) a representative from the Department of Justice (DOJ); and (d) any elected public official. They should also sign the inventory and be given a copy thereof.

Requiring the presence of these persons during the inventory serves to prevent switching, planting, or contaminating the seized evidence, which taints the integrity and evidentiary value of the confiscated dangerous drugs.[37] In line with this, jurisprudence requires the apprehending officers to immediately mark the seized items upon its confiscation, or at the "earliest reasonably available opportunity,"[38] because this serves as the fundamental reference point in establishing the chain of custody.[39] As this Court judiciously explained in *People v. Mendoza*:[40]

"x x x x x x x x x

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided*, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items."

[37] *People v. Mendoza*, 736 Phil. 749, 761 (2014).

[38] *People v. Sabdula*, 733 Phil. 85, 96 (2014).

[39] *People v. Dahil, et al.*, 750 Phil. 212, 232 (2015), citing *People v. Sabdula*, *supra* note 38, at 96.

[40] 736 Phil. 749 (2014).

Based on the foregoing statutory rules, the manner and timing of the marking of the seized drugs or related items are crucial in proving the chain of custody. Certainly, the marking after seizure by the arresting officer, being the starting point in the custodial link, should be made immediately upon the seizure, or, if that is not possible, as close to the time and place of the seizure as practicable under the obtaining circumstances. **This stricture is essential because the succeeding handlers of the contraband would use the markings as their reference to the seizure. The marking further serves to separate the marked seized drugs from all other evidence from the time of seizure from the accused until the drugs are disposed of upon the termination of the criminal proceedings**. The deliberate taking of these identifying steps is statutorily aimed at obviating switching, "planting" or contamination of the evidence. Indeed, the preservation of the chain of custody *vis-à-vis* the contraband ensures the integrity of the evidence incriminating the accused, and relates to the element of relevancy as one of the requisites for the admissibility of the evidence.[41] (Emphasis Ours)

While non-compliance with these requirements is excusable, this only applies when the integrity and the evidentiary value of the seized items were properly preserved. The prosecution must also provide a credible justification for the arresting officers' failure to comply with the procedure under Section 21 of R.A. No. 9165.[42]

It is readily apparent from the records that the arresting officers committed several lapses in the prescribed procedure for the handling of the seized illegal drugs.

IO Aguilar, the poseur-buyer, testified that the marking and inventory of the items confiscated from Ahmad were not conducted immediately after Ahmad's arrest.[43] IO Orcales, the team leader of the buy-bust team, justified this failure by stating that the target area was dangerous:

---

[41] *Id*. at 761.

[42] *People of the Philippines v. Eddie Barte y Mendoza*, G.R. No. 179749, March 1, 2017.

[43] TSN, September 5, 2012, pp. 16-17.

Assistant Provincial Prosecutor Gerald Cecilio P. Roa:
You said Mr. [W]itness that you made the actual inventory in your office, right?

IO Orcales:
Yes, but we had an initial inventory in the area, but as what I have told you the area is dangerous and I cannot compromise the safety of the agents and so I declared to conduct the inventory in the office.

Q: In short, there was no really inventory (sic) that you conducted in the house of LOVE2X even a partial one?

A: No Sir, I just tried to write there, but one of the agents approached me Sir that the area is a hostile zone and so I also followed them down Sir because I know that the area is also dangerous.[44]

During cross-examination, IO Orcales merely reiterated that the place of arrest was dangerous, without providing substantial details regarding this claim:

Atty. Ricolino L. Ayuban (Counsel for the Accused):
It was only in your office when you made the markings of all those items, Officer Orcales, correct?

IO Orcales:
Yes, sir. We have supposedly (sic) initial inventory in the area but one of our agents told me "let us proceed to the office for inventory and other documents."

Q: So, there was no markings [sic] made while inside of that house?
A: Yes, sir.

Q: You said that initial inventory was made supposedly in that house but for security reason[s] you did not continue it but just continued only in your office, correct?
A: Yes, sir. And also the media advised us to have that in the office[.]

---

[44] TSN, May 7, 2013, p. 9.

Q: The media was not able to arrive at the house of the accused?
A: When we have the operation, sir we requested them to proceed to the area.[45]

Indeed, lapses may be excused under exceptional circumstances. But it should be borne in mind that this remains as an exception to the rule requiring the immediate marking and inventory of the seized dangerous drugs. There must be adequate explanation, proven as a fact, for the arresting officers' failure to follow the prescribed procedure in Section 21 of R.A. No. 9165. **The court can neither presume what these justifiable grounds are, nor assume its existence**.[46] As such, the prosecution cannot simply bypass the requirements under Section 21 of R.A. No. 9165 through a bare and unsupported allegation that the area was dangerous.

IO Orcales' unsubstantiated allegation also rests on conflicting testimony. He initially stated that the decision to mark and inventory the items in their office was due to another agent's advice. But he further went on to state that the media representative, who they asked to proceed to the target area for the conduct of the buy-bust operation, also advised them to conduct the inventory in the PDEA office.

However, the media representative from ABS-CBN Network, Arnulfo Saniel (Arnulfo), testified that at about 5:00 p.m., he received a call from PDEA requesting him to go to the PDEA office—not the target area of the buy-bust operation.[47] This directly contradicts IO Orcales' testimony that the media representative was asked to directly proceed to the target area. More importantly, Arnulfo was told during this call that "they have arrested the suspect"[48] but notably, the PDEA officers

---

[45] TSN June 25, 2013, pp. 8-9.

[46] *People v. De Guzman y Danzil*, 630 Phil. 637, 648-649 (2010).

[47] TSN, October 30, 2013, p. 3.

[48] *Id*.

were just about to proceed to the target area around the same time Arnulfo received the call from PDEA.[49]

These inconsistencies in the testimonies of the prosecution witnesses are hardly minor and irrelevant because it goes into the integrity of the *corpus delicti*. Any reasonable doubt on its credibility necessarily casts doubt on the guilt of the accused because it negates the existence of an essential element of the crimes charged.

In addition, the Court is uncertain as to how the seized drugs were handled from the time it was taken from Ahmad until these were marked at the PDEA office. IO Aguilar testified that when she took the sachet of suspected *shabu* from Ahmad after their transaction, she pocketed it and went outside to give the pre-arranged signal. After giving the signal, she boarded the service vehicle of the apprehending team, while IO Orcales made their way to the house. IO Aguilar returned to the house only after Ahmad and the two other persons in the house were arrested. Even then, the marking of the sachet containing suspected *shabu*, supposedly obtained from Ahmad during the buy-bust transaction, was made only after they had returned to the PDEA office.[50]

The same holds true for the sachet of suspected *shabu* that IO Orcales seized from Ahmad during his arrest. A considerable amount of time has intervened before these items were marked and inventoried at the PDEA office, creating an opportunity for evidence tampering or, at the very least, contamination.[51]

Furthermore, the arresting officers did not conduct the inventory and take photographs of the seized items in the presence of a DOJ representative[52] and an elected public official. Only

---

[49] *Supra* note 9.

[50] TSN, September 5, 2012, pp. 6-7.

[51] *People v. De Guzman*, *supra* note 46, at 653; *People v. Garcia*, 599 Phil. 416, 433-434 (2009).

[52] As amended, R.A. No. 10640 now requires the presence of a representative from the National Prosecution Service (R.A. No. 10640, Section 1).

Arnulfo, the media representative from ABS-CBN, was present. Arnulfo, however, arrived at the PDEA office only after Ahmad's arrest, with the confiscated items already laid out on top of a table.[53] Thus, Arnulfo relied purely on the representation of the PDEA officers that the items on the table were the same items seized from Ahmad.[54] His presence could not have obviated any evidence planting, tampering, or contamination.

While the PDEA officers are presumed to have regularly performed their duty, the presumption only applies when there is nothing to suggest that the police officers deviated from the standard conduct of official duty required by law.[55] This presumption is inapplicable to the present case because the record is replete with evidence showing the arresting officers' failure to comply with the mandatory language of Section 21 of R.A. No. 9165. As the Court aptly held in *Mallilin v. People*:[56]

> **Given the foregoing deviations of police officer Esternon from the standard and normal procedure in the implementation of the warrant and in taking post-seizure custody of the evidence, the blind reliance by the trial court and the [CA] on the presumption of regularity in the conduct of police duty is manifestly misplaced**. The presumption of regularity is merely just that—a mere presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth. Suffice it to say that this presumption cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt. In the present case the lack of conclusive identification of the illegal drugs allegedly seized from petitioner, coupled with the irregularity in the manner by which the same were placed under police custody before offered in court, strongly militates a finding of guilt.[57] (Emphasis Ours)

---

[53] TSN, October 30, 2013, p. 5.

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

[55] *People v. Dela Cruz,* 744 Phil. 816, 832 (2014), citing *Mallilin v. People,* 576 Phil. 576, 579 (2008).

[56] 576 Phil. 576 (2008).

[57] *Id*. at 593.

Simply put, this presumption—gratuitously invoked in instances such as this—does not serve to cure the lapses and deficiencies on the part of the arresting officers. It cannot likewise overcome the constitutional presumption of innocence accorded the accused. Part of the prosecution's duty in overturning this presumption of innocence is to establish that the requirements under Section 21 of R.A. No. 9165 were strictly observed. It should be emphasized that Section 21 of R.A. No. 9165 is a matter of substantive law, which should not be disregarded as a procedural technicality.[58]

In light of the prosecution's failure to justify its non-compliance with the mandatory requirements under the law, which in the process, tainted the integrity and evidentiary value of the seized illegal drugs, the acquittal of Ahmad based on reasonable doubt is in order.

WHEREFORE, premises considered, the appeal is **GRANTED**. The Decision dated September 13, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 01376-MIN, which in turn affirmed the Consolidated Judgment dated December 4, 2014 of Regional Trial Court of Cagayan de Oro City, Branch 40, in Criminal Case Nos. 2012-338 and 2012-340, is **REVERSED** and **SET ASIDE**.

Accused Al Shierav Ahmad *y* Salih is **ACQUITTED** based on reasonable doubt.

The Director of the Bureau of Corrections is directed to: (a) cause the immediate release of Al Shierav Ahmad *y* Salih, unless he is being lawfully held for another cause; and (b) inform this Court of the date of his release, or the reason for his continued confinement as the case may be, within five (5) days from notice.

Copies of this Decision must be furnished to the Director General of the Philippine National Police and the Director

---

[58] *People of the Philippines v. Jonas Geronimo y Pinlac*, G.R. No. 225500, September 11, 2017; *People of the Philippines v. John Paul Ceralde y Ramos*, G.R. No. 228894, August 7, 2017.

General of the Philippine Drug Enforcement Agency for their information.

SO ORDERED.

Carpio,[*] *Acting Chief Justice (Chairperson*), *Peralta, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 230065. March 14, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARCELINO CRISPO *y* DESCALSO *alias* "GOGO" and ENRICO HERRERA *y* MONTES,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; EXTINCTION OF CRIMINAL LIABILITY; THE DEATH OF THE ACCUSED PENDING APPEAL OF HIS CONVICTION EXTINGUISHES HIS CRIMINAL LIABILITY AS WELL AS THE CIVIL LIABILITY BASED SOLELY THEREON.— During the pendency of this appeal, the Court received a letter dated September 7, 2017 from the Bureau of Corrections, informing it that Herrera had already died on April 3, 2017. Attached thereto is a duplicate copy of Herrera's Certificate of Death issued by the Officer of the Civil Registrar General. Under Paragraph 1, Article 89 of the Revised Penal Code, the consequences of Herrera's death x x x. In *People v. Jao,* the Court eloquently summed up the effects of the death

---

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

of an accused pending appeal on his liabilities, as follows: From this lengthy disquisition, we summarize our ruling herein: 1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.,* civil liability *ex delicto* in *senso strictiore."* Thus, upon Herrera's death pending appeal of his conviction, the criminal action against him is extinguished inasmuch as there is no longer a defendant to stand as the accused. As such, the criminal case against him is hereby dismissed, and declared closed and terminated.

2. REMEDIAL LAW; CRIMINAL 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.— It must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— Crispo 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.

4. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— [I]n 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.

5. ID.; ID.; SECTION 21, ARTICLE II THEREOF; CHAIN OF CUSTODY RULE; PROCEDURE IN THE HANDLING OF SEIZED DRUGS IN ORDER TO PRESERVE THEIR INTEGRITY AND EVIDENTIARY VALUE; IN ORDER TO OBVIATE ANY UNNECESSARY DOUBT ON THE IDENTITY OF THE DANGEROUS DRUGS, THE PROSECUTION HAS TO SHOW AN UNBROKEN CHAIN OF CUSTODY OVER THE SAME AND ACCOUNT FOR EACH LINK IN THE CHAIN OF CUSTODY FROM THE MOMENT THE DRUGS ARE SEIZED UP TO THEIR PRESENTATION IN COURT AS EVIDENCE OF THE CRIME. — 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 the identity of the dangerous drugs, 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 their presentation in court as evidence of the crime. 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] 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.; ID.; THE FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE PROCEDURE LAID OUT IN SECTION 21, ARTICLE II OF RA 9165 AND ITS IMPLEMETING 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 THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.— The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.** In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is justifiable ground for non-compliance; **and** *(b)* the integrity and evidentiary value of the seized items are properly preserved. 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**. After a judicious study of the case, the Court finds that the arresting 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 Crispo.

7. ID.; ID.; ID.; ID.; ID.; THE ABSENCE OF THE REQUIRED WITNESSES DURING THE INVENTORY OF THE SEIZED ITEMS DOES NOT *PER SE* RENDER THE CONFISCATED ITEMS INADMISSIBLE, PROVIDED A JUSTIFIABLE REASON FOR SUCH FAILURE OR A SHOWING OF ANY GENUINE AND SUFFICIENT EFFORT TO SECURE THE REQUIRED WITNESSES WAS ADDUCED, AS MERE STATEMENTS OF UNAVAILABILITY, ABSENT ACTUAL SERIOUS ATTEMPTS TO CONTACT THE REQUIRED WITNESSES ARE UNACCEPTABLE AS JUSTIFIED GROUNDS FOR NON-COMPLIANCE.— The law requires the presence of an elected public official, as well as representatives from the DOJ and the media to ensure that the chain of custody rule is observed and thus, remove any suspicion of tampering, switching, planting, or contamination of evidence which could considerably affect a case. However, minor deviations may be excused in situations where a justifiable reason for non-compliance is explained. In this case, despite the non-observance of the witness requirement, no plausible explanation was given by the prosecution. In fact, the poseur-buyer, PO2 Reyes, only feigned ignorance as to the reason why no representatives of the DOJ and the media were present during the inventory of the seized items x x x. At this point, 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, Article II 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. 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 fully well that they would have to strictly comply with the set procedure prescribed in Section 21, Article II of RA 9165. **As such, police officers are compelled not only to state reasons for their non-compliance, but must in 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.**

8. ID.; ID.; IN A PROSECUTION FOR THE SALE AND POSSESSION OF DANGEROUS DRUGS, THE STATE CARRIES THE HEAVY BURDEN OF PROVING NOT ONLY THE ELEMENTS OF THE OFFENSE, BUT ALSO THE INTEGRITY OF THE *CORPUS DELICTI,* FAILING IN WHICH, RENDERS THE CASE FOR THE STATE INSUFFICIENT TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.— [F]or failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would excuse their transgression, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Crispo have been compromised. It is settled that in a prosecution for the sale and possession of dangerous drugs under RA 9165, the State carries the heavy burden of proving not only the elements of the offense, but also to prove the integrity of the *corpus delicti,* failing in which, renders the case for the State insufficient to prove the guilt of the accused beyond reasonable doubt.

9. ID.; ID.; 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.— Verily, the procedural lapses committed by the arresting officers, which were unfortunately left unjustified, militate against a finding of guilt beyond reasonable doubt against Crispo, 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 the aforesaid provision, Crispo's acquittal is perforce in order.

10. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; THE FACT THAT ANY ISSUE REGARDING COMPLIANCE WITH PROCEDURE SET FORTH IN SECTION 21, ARTICLE II OF RA 9165, AS AMENDED WAS NOT RAISED, OR EVEN 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; IF NO SUCH REASONS EXIST, THEN IT IS THE APPELLATE COURT'S BOUNDEN DUTY TO ACQUIT THE ACCUSED, AND PERFORCE, OVERTURN A CONVICTION.— [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.

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-appellants Marcelino Crispo *y* Descalso alias "Gogo" (Crispo) and Enrico Herrera *y* Montes (Herrera; collectively, accused-appellants) assailing the Decision[2] dated March 17, 2016 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07117, which affirmed the Decision[3] dated October 24, 2014 of the Regional Trial Court of Manila, Branch 2 (RTC) in Crim. Case Nos. 12-293828 and 12-293829 finding: *(a)* accused-appellants 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"; and *(b)*Crispo guilty beyond reasonable doubt of violating Section 11, Article II of the same law.

---

[1] See Notice of Appeal dated April 14, 2016; *rollo,* pp. 13-14.

[2] *Id.* at 2-12. Penned by Associate Justice Manuel M. Barrios with Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy concurring.

[3] *CA rollo,* pp. 40-46. Penned by Presiding Judge Sarah Alma M. Lim.

[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.

The Facts

This case stemmed from two (2) Informations[5] filed before the RTC charging accused-appellants of the crime of Illegal Sale of Dangerous Drugs, and Crispo of the crime of Illegal Possession of Dangerous Drugs, the accusatory portions of which state:

Crim. Case No. 12-293828

That on or about November 19, 2012, in the City of Manila, Philippines, the said [accused-appellants], conspiring and confederating together and mutually helping each other, not being then authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully, knowingly and jointly sell one (1) heat- sealed transparent plastic sachet containing ZERO POINT ZERO TWO THREE (0.023) gram of white crystalline substance containing methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[6]

Crim. Case No. 12-293829

That on or about November 19, 2012, in the City of Manila, Philippines, [Crispo], not being then authorized by law to possess any dangerous drug, did then and there willfully, unlawfully, and knowingly possess or have under his control three (3) heat-sealed transparent plastic sachets containing white crystalline substance weighing zero point zero three seven (0.037) gram, zero point zero two five (0.025) gram and zero point zero one nine (0.019) gram or in the total weight of zero point zero eight one (0.081) gram of methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[7]

The prosecution alleged that at around 1 :30 in the afternoon of November 19, 2012,[8] a confidential informant (CI) tipped

---

[5] Records, pp. 2-3 and 4-5.

[6] *Id.* at 2.

[7] *Id.* at 4.

[8] Erroneously dated as "May 1, 2003" and "November 19, 2014" in some parts of the records.

the Manila Police District Station 4 (MPD) of the alleged illegal drug activities of a certain alias "Gogo" (later identified as Crispo) at Ma. Cristina Street, Sampaloc, Manila. Thus, after coordinating with the operatives of the Philippine Drug Enforcement Agency, the MPD organized a buy-bust operation at the said area, with Police Officer (PO) 2 Dennis Reyes (PO2 Reyes) as the poseur buyer. Upon arrival at the area at around 5:30 in the afternoon of even date, the CI and PO2 Reyes saw Crispo talking to his runner, Herrera, and decided to approach them. As they went nearer, Herrera approached the CI and PO2 Reyes, while Crispo remained about five (5) to six (6) meters away. PO2 Reyes then signified his intention of buying *shabu,* prompting Herrera to get the marked money from him, and thereafter, approach Crispo in order to remit the money and get a sachet containing white crystalline substance from the latter. When Herrera handed over the sachet to PO2 Reyes, the latter performed the pre-arranged signal, directly causing his backups to rush into the scene and apprehend accused-appellants. Upon frisking accused-appellants, the arresting officers recovered three (3) other plastic sachets containing white crystalline substance from Crispo. The accused-appellants and the seized items were then taken to the barangay office where the arresting officers, *inter alia,* conducted the inventory and photography in the presence of two (2) barangay kagawads, as indicated in the Receipt of Property/Evidence Seized.[9] After examination[10] at the Crime Laboratory, it was confirmed that the sachets seized from accused-appellants contain methamphetamine hydrochloride, or *shabu.*[11]

Accused-appellants pleaded not guilty to the crimes charged[12] and offered their version of the events. According to Crispo,

---

[9] Dated November 19, 2012. Records, p. 15.

[10] See Chemistry Report No. D-850-12 dated November 19, 2012 signed by Forensic Chemical Officer, Police Chief Inspector Elisa G. Reyes; *id.* at 12.

[11] See *rollo,* pp. 4-6.

[12] *Id.* at 4.

he was just on board a tricycle going to his niece's house when suddenly, a car with five (5) policemen in civilian clothes blocked the tricycle's path. One of the policemen then poked a gun at Crispo, and told him,*"Mga pulis kami, sumama ka sa presinto."* Fearful for his life, Crispo complied. Upon arrival at the police station, the policemen demanded from him ₱30,000.00 for his release; otherwise, they will plant evidence against him. The policemen then proceeded to show him four (4) sachets of *shabu* which will be used against him. For his part, Herrera averred that he was riding a bicycle when he accidentally bumped a brown van. Three (3) men then alighted from the van, arrested him, and took him to the police station. Thereat, an affidavit was purportedly prepared for him and that he signed the same even without reading it out of confusion.[13]

The RTC Ruling

In a Decision[14] dated October 24, 2014, the RTC found accused- appellants guilty beyond reasonable doubt of the crimes charged and, accordingly, sentenced them as follows: *(a)* for Illegal Sale of Dangerous Drugs, the RTC sentenced accused-appellants to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00; and *(b)* for Illegal Possession of Dangerous Drugs, the RTC sentenced Crispo to suffer the penalty of imprisonment for the indeterminate period of twelve (12) years and one (1) day, as minimum, to seventeen (17) years and four (4) months, as maximum, and to pay a fine in the amount of ₱300,000.00.[15]

The RTC found that the prosecution was able to establish all the elements of the crimes charged as it was shown that accused-appellants sold to PO2 Reyes one (1) sachet of *shabu* and that after their arrest, three (3) more sachets of *shabu* were found in Crispo's possession. On the other hand, the RTC did

---

[13] See *id*. at 6-7.

[14] CA *rollo,* pp. 40-46.

[15] *Id*. at 46.

not give merit to accused-appellants' imputation of ill-motive against their arresting officers after finding it unsubstantiated.[16]

Aggrieved, accused-appellants appealed[17] to the CA.

The CA Ruling

In a Decision[18] dated March 17, 2016, the CA affirmed the RTC ruling.[19] It held that the prosecution had established beyond reasonable doubt all the elements of the crimes charged. Further, the CA ruled that the absence of representatives from the DOJ and the media during the conduct of the inventory is not fatal to the prosecution of accused-appellants, so long as the integrity and evidentiary value of the seized items are preserved.[20]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld accused-appellants' conviction for the crimes charged.

The Court's Ruling

I.

During the pendency of this appeal, the Court received a letter[21] dated September 7, 2017 from the Bureau of Corrections, informing it that Herrera had already died on April 3, 2017. Attached thereto is a duplicate copy of Herrera's Certificate of Death[22] issued by the Officer of the Civil Registrar General.

---

[16] *Id*. at 44-46.

[17] See Notice of Appeal dated October 28, 2014; records, p. 95.

[18] *Rollo,* pp. 2-12.

[19] *Id*. at 11.

[20] See *id*. at 7-11.

[21] *Id*. at 27.

[22] *Id*. at 28.

Under Paragraph 1, Article 89 of the Revised Penal Code, the consequences of Herrera's death are as follows:

> Art. 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished:
>
> 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;
>
> x x x x x x x x x

In *People v. Jao,*[23] the Court eloquently summed up the effects of the death of an accused pending appeal on his liabilities,[24] as follows:

> From this lengthy disquisition, we summarize our ruling herein:
>
> 1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.,* civil liability *ex delicto* in *senso strictiore*."[25]

Thus, upon Herrera's death pending appeal of his conviction, the criminal action against him is extinguished inasmuch as there is no longer a defendant to stand as the accused. As such, the criminal case against him is hereby dismissed, and declared closed and terminated.[26]

II.

With respect to Crispo, the Court finds his appeal meritorious.

---

[23] See G.R. No. 225634, June 7, 2017.

[24] See *id*., citing *People v. Egagamao,* G.R. No. 218809, August 3, 2016, 799 SCRA 507, 513.

[25] See *id*.

[26] See *id*.

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.[27] "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."[28]

Here, Crispo 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.[29] 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.[30]

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 the identity of the dangerous drugs, 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 their presentation in court as evidence of the crime.[31]

---

[27] See *People v. Dahil,* 750 Phil. 212, 225 (2015).

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

[29] *People v. Sumili,* 753 Phil. 342, 348 (2015).

[30] *People v. Bio,* 753 Phil. 730, 736 (2015).

[31] See *People v. Viterbo,* 739 Phil. 593, 601 (2014).

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.[32] Under the said section, prior to its amendment by RA 10640,[33] 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.[34] In the case of *People v. Mendoza,*[35] 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."[36]

---

[32] See *People v. Sumili, supra* note 29, at 349-350.

[33] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014. The crime subject of this case was allegedly committed before the enactment of RA 10640, or on November 19, 2012.

[34] See Section 21 (1) and (2), Article II of RA 9165.

[35] 736 Phil. 749 (2014).

[36] *Id*. at 764; emphases and underscoring supplied.

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible.[37] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640[38] – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds – will not render**

---

[37] See *People v. Sanchez,* 590 Phil. 214, 234 (2008).

[38] Section 1 of RA 10640 states:

Section 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," is hereby amended to read as follows:

"SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

"(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/ paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided,* That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally,* That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

x x x x x x x x x"

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.[39] In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is justifiable ground for non-compliance; **and** *(b)* the integrity and evidentiary value of the seized items are properly preserved.[40] In *People v. Almorfe,*[41] **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.**[42] Also, in *People v. De Guzman,*[43] it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist**.[44]

After a judicious study of the case, the Court finds that the arresting 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 Crispo.

An examination of the records reveals that while the inventory and photography of the seized items were made in the presence of two (2) elected public officials, *i.e.,*Barangay Kagawads Ramon Amtolim and Helen Tolentino, as evidenced by their

---

[39] See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde,* G.R. No. 228894, August 7, 2017.

[40] See *People v. Goco,* G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252.

[41] 631 Phil. 51 (2010).

[42] *Id*. at 60; citation omitted.

[43] 630 Phil. 637 (2010).

[44] *Id*. at 649.

signatures on the Receipt of Property/Evidence Seized,[45] the same were not done in the presence of representatives from either the DOJ and the media. This fact was confirmed by PO3 Manolito Rodriguez (PO3 Rodriguez), a member of the buy-bust team that apprehended Crispo, in his testimony in direct and cross-examinations, to wit:

> [Asst. Pros. Alexander T. Yap]: What happened at the barangay? What barangay by the way?
>
> [PO3 Rodriguez]: I forgot the number of the barangay, sir.
>
> **Q: Who was, was there an official of the barangay with you?**
> **A: I remember two Kagawad[s], sir.**
>
> **Q: Tell the Court what happened at the barangay?**
> **A: They signed as witnesses in the inventory receipt, sir.**
>
> **Q: Who signed the inventorv?**
>
> **A: [The] Barangay Kagawad[s], sir.**
>
> x x x x x x x x x
>
> [Atty. Rosemarie G. Gonzales (Atty. Gonzales)]: Mr. Witness, according to you, you already proceeded to the barangay? [PO3 Rodriguez]: Yes, ma'am.
>
> x x x x x x x x x
>
> Q: Mr. Witness, were you able to see when the markings of the evidences (sic) were done?
> A: Yes, ma'am.
>
> Q: Where were you at that time?
> A: At the barangay hall, ma'am.
>
> Q: How about the accused at that time, where were they?
> A: They were with us also, ma'am.
>
> Q: Were they assisted [by] any counsel at that time?
> A: None, ma'am.
>
> **Q: Were there any members of the DOJ?**
> **A: None, ma'am.**

---

[45] See records, p. 15.

Q: Were there any members of the media?
A: None, ma'am.

Q: According to you the inventory of the evidences (sic) were witnessed by the Kagawads?
A: Yes, ma'am.

Q: An these kagawads? Who called the kagawads?
A: We, ma'am.

Q: They were already at the area when they arrived?
A: Yes, ma'am.[46] (Emphases and underscoring supplied)

The law requires the presence of an elected public official, as well as representatives from the DOJ and the media to ensure that the chain of custody rule is observed and thus, remove any suspicion of tampering, switching, planting, or contamination of evidence which could considerably affect a case. However, minor deviations may be excused in situations where a justifiable reason for non-compliance is explained. In this case, despite the non-observance of the witness requirement, no plausible explanation was given by the prosecution. In fact, the poseur-buyer, PO2 Reyes, only feigned ignorance as to the reason why no representatives of the DOJ and the media were present during the inventory of the seized items:

(Atty. Gonzales]: By the way, Mr. Witness, prior to the operation considering that you would be conducting a buy-bust operation, was there any coordination with the DOJ? [PO2 Reyes]: I do not know if [SPO3 Agapito Yadao, the buy-bust team leader,] did that, ma'am.

Q: How about with any media representative?
A: I do not know, ma'am.

x x x x x x x x x

Q: Mr. Witness, when these evidences (sic) were likewise being marked was there any presence of the DOJ now?

A: None, ma'am.

---

[46] TSN, May 7, 2013, pp. 9 and 18-19.

Q: How about the presence of the media now?

A: None, ma'am.

x x x x x x x x x

Q: Why was there none?

A: When we arrested them we immediately proceeded to the Barangay[.]

Q: That's the only your (sic) explanation?

A: Yes, ma'am.

Q: Despite the fact that it is a buy-bust operation which was prepared by your office?

A: Yes, ma'am.

Q: With all documents prepared and Pre-operation Report prepared?

A: Yes, ma'am.

Q: You just merely did not consider getting all the required persons to comply with Sec. 21?

A: I do not know with Yadao, ma'am.[47] (Emphases and underscoring supplied)

At this point, it is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible.[48] However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21, Article II of RA 9165 must be adduced.[49] In *People v. Umipang,*[50] 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 –

---

[47] TSN, June 25, 2013, pp. 26 and 29.

[48] See *People v. Umipang,* 686 Phil. 1024, 1052 (2012).

[49] See *id*. at 1052-1053.

[50] *Id*.

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."[51] Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.[52] 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, Article II of RA 9165. **As such, police officers are compelled not only to state reasons for their non-compliance, but must in 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.**[53]

Thus, for failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would excuse their transgression, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Crispo have been compromised. It is settled that in a prosecution for the sale and possession of dangerous drugs under RA 9165, the State carries the heavy burden of proving not only the elements of the offense, but also to prove the integrity of the *corpus delicti,* failing in which, renders the case for the State insufficient to prove the guilt of the accused beyond reasonable doubt.[54]

Verily, the procedural lapses committed by the arresting officers, which were unfortunately left unjustified, militate

---

[51] *Id*. at 1053.

[52] See *id*.

[53] See *People v. Manansala,* G.R. No. 229092, February 21, 2018.

[54] See *People v. Umipang, supra* note 48, at 1039-1040; citation omitted.

against a finding of guilt beyond reasonable doubt against Crispo, as the integrity and evidentiary value of the *corpus delicti* had been compromised.[55] 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.[56] As such, since the prosecution failed to provide justifiable grounds for non-compliance with the aforesaid provision, Crispo'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. Order is too high a price for the loss of liberty. x x x.[57]

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.**

---

[55] See *People v. Sumili, supra* note 29, at 352.

[56] See *People v. Macapundag,* G.R. No. 225965, March 13, 2017, citing *People v. Umipang, supra* note 48, at 1038.

[57] *People v. Go,* 457 Phil. 885, 925 (2003), citing *People v. Aminnudin,* 246 Phil. 424, 434-435 (1998).

Since compliance with the 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.[58]

WHEREFORE, the Court hereby rules as follows:

(a) Crim. Case No. 12-293828 is hereby **DISMISSED** and declared **CLOSED** and **TERMINATED** insofar as accused-appellant Enrico Herrera *y* Montes is concerned due to his supervening death pending appeal; and

(b) The appeal of accused-appellant Marcelino Crispo *y* Descalso is **GRANTED.** The Decision dated March 17, 2016 of the Court of Appeals in CA-G.R. CR HC No. 07117 is **REVERSED** and **SET ASIDE.** Accordingly, he 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.

---

[58] See *People v. Miranda,* G.R. No. 229671, January 31, 2018.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

SECOND DIVISION

[G.R. No. 230070. March 14, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NESTOR AÑO *y* DEL REMEDIOS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL 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.— At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— [A]ño was charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. In order to 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.

3. ID.; ID.; SECTION 21, ARTICLE II THEREOF; CHAIN OF CUSTODY RULE; PROCEDURAL REQUIREMENTS IN THE HANDLING OF THE SEIZED DRUGS IN ORDER TO ENSURE THAT THEIR INTEGRITY AND EVIDENTIARY VALUE ARE PRESERVED; THE PROSECUTION MUST BE ABLE TO ACCOUNT FOR EACH LINK IN THE CHAIN OF CUSTODY OVER THE

DANGEROUS DRUG FROM THE MOMENT OF SEIZURE UP TO ITS PRESENTATION IN COURT AS EVIDENCE OF THE *CORPUS DELICTI*.— It is likewise essential for a conviction that the drugs subject of the sale be presented in court and its identity established with moral certainty through an unbroken chain of custody over the same. In cases like this, the prosecution must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*. In this relation, Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs in order to ensure that their integrity and evidentiary value are preserved. 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 take photographs of the seized items **in the presence of the accused or the person from whom such items were seized, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall then sign the copies of the inventory and be given a copy of the same; and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination purposes. 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] 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused**. Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."

4. ID.; ID.; ID.; 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 THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; UNJUSTIFIED SUBSTANTIAL GAPS IN THE CHAIN OF CUSTODY OF THE SEIZED ITEMS FROM THE ACCUSED PUT INTO QUESTION THEIR INTEGRITY AND EVIDENTIARY VALUE.— 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 **non-compliance with the requirements of Section 21, Article II of RA 9165 - under justifiable grounds — will not automatically 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. 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**. After a judicious study of the case, the Court finds that there are substantial gaps in the chain of custody of the seized items from Año which were unfortunately, left unjustified, thereby putting into question their integrity and evidentiary value.

5. ID.; ID.; ID.; ID.; THE PROCEDURE UNDER 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 the prosecution submits, upon Año's arrest, PO1 Ortilla called Brgy. Captain Buenviaje to witness the marking and to sign the inventory. After which, PO2 Ayad marked the sachet of *shabu* subject of the sale with Año's intials, "NDRA," while PO1 Ortilla prepared an inventory of the seized items, which was signed by Brgy. Captain Buenviaje as witness, and had them photographed. Thereafter, the buy-bust team escorted Año to the police station and turned over the sachet for examination to FC Villaraza. While the fact of marking and inventory of the seized item was established by the attached Inventory of Seized/Confiscated Items, the records are glaringly silent as to the presence of the required witnesses, namely, the representatives from the media and the DOJ. To reiterate, Section 21 (1) of RA 9165, prior to its amendment by RA 10640, as well as its IRR requires the presence of the following witnesses during the conduct of inventory and photography of the seized items: (*a*) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (*b*) any elected public official; and (*c*) a representative from the media and the DOJ. In their absence, the prosecution must provide a credible explanation justifying the non-compliance with the rule; otherwise, the saving clause under the IRR of RA 9165 (and now, the amended Section 21, Article II of RA 9165) would not apply. Here, no such explanation was proffered by the prosecution to justify the procedural lapse. It then follows that there are unjustified gaps in the chain of custody of the items seized from Año, thereby militating against a finding of guilt beyond reasonable doubt, which resultantly warrants his acquittal. It is well-settled that the procedure under 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.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; THE FACT THAT ANY ISSUE REGARDING THE COMPLIANCE WITH THE PROCEDURE SET FORTH IN SECTION 21 OF RA 9165 WAS NOT RAISED, OR EVEN 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; IF NO SUCH REASONS EXIST, THEN IT IS THE APPELLATE COURT'S BOUNDEN DUTY TO ACQUIT THE ACCUSED, AND PERFORCE, OVERTURN A CONVICTION.— [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. Order 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 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.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated December 4, 2015 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06127, which affirmed the Decision[3] dated October 1, 2012 of the Regional Trial Court of San Mateo, Rizal, Branch 76 (RTC) in Criminal Case No. 11427 finding accused-appellant Nestor Año *y* Del Remedios (Año) guilty beyond reasonable doubt for violating Section 5 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 Año with violation of Section 5, Article II of RA 9165, the accusatory portion of which reads:

Criminal Case No. 11427

That on or about the 3rd day of August 2009 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction

---

[1] See Notice of Appeal dated January 7, 2016; *rollo*, pp. 14-15.

[2] *Rollo*, pp. 2-13. Penned by Associate Justice Noel G. Tijam (now a member of the Court) with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr. concurring.

[3] CA *rollo*, pp. 45-53. Penned by Judge Josephine Zarate Fernandez.

[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 THEREFORE, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] Records, pp. 1-2.

of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to poseur buyer, PO2 Ruel T. Ayad, 0.03 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet which substance was found positive to the tests for Methamphetamine Hydrochloride, also known as "shabu", a dangerous drug, in consideration of the amount of Php.200.00, in violation of the above-cited law.

CONTRARY TO LAW.[6]

The prosecution alleged that at around five (5) o'clock in the afternoon of August 3, 2005 and after receiving information about Año's drug activities at Daangbakal, Guitnangbayan II, Police Officer (PO) 2 Ruel T. Ayad (PO2 Ayad), PO1 Aldwin Ortilla (PO1 Ortilla), and PO1 Jenesis A. Acuin[7] (PO1 Acuin) formed a buy-bust team designating PO2 Ayad as the poseur-buyer, with PO1 Ortilla and PO1 Acuin as back-ups, and marked two (2) ₱100.00 bills to be used in the operation.[8] Thereafter, the team headed to the house of Año where PO2 Ayad knocked on the door and upon seeing Año, whispered that he "wants to score" worth ₱200.00. Año replied that he has drugs with him and gave PO2 Ayad a transparent plastic sachet, while the latter simultaneously handed the marked money as payment. As Año placed the money inside his pocket, PO2 Ayad introduced himself as a policeman, causing Año to flee. Fortunately, PO2 Ayad caught Año and asked him to empty his pockets which produced the two (2) ₱100.00 bills. Due to the commotion caused by Año's relatives who were preventing his arrest, the team moved at a distance of around 100 meters from the place of arrest, marked the confiscated sachet, and completed the inventory thereat. Barangay Captain Leo S. Buenviaje (Brgy. Captain Buenviaje) witnessed and signed the Inventory of Seized/ Confiscated Items,[9] photographs were also taken in the presence

---

[6] *Id*. at 1.

[7] "PO2 Jenesis Acuin" in some parts of the records.

[8] See *rollo*, pp. 3-4.

[9] See Inventory of Seized/Confiscated Items dated August 3, 2009; records, p. 14.

of Año, PO2 Ayad, and PO1 Acuin.[10] On the same day, PO2 Ayad delivered the seized sachet to the Crime Laboratory where it was turned over to Police Inspector Forensic Chemist Beaune V. Villaraza (FC Villaraza) for examination. In Laboratory Report No. D-198-09,[11] FC Villaraza confirmed that the seized sachet was positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.[12]

Upon arraignment, Año pleaded not guilty and denied the charges leveled against him. He claimed that on said date, he was at home celebrating the 4th birthday of his nephew when suddenly, three police officers whom he identified to be PO2 Ayad, PO1 Ortilla, and PO1 Acuin, forcibly arrested him and brought him to the police station for inquiry. The following day, he learned that he was being charged of drug pushing.[13]

The RTC Ruling

In a Decision[14] dated October 1, 2012, the RTC found Año guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs under Section 5 of RA 9165, sentencing him to suffer the penalty of life imprisonment and a fine of ₱500,000.00.[15]

The RTC found all the elements for the prosecution of sale of dangerous drugs present, noting that the identity of Año as the seller of the illegal drug was clearly established when he was arrested *in flagrante delicto* during a buy-bust operation.[16]

Aggrieved, Año elevated his conviction before the Court of Appeals (CA).[17]

---

[10] See *id*. at 17 and 48.

[11] *Id*. at 65.

[12] See *id*. See also *rollo*, pp. 3-5.

[13] See *rollo*, pp. 3 and 5-6.

[14] CA *rollo*, pp. 45-53.

[15] *Id*. at 53.

[16] See *id*. at 51-53.

[17] See Notice of Appeal dated November 14, 2012; records, p. 175.

The CA Ruling

In a Decision[18] dated December 4, 2015, the CA upheld the RTC ruling,[19] likewise finding that all the elements constituting the crime of Illegal Sale of Dangerous Drugs were present. Moreover, it ruled that the apprehending officers duly complied with the chain of custody rule under Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, as PO2 Ayad testified in detail the links in the chain of custody of the seized drug from the time of its confiscation until its presentation in court as evidence.

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Año is guilty beyond reasonable doubt of Section 5, Article II of RA 9165.

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.[20] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[21]

Here, Año was charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. In order to secure the conviction of an accused charged with

---

[18] *Rollo*, pp. 2-13.

[19] *Id.* at 12.

[20] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

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

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.[22] It is likewise essential for a conviction that the drugs subject of the sale be presented in court and its identity established with moral certainty through an unbroken chain of custody over the same. In cases like this, the prosecution must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.[23]

In this relation, Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs in order to ensure that their integrity and evidentiary value are preserved.[24] Under the said section, prior to its amendment by RA 10640,[25] the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and take photographs of the seized items **in the presence of the accused or the person from whom such items were seized, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall then sign the copies of the inventory and be given a copy of the same; and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination purposes.[26] In the case of *People v. Mendoza*,[27] the Court stressed that "**[w]ithout the**

---

[22] *People v. Sumili*, 753 Phil. 342, 348 (2015).

[23] See *People v. Viterbo*, 739 Phil. 593, 601 (2014). See also *People v. Alagarme*, 754 Phil. 449, 459-460 (2015).

[24] See *People v. Sumili*, 753 Phil. 342, 349-350 (2015).

[25] 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.

[26] See Section 21 (1) and (2), Article II of RA 9165.

[27] 736 Phil. 749 (2014).

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."[28]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible.[29] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640[30] — provide

---

[28] *Id*. at 764; emphases and underscoring supplied.

[29] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[30] Section 1 of RA 10640 states:

SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", is hereby amended to read as follows:

"SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

"(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/ paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies

that **non-compliance with the requirements of Section 21, Article II of RA 9165 — under justifiable grounds — will not automatically render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**.[31] 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.[32] In *People v. Almorfe*,[33] **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**.[34] Also, in *People v. De Guzman*,[35] it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist**.[36]

---

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"

[31] See Section 21 (a), Article II, of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

[32] See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252.

[33] 631 Phil. 51 (2010).

[34] See *id*. at 60.

[35] 630 Phil. 637 (2010).

[36] *Id*. at 649.

After a judicious study of the case, the Court finds that there are substantial gaps in the chain of custody of the seized items from Año which were unfortunately, left unjustified, thereby putting into question their integrity and evidentiary value.

As the prosecution submits, upon Año's arrest, PO1 Ortilla called Brgy. Captain Buenviaje to witness the marking and to sign the inventory. After which, PO2 Ayad marked the sachet of *shabu* subject of the sale with Año's intials, "NDRA," while PO1 Ortilla prepared an inventory of the seized items, which was signed by Brgy. Captain Buenviaje as witness, and had them photographed. Thereafter, the buy-bust team escorted Año to the police station and turned over the sachet for examination to FC Villaraza.

While the fact of marking and inventory of the seized item was established by the attached Inventory of Seized/Confiscated Items,[37] the records are glaringly silent as to the presence of the required witnesses, namely, the representatives from the media and the DOJ. To reiterate, Section 21 (1) of RA 9165, prior to its amendment by RA 10640, as well as its IRR requires the presence of the following witnesses during the conduct of inventory and photography of the seized items: (*a*) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (*b*) any elected public official; and (*c*) a representative from the media and the DOJ.[38] In their absence, the prosecution must provide a credible explanation justifying the non- compliance with the rule; otherwise, the saving clause under the IRR of RA 9165 (and now, the amended Section 21, Article II of RA 9165) would not apply.

Here, no such explanation was proffered by the prosecution to justify the procedural lapse. It then follows that there are unjustified gaps in the chain of custody of the items seized from Año, thereby militating against a finding of guilt

---

[37] Records, p. 14.

[38] See Section 21 (1), Article II of RA 9165 and Section 21 (a), Article II of its IRR.

beyond reasonable doubt, which resultantly warrants his acquittal.[39] It is well-settled that the procedure under 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.[40]

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.[41]

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

---

[39] *People v. Lintag*, G.R. No. 219855, September 6, 2016, 802 SCRA 257, 267.

[40] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 486 Phil. 1024, 1038 (2012).

[41] *People v. Go*, 457 Phil. 885,925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

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 December 4, 2015 of the Court of Appeals in CA-G.R. CR-H.C. No. 06127 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Nestor Año *y* Del Remedios is **ACQUITTED** of the crime charged. The Director of Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 230657. March 14, 2018]

ANGELITO MAGNO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES, represented by the OFFICE OF THE OMBUDSMAN through the OFFICE OF THE SPECIAL PROSECUTOR,** *respondent.*

---

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; IN A PETITION FOR REVIEW ON *CERTIORARI* SEEKING TO REVIEW THE RULING OF THE SANDIGANBAYAN IN A PETITION FOR *CERTIORARI* UNDER RULE 65, THE SUPREME COURT EXAMINES THE RULING OF THE SANDIGANBAYAN FROM THE PRISM OF WHETHER OR NOT IT CORRECTLY DETERMINED THE PRESENCE OR ABSENCE OF GRAVE ABUSE OF DISCRETION IN THE ASSAILED RULING OF THE REGIONAL TRIAL COURT; GRAVE ABUSE OF DISCRETION, WHEN IT EXISTS.— Preliminarily, the Court points out the distinct approach in dealing with Rule 45 petitions for review on *certiorari* that seek to review a ruling of a lower court, such as the SB, regarding a Rule 65 petition for *certiorari*. In a Rule 45 review, the Court examines the correctness of the SB ruling in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court must view the SB ruling in the same context that the petition for *certiorari* was presented to the latter court. Hence, the Court has to examine the SB ruling from the prism of whether or not it correctly determined the presence or absence of grave abuse of discretion in the assailed ruling, *i.e.*, that of the RTC. Grave abuse of discretion is the capricious and whimsical exercise of judgment. It is the exercise of a power in an arbitrary manner. It must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined or to act at all in contemplation of law. Case law provides that grave abuse of discretion exists when the act is: (*a*) done contrary to the Constitution, the law or jurisprudence; or (*b*) executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias. [T]he RTC ruling finding that petitioner's right to speedy trial has been violated finds support in prevailing law and jurisprudence.

2. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION; RIGHTS OF ACCUSED; RIGHT TO SPEEDY TRIAL; DEFINED.— An accused's right to "have a speedy, impartial, and public trial" is guaranteed in criminal cases by Section 14 (2), Article III of the 1987 Constitution.

"This right to a speedy trial may be defined as one free from vexatious, capricious and oppressive delays, its 'salutary objective' being to assure that an innocent person may be free from the anxiety and expense of a court litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. Intimating historical perspective on the evolution of the right to speedy trial, the old legal maxim, 'justice delayed is justice denied' must be reiterated. This oft-repeated adage requires the expeditious resolution of disputes, much more so in criminal cases where an accused is constitutionally guaranteed the right to a speedy trial."

3. ID.; ID.; ID.; ID.; ID.; THE RIGHT TO SPEEDY TRIAL AS WELL AS THE RIGHT TO SPEEDY DISPOSITION OF CASES IS DEEMED VIOLATED ONLY WHEN THE PROCEEDINGS ARE ATTENDED BY VEXATIOUS, CAPRICIOUS, AND OPPRESSIVE DELAYS, OR WHEN UNJUSTIFIED POSTPONEMENTS OF THE TRIAL ARE ASKED FOR AND SECURED, OR EVEN WITHOUT JUSTIFIABLE MOTIVE, A LONG PERIOD OF TIME IS ALLOWED TO ELAPSE WITHOUT THE PARTY HAVING HIS CASE TRIED; FACTORS TO CONSIDER.— [T]he right to speedy trial (as well as the right to speedy disposition of cases) should be understood as a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient. Pertinently, this right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or even without justifiable motive, a long period of time is allowed to elapse without the party having his case tried. Hence, in the determination of whether the defendant has been denied such right, the following factors may be considered and balanced: (*a*) the length of delay; (*b*) the reasons for the delay; (*c*) the assertion or failure to assert such right by the accused; and (*d*) the prejudice caused by the delay. Examining the incidents of this case vis-a-vis the aforesaid jurisprudential parameters in determining the existence of violation of such right, the Court holds that petitioner's right to speedy trial had been violated.

4. ID.; ID.; ID.; ID.; ID.; THE TACTICAL DISADVANTAGES AS WELL AS THE LOOMING UNREST BROUGHT BY

THE LENGTHY AND UNJUSTIFIED PASSAGE OF TIME SHOULD BE WEIGHED AGAINST THE STATE AND IN FAVOR OF THE INDIVIDUAL.— [T]he Court recognizes the prejudice caused to petitioner by the lengthy and unjustified delay in Crim. Case No. DU-10123. To stress, the right to speedy trial is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. As already adverted to, the "salutary objective" of this right is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. In *Coscolluela v. Sandiganbayan*, the Court stated that the tactical disadvantages as well as the looming unrest brought by this lengthy and unjustified passage of time should be weighed against the State and in favor of the individual, *viz*.: Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. **Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.**

5. ID.; ID.; ID.; ID.; THE ACQUITTAL OF THE ACCUSED ON GROUND OF VIOLATION OF HIS RIGHT TO SPEEDY TRIAL WILL BAR HIS FURTHER PROSECUTION FOR THE SAME OFFENSE, BUT WILL NOT EXCULPATE HIM FROM ANY CIVIL LIABILITY, WHERE THE SAME IS PROVEN IN A SUBSEQUENT CASE WHICH THE PRIVATE COMPLAINANT MAY OPT TO PURSUE.— [I]n view of the unjustified length of time miring the resolution of Crim. Case No. DU-10123 as well as

the concomitant prejudice that the delay in this case has caused, the Court concludes that petitioner's right to speedy trial had been violated. As such, the RTC did not gravely abuse its discretion in ordering the dismissal of Crim. Case No. DU-10123 on this ground. While this pronouncement should, as a matter of course, result in the acquittal of petitioner that would bar his further prosecution for the same offense, it does not necessarily follow that he is entirely exculpated from any civil liability, assuming that the same is proven in a subsequent case which the private complainant/s may opt to pursue.

APPEARANCES OF COUNSEL

Wee Lim & Salas Law Firm for petitioner.
Office of the Special Prosecutor for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by petitioner Angelito Magno (petitioner) assailing the Decision[2] dated September 16, 2016 and the Resolution[3] dated February 15, 2017 of the Sandiganbayan (SB) in SB-15-SCA-0001, which nullified and set aside the Orders dated September 30, 2013[4] and November 28, 2014[5] of the Regional Trial Court of Mandaue City, Branch 56 (RTC) in Crim. Case No. DU-10123, and found that petitioner's right to speedy trial was not violated.

---

[1] *Rollo*, pp. 49-86.

[2] *Id*. at 92-105, including dorsal portions. Penned by Associate Justice Sarah Jane T. Fernandez with Presiding Justice Amparo M. Cabotaje-Tang and Associate Justice Samuel R. Martires (now a member of the Court) concurring.

[3] *Id*. at 106-109.

[4] *Id*. at 138-139. Penned by Presiding Judge Teresita A. Galanida.

[5] *Id*. at 140-141.

The Facts

On ***May 14, 2003***, an Information[6] was filed before the RTC charging, *inter alia*, petitioner (who was then serving as Investigative Agent IV of the National Bureau of Investigation) with Multiple Frustrated Murder and Double Attempted Murder.[7] After arraignment, petitioner objected to the formal appearance of one Atty. Adelino Sitoy (Atty. Sitoy), who intended to act as a private prosecutor for and in behalf of the Office of the Ombudsman (Ombudsman). In the Orders dated September 25, 2003 and October 1, 2003, the RTC ruled that only the Ombudsman may prosecute the instant case, to the exclusion of any other entity/person other than those authorized under Republic Act No. 6770.[8] The Ombudsman and Atty. Sitoy questioned the RTC's aforesaid Orders to the Court of Appeals (CA), which, in a Decision dated September 26, 2005, ruled that the private prosecutor may prosecute the case and appear for the People of the Philippines in collaboration with any lawyer deputized by the Ombudsman. Eventually, the matter reached the Court,[9] which nullified the CA's pronouncements on the ground of lack of jurisdiction, ratiocinating that the Ombudsman and Atty. Sitoy should have sought recourse from the SB instead (Private Prosecutor Case).[10]

While the Private Prosecutor Case was still pending before the CA, the latter court issued a temporary restraining order (TRO), and thereafter, a preliminary injunction enjoining the RTC from implementing its Orders dated September 25, 2003 and October 1, 2003. This notwithstanding and upon motion by the prosecution, the CA clarified in a Resolution dated

---

[6] Dated April 28, 2003. *Id.* at 175-179.

[7] See *id*. at 54-55.

[8] Entitled "AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES," approved on November 17, 1989.

[9] See *Magno v. People*, 662 Phil. 726 (2011).

[10] See *rollo*, pp. 92-96, including dorsal portions.

January 19, 2005 that the injunctive writs do not operate to enjoin the proceedings in Crim. Case No. DU-10123, provided that it is conducted in the presence of the private prosecutor. Thus, the prosecution moved to set the case for trial and started presenting one of its witnesses on **March 29, 2005**. In the course of the prosecution's presentation of witnesses, the RTC sustained petitioner's objection on the admissibility of one of the witness's testimony, prompting the prosecution to elevate the matter to the SB (Objection Case). Initially, the SB issued a sixty (60)-day TRO enjoining the RTC from proceeding with Crim. Case No. DU-10123. In a Decision dated February 12, 2007, the SB dismissed the Objection Case.[11]

Meanwhile and after the expiration of the TRO in the Objection Case, petitioner filed on **March 16, 2006** a Motion to Set Case for Continuous Hearing before the RTC, invoking his right to speedy trial. In an Order dated June 16, 2006, the RTC granted petitioner's motion, and accordingly, set the hearing on September 1, 2006.[12] The prosecution moved for reconsideration[13] but the same was denied in an Order dated August 18, 2006.[14] Thus, under threat of being cited in contempt, the prosecution continued its presentation of witnesses on **September 1, 2006**. Such presentation continued all the way until **June 7, 2007** when the prosecution requested to reset the hearing to August 16, 2007 due to the handling prosecutor's illness. However, it appears that from such postponement until around early 2010, no hearings were conducted in the case. In fact, records show that there were only two (2) incidents during that time, namely: (*a*) petitioner's Motion for Substitution of Bond and Cancellation of Annotation which was resolved on October 9, 2009; and (*b*) Philippine Charter Insurance Corporation's Motion to Release a vehicle involved in a case which was resolved on December 9, 2013.[15]

---

[11] See *id*. at 92-95, including dorsal portions.

[12] See *id*. at 64 and 94 (dorsal portion).

[13] *Id*. at 412-416.

[14] See *id*. at 94 (dorsal portion)-95.

[15] See *id*. at 95, including dorsal portion.

In view of the foregoing, petitioner moved for the continuation of the trial, the hearing of which was set on April 22, 2010, which was further reset to September 2, 2010. At the **September 2, 2010** hearing, only petitioner's counsel appeared. Thus, on **September 17, 2010**, petitioner filed a Motion to Dismiss[16] on the ground of violation of his right to speedy trial. In such motion, petitioner not only pointed out the various postponements and cancellations of hearings by the prosecution from the filing of the information until 2007, but also highlighted the hibernation of the case from 2007 until his Motion to Set Case for Hearing filed in April 2010. For its part, the prosecution filed an Opposition[17] to petitioner's motion, and at the same time, prayed that it be allowed to present further evidence.[18]

The RTC Ruling

In an Order[19] dated September 30, 2013, the RTC granted petitioner's motion to dismiss on the ground of violation of the latter's right to speedy trial.[20] It found that Crim. Case No. DU-10123 had already been pending for thirteen (13) years and yet, remained unresolved. In particular, the RTC pointed out that from 2007 onwards, the case has ceased to move forward due to the inaction of the State.[21]

The prosecution moved for reconsideration,[22] which was, however, denied in an Order[23] dated November 28, 2014. Aggrieved, the prosecution filed a petition for *certiorari*[24] before the SB.

---

[16] *Id*. at 180-185.

[17] See Opposition to Motion to Dismiss dated October 14, 2010; *id*. at 186-190.

[18] See *id*. at 95 (dorsal portion)-96.

[19] *Id*. at 138-139.

[20] *Id*. at 139.

[21] *Id*.

[22] See Motion for Reconsideration (Re: Order dated 30 September 2013) dated October 27, 2014; *id*. at 195-205.

[23] *Id*. at 140-141.

[24] Dated February 16, 2015. *Id*. at 110-134.

The SB Ruling

In a Decision[25] dated September 16, 2016, the SB set aside the RTC ruling and, accordingly, ordered the reinstatement of Crim. Case No. DU-10123 and for the RTC to conduct further proceedings immediately.[26] It held that the RTC gravely abused its discretion in ruling that petitioner's right to speedy trial has been violated, pointing out that both the prosecution and petitioner contributed to the delays in the case. In this regard, the SB opined that it is equally the responsibility of both the prosecution and the defense to move for the continuation of the trial.[27]

Petitioner moved for reconsideration[28] but the same was denied in a Resolution[29] dated February 15, 2017; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the SB correctly ascribed grave abuse on the part of the RTC when the latter court found that petitioner's right to speedy trial has been violated.

The Court's Ruling

The petition is meritorious.

Preliminarily, the Court points out the distinct approach in dealing with Rule 45 petitions for review on *certiorari* that seek to review a ruling of a lower court, such as the SB, regarding a Rule 65 petition for *certiorari*. In a Rule 45 review, the Court examines the correctness of the SB ruling in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court must view the SB ruling in the same context that the petition for *certiorari* was presented to the latter

---

[25] *Id*. at 92-105, including dorsal portions.

[26] *Id*. at 104 (dorsal portion).

[27] See *id*. at 98-104, including dorsal portions.

[28] See motion for reconsideration dated October 25, 2016; *id*. at 422-439.

[29] *Id*. at 106-109.

court. Hence, the Court has to examine the SB ruling from the prism of whether or not it correctly determined the presence or absence of grave abuse of discretion in the assailed ruling, *i.e.*, that of the RTC.[30]

Grave abuse of discretion is the capricious and whimsical exercise of judgment. It is the exercise of a power in an arbitrary manner. It must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined or to act at all in contemplation of law. Case law provides that grave abuse of discretion exists when the act is: (*a*) done contrary to the Constitution, the law or jurisprudence; or (*b*) executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias.[31]

Guided by the foregoing considerations, the Court finds that the CA erred in ascribing grave abuse of discretion on the part of the RTC. As will be explained hereunder, the RTC ruling finding that petitioner's right to speedy trial has been violated finds support in prevailing law and jurisprudence.

An accused's right to "have a speedy, impartial, and public trial" is guaranteed in criminal cases by Section 14 (2), Article III of the 1987 Constitution. "This right to a speedy trial may be defined as one free from vexatious, capricious and oppressive delays, its 'salutary objective' being to assure that an innocent person may be free from the anxiety and expense of a court litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. Intimating historical perspective on the evolution of the right to speedy trial, the old legal maxim, 'justice delayed is justice denied' must be reiterated. This oft-repeated adage requires

---

[30] See *University of Santo Tomas v. Samahang Manggagawa ng UST*, G.R. No. 184262, April 24, 2017, citing *Quebral v. Angbus Construction, Inc.*, G.R. No. 221897, November 7, 2016, 807 SCRA 176, 184.

[31] See *Imperial v. Armes*, G.R. Nos. 178842 and 195509, January 30, 2017, citing *Air Transportation Office v. CA*, 737 Phil. 61, 84 (2014).

the expeditious resolution of disputes, much more so in criminal cases where an accused is constitutionally guaranteed the right to a speedy trial."[32] In *Tan v. People*,[33] the Court made a thorough discussion on the matter, to wit:

> The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. **Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.**
>
> While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.
>
> x x x x x x x x x
>
> A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis.
>
> **In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (*a*) length of delay; (*b*) the reason for the delay; (*c*) the defendant's assertion of his right; and (*d*) prejudice to the defendant.** x x x.

---

[32] *Tan v. People*, 604 Phil. 68, 78-79 (2009).

[33] *Id*.

Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. x x x.[34] (Emphases and underscoring supplied)

Thus, the right to speedy trial (as well as the right to speedy disposition of cases) should be understood as a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient. Pertinently, this right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or even without justifiable motive, a long period of time is allowed to elapse without the party having his case tried. Hence, in the determination of whether the defendant has been denied such right, the following factors may be considered and balanced: (*a*) the length of delay; (*b*) the reasons for the delay; (*c*) the assertion or failure to assert such right by the accused; and (*d*) the prejudice caused by the delay.[35]

Examining the incidents of this case vis-a-vis the aforesaid jurisprudential parameters in determining the existence of violation of such right, the Court holds that petitioner's right to speedy trial had been violated.

First, more than a decade has elapsed from the time the Information in Crim. Case No. DU-10123 was filed on May 14, 2003, until the RTC promulgated its Orders dated September 30, 2013 and November 28, 2014 dismissing the case on the ground of violation of petitioner's right to speedy trial. Notably, when the RTC dismissed the case, the prosecution has yet to complete the presentation of its evidence in chief.

Second, for the purpose of determining whether or not a violation of petitioner's right to speedy trial indeed exists, the

---

[34] *Id*. at 80, citing *Corpuz v. Sandiganbayan*, 484 Phil. 899, 917-919 (2004).

[35] See *Coscolluela v. Sandiganbayan*, 714 Phil. 55, 61 (2013); citations omitted.

Court deems it appropriate to highlight two (2) distinct periods, namely: (*a*) the period from the filing of the information on May 14, 2003 until June 7, 2007 when the prosecution requested to reset the hearing due to the handling prosecutor's illness (First Period); and (*b*) from June 7, 2007 until September 17, 2010 when petitioner finally filed a Motion to Dismiss on the ground of violation of his right to speedy trial (Second Period).

As may be gleaned from the records, the numerous delays and postponements that occurred during the First Period were excusable, as Crim. Case No. DU-10123 was plagued with various incidents that reached the higher courts, *i.e.*, the Private Prosecutor and Objection Cases, which even issued TROs and/or preliminary injunctions that undeniably contributed to the hampering of the proceedings before the RTC.

On the other hand, the very long delay that occurred during the Second Period largely remains unjustified. Records reveal after trial was postponed on June 7, 2007 and reset to August 16, 2007, there is no showing that the August 16, 2007 setting or any hearing thereafter actually took place. During this time, it appears that the prosecution never lifted a finger to keep the proceedings in Crim. Case No. DU-10123 from stalling. Worse, despite the fact that two (2) incidents were raised in this case during the Second Period[36] which would have alerted the prosecution as to the long, drawn-out pendency of this case, the latter remained indifferent in pursuing the case and never pushed for the continuation of trial.

Third, petitioner was not remiss in asserting his right to speedy trial. Records show that during the First Period and after the TROs and/or injunctions issued by the higher courts enjoining the proceedings on the main were already dissolved, petitioner filed on March 16, 2006 a Motion to Set Case for Continuous

---

[36] Namely: (*a*) petitioner's Motion for Substitution of Bond and Cancellation of Annotation; and (*b*) Philippine Charter Insurance Corporation's Motion to Release a vehicle involved in a case. (see *rollo*, pp. 95 [dorsal portion] and 100 [dorsal portion]-101.)

Hearing, already invoking such right.[37] In fact, this directly resulted in the Court ordering the prosecution to continue with the presentation of its witnesses. Unfortunately, the case progress bogged down once again after the prosecution asked for a postponement of the June 7, 2007 hearing, and thereafter, failed to move forward with the proceedings. In fact, the prosecution only moved to continue the presentation of its evidence ***after*** petitioner moved to dismiss the case on the ground of violation of his right to speedy trial.

Fourth, the Court recognizes the prejudice caused to petitioner by the lengthy and unjustified delay in Crim. Case No. DU-10123. To stress, the right to speedy trial is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. As already adverted to, the "salutary objective" of this right is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. In *Coscolluela v. Sandiganbayan*,[38] the Court stated that the tactical disadvantages as well as the looming unrest brought by this lengthy and unjustified passage of time should be weighed against the State and in favor of the individual, *viz.*:

> Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. **Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to**

---

[37] See *id*. at 64 and 100, including dorsal portion

[38] *Supra* note 35.

trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.

Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State.[39] (Emphasis and underscoring supplied)

Thus, in view of the unjustified length of time miring the resolution of Crim. Case No. DU-10123 as well as the concomitant prejudice that the delay in this case has caused, the Court concludes that petitioner's right to speedy trial had been violated. As such, the RTC did not gravely abuse its discretion in ordering the dismissal of Crim. Case No. DU-10123 on this ground. While this pronouncement should, as a matter of course, result in the acquittal of petitioner that would

---

[39] *Id*. at 65-66, citing *Corpuz v. Sandiganbayan*, *supra* note 34, at 918-919.

bar his further prosecution for the same offense,[40] it does not necessarily follow that he is entirely exculpated from any civil liability, assuming that the same is proven in a subsequent case which the private complainant/s may opt to pursue.[41]

WHEREFORE, the petition is **GRANTED**. The Decision dated September 16, 2016 and the Resolution dated February 15, 2017 of the Sandiganbayan in SB-15-SCA-0001 are hereby **NULLIFIED** and **SET ASIDE**. The Orders dated September 30, 2013 and November 28, 2014 of the Regional Trial Court of Mandaue City, Branch 56 in Crim. Case No. DU-10123 are **REINSTATED**. Accordingly, Crim. Case No. DU-10123 is **DISMISSED** on the ground of violation of the accused's right to speedy trial, without prejudice to any civil action which the private complainant/s may file against him.

Let a copy of this Decision be furnished the Secretary of Justice for his information and guidance.

SO ORDERED.

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

SECOND DIVISION

[A.C. No. 11156. March 19, 2018]
(Formerly CBD Case No. 12-3680)

MICHELLE YAP, *complainant, vs.* **ATTY. GRACE C. BURI,** *respondent.*

---

[40] See *Bonsubre v. Yerro*, 753 Phil. 653, 661-662 (2015), citing *People v. Hernandez*, 531 Phil. 289, 305-306 (2006).

[41] See *Coscolluela v. People*, *supra* note 35, at 67.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; ADMINISTRATIVE CHARGES; RESPONDENT'S LACK OF INTEREST IN CLEARING HER NAME IS INDICATIVE OF AN IMPLIED ADMISSION OF THE CHARGES LEVELLED AGAINST HER.—** [I]nstead of paying Yap the remaining balance of the purchase price of the condominium unit, Buri opted to simply threaten her and file a criminal case against her. Obviously, this strategy was to intimidate Yap and prevent her from collecting the remaining ₱200,000.00. When given a chance to defend herself, Buri chose to stay silent and even refused to file an answer, attend the hearing, or to submit her position paper, despite due notice. Hence, Yap's version of the facts stands and remains uncontroverted. Buri's unwarranted tenacity simply shows, not only her lack of responsibility, but also her lack of interest in clearing her name, which, as pronounced in case law, is indicative of an implied admission of the charges levelled against her.

2. **ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; REFUSAL TO PAY AN OBLIGATION REFLECTS LACK OF INTEGRITY AND MORAL SOUNDNESS, AND TAKING ADVANTAGE OF THE KNOWLEDGE OF THE LAW AND RESORTING TO THREATS AND INTIMIDATION CONSTITUTE GROSS VIOLATION OF PROFESSIONAL ETHICS AND A BETRAYAL OF PUBLIC CONFIDENCE IN THE LEGAL PROFESSION.—** Buri's persistent refusal to pay her obligation despite frequent demands clearly reflects her lack of integrity and moral soundness; she took advantage of her knowledge of the law and clearly resorted to threats and intimidation in order to get away with what she wanted, constituting a gross violation of professional ethics and a betrayal of public confidence in the legal profession.

3. **ID.; ID.; ID.; LAWYERS MUST CONDUCT THEMSELVES WITH GREAT PROPRIETY, AND THEIR BEHAVIOR SHOULD BE BEYOND REPROACH ANYWHERE AND AT ALL TIMES, FOR, AS OFFICERS OF THE COURTS AND KEEPERS OF THE PUBLIC'S FAITH, THEY ARE BURDENED WITH THE HIGHEST DEGREE OF SOCIAL RESPONSIBILITY AND ARE THUS MANDATED TO**

BEHAVE AT ALL TIMES IN A MANNER CONSISTENT WITH TRUTH AND HONOR.— Buri indubitably swept aside the Lawyer's Oath that enjoins her to support the Constitution and obey the laws. She forgot that she must not wittingly or willingly promote or sue any groundless, false or unlawful suit nor give aid nor consent to the same. She also took for granted the express commands of the Code of Professional Responsibility (CPR), specifically Rule 1.01 of Canon 1 and Rule 7.03 of Canon 7 of the CPR. x x x. The foregoing canons require of Buri, as a lawyer, an enduring high sense of responsibility and good fidelity in all her dealings and emphasize the high standard of honesty and fairness expected of her, not only in the practice of the legal profession, but in her personal dealings as well. A lawyer must conduct himself with great propriety, and his behavior should be beyond reproach anywhere and at all times. For, as officers of the courts and keepers of the public's faith, they are burdened with the highest degree of social responsibility and are thus mandated to behave at all times in a manner consistent with truth and honor. Likewise, the oath that lawyers swear to impresses upon them the duty of exhibiting the highest degree of good faith, fairness and candor in their relationships with others. Thus, lawyers may be disciplined for any conduct, whether in their professional or in their private capacity, if such conduct renders them unfit to continue to be officers of the court.

4. ID.; ID.; ID.; A LAWYER, WHETHER ACTING AS SUCH OR IN A NON-PROFESSIONAL CAPACITY, HAS THE OBLIGATION TO EXHIBIT GOOD FAITH, FAIRNESS AND CANDOR IN HIS/HER RELATIONSHIP WITH OTHERS, AND HE/SHE COULD BE DISCIPLINED NOT ONLY FOR A MALPRACTICE IN HIS/HER PROFESSION, BUT ALSO FOR ANY MISCONDUCT COMMITTED OUTSIDE OF HIS/HER PROFESSIONAL CAPACITY.— That Buri's act involved a private dealing with Yap is immaterial. Her being a lawyer calls for — whether she was acting as such or in a non-professional capacity — the obligation to exhibit good faith, fairness and candor in her relationship with others. There is no question that a lawyer could be disciplined not only for a malpractice in his profession, but also for any misconduct committed outside of his professional capacity. Buri's being a lawyer demands that she conduct herself

as a person of the highest moral and professional integrity and probity in her dealings with others. The Court has repeatedly emphasized that the practice of law is imbued with public interest and that a lawyer owes substantial duties, not only to his client, but also to his brethren in the profession, to the courts, and to the public, and takes part in the administration of justice, one of the most important functions of the State, as an officer of the court. Accordingly, lawyers are bound to maintain, not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing.

5. **ID.; ID.; ID.; A HIGH SENSE OF MORALITY, HONESTY, AND FAIR DEALING IS EXPECTED AND REQUIRED OF A MEMBER OF THE BAR, AND THIS QUALIFICATION IS NOT ONLY A CONDITION PRECEDENT TO THE ADMISSION TO THE LEGAL PROFESSION, BUT ITS CONTINUED POSSESSION IS ESSENTIAL TO MAINTAIN ONE'S GOOD STANDING IN THE PROFESSION.—** Time and again, the Court has stressed the settled principle that the practice of law is not a right but a privilege bestowed by the State on those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege. Membership in the bar is a privilege burdened with conditions. A high sense of morality, honesty, and fair dealing is expected and required of a member of the bar. The nature of the office of a lawyer requires that he shall be of good moral character. This qualification is not only a condition precedent to the admission to the legal profession, but its continued possession is essential to maintain one's good standing in the profession. Consequently, a lawyer can be deprived of his license for misconduct ascertained and declared by judgment of the Court after giving him the opportunity to be heard. Verily, Buri has fallen short of the high standard of morality, honesty, integrity, and fair dealing expected of her. On the contrary, she employed her knowledge and skill of the law in order to avoid fulfillment of her obligation, thereby unjustly enriching herself and inflicting serious damage on Yap. Her repeated failure to file her answer and position paper and to appear at the mandatory conference aggravate her misconduct. These demonstrate high degree of irresponsibility and lack of respect for the IBP and its proceedings. Her attitude severely stains the nobility of the legal profession.

6. ID.; ID.; ADMINISTRATIVE CHARGES; DELIBERATE FAILURE TO PAY JUST DEBTS CONSTITUTES GROSS MISCONDUCT, FOR WHICH A LAWYER MAY BE SANCTIONED WITH ONE (1) YEAR-SUSPENSION FROM THE PRACTICE OF LAW; MONEY CLAIMS AGAINST A LAWYER WHICH ARE PURELY CIVIL IN NATURE, AND NOT BY VIRTUE OF A LAWYER-CLIENT RELATIONSHIP SHOULD BE THRESHED OUT IN A SEPARATE CIVIL ACTION.— The Court sustains the modified recommendation of the IBP Board of Governors. The Court has held that the deliberate failure to pay just debts constitutes gross misconduct, for which a lawyer may be sanctioned with one (1) year-suspension from the practice of law. The Court likewise upholds the deletion of the payment of the ₱200,000.00 since the same is not intrinsically linked to Buri's professional engagement. Disciplinary proceedings should only revolve around the determination of the respondent lawyer's administrative and not his civil liability. Thus, when the claimed liabilities are purely civil in nature, as when the claim involves money owed by the lawyer to his client in view of a separate and distinct transaction and not by virtue of a lawyer-client relationship, the same should be threshed out in a separate civil action.

APPEARANCES OF COUNSEL

Virgilio S. Ferrer II for complainant.

D E C I S I O N

PERALTA, *J.*:

The instant case stemmed from the complaint of Michelle Yap against respondent Atty. Grace C. Buri for refusing to pay her monetary obligation and for filing a criminal case of Estafa against her based on false accusations.

The factual backdrop of the case is as follows:

Complainant Michelle Yap was the vendor in a contract of sale of a condominium unit, while Atty. Grace C. Buri, Yap's close friend and her daughter's godmother, was the vendee.

Buri made an offer to purchase the property but asked for the reduction of the price from ₱1,500,000.00 to ₱1,200,000.00. After consulting with her husband, Yap agreed. Of the total amount of purchase price of ₱1,200,000.00, ₱200,000.00 remains unpaid. Buri insisted that she would just pay the balance on installment starting in January 2011, but without specifying the amount to be paid on each installment. Because she trusted the respondent, Yap gave Buri the full and immediate possession of the condominium unit upon completion of the ₱1,000,000.00 despite the outstanding balance and even without the necessary Deed of Absolute Sale. However, when Yap finally asked for the balance in January 2011, Buri said she would pay it on a monthly installment of ₱5,000.00 until fully paid. When Yap disagreed, Buri said she would just cancel the sale. Thereafter, Buri also started threatening her through text messages, and then later on filed a case for estafa against her.

Buri alleged in the criminal case that when she found out that the sale of the condominium unit was made without the consent of Yap's husband, Yap cancelled the sale and promised to return the amount of ₱1,000,000.00 initially paid. Despite several demands, however, she failed and refused to return the money. Thus, Buri was constrained to file a case for estafa against Yap. Said case was later dismissed.

Yap then filed an administrative complaint against Buri for the alleged false accusations against her.

When ordered to submit her answer, Buri failed to comply. She did not even appear during the mandatory conference. Thus, the mandatory conference was terminated and the parties were simply required to submit their respective position papers. However, only Yap complied with said order.

On July 2, 2014, the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) recommended Buri's suspension to wit:[1]

---

[1] Report and Recommendation submitted by Commissioner Felimon C. Abelita III dated July 2, 2014; *rollo*, pp. 38-39.

WHEREFORE, in view of all the foregoing, undersigned Commissioner recommends to impose the penalty of suspension from the practice of law for a period of three (3) months upon the respondent, Atty. Grace C. Buri, and for her to pay the complainant the amount of PhP200,000.00 upon execution by complainant and spouse of the Deed of Absolute Sale of the condominium unit subject of the sale between the parties.

On January 31, 2015, the IBP Board of Governors issued Resolution No. XXI-2015-062,[2] which adopted the foregoing recommendation but with modification, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby 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", finding Respondent's violation of Canon 1 of the Code of Professional Responsibility. Hence, Atty. Grace C. Buri is hereby* ***SUSPENDED from the practice of law for one (1) year.*** *The order to pay ₱200,000.00 is deleted without prejudice to the filing of proper action by Complainant in Court.*

The Court's Ruling

The Court finds no sufficient reason to overturn the findings and recommendation of the IBP that Buri must be disciplined accordingly.

Here, instead of paying Yap the remaining balance of the purchase price of the condominium unit, Buri opted to simply threaten her and file a criminal case against her. Obviously, this strategy was to intimidate Yap and prevent her from collecting the remaining ₱200,000.00. When given a chance to defend herself, Buri chose to stay silent and even refused to file an answer, attend the hearing, or to submit her position paper, despite due notice. Hence, Yap's version of the facts stands and remains uncontroverted.

Buri's unwarranted tenacity simply shows, not only her lack of responsibility, but also her lack of interest in clearing her

---

[2] *Rollo*, pp. 36-37.

name, which, as pronounced in case law, is indicative of an implied admission of the charges levelled against her.[3]

Buri's persistent refusal to pay her obligation despite frequent demands clearly reflects her lack of integrity and moral soundness; she took advantage of her knowledge of the law and clearly resorted to threats and intimidation in order to get away with what she wanted, constituting a gross violation of professional ethics and a betrayal of public confidence in the legal profession.[4]

Buri indubitably swept aside the Lawyer's Oath that enjoins her to support the Constitution and obey the laws. She forgot that she must not wittingly or willingly promote or sue any groundless, false or unlawful suit nor give aid nor consent to the same. She also took for granted the express commands of the Code of Professional Responsibility (*CPR*), specifically Rule 1.01 of Canon 1 and Rule 7.03 of Canon 7 of the CPR.

Canon 1 and Rule 1.01 of the CPR provide:

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

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

x x x x x x x x x

While Canon 7 and Rule 7.03 of the CPR state:

CANON 7 - A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

Rule 7.03 - A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private

---

[3] *Pitcher v. Atty. Gagate*, 719 Phil. 82, 93 (2013).

[4] *Rollon v. Atty. Naraval*, 493 Phil. 24, 31 (2005).

life, behave in a scandalous manner to the discredit of the legal profession.

The foregoing canons require of Buri, as a lawyer, an enduring high sense of responsibility and good fidelity in all her dealings and emphasize the high standard of honesty and fairness expected of her, not only in the practice of the legal profession, but in her personal dealings as well. A lawyer must conduct himself with great propriety, and his behavior should be beyond reproach anywhere and at all times. For, as officers of the courts and keepers of the public's faith, they are burdened with the highest degree of social responsibility and are thus mandated to behave at all times in a manner consistent with truth and honor. Likewise, the oath that lawyers swear to impresses upon them the duty of exhibiting the highest degree of good faith, fairness and candor in their relationships with others. Thus, lawyers may be disciplined for any conduct, whether in their professional or in their private capacity, if such conduct renders them unfit to continue to be officers of the court.[5]

That Buri's act involved a private dealing with Yap is immaterial. Her being a lawyer calls for – whether she was acting as such or in a non- professional capacity – the obligation to exhibit good faith, fairness and candor in her relationship with others. There is no question that a lawyer could be disciplined not only for a malpractice in his profession, but also for any misconduct committed outside of his professional capacity. Buri's being a lawyer demands that she conduct herself as a person of the highest moral and professional integrity and probity in her dealings with others.[6]

The Court has repeatedly emphasized that the practice of law is imbued with public interest and that a lawyer owes substantial duties, not only to his client, but also to his brethren in the profession, to the courts, and to the public, and takes part in the administration of justice, one of the most important

---

[5] *Ong v. Atty. Delos Santos*, 728 Phil. 332, 339 (2014).

[6] *Id.* at 340.

functions of the State, as an officer of the court. Accordingly, lawyers are bound to maintain, not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing.[7]

Time and again, the Court has stressed the settled principle that the practice of law is not a right but a privilege bestowed by the State on those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege. Membership in the bar is a privilege burdened with conditions. A high sense of morality, honesty, and fair dealing is expected and required of a member of the bar. The nature of the office of a lawyer requires that he shall be of good moral character. This qualification is not only a condition precedent to the admission to the legal profession, but its continued possession is essential to maintain one's good standing in the profession. Consequently, a lawyer can be deprived of his license for misconduct ascertained and declared by judgment of the Court after giving him the opportunity to be heard.[8]

Verily, Buri has fallen short of the high standard of morality, honesty, integrity, and fair dealing expected of her. On the contrary, she employed her knowledge and skill of the law in order to avoid fulfillment of her obligation, thereby unjustly enriching herself and inflicting serious damage on Yap. Her repeated failure to file her answer and position paper and to appear at the mandatory conference aggravate her misconduct. These demonstrate high degree of irresponsibility and lack of respect for the IBP and its proceedings. Her attitude severely stains the nobility of the legal profession.[9]

The Court sustains the modified recommendation of the IBP Board of Governors. The Court has held that the deliberate failure to pay just debts constitutes gross misconduct, for which a lawyer may be sanctioned with one (1) year-suspension from

---

[7] *Tabang v. Atty. Gacott*, 713 Phil. 578, 593 (2013).

[8] *Eustaquio v. Atty. Rimorin*, 447 Phil. 549, 555 (2003).

[9] *Villanueva v. Atty. Gonzales*, 568 Phil. 379, 388 (2008).

the practice of law.[10] The Court likewise upholds the deletion of the payment of the ₱200,000.00 since the same is not intrinsically linked to Buri's professional engagement. Disciplinary proceedings should only revolve around the determination of the respondent lawyer's administrative and not his civil liability. Thus, when the claimed liabilities are purely civil in nature, as when the claim involves money owed by the lawyer to his client in view of a separate and distinct transaction and not by virtue of a lawyer-client relationship, the same should be threshed out in a separate civil action.[11]

WHEREFORE, IN VIEW OF THE FOREGOING, the Court **SUSPENDS** Atty. Grace C. Buri from the practice of law for a period of one (1) year and **WARNS** her 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. Grace C. Buri and entered in her file in the Office of the Bar Confidant.

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, Caguioa,* and *Reyes, Jr., JJ.,* concur.

---

[10] *Yuson v. Atty. Vitan*, 528 Phil. 939, 952 (2006).

[11] *Pitcher v. Atty. Gagate, supra* note 3, at 94.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

FIRST DIVISION

[G.R. No. 200383. March 19, 2018]

NORMA M. DIAMPOC, *petitioner, vs.* **JESSIE BUENAVENTURA and THE REGISTRY OF DEEDS FOR THE CITY OF TAGUIG,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACT OF SALE; THE ABSENCE OF NOTARIZATION OF THE DEED OF SALE WOULD NOT INVALIDATE THE TRANSACTION EVIDENCED THEREIN, BUT IT MERELY REDUCES THE EVIDENTIARY VALUE OF A DOCUMENT TO THAT OF A PRIVATE DOCUMENT, WHICH REQUIRES PROOF OF ITS DUE EXECUTION AND AUTHENTICITY TO BE ADMISSIBLE AS EVIDENCE. — It must be remembered, however, that "the absence of notarization of the deed of sale would not invalidate the transaction evidenced therein"; it merely "reduces the evidentiary value of a document to that of a private document, which requires proof of its due execution and authenticity to be admissible as evidence." "A defective notarization will strip the document of its public character and reduce it to a private instrument. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence." x x x Article 1358 of the Civil Code requires that the form of a contract that transmits or extinguishes real rights over immovable property should be in a public document, yet the failure to observe the proper form does not render the transaction invalid. The necessity of a public document for said contracts is only for convenience; it is not essential for validity or enforceability. Even a sale of real property, though not contained in a public instrument or formal writing, is nevertheless valid and binding, for even a verbal contract of sale or real estate produces legal effects between the parties. Consequently, when there is a defect in the notarization of a document, the clear

and convincing evidentiary standard originally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE JURISDICTION OF THE SUPREME COURT IN A PETITION FOR REVIEW ON *CERTIORARI* IS LIMITED TO REVIEWING ONLY ERRORS OF LAW SINCE IT IS NOT A TRIER OF FACTS. — The RTC and the CA are unanimous in declaring that the deed should be sustained on account of petitioner's failure to discredit it with her evidence. The CA further found that petitioner and her husband received in full the consideration of ₱200,000.00 for the sale. As far as the lower courts are concerned, the three requirements of cause, object, and consideration concurred. This Court is left with no option but to respect the lower courts' findings, for its jurisdiction in a petition for review on *certiorari* is limited to reviewing only errors of law since it is not a trier of facts. This is especially so in view of the identical conclusions arrived at by them.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACT OF SALE; THE RULE THAT ONE WHO SIGNS A CONTRACT IS PRESUMED TO KNOW ITS CONTENTS APPLIES EVEN TO CONTRACTS OF ILLITERATE PERSONS; PARTIES WHO FAILED TO OBSERVE THE CARE AND CIRCUMSPECT EXPECTED OF THEM MUST BEAR THE CONSEQUENCES FLOWING FROM THEIR OWN NEGLIGENCE. — Petitioner and her husband's admission that they failed to exercise prudence can only be fatal to their cause. They are not unlettered people possessed with a modicum of intelligence; they are educated property owners capable of securing themselves and their property from unwarranted intrusion when required. They knew the wherewithal of property ownership. Their failure to thus observe the care and circumspect expected of them precludes the courts from lending a helping hand, and so they must bear the consequences flowing from their own negligence. The rule that one who signs a contract is presumed to know its contents has been applied even to contracts of illiterate persons on the ground that if such persons are unable to read, they are negligent if they fail to have the contract read to them. If a person cannot read the instrument, it is as much his duty to procure some

reliable persons to read and explain it to him, before he signs it, as it would be to read it before he signed it if he were able to do so and his failure to obtain a reading and explanation of it is such gross negligence as will estop him from avoiding it on the ground that he was ignorant of its contents**.**

4. ID.; ID.; ID.; NEITHER THE LAW NOR THE COURTS WILL EXTRICATE THE PARTIES FROM AN UNWISE OR UNDESIRABLE CONTRACT WHICH THEY ENTERED INTO WITH ALL THE REQUIRED FORMALITIES AND WITH FULL KNOWLEDGE OF ITS CONSEQUENCES.— It is also a well-settled principle that "the law will not relieve parties from the effects of an unwise, foolish or disastrous agreement they entered into with all the required formalities and with full awareness of what they were doing. Courts have no power to relieve them from obligations they voluntarily assumed, simply because their contracts turn out to be disastrous deals or unwise investments. Neither the law nor the courts will extricate them from an unwise or undesirable contract which they entered into with all the required formalities and with full knowledge of its consequences."

APPEARANCES OF COUNSEL

U.P. Office Of Legal Aid for petitioner.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to set aside the February 21, 2011 Decision[2] and May 6, 2011 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 92453 which denied herein petitioner's appeal and affirmed the December

---

[1] *Rollo,* pp. 21-34.

[2] *Id*. at 35-41; penned by Associate Justice Japar B. Dimaampao and concurred in by Presiding Justice Andres B. Reyes, Jr. (now a member of this Court) and Associate Justice Jane Aurora C. Lantion.

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

20, 2007 Decision[4] of the Regional Trial Court of Pasig City, Branch 268 (RTC) in Civil Case No. 70076.

Factual Antecedents

In July, 2004, petitioner Norma M. Diampoc and her husband Wilbur L. Diampoc (the Diampocs) filed a Complaint[5] for annulment of deed of sale and recovery of duplicate original copy of title, with damages, against respondent Jessie Buenaventura (Buenaventura) and the Registry of Deeds for the Province of Rizal. The case was docketed before the RTC as Civil Case No. 70076.

The Diampocs alleged in their Complaint that they owned a 174-square meter parcel of land (subject property) in Signal Village, Taguig City covered by Transfer Certificate of Title No. 25044 (TCT 25044); that Buenaventura became their friend; that Buenaventura asked to borrow the owner's copy of TCT 25044 to be used as security for a ₱1 million loan she wished to secure; that they acceded, on the condition that Buenaventura should not sell the subject property; that Buenaventura promised to give them ₱300,000.00 out of the ₱1 million loan proceeds; that on July 2, 2000, Buenaventura caused them to sign a folded document without giving them the opportunity to read its contents; that Buenaventura failed to give them a copy of the document which they signed; that they discovered later on that Buenaventura became the owner of a one-half portion (87 square meters) of the subject property by virtue of a supposed deed of sale in her favor; that they immediately proceeded to the notary public who notarized the said purported deed of sale, and discovered that the said 87-square meter portion was purportedly sold to Buenaventura for ₱200,000.00; that *barangay* conciliation proceedings were commenced, but proved futile; that the purported deed of sale is spurious; and that the deed was secured through fraud and deceit, and thus null and void. The Diampocs thus prayed that the purported deed of sale be annulled and the

---

[4] *Id.* at 58-62; penned by Judge Amelia C. Manalastas.

[5] *Id.* at 51-57.

annotation thereof on TCT 25044 be canceled; that the owner's duplicate copy of TCT 25044 be returned to them; and that attorney's fees and costs of suit be awarded to them.

In her Answer, Buenaventura claimed that the Diampocs have no cause of action; that the case is a rehash of an estafa case they previously filed against her but which was dismissed; and that the case is dismissible for lack of merit and due to procedural lapses.[6]

Ruling of the Regional Trial Court

After trial, the RTC rendered its December 20, 2007 Decision, pronouncing as follows:

> Counsel for the plaintiffs presented two witnesses, namely: Norma Diampoc and Wilbur Diampoc. Stripped off of its non-essentials, their testimonies are, summarized as follows:
>
> 1. MRS. NORMA DIAMPOC - The witness is one of the plaintiffs. She testifies that they are the owners of the property x x x covered by Transfer Certificate of Title No. 25044 x x x; that sometime in May 2000, defendant borrowed the original owner's duplicate copy of said title from the plaintiffs to be used as collateral of her loan from a bank as she needed additional capital for her store x x x; that they have agreed that after getting the proceeds of the loan of Php1,000,000.00, defendant will give Php300,000.00 to plaintiff to be used for the repair of plaintiffs' second floor x x x; it was further agreed by the parties that defendant will pay the entire amount of the loan and the Php300,000.00 shall represent payment for the use of plaintiffs' title x x x; that in the morning of July 3, 2000, while plaintiff Norma Diampoc was in the store of a certain Marissa Ibes, defendant Jessie Buenaventura arrived and force her to sign a document without giving her a chance to read the same x x x; that in the morning of November 19, 2002, Eng[r]. Perciliano Aguinaldo went to the plaintiffs' house and conducted a survey of the subject property; that plaintiffs asked said engineer why he was conducting a survey and the engineer replied that it was the instruction of defendant Buenaventura as the said property has already been sold x x x; that Engineer Aguinaldo showed plaintiff a document denominated as

[6] See RTC Decision, *id*. at 58-59.

"Deed of Sale" x x x; that when plaintiffs signed the Deed of Sale, the word "Vendor" was not yet written x x x; that plaintiffs did not appear before the notary public who notarized the document and never received the amount of Php200,000.00 as stated in the document x x x; that when they confronted the lawyer who notarized the document, plaintiffs were advised to file a complaint before the Office of the Barangay x x x; that the Lupong Tagapamayapa of the said Barangay issued a certificate to file action as the parties failed to settle the case amicably x x x; that plaintiffs sent a letter of protest to Eng[r]. Aguinaldo x x x; that in connection with the filing of the instant complaint, the witness executed a sworn statement x x x.

2. MR. WILBUR DIAMPOC – x x x He was presented to corroborate the testimony of his wife-co-plaintiff Mrs. Norma Diampoc.

On May 19, 2005, defendant through counsel filed a Motion for Reconsideration praying that he be allowed to participate in the trial. The Court in its Order dated August 22, 2005 gave defendant last opportunity to present evidence in her behalf and allowed her to cross-examine the plaintiffs' witnesses.

On cross-examination, the witnesses confirmed that they signed the subject deed of sale but did not read the contents of the document they signed; that they never appeared before the Notary Public to acknowledge the Deed of Sale; that they did not file a case against the Notary Public; that they did not receive any consideration for the alleged sale; that they filed a complaint against defendant only after they discovered that what they have signed was a Deed of Sale; that they did not read the document before they affixed their signatures because they trusted the defendant x x x.

Counsel for the defendant on the other hand presented the defendant herself as his lone witness. Jessie Buenaventura testified that spouses Diampoc sold to her a portion of their land consisting of 87 square meters as evidenced by a Deed of Sale marked in evidence x x x; that the said deed of sale was signed and acknowledged before a Notary Public, Atty. Pastor Mendoza on July 6, 2000 x x x; that spouses Diampoc filed a case against her for Estafa, Grave Threat, Coercion and Falsification before the Prosecutor's Office of Rizal x x x; that said cases were dismissed x x x; that because of the filing of the instant case, defendant spent litigation expenses x x x. On cross-examination, defendant further testified that [she] personally gave the amount of Php200,000.00 to plaintiff Norma Diampoc before they went to the Notary Public x x x.

After evaluating the evidence on hand, the Court finds that plaintiffs fall short of the required evidence to substantiate their allegations that subject Deed of Sale x x x is illegal and spurious. 'Deed of Sale being a public document, it is ***prima facie*** evidence of the facts stated therein' (Domingo *versus* Domingo, 455 SCRA 555). Under the rule, the terms of a contract are rendered conclusive upon the parties and evidence *aliunde* is not admissible to vary or contradict a complete and enforceable agreement embodied in a document. (Rosario Textile Mills Corp. *versus* Home Bankers Savings, 462 SCRA 88).

The pertinent provision of the New Civil Code reads:

> *'Art. 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.'*

WHEREFORE, foregoing premises considered, the above-captioned case is hereby DISMISSED for insufficiency of evidence. No pronouncement as to costs.

SO ORDERED.[7]

Ruling of the Court of Appeals

Respondents filed an appeal before the CA, which denied the same, ruling as follows:

In beseeching the annulment of the notarized deed of sale, appellants impress upon Us that they were deceived by Jessie (now 'appellee') into believing that they were signing papers for the intended bank loan. They failed to read the contents of the document for it *'was folded',* and Jessie was in a hurry.

These specious arguments are devoid of judicial mooring.

As aptly declared by the court *a quo,* notarized documents, like the deed in question, enjoy the presumption of regularity which can be overturned only by clear, convincing and more than merely preponderant evidence. Miserably, appellants failed to discharge this burden.

---

[7] *Id.* at 59-62.

Appellants are not illiterate, but educated persons who understood the meaning of the word 'vendor' printed [vividly] under their names. They could easily read such word before they could affix their signatures. We are simply appalled by appellant Wilbur's pathetic explanation that it was *'dark'* at the time he signed the deed so that he failed to read the word 'vendor'.

Yet, even if they avouch to be illiterate, which they most certainly are not being high school graduates themselves, the enunciations in **Bernardo v. Court of Appeals** come to mind –

> '[G]ranting, without conceding, that private respondent and his wife were both illiterate, this still does not save the day for them. As stressed in Tan Tua Sia v. Yu Biao Sontua, 56 Phil. 711, cited in Mata v. Court of Appeals - **....The rule that one who signs a contract is presumed to know its contents have been applied even to contracts of illiterate persons on the ground that if such persons are unable to read, they are negligent if they fail to have the contract read to them.** If a person cannot read the instrument, it is as much his duty to procure some reliable persons to read and explain it to him, before he signs it, x x x and his failure to obtain a reading and explanation of it is such gross negligence as will estop him from avoiding it on the ground that he was ignorant of its contents.' x x x

Verily, the fact that appellants used only one community tax certificate cannot emasculate the evidentiary weight of the notarized deed. The notary public may have been lax in his duty of requiring two community tax certificates front the appellants, but this will not adversely affect the validity of the notarized deed.

Invariably, appellants cannot now be allowed to disavow the contractual effects of the notarized deed. It is true that parol evidence may be admitted to challenge the contents of such agreement 'where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, or the validity of the agreement is put in issue by the pleadings.' However, such evidence must be clear and convincing and of such sufficient credibility as to overturn the written agreement. The flimsy protestations of the parties are not substantiated by compelling evidence which would warrant a reversal of the impugned judgment.

As borne out by the notarized deed, a perfected contract of sale was forged between the parties. Appellants received in full the payment of ₱200,000.00, having sold to appellee a portion of their lot. If the terms of the deed were not in consonance with their expectations, they should have objected to it and insisted on the provisions they wanted. Courts are not authorized to extricate parties from the necessary consequences of their acts, and the fact that the contractual stipulations may turn out to be financially disadvantageous will not relieve parties thereto of their obligations.

With this discourse, appellants' recourse falls through. The claim for payment of damages necessarily fails.

WHEREFORE, the *Appeal* is hereby **DENIED.** The *Decision* dated 20 December 2007 of the Regional Trial Court, Pasig City, Branch 268, in Civil Case No. 70076, is **AFFIRMED.**

SO ORDERED.[8] (Emphasis in the original)

Petitioner filed a Motion for Reconsideration,[9] which was denied *via* the May 6, 2011 Resolution. Hence, the instant Petition.

In a January 25, 2016 Resolution,[10] this Court resolved to dispense with the filing of respondent Buenaventura's comment, and petitioner manifested[11] her willingness to submit the case for resolution on the basis of the pleadings on record.

Issues

Petitioner claims that –

A. THE COURT OF APPEALS ERRED IN APPLYING THE PRIMA FACIE PRESUMPTION OF REGULARITY OF NOTARIZED DOCUMENTS AND UPHOLDING THE VALIDITY OF THE NOTARIZED DEED OF SALE NOTWITHSTANDING THE UNDISPUTED FACT THAT

---

[8] *Id*. at 38-40.

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

[10] *Id*. at 215-216.

[11] *Id*. at 220-224.

THERE WERE IRREGULARITIES IN THE EXECUTION AND NOTARIZATION OF THE DEED OF SALE.

B. THE COURT OF APPEALS ERRED IN RULING THAT THERE WAS A VALID CONTRACT OF SALE.[12]

Petitioner's Arguments

Seeking reversal of the assailed CA dispositions, nullification of the subject deed of sale, cancellation of Entry No. 5381 on the back of TCT 25044, the return of the owner's duplicate copy of TCT 25044, and payment of attorney's fees and costs of suit, petitioner argues that while a notarized document enjoys the presumption of regularity, this does not apply to the subject deed of sale as it was not signed before the notary public, and was notarized in the absence of petitioner and her husband; that Buenaventura failed to present as her witness the notary public who notarized the deed of sale; that Buenaventura herself failed to show that she was present at the notarization; that there was only one Community Tax Certificate used for both petitioner and her husband; that with the irregularities pointed out, the *prima facie* presumption of regularity no longer applies to the subject deed of sale; that she and her husband never intended to sell the subject property; that while she and her husband were not illiterate, still what matters is that Buenaventura deceived them into signing the subject document without reading it through assurances that what they were signing was an authorization for the purpose of obtaining a bank loan; that she and her husband had no reason to distrust Buenaventura as the purported loan was previously agreed upon; that Buenaventura failed to prove that she paid the purported consideration of ₱200,000,00 for the supposed sale, as she did not present any receipt therefor; and that in view of these facts, the deed of sale should be annulled and voided.

---

[12] *Id*. at 25.

Our Ruling

The Court denies the Petition.

Petitioners arguments center on the claim that the deed of sale suffers from defects relative to its notarization, which thus render the deed ineffective, if not null and void. Petitioner claims that the deed was not signed by the parties before the notary public; that it was notarized in her and her husband's absence; that there was only one Community Tax Certificate used for both petitioner and her husband; and that Buenaventura failed to present the notary public as her witness.

It must be remembered, however, that "the absence of notarization of the deed of sale would not invalidate the transaction evidenced therein"; it merely "reduces the evidentiary value of a document to that of a private document, which requires proof of its due execution and authenticity to be admissible as evidence,"[13] "A defective notarization will strip the document of its public character and reduce it to a private instrument. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence."[14]

x x x Article 1358 of the Civil Code requires that the form of a contract that transmits or extinguishes real rights over immovable property should be in a public document, yet the failure to observe the proper form does not render the transaction invalid. The necessity of a public document for said contracts is only for convenience; it is not essential for validity or enforceability. Even a sale of real property, though not contained in a public instrument or formal writing, is nevertheless valid and binding, for even a verbal contract of sale or real estate produces legal effects between the parties. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard originally attached to a duly-

---

[13] *Riosa v. Tabaco La Suerte Corporation,* 720 Phil. 586, 602 (2013).

[14] *Mendoza v. Fermin,* 738 Phil. 429, 445 (2014).

notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.[15]

x x x Nevertheless, the defective notarization of the deed does not affect the validity of the sale of the house. Although Article 1358 of the Civil Code states that the sale of real property must appear in a public instrument, the formalities required by this article is not essential for the validity of the contract but is simply for its greater efficacy or convenience, or to bind third persons, and is merely a coercive means granted to the contracting parties to enable them to reciprocally compel the observance of the prescribed form. Consequently, the private conveyance of the house is valid between the parties.[16]

Thus, following the above pronouncements, the remaining judicial task, therefore, is to determine if the deed of sale executed by and between the parties should be upheld. The RTC and the CA are unanimous in declaring that the deed should be sustained on account of petitioner's failure to discredit it with her evidence. The CA further found that petitioner and her husband received in full the consideration of ₱200,000.00 for the sale. As far as the lower courts are concerned, the three requirements of cause, object, and consideration concurred. This Court is left with no option but to respect the lower courts' findings, for its jurisdiction in a petition for review on *certiorari* is limited to reviewing only errors of law since it is not a trier of facts. This is especially so in view of the identical conclusions arrived at by them.

Indeed, petitioner and her husband conceded that there was such a deed of sale, but only that they were induced to sign it without being given the opportunity to read its contents — believing that the document they were signing was a mere authorization to obtain a bank loan. According to petitioner, the document was "folded" when she affixed her signature thereon; on the other hand, her husband added that at the time he signed the same, it was "dark". These circumstances, however, did not prevent them from discovering the true nature of the document; being high school graduates and thus literate, they

---

[15] *Castillo v. Security Bank Corporation,* 740 Phil. 145, 153-154 (2014).

[16] *Chong v. Court of Appeals,* 554 Phil. 43, 61-62 (2007).

were not completely precluded from reading the contents thereof, as they should have done if they were prudent enough. Petitioner's excuses are therefore flimsy and specious.

Petitioner and her husband's admission that they failed to exercise prudence can only be fatal to their cause. They are not unlettered people possessed with a modicum of intelligence; they are educated property owners capable of securing themselves and their property from unwarranted intrusion when required. They knew the wherewithal of property ownership. Their failure to thus observe the care and circumspect expected of them precludes the courts from lending a helping hand, and so they must bear the consequences flowing from their own negligence.

> The rule that one who signs a contract is presumed to know its contents has been applied even to contracts of illiterate persons on the ground that if such persons are unable to read, they are negligent if they fail to have the contract read to them. If a person cannot read the instrument, it is as much his duty to procure some reliable persons to read and explain it to him, before he signs it, as it would be to read it before he signed it if he were able to do so and his failure to obtain a reading and explanation of it is such gross negligence as will estop him from avoiding it on the ground that he was ignorant of its contents.[17]

It is also a well-settled principle that "the law will not relieve parties from the effects of an unwise, foolish or disastrous agreement they entered into with all the required formalities and with full awareness of what they were doing. Courts have no power to relieve them from obligations they voluntarily assumed, simply because their contracts turn out to be disastrous deals or unwise investments. Neither the law nor the courts will extricate them from an unwise or undesirable contract which they entered into with all the required formalities and with full knowledge of its consequences."[18]

---

[17] *Bernardo v. Court of Appeals,* 387 Phil. 736, 748 (2000), citing *Mata v. Court of Appeals,* 284 Phil. 36, 45 (1992).

[18] *Fernandez v. Spouses Tarun,* 440 Phil. 334, 347 (2002).

WHEREFORE, the Petition is **DENIED.** The February 21, 2011 Decision and May 6, 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 92453 are **AFFIRMED *in toto*.**

SO ORDERED.

Leonardo-de Castro,[*] *Jardeleza,* and *Tijam, JJ.,* concur.

Sereno, C.J., on leave.

FIRST DIVISION

[G.R. No. 206167. March 19, 2018]

NATIONAL POWER CORPORATION, *petitioner, vs.* **THE COURT OF APPEALS, HON. JOSE D. AZARRAGA,** in his capacity as **Presiding Judge of Branch 37, Regional Trial Court, Iloilo City, and ATTY. REX C. MUZONES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE EXISTENCE OF THE REMEDY OF APPEAL PROHIBITS THE PARTIES' RESORT TO A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT; CASE AT BAR.— "A petition for *certiorari* under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the

---

[*] Designated as Acting Chairperson pursuant to Special Order No. 2540 dated February 28, 2018.

ordinary course of law." In the instant case, NPC has a plain, speedy and adequate remedy to appeal the CA decision, which is to file a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. x x x Here, the Decision dated April 14, 2011 of the CA dismissed the NPC's petition for being filed out of time, thus it was a final judgment rendered by the CA. There is nothing left to be done by the CA in respect to the said case. Thus, NPC should have filed an appeal by petition for review on *certiorari* under Rule 45 before this Court, not a petition for *certiorari* under Rule 65. In the case of *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC, et al*., it is stated that the existence of an appeal prohibits the parties' resort to a petition for *certiorari*, thus: **The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution.**

2. **ID.; RULES OF COURT; TECHNICAL RULES OF PROCEDURE SHOULD GIVE WAY TO SERVE SUBSTANTIAL JUSTICE.—Technical rules of procedure should give way to serve substantial justice**. Notwithstanding the procedural lapses in this case, We opt not to deny the case based on merely technical grounds. We must be reminded that deciding a case is not a mere play of technical rules. If We are to abide by Our mandate to provide justice for all, We should be ready to set aside technical rules of procedure when the same hampers justice rather than to serve the same.

3. **LEGAL ETHICS; CANONS OF PROFESSIONAL ETHICS; CONTINGENT FEES; A CONTINGENT FEE ARRANGEMENT IS PERMITTED BECAUSE THEY REDOUND TO THE BENEFIT OF THE POOR CLIENT; SUSTAINED IN CASE AT BAR.—** The Contract of Legal Services executed between Spouses Javellana and Atty. Muzones, fixed the contingency fee at 12.5% of whatever amount realized, x x x. A contingent fee arrangement is permitted in this jurisdiction because they redound to the benefit of the poor client. In the case of *Rayos v. Atty. Hernandez*, We stated that: A contingent fee arrangement is valid in this jurisdiction and is generally

recognized as valid and binding but must be laid down in an express contract. x x x Contingent fee contracts are subject to the supervision and close scrutiny of the court in order that clients may be protected from unjust charges. Section 13 of the Canons of Professional Ethics states that "a contract for a contingent fee, where sanctioned by law, should be reasonable under all the circumstances of the case including the risk and uncertainty of the compensation, but should always be subject to the supervision of a court, as to its reasonableness. x x x It is clear in the Contract of Legal Services that the 12.5% contingency fee should be computed on the amount of whatever award or monetary consideration realized. Since the the amount actually received by the Spouses Javellana under the compromise agreement was only ₱80,380,822.00, then the 12.5% contingency fee should be pegged on this amount. As such, Atty. Muzones is only entitled to the amount of ₱10,047,602.75.

4. ID.; CODE OF PROFESSIONAL RESPONSIBILITY; THE LAWYER AND THE CLIENT; THE PAYMENT OF ATTORNEY'S FEES IS THE PERSONAL OBLIGATION OF THE CLIENTS; CASE AT BAR.— It is settled that payment of attorney's fees is the personal obligation of the clients. As held in the case of *Atty. Gubat v. National Power Corporation*, the client, in this case, Spouses Javellana, has the right to settle the case even without the participation of Atty. Muzones, x x x. The contract for the payment of attorney's fees is strictly a contract between Spouses Javellana and Atty. Muzones. It is basic that a contract takes effect only between the parties, their assigns, and heirs. Thus, NPC cannot be affected by the contract between Spouses Javellana and Atty. Muzones, specially as to the payment of attorney's fees. Therefore, any action as to the satisfaction of the attorney's fees should be brought against the Spouses Javellana and not against NPC.

APPEARANCES OF COUNSEL

The Solicitor General for public respondents.

D E C I S I O N

TIJAM, *J.*:

Before Us is a Petition for *Certiorari*[1] under Rule 65 of the Rules of Court assailing the Decision[2] dated April 14, 2011 and Resolution[3] dated January 8, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 03908 dismissing the petition filed by the National Power Corporation (NPC) for being filed out of time.

The Antecedent Facts

The case stemmed from Civil Case No. 05-28553 filed by Spouses Romulo and Elena Javellana (Spouses Javellana) to fix lease rental and just compensation; collection of sum of money and damages against NPC and National Transmission Corporation (Transco).[4]

On July 26, 2007, the RTC rendered a Decision[5] in favor of the Spouses Javellana. NPC and Transco filed their respective appeal.[6] On the other hand, Spouses Javellana filed a Motion for Execution Pending Appeal.[7] On January 4, 2008, the RTC, in its Order[8] granted the motion for execution pending appeal.

In the meantime, Transco negotiated with Spouses Javellana for the extra-judicial settlement of the case. As a result, Transco agreed to buy the property of the Spouses Javellana affected by the transmission lines. Subsequently, Spouses Javellana received the amount of ₱80,380,822.00 from Transco.[9]

---

[1] *Rollo*, pp. 10-42.

[2] Penned by Associate Justice Eduardo B. Peralta, Jr., concurred in by Associate Justices Pampio A. Abarintos and Gabriel T. Ingles; *id*. at 50-57.

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

[4] *Id*. at 12.

[5] Rendered by Judge Jose D. Azarraga; *id*. at 58-42.

[6] *Id*. at 13.

[7] *Id*. at 82-84.

[8] *Id*. at 85-89.

[9] *Id*. at 14.

Thereafter, Atty. Rex C. Muzones (Atty. Muzones), the counsel of the Spouses Javellana filed a Notice of Attorney's lien.[10]

Transco then filed a Motion to Dismiss[11] the case in view of the extra-judicial settlement of the case. On his part, Atty. Muzones filed a Motion for Partial Satisfaction of Judgment and Opposition to the Motion to Dismiss.[12]

On June 27, 2008, the respondent judge issued an Order[13] ordering NPC and Transco to pay Atty. Muzones the amount of ₱52,469,660.00 as his attorney's lien, to wit:

> WHEREFORE, premises considered, an Entry for the satisfaction of the Judgment claims of [Spouses Javellana], in the amount of ₱80,380,822.00 be made in the records and the same DISMISSED against [NPC and Transco].
>
> [NPC and Transco] are hereby directed to pay [Spouses Javellana's] counsel, [Atty. MUZONES], his Lawyer's Lien in the amount of ₱52,469,660.00, within a period of TEN (10) days from receipt of this Order.
>
> Pending compliance the Motion to Dismiss is held in abeyance.
>
> SO ORDERED.[14]

On June 30, 2008, the respondent judge issued a Clarificatory Order[15] stating that the attorney's fees of ₱52,469,660.00 is separate and distinct from the amount to be paid to the Spouses Javellana, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, an Entry for the satisfaction of the judgment claims of [Spouses Javellana], in the amount of ₱80,380,822.00 be made in the records and the same DISMISSED against [NPC and Transco].

---

[10] *Id*. at 96-97.

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

[12] *Id*. at 157-159.

[13] *Id*. at 160-161.

[14] *Id*. at 161.

[15] *Id*. at 162-163.

[NPC and Transco] are hereby directed to pay [Spouses Javellana's] counsel, [Atty. MUZONES], his Lawyer's lien in the amount of ₱52,469,660.00, within a period of TEN (10) days from receipt of this Order, which payment is aside from, separate and different from the amount of ₱80,380.822.00 paid by [NPC and Transco] to [Spouses Javellana].

Pending compliance the Motion to Dismiss is held in abeyance.

SO ORDERED.[16] (Underscoring in the original)

Transco filed a Motion for Reconsideration of the orders, while NPC filed its comment to the Clarificatory Order.[17]

On August 6, 2008, the respondent judge denied[18] the motion for reconsideration and the comment of NPC, thus:

WHEREFORE, premises considered, the reliefs prayed for in the Motion for Reconsideration filed by [NPC], dated July 15, 2008 and the Comment filed by [NPC] dated July 21, 2008 are hereby DENIED.

The Order dated June 27, 2008 and Clarificatory Order dated June 30, 2008, stands.

SO ORDERED.[19]

NPC then filed a motion for reconsideration[20] of the Order dated August 6, 2008. The respondent judge however denied the same in his Order[21] dated September 22, 2008.

Aggrieved, NPC filed a Petition for *Certiorari*[22] with the CA assailing the Orders dated June 27, 2008, June 30, 2008, August 6, 2008 and September 22, 2008.

---

[16] *Id*.

[17] *Id*. at 16.

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

[19] *Id*. at 168-169.

[20] *Id*. at 170-172.

[21] *Id*. at 173-175.

[22] *Id*. at 176-205.

In its Decision[23] dated April 14, 2011, the CA dismissed NPC's petition for being filed beyond the 60-day reglementary period.

Thus, NPC comes before Us assailing the CA's dismissal of its petition.

The petition is GRANTED.

Petition for *Certiorari* is the wrong remedy.

At the outset, NPC filed a Petition for *Certiorari* under Rule 65 of the Rules of Court which is a wrong remedy.

"A petition for *certiorari* under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law."[24] In the instant case, NPC has a plain, speedy and adequate remedy to appeal the CA decision, which is to file a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

Section 1 of Rule 45 states that "*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*."

Here, the Decision dated April 14, 2011 of the CA dismissed the NPC's petition for being filed out of time, thus it was a final judgment rendered by the CA. There is nothing left to be done by the CA in respect to the said case. Thus, NPC should have filed an appeal by petition for review on *certiorari* under Rule 45 before this Court, not a petition for *certiorari* under Rule 65.

---

[23] *Id*. at 50-57.

[24] *Sps. Dycoco v. CA, et al*., 715 Phil. 550, 560 (2013).

In the case of *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC, et al.*,[25] it is stated that the existence of an appeal prohibits the parties' resort to a petition for *certiorari*, thus:

> **The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution.** The existence and availability of the right of appeal prohibits the resort to *certiorari* because one of the requirements for the latter remedy is that there should be no appeal.[26] (Citation omitted and emphasis ours)

The Comment filed by NPC is in the nature of a Motion for Reconsideration.

We agree with the CA that the Comment filed by NPC is in the nature of a motion for reconsideration. The allegations of NPC and even the prayer[27] of NPC in its comment sought the reconsideration of the June 30, 2008 Clarificatory Order. Thus, upon the RTC's denial of the "Comment", NPC should have already filed for a Petition for *Certiorari* before the CA, not a second motion for reconsideration before the RTC. Thus, upon NPC's filing of its Petition for *Certiorari* on December 2, 2008, the 60-day reglementary period of filing the same has already lapsed.

---

[25] 716 Phil. 500 (2013).

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

[27] **WHEREFORE**, premises considered, it is most respectfully prayed that the Order of this Honorable Court directing [NPC and Transco] to pay FIFTY FOUR MILLION to [Spouses Javellana's] counsel **be recalled and set aside**, and that the instant case be finally dismissed. *Rollo*, p. 165 (Emphasis ours)

Technical rules of procedure should give way to serve substantial justice.

Notwithstanding the procedural lapses in this case, We opt not to deny the case based on merely technical grounds. We must be reminded that deciding a case is not a mere play of technical rules. If We are to abide by Our mandate to provide justice for all, We should be ready to set aside technical rules of procedure when the same hampers justice rather than to serve the same.

The Contract of Legal Services[28] executed between Spouses Javellana and Atty. Muzones, fixed the contingency fee at 12.5% of whatever amount realized, to wit:

> That the CLIENT engages the legal services of the herein LAWYER under the following terms and conditions, to wit:
>
> > Preparation and filing of a Complaint to Fix Lease Rental and Just Compensation; Collection of a Sum of Money and Damages against NPC and NTC before the RTC, Iloilo City and appearance at every stage of the proceedings until terminated — a Contingent Fee at the rate of 12.5% of whatever award or monetary consideration realized.[29]

A contingent fee arrangement is permitted in this jurisdiction because they redound to the benefit of the poor client.[30] In the case of *Rayos v. Atty. Hernandez*,[31] We stated that:

> A contingent fee arrangement is valid in this jurisdiction and is generally recognized as valid and binding but must be laid down in an express contract. The amount of contingent fee agreed upon by the parties is subject to the stipulation that counsel will be paid for his legal services only if the suit or litigation prospers. A much higher compensation is allowed as contingent fee in consideration of the

---

[28] *Id*. at 294.

[29] *Id*.

[30] *Ramon R. Villarama v. Atty. Clodualdo C. De Jesus*, G.R. No. 217004, April 17, 2017.

[31] 544 Phil. 447 (2007).

risk that the lawyer may get nothing if the suit fails. Contracts of this nature are permitted because they redound to the benefit of the poor client and the lawyer "especially in cases where the client has meritorious cause of action, but no means with which to pay for legal services unless he can, with the sanction of law, make a contract for a contingent fee to be paid out of the proceeds of the litigation. Oftentimes, the contingent fee arrangement is the only means by which the poor and helpless can seek redress for injuries sustained and have their rights vindicated.

Contingent fee contracts are subject to the supervision and close scrutiny of the court in order that clients may be protected from unjust charges. Section 13 of the Canons of Professional Ethics states that "a contract for a contingent fee, where sanctioned by law, should be reasonable under all the circumstances of the case including the risk and uncertainty of the compensation, but should always be subject to the supervision of a court, as to its reasonableness. x x x[.][32] (Citations and emphasis omitted)

It appears on the records that the contingency fee arrangement executed between Spouses Javellana and Atty. Muzones, fixed the contingency fee at 12.5% of whatever amount realized,[33] this Court deems the said arrangement as reasonable since the Spouses Javellana did not dispute the said percentage nor questioned Atty. Muzones' right to claim such amount.

However, the RTC erred when it computed the 12.5% contingent fee on the basis of the original award of ₱419,757,280.00.[34] It is clear in the Contract of Legal Services that the 12.5% contingency fee should be computed on the amount of whatever award or monetary consideration realized. Since the the amount actually received by the Spouses Javellana under the compromise agreement was only ₱80,380,822.00,[35] then the 12.5% contingency fee should be pegged on this amount. As such, Atty. Muzones is only entitled to the amount of ₱10,047,602.75.

---

[32] *Id*. at 460-461.

[33] *Rollo*, p. 171.

[34] *Id*. at 15.

[35] *Id*. at 16.

NPC is not liable to pay the attorney's fees.

Notwithstanding Our finding that Atty. Muzones is entitled to the amount of ₱10,047,602.75, NPC is still not liable to pay such amount. It is settled that payment of attorney's fees is the personal obligation of the clients.[36]

As held in the case of *Atty. Gubat v. National Power Corporation*,[37] the client, in this case, Spouses Javellana, has the right to settle the case even without the participation of Atty. Muzones, thus:

> [A] client has an undoubted right to settle a suit without the intervention of his lawyer, for he is generally conceded to have the exclusive control over the subject-matter of the litigation and may, at any time before judgment, if acting in good faith, compromise, settle, and adjust his cause of action out of court without his attorney's intervention, knowledge, or consent, even though he has agreed with his attorney not to do so. Hence, a claim for attorney's fees does not void the compromise agreement and is no obstacle to a court approval.
>
> However, counsel is not without remedy. As the validity of a compromise agreement cannot be prejudiced, so should not be the payment of a lawyer's adequate and reasonable compensation for his services should the suit end by reason of the settlement. The terms of the compromise subscribed to by the client should not be such that will amount to an entire deprivation of his lawyer's fees, especially when the contract is on a contingent fee basis. In this sense, the compromise settlement cannot bind the lawyer as a third party. A lawyer is as much entitled to judicial protection against injustice or imposition of fraud on the part of his client as the client is against abuse on the part of his counsel. The duty of the court is not only to ensure that a lawyer acts in a proper and lawful manner, but also to see to it that a lawyer is paid his just fees.[38] (Citations omitted)

However, NPC cannot be held liable to pay the attorney's fees of Atty. Muzones since the same is a personal obligation

---

[36] *Atty. Agustin, et al. v. Cruz-Herrera*, 726 Phil. 533, 549 (2014).

[37] 627 Phil. 551 (2010).

[38] *Id.* at 566-567.

of the Spouses Javellana who benefited from the legal services of Atty. Muzones. Thus, the RTC committed a reversible error when it held NPC and Transco are solidarily liable to pay the amount of ₱52,469,660.00, representing Atty. Muzones' attorney's fees. The contract for the payment of attorney's fees is strictly a contract between Spouses Javellana and Atty. Muzones. It is basic that a contract takes effect only between the parties, their assigns, and heirs.[39] Thus, NPC cannot be affected by the contract between Spouses Javellana and Atty. Muzones, specially as to the payment of attorney's fees. Therefore, any action as to the satisfaction of the attorney's fees should be brought against the Spouses Javellana and not against NPC.

WHEREFORE, the petition is **GRANTED**. The Decision dated April 14, 2011 and Resolution dated January 8, 2013 of the Court of Appeals in CA-G.R. SP No. 03908 are **REVERSED and SET ASIDE**. Accordingly, the Order dated June 27, 2008, the Clarificatory Order dated June 30, 2008 are **MODIFIED** by **DELETING** the joint and solidary liability of National Power Corporation and National Transmission Corporation for the payment of the attorney's fees in the amount of ₱52,469,660.00 to Atty. Rex C. Muzones.

This is without prejudice to any action Atty. Rex C. Muzones may bring against Spouses Romulo and Elena Javellana for the satisfaction of his attorney's fees under the Contract for Legal Services.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson),[*] *Peralta,*[**] and *del Castillo, JJ.,* concur.

Sereno, C.J., on leave.

---

[39] Article 1311 of the New Civil Code.

[*] Designated as Acting Chairperson pursuant to Special Order No. 2540 dated February 28, 2018.

[**] Designated additional Member per Raffle dated October 4, 2017 *vice* Associate Justice Francis H. Jardeleza.

FIRST DIVISION

[G.R. No. 215659. March 19, 2018]

TERESITA DE LOS SANTOS AND SPOUSES RAPHAEL LOPEZ and ANALYN DE LOS SANTOS-LOPEZ, *petitioners, vs.* **JOEL LUCENIO and ALL OTHER PERSONS CLAIMING RIGHTS AND AUTHORITY UNDER HIM,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; ORDINARY APPEALED CASES; IT IS A SETTLED PRINCIPLE THAT, ON APPEAL, THE PARTY IS NOT ALLOWED TO CHANGE THEIR THEORY OF THE CASE.—**Section 15, Rule 44 of the Rules of Court embodies the settled principle that, on appeal, the parties are not allowed to change their "theory of the case," x x x In other words, an issue not alleged in the complaint nor raised before the trial court cannot be raised for the first time on appeal as this goes against the basic rules of fair play, justice, and due process. In the same way, a defense not pleaded in the answer cannot also be raised for the first time on appeal.

2. **ID.; ID.; ID.; ID.; BELATED ALLEGATIONS THAT WILL CHANGE THE THEORY OF THE CASE OF THE PETITIONER IS NOT ALLOWED UNDER THE RULES AS IT GOES AGAINST THE BASIC RULES OF FAIR PLAY, JUSTICE, AND DUE PROCESS; CASE AT BAR.—** [I]t is apparent that the issue of whether the GSIS complied with the Maceda Law or not was never brought to the attention of the MTC and the RTC. Respondents' contention that the MTC and the RTC should have taken judicial notice of the Maceda Law is untenable as the issue of compliance with the Maceda Law is a factual matter, which should have been alleged or raised as a defense in the Answer. And since respondent Joel failed to allege such matters in his Answer, there was no reason for the MTC, as well as the RTC, to resolve the issue

and apply the Maceda Law. Moreover, records show that it was only before the CA that respondent Joel alleged that the GSIS failed to send a notarized notice of cancellation and a refund of the cash surrender value to his sister. The CA, therefore, should not have considered these belated allegations, as these are factual matters, which would require the presentation of additional evidence on the part of petitioners. Furthermore, these belated allegations likewise changed the theory of his case, which is not allowed under the Rules as it goes against the basic rules of fair play, justice, and due process. All told, the Court finds that the CA gravely erred in resolving the issue of GSIS' compliance with the Maceda Law, as it had no jurisdiction to resolve an issue not raised before the lower courts. Accordingly, the CA Decision must be set aside and the RTC Decision affirming the MTC Decision must be reinstated.

APPEARANCES OF COUNSEL

James Arban Santiago for petitioners.
Ferdinand H. Moreño for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

A judgment or decision of the appellate court that goes beyond the issues raised before the trial court must be set aside for lack of jurisdiction.[1]

Before the Court is a Petition for Review on *Certiorari*[2] filed under Rule 45 of the Rules of Court assailing the September 29, 2014 Decision[3] and the December 1, 2014 Resolution[4] of the Court of Appeals (CA) in CA-G.R. SP No. 130384.

---

[1] *Peña v. Spouses Tolentino*, 657 Phil. 312, 328-329 (2011).

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

[3] *Id*. at 32-unpaged; penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Francisco P. Acosta and Myra V. Garcia-Fernandez.

[4] *Id*. at 51.

Factual Antecedents

On October 1, 2010, petitioners Teresita de los Santos (petitioner Teresita) and spouses Analyn de los Santos-Lopez and Raphael Lopez (petitioner spouses) filed before the Municipal Trial Court (MTC) of Biñan, Laguna, a Complaint[5] for Ejectment/ Unlawful Detainer with Damages, docketed as Civil Case No. 4086, against respondents Joel Lucenio (respondent Joel) and all persons claiming rights and authority under him.[6] Petitioners alleged that, in December 2009, petitioner Teresita lent her name and credit standing in favor of her daughter and son-in-law, petitioner spouses, as an accommodation party thru a Deed of Assignment[7] dated August 31, 2010 to enable them to purchase a property from the list of assets for sale by the Government Service Insurance System (GSIS);[8] that on January 19, 2010, the GSIS issued a Notice of Approval[9] granting petitioner Teresita's application to purchase the property located, at Block 8, Lot 14, Juana I Complex, Biñan, covered by Transfer Certificate of Title (TCT) No. T-129136[10] issued under the name of the GSIS;[11] that on March 5, 2010, petitioner spouses paid the required deposit in the amount of ₱87,255.00 and a front end service fee in the amount of ₱7,852.97;[12] that on May 12, 2010, a Deed of Conditional Sale[13] was executed by the GSIS over the subject property in favor of petitioner Teresita;[14] that despite demand by petitioners, respondent Joel refused to vacate the

---

[5] Records, pp. 1-7.

[6] *Id*. at 1.

[7] *Id*. at 14-15.

[8] *Id*. at 2.

[9] *Id*. at 6.

[10] *Id*. at 13.

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

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

[13] *Id*. at 8-12.

[14] *Id*. at 3.

subject property;[15] and that petitioners filed a complaint against respondent Joel before the *Barangay Lupong Tagapamayapa* but the same was unavailing as the parties failed to reach an amicable settlement.[16]

In his Answer,[17] respondent Joel raised as a defense lack of cause of action. He alleged, that in 1995, his sister obtained a housing loan from the GSIS to purchase the subject property;[18] that his sister has already acquired ownership over the subject property;[19] that in 2005, his sister executed in his favor a Deed of Transfer of Rights[20] over the subject property;[21] that he then availed of the condonation or amnesty program offered by the GSIS for the unpaid amortizations of his sister;[22] that he paid the required 10 percent (10%) down payment and applied for the restructuring of the loan;[23] that he was not able to pay the amortization due to the failure of the GSIS to recompute the total balance of the loan;[24] that he was deprived of due process as the GSIS executed a Deed of Conditional Sale in favor of petitioners without first acting on his offer to purchase the property;[25] and that the Deed of Conditional Sale executed by the GSIS in favor of petitioner Teresita was void because the conditional sale in favor of his sister cannot be unilaterally terminated.[26]

---

[15] *Id*.

[16] *Id*. at 4.

[17] *Id*. at 32-36.

[18] *Id*. at 33.

[19] *Id*. at 34.

[20] *Id*. at 57-58.

[21] *Id*. at 33.

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

[23] *Id*.

[24] *Id*. at 34.

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

[26] *Id*. at 34.

Ruling of the Municipal Trial Court

On March 20, 2012, the MTC rendered a Decision[27] in favor of petitioners. The Court found that petitioners had a better right over the subject property as they acquired an inchoate right of ownership by virtue of the Deed of Conditional Sale executed by GSIS.[28] Thus, the MTC disposed of the case in this wise:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of [petitioners] and against [respondent Joel], as follows:
>
> 1. Ordering the [respondent Joel] and all persons claiming rights under him to immediately vacate the subject property and to peacefully turn over possession of the same to [petitioners];
>
> 2. Ordering [respondent Joel] to pay [petitioners] the sum of FIVE THOUSAND PESOS (₱5,000.00) per month as reasonable compensation for the continued use and occupation of the premises beginning May 16, 2010 until the time the [respondent Joel] vacates the property; and
>
> 3. Ordering [respondent Joel] to pay the amount of TWENTY THOUSAND PESOS (₱20,000.00) as and for attorney's fees;
>
> 4. Ordering [respondent Joel] to pay the costs of suit.
>
> SO ORDERED.[29]

Ruling of the Regional Trial Court

Respondent Joel appealed the MTC Decision to the Regional Trial Court (RTC).

On February 4, 2013, the RTC rendered a Judgment[30] affirming the findings of the MTC that petitioners, as successors-in-interest of GSIS, were legally entitled to the full control and possession

---

[27] *Rollo*, pp. 64-69; penned by Presiding Judge Josefina E. Siscar.

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

[29] *Id*. at 69.

[30] *Id*. at 70-74; penned by Judge Teodoro N. Solis.

of the subject property.[31] It pointed out that from the time the Deed of Transfer of Rights was executed on January 20, 2005, respondent Joel never made any payment on the delinquencies.[32]

Respondent Joel moved for reconsideration but the RTC denied the same in its May 20, 2013 Order.[33]

Thereafter, the RTC issued Orders granting petitioners' Motion for Immediate Execution and Urgent Motion for Issuance of Break Open Order.[34]

Ruling of the Court of Appeals

Unfazed, respondent Joel elevated the matter to the CA *via* a Petition for Review[35] under Rule 42 of the Rules of Court, docketed, as CA-G.R. SP No. 130384.

For the first time, respondent Joel raised, as an issue the alleged failure of the GSIS to comply with the provisions under Republic Act (RA) No. 6552, otherwise known as the Maceda Law. He alleged that his sister's contract had not been cancelled and that she had not received the cash surrender value of the payments made on the subject property.

On September 29, 2014, the CA reversed the ruling of the RTC. The CA dismissed the complaint for unlawful detainer for failure of the GSIS to issue a notarized notice of cancellation and to refund the cash surrender value of the payments made on the subject property.[36]

Petitioners moved for reconsideration[37] arguing that the CA erred in allowing respondent Joel to change his theory on appeal.

---

[31] *Id*. at 73.

[32] *Id*.

[33] Records, p. 267.

[34] *Id*. at 268 and 286.

[35] CA *rollo*, pp. 3-19.

[36] *Rollo*, pp. 45-50.

[37] CA *rollo*, pp. 324-337.

In any case, petitioners attached a copy of the notarized cancellation of the contract[38] from the GSIS to dispute the allegation of respondent Joel. As to the cash surrender value, petitioners alleged that, under the law, it would be released only upon the retirement of respondent Joel's sister.

On December 1, 2014, the CA issued a Resolution denying petitioners' Motion for Reconsideration for lack of merit.

Hence, petitioners filed the instant Petition for Review on *Certiorari*, raising the following errors:

I.

THE HONORABLE [CA] ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT ALLOWED RESPONDENT [JOEL] TO CHANGE HIS THEORY FOR THE FIRST TIME IN HIS PETITION FOR REVIEW AND GRANTED THE SAME, THE CHANGE OF THEORY MADE BY RESPONDENT IS PROHIBITED BY THE RULES OF COURT.

II.

THE HONORABLE [CA] ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT [RA] NO. 6552 COMMONLY KNOWN AS MACEDA LAW APPLIES TO BOTH PARTIES DESPITE THE FACT THAT THE PROVISIONS OF THE MACEDA LAW APPLIES ONLY TO SELLER AND BUYER OF A REAL ESTATE PROPERT[Y]. HEREIN PARTIES ARE BOTH BUYERS OF THE SUBJECT PROPERTY FROM [GSIS].

III.

ASSUMING ARGUENDO THAT MACEDA LAW APPLIES TO THE PARTIES HEREIN, THE HONORABLE [CA] ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT ALLOWED RESPONDENT [JOEL] TO CHANGE HIS THEORY WHILE TOTALLY DISREGARDING THE DOCUMENTARY PIECES OF EVIDENCE PRESENTED BY PETITIONERS IN RESPONSE, WHICH IS OFFENSIVE TO THE RULES OF FAIR PLAY, JUSTICE, AND DUE PROCESS.[39]

---

[38] *Id*. at 365.

[39] *Rollo*, pp. 9 and 128.

Petitioners' Arguments

Petitioners contend that the CA erred in allowing respondent Joel to change his theory on appeal as this is prohibited by the Rules of Court and prevailing jurisprudence.[40] Petitioners point out that respondent Joel never raised as a defense the non-compliance by GSIS with the Maceda Law before the MTC and the RTC.[41] Thus, the CA in considering this on appeal violated petitioners' constitutional right to due process.[42] Petitioners further argue that the CA also erred in applying the Maceda Law to the instant case as it is applied only between a real estate seller and a buyer.[43] In any case, even if said law applied, the CA still erred in ruling that the GSIS failed to comply with the provisions of the Maceda Law considering that the GSIS sent a notarized letter of cancellation.[44] As to the cash surrender value, petitioners claim that respondent Joel failed to show that his sister filed a claim with the GSIS.[45]

Respondent's Argument

Respondents, on the other hand, fault the MTC and the RTC in not taking judicial notice of the Maceda Law in deciding the instant case.[46] They maintain that the Maceda Law applies to the instant case and that the conditional sale in favor of respondent Joel's sister remains valid due to the failure of GSIS to return the cash surrender value of the payments made by her on the subject property.[47] Accordingly, petitioners have no possessory right over the subject property.[48]

---

[40] *Id*. at 128-135.

[41] *Id*.

[42] *Id*.

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

[44] *Id*. at 136-146.

[45] *Id*. at 146-148.

[46] *Id*. at 167-168.

[47] *Id*. at 163-166.

[48] *Id*. at 169-172.

Our Ruling

The Petition is meritorious.

Section 15, Rule 44 of the Rules of Court provides:

> Section 15. *Questions that may be raised on appeal*. – Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

This provision embodies the settled principle that, on appeal, the parties are not allowed to change their "theory of the case," which is defined in Black's Law Dictionary as:

> A comprehensive and orderly mental arrangement of principle and facts, conceived and constructed for the purpose of securing a judgment or decree of a court in favor of a litigant; the particular line of reasoning of either party to a suit, the purpose being to bring together certain facts of the case in a logical sequence and to correlate them in a way that produces in the decision maker's mind a definite result or conclusion favored by the advocate.[49]

In other words, an issue not alleged in the complaint nor raised before the trial court cannot be raised for the first time on appeal as this goes against the basic rules of fair play, justice, and due process.[50] In the same way, a defense not pleaded in the answer cannot also be raised for the first time on appeal.[51]

In *Peña v. Spouses Tolentino*,[52] the Court explained that –

> x x x a party cannot change his theory of the case or his cause of action on appeal. This rule affirms that 'courts of justice have no jurisdiction or power to decide a question not in issue.' Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties is not only

---

[49] *Bote v. Spouses Veloso*, 700 Phil. 78, 87 (2012).

[50] *Ramos v. Intermediate Appellate Court*, 256 Phil. 521, 525 (1989).

[51] *Carinan v. Spouses Cueto*, 745 Phil. 186, 195 (2014).

[52] *Supra* note 1 at 328, 329.

irregular but also extrajudicial and invalid. The legal theory under which the controversy was *heard* and *decided* in the trial, court should be the *same* theory under which the *review on appeal* is conducted. Otherwise, prejudice will result to the adverse party. We stress that points of law, theories, issues, and arguments not adequately brought to the attention of the lower court will not be ordinarily considered by a reviewing court, inasmuch as they cannot be raised for the first time on appeal. This would be offensive to the basic rules of fair play, justice, and due process.

In this case, respondent Joel in his Answer[53] averred:

7. The subject property was originally awarded to [respondent's] sister, Beaulah L. Aguillon (Aguillon, for brevity), by the GSIS through a housing loan. Aguillon's monthly loan amortizations were dutifully deducted through her salary and remitted to GSIS from year 1985 to 2000. xxx

8. Since Aguillon's place of work was in Bacolod City, she requested [respondent's] family to stay in the subject property. In 1994, the GSIS informed Aguillon, through defendant, that she was delinquent on her payment of amortizations. To prove payments and reconcile with her records, Aguillon requested GSIS (Manila and Iloilo branches) to furnish her with copies of remittances of amortization. She even went to Manila to request statement of payment/remittance but to no avail. Later on, defendant would do the following up with GSIS Manila regarding the request for issuance of statement of remittance which efforts suffered the same fate as Aguillon. xxx

9. Burdened by the continued inaction of GSIS, Aguillon executed a Deed of Transfer of Rights in favor of [respondent] which was approved by the former. [Respondent] then availed of condonation/amnesty of whatever unpaid amortization the former owner of the subject property incurred after paying ten (10%) percent of the computed balance subject to proper computations of the total remittance made by Aguillon. xxx

10. [Respondent] paid the ten (10%) percent down payment and requested anew for the proper computation of the total remittance made by Aguillon in order to determine the correct and proper balance payable. Like the previous ones, GSIS failed to address the concern of [respondent]. xxx

---

[53] Records, pp. 32-36.

11. On May 16, 2010, [respondent] was shocked when [petitioners] went to his house and informed him that they had bought the subject property from GSIS.

12. [Petitioner] has no cause of action against herein [respondent.] [Respondent is entitled to the possession of the subject property as buyer thereof. His failure to pay the amortization was due to the fault of GSIS arising from the latter's continued disregard of the repeated request for computation of the total remittance/amortization made for the purpose of ascertaining the correct and proper balance of the loan. This mess could be attributed to the absence of ledger of the account as noticed by [respondent] or perhaps caused by the complete computerization program GSIS has introduced in its system which bugged down resulting in confusion of its records and its consequent filing of a case against the contractor – IBM.

13. Moreover, the sale made by GSIS in favor of [petitioners] is void. GSIS cannot unilaterally terminate the deed of [conditional] sale without violating due process. Besides, subject property was not mortgage[d] as security for the loan. Even if it was, no foreclosure proceeding was initiated to date.

14. Having paid since 1985, Aguillon acquired ownership over the subject property. The effect of the blunder in the computerization program of GSIS should not be tossed to [respondent].

15. Assuming for the sake of argument that the termination of the deed of conditional sale was legal, [petitioners,] did not exhaust administrative remedies. [Petitioner Teresita], a neighbor, acted in bad faith in purchasing [the] subject property from GSIS. She was aware that [the] subject property is owned by [respondent]. On the other hand, GSIS did not act on the offer proposal of [respondent] to purchase the property.[54]

In his Pre-Trial Brief,[55] respondent Joel raised two issues, to wit:

1. Whether x x x [petitioners] are legitimate buyer[s] and legally entitled to the possession of the subject property?

---

[54] *Id*. at 33-35.

[55] *Id*. at 73-73.

2. Whether x x x [respondent Joel] has superior right over [petitioners] as transferee of the subject property and are entitled to its possession as well as to the compulsory counterclaim?[56]

On appeal to the RTC, respondent Joel raised the following issues:

I.

THE LOWER COURT'S FINDING THAT THE [PETITIONERS] ARE BUYERS IN GOOD FAITH IS HIGHLY ERRONEOUS FOR BEING CONTRARY TO ATTENDANT FACTS AND CIRCUMSTANCES.

II.

THE LOWER COURT REGRETTABLY CLOSED ITS EYES ON THE APPARENT LACK OF DUE PROCESS, WHICH UNJUSTLY DEPRIVED [RESPONDENT JOEL] OF HIS CONSTITUTIONAL RIGHT TO PROPERTY.[57]

From the foregoing, it is apparent that the issue of whether the GSIS complied with the Maceda Law or not was never brought to the attention of the MTC and the RTC. Respondents' contention that the MTC and the RTC should have taken judicial notice of the Maceda Law is untenable as the issue of compliance with the Maceda Law is a factual matter, which should have been alleged or raised as a defense in the Answer. And since respondent Joel failed to allege such matters in his Answer, there was no reason for the MTC, as well as the RTC, to resolve the issue and apply the Maceda Law.

Moreover, records show that it was only before the CA that respondent Joel alleged that the GSIS failed to send a notarized notice of cancellation and a refund of the cash surrender value to his sister. The CA, therefore, should not have considered these belated allegations, as these are factual matters, which would require the presentation of additional evidence on the part of petitioners.

---

[56] *Id*. at 74.

[57] *Id*. at 211.

Furthermore, these belated allegations likewise changed the theory of his case, which is not allowed under the Rules as it goes against the basic rules of fair play, justice, and due process.

All told, the Court finds that the CA gravely erred in resolving the issue of GSIS' compliance with the Maceda Law, as it had no jurisdiction to resolve an issue not raised before the lower courts. Accordingly, the CA Decision must be set aside and the RTC Decision affirming the MTC Decision must be reinstated.

Respondents, therefore, must vacate the premises and pay petitioners the amount of ₱5,000.00 per month as reasonable compensation for the continued use and occupation of the subject property from May 16, 2010, the date of the demand to vacate, until respondents actually vacate the subject property and the amount of ₱20,000.00 as and for attorney's fees, plus costs of suit.

In addition, the reasonable compensation for the use and occupation of the subject property shall incur a legal rate of interest of 6% *per annum* from May 16, 2010, when the demand to vacate was made, up to the finality of this Decision. Thereafter, an interest, of 6% *per annum* shall be imposed on the total amount due until full payment is made in accordance with *Nacar v. Gallery Frames*[58] and *Bangko Sentral ng Pilipinas*-Monetary Board Circular No. 799, Series of 2013.

WHEREFORE, the Petition is hereby **GRANTED**. The assailed September 29, 2014 Decision and the December 1, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 130384 are hereby **REVERSED** and **SET ASIDE**. The February 4, 2013 Judgment and the May 20, 2013 Order of the Regional Trial Court of Biñan, Laguna, Branch 25, in Civil Case No. B-8784, affirming the March 20, 2012 Decision of the Municipal Trial Court of Biñan, Laguna, in Civil Case No. 4086, are hereby **REINSTATED**.

---

[58] 716 Phil. 267, 278-279 (2013).

In addition, the reasonable compensation for the use and occupation of the subject property shall incur a legal rate of interest of 6% *per annum* from May 16, 2010 up to the finality of this decision. Thereafter, an interest of 6% *per annum* shall be imposed on the total amount due until full payment is made.

SO ORDERED.

Leonardo-de Castro,[*] *Jardeleza*, and *Tijam, JJ.*, concur.

Sereno, C.J., on leave.

FIRST DIVISION

[G.R. No. 219086. March 19, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BONIFACIO GAYLON *y* ROBRIDILLO,** *a.k.a.* **"Boni",** *accused-appellant.*

SYLLABUS

CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; WHEN THE COURTS ARE GIVEN RESERVATIONS ABOUT THE IDENTITY OF THE ILLEGAL DRUG ITEM ALLEGEDLY SEIZED FROM THE ACCUSED, THE ACTUAL CRIME IS PUT IN SERIOUS QUESTION, HENCE, THE COURTS HAVE NO ALTERNATIVE BUT TO ACQUIT ON THE GROUND OF REASONABLE DOUBT; CASE AT BAR.— "Generally, the assessment by the [RTC] x x x, once affirmed by the CA, is binding and conclusive upon the Court, unless there is a showing that certain facts or circumstances had been overlooked

---

[*] Acting Chairperson per Special Order No. 2540 dated February 28, 2018.

or misinterpreted that, if properly considered, would substantially affect the ruling of the case," as in this case. In this connection, both the RTC and the CA failed to take into consideration the buy-bust team's non-compliance with Section 21, Article II of RA 9165. x x x In short, the prosecution failed to show "that the non-compliance with the requirements was upon justifiable grounds, [and] that the evidentiary value of the seized items was properly preserved by the apprehending team." x x x "Verily, without the State's justification for the lapses or gaps, the chain of custody so essential in the establishment of the *corpus delicti* of the offense charged against [appellant] was not shown to be unbroken and preserved." x x x "When the courts are given reason to entertain reservations about the identity of the illegal drug item alleged[ly] seized from the accused, the actual crime charged is put into serious question. Courts have no alternative but to acquit on the ground of reasonable doubt."To stress, the presence of the so-called insulating witnesses required under Section 21, Article II of RA 9165 should also either be present during marking or their absence should be with a valid justification. Otherwise, a lapse with respect thereto would also result in a gap in the chain of custody as held in *People v. Macud*: x x x In view of the foregoing, the Court is constrained to acquit the appellant on the ground of 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.*:

This is an appeal from the October 28, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06347,

[1] CA *rollo*, pp. 85-96; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela.

which affirmed the May 10, 2013 Decision[2] of Branch 151, Regional Trial Court (RTC) of Pasig City in Criminal Case No. 16681-D finding Bonifacio Gaylon *y* Robridillo a.k.a. "Boni" (appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 (RA 9165),[3] otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

Appellant was charged with violation of Section 5, Article II of RA 9165 in an Information[4] that reads:

> On or about May 3, 2009, in Pasig City, and within the jurisdiction of this Honorable Court, [appellant], not being lawfully authorized to sell any dangerous drug, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Frederick Nervar *y* Malana, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing three (3) centigrams (0.03 gram) of white crystalline substance, which was found positive to the tests of methamphetamine hydrochloride, a dangerous drug, in violation of the said law.
>
> Contrary to law.[5]

Appellant pleaded "not guilty" during his arraignment.[6]

Version of the Prosecution

Based on the testimony of PO1 Frederick Nervar y Malana (PO1 Nervar), the prosecution established the following facts:

PO1 Nervar was a member of the Philippine National Police and was assigned at the Pasig Police Station, Station Anti-Illegal Drugs Operation Task Force (SAID-SOTF). On May 3, 2009, at around 4:45 p.m., a confidential informant (CI) arrived at

---

[2] Records, pp. 121-127; penned by Judge Maria Teresa Cruz-San Gabriel.

[3] RA 9165 has been amended by RA 10640, entitled An Act to Further Strengthen the Anti-Drug Campaign of the Government, amending for the purpose Section 21 of [RA] 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, which was approved on July 15, 2014.

[4] Records, pp. 1-2.

[5] *Id*. at 1.

[6] *Id*. at 24-25.

their office and reported an ongoing illegal trade of drugs in MRR Street, Brgy. Pineda, Pasig City, involving "*alias Boni*" herein appellant. A buy-bust group was formed wherein PO1 Nervar was designated as the poseur-buyer. He was given a ₱200.00 bill and a ₱100.00 bill as buy-bust money wherein he placed his initials at the right bottom portion of said bills.

At around 6:50 p.m., PO1 Nervar, together with the CI and three other police officers, arrived at the target area. The CI introduced PO1 Nervar to appellant as a buyer of *shabu*. Appellant then asked how much PO1 Nervar was going to buy to which he replied, "*isang kasang tres lang*" which meant ₱300.00. After receiving the ₱300.00 buy-bust money, appellant got from his left pocket a plastic sachet that contained a white crystalline substance suspected to be *shabu* and gave the same to PO1 Nervar, who thereupon, removed his cap to signal that the transaction, was consummated. The rest of the buy-bust team immediately arrived. They arrested appellant and recovered from him the buy-bust money. PO1 Nervar marked the sachet and prepared the inventory; however, appellant refused to sign the same. Thereafter, they brought appellant, to their office. PO1 Nervar also brought the seized sachet to the crime laboratory, together with a request for laboratory examination. Appellant, was also brought to the Rizal Medical Center for a drug test.

PO1 Nervar identified in court the plastic sachet which he marked and when examined yielded positive for *shabu*.

Version of the Defense

The defense presented appellant as its sole witness. He denied the charge against him. He claimed that he was resting inside his house when police officers suddenly barged in and forcibly brought him to the police station, He knew about the accusation against him only the following day.

The defense also pointed to the failure of the police officers to coordinate with the Philippine Drug Enforcement Agency (PDEA). It argued that the supposed coordination form should not be given any weight because it was faxed from a residential house and not from the PDEA. Moreover, PO1 Nervar failed

to record, in their logbook the serial numbers of the buy-bust money prior to the operation.

Ruling of the Regional Trial Court

The RTC found that the prosecution had proven the existence of the elements of illegal sale of *shabu*, Thus, it sentenced appellant to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

The RTC brushed aside as irrelevant the argument interposed by the defense that the fax copy of the coordination form came from a residential house as it had nothing to do with the elements of the offense charged; moreover, the RTC held that a buy-bust operation is not invalidated by mere non-coordination with the PDEA claiming that a buy-bust operation is just a form, of an *in flagrante* arrest. The RTC also labeled as immaterial PO1 Nervar's failure to record the serial numbers of the buy-bust money in their logbook and stressed that PO1 Nervar enjoyed the presumption, of regularity in the performance of official duties especially in the absence of proof of ill-motive. Finally, the RTC lent more credence to the positive testimony of the prosecution's witness vis-a-vis the uncorroborated, and unsubstantiated claim of frame-up and denial by the defense.

Aggrieved, appellant appealed to the CA.

Ruling of the Court of Appeals

In his Brief,[7] appellant argued that there was no evidence sufficient to support his conviction beyond reasonable doubt.[8] He alleged that certain irregularities attended the buy-bust operation. In particular, it failed to comply with the requirements under Section 21, Article II of RA 9165, He claimed that no representatives from the media, Department of Justice (DOJ) or any elected public official witnessed the buy-bust or signed the inventory sheet; that the apprehending team did not take a photograph of the seized drug in his presence or his

---

[7] CA *rollo*, pp. 40-54.

[8] *Id.* at 47.

representative;[9] that it was unclear when or how the marking was done since PO1 Nervar merely testified that he himself placed the markings; that neither was there any testimony that the marking was done in the presence of the accused or his representative; that there was no testimony regarding the handling of the *shabu* from the time of its seizure until its presentation in court;[10] and that PO1 Nervar did not categorically state that the item which he marked as "FNB 03/05/09" was the same item which he bought from appellant.[11] Given the foregoing, the defense concluded that the evidence proffered by the prosecution did not satisfactorily establish an unbroken chain of custody[12] thus putting in issue the integrity, identity, and evidentiary value of the seized drug.

The appellate court, however, was not swayed by the arguments of the defense. Thus, on October 28, 2014, the CA affirmed in full the RTC ruling, *viz.*:

> WHEREFORE, premises considered, the instant appeal is DENIED. The assailed May 10, 2013 Decision is AFFIRMED.
>
> SO ORDERED.[13]

The CA disregarded appellant's arguments; it found the same bare and unsubstantiated. It held that appellant failed to prove that the evidence submitted against him had been tampered with.[14] Moreover, it ruled that appellant's defense of denial and alibi could not prevail over the categorical testimony of PO1 Nervar.

Hence, appellant filed the instant appeal. In his Manifestation[15] dated October 29, 2015, appellant deemed it no longer necessary to file a supplemental brief considering that the assigned errors

---

[9] *Id.* at 48.

[10] *Id.* at 49.

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

[12] *Id.* at 51.

[13] *Id.* at 96.

[14] *Id.* at 95.

[15] *Rollo*, p. 26.

had already been exhaustively discussed in the brief he filed before the CA.

Our Ruling

The Court grants the appeal.

"Our Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. x x x [T]he prosecution must rest on its own merits and must not rely on the weakness of the defense."[16]

In this case, the prosecution had the burden of establishing the presence of the elements of the crime of illegal sale of *shabu* in order to secure a conviction of the appellant therefor.

"Generally, the assessment by the [RTC] x x x, once affirmed by the CA, is binding and conclusive upon the Court, unless there is a showing that certain facts or circumstances had been overlooked or misinterpreted that, if properly considered, would substantially affect the ruling of the case,"[17] as in this case. In this connection, both the RTC and the CA failed to take into consideration the buy-bust team's non-compliance with Section 21, Article II of RA 9165. In particular, (1) the prosecution's failure to show that the Inventory of Seized Properties/Items[18] was prepared in the presence of a media representative, a DOJ representative, and any elected public official who should have signed the same and received copies thereof; (2) the prosecution did not offer as evidence any photograph of the seized *shabu*; and (3) no explanation for such non-compliance was proffered by the prosecution. In short, the prosecution failed to show "that the non-compliance with the requirements was upon justifiable grounds, [and] that the evidentiary value of the seized items was properly preserved by the apprehending team."[19]

---

[16] *People v. Miranda, Jr.*, G.R. No. 206880, June 29, 2016, 795 SCRA 227, 235.

[17] *People v. Lumudag*, G.R. No. 201478, August 23, 2017.

[18] Records, p. 89; Exhibit "I".

Moreover, a perusal of the Inventory of Seized Properties/ Items[20] shows that it was signed only by PO1 Nervar with a notation that the appellant had refused to sign the same. No representative of appellant signed said Inventory of Seized Properties/Items; neither did any representative from the media, DOJ, and any elected public official. Worse, the prosecution did not provide any justifiable ground for this lapse.

The Court, also notes that the only photograph submitted by the prosecution was Exhibit "J".[21] A perusal of Exhibit "J" shows that such was a blurred picture of the buy-bust money, **together with what appeared to be a small plastic sachet** with the blurred marking "FNB 03/05/09" BUYBUST and an illegible signature. On the other hand, Exhibit "J-1"[22] was a photocopy of the buy-bust money only. Notably, in the Prosecution's Formal Offer of Documentary Evidence,[23] and the RTC Order dated April 18, 2012,[24] it was stated that said Exhibits "J" and "J-1" were offered and admitted merely as **a picture of the buy-bust money** and not of the seized *shabu*.

In addition, PO1 Nervar also gave conflicting testimonies as regards when the photograph was taken. At first, he testified that it was taken before the buy-bust operation but upon further questioning he testified that the picture was actually taken after the operation, to wit:

> [Prosecutor to the witness, PO1 Nervar, on re-direct examination]:
>
> Q: By the way, it was you who marked the money?
> A: Yes, [S]ir.
>
> Q: What did you do after marking the money?
> A: We took pictures.[25]

---

[19] *People v.* [redacted] *Lumudag*, *supra* note 17.

[20] Records, p. 89; Exhibit "I".

[21] *Id.* at 91.

[22] *Id.* at 92.

[23] *Id.* at 77-80.

x x x x x x x x x

[Defense counsel/Public Attorney's Office lawyer to the witness, PO1 Nervar, on re-cross examination]:

Q: You mentioned that you took the picture of the marked money before the operation. Am I correct that you have no picture with the said date that it was taken before your operation? Was it on the same date?
A: Yes, [M]a'am.

Q: If we are to follow your statement, you should have a picture with the date of the operation that you are mentioning?
A: Yes, [M]a'am.

Q: Am I correct that there is no such picture in your evidence?
A: It is only the marked money.

Q: Am I correct that the picture you presented here is a picture after the operation?
A: Yes, [M]a'am.

Q: It was not before the operation that you were claiming as part of the recording of your office?
A: Yes, [M]a'am.[26]

And again, the prosecution likewise did not give any justifiable ground for this lapse.

"Verily, without the State's justification for the lapses or gaps, the chain of custody so essential in the establishment of the *corpus delicti* of the offense charged against [appellant] was not shown to be unbroken and preserved."[27] Thus, as explained tin *People v. Lumudag*:[28]

The records reveal that the buy-bust team did not faithfully observe the foregoing statutory requirements, such as performing the physical inventory and photographing of the illegal drug immediately upon seizure and confiscation, and in the presence of a representative of the media and the Department of Justice (DOJ), and of any elected

---

[24] *Id*. at 99.

[25] TSN, February 2, 2011, p. 13.

[26] *Id*. at 16,

public official who would then be required to sign the inventory and be given copies thereof. The requirements were precisely designed by the law to prevent planting, or switching, or contamination of evidence, and thereby secure the suspects against malicious incriminations. In the field of drug enforcement, the need for the requirements to be literally followed, or at least to be substantially complied with, has become all the more pronounced. By specifying the steps to be taken for preserving the chain of custody, Congress really established firm guarantees against false incriminations of individuals that the lawless elements among the ranks of the law enforcers had often resorted to.

x x x x x x x x x

The non-disclosure of the justification by the members of the buy-bust team underscored the uncertainty about the identity and integrity of the *shabu* admitted as evidence against the accused. The unavoidable consequence of the non-disclosure of the justification was the non-establishment of the chain of custody, which, in turn, raised serious doubt on whether or not the *shabu* presented as evidence was the *shabu* supposedly sold by [appellant], or whether or not *shabu* had really been sold by him.

"When the courts are given reason to entertain reservations about the identity of the illegal drug item alleged[ly] seized from the accused, the actual crime charged is put into serious question. Courts have no alternative but to acquit on the ground of reasonable doubt."[29]

To stress, the presence of the so-called insulating witnesses required under Section 21, Article II of RA 9165 should also either be present during marking or their absence should be with a valid justification. Otherwise, a lapse with respect thereto would also result in a gap in the chain of custody as held in *People v. Macud*:[30]

The prosecution never contested that the police officers failed to comply with Section 21 (1) of [RA] 9165 and Section 21 (a) of its IRR. The lapses constituted of the following:

---

[27] *People v. Lumudag*, *supra* note 17.

[28] *Id.*

first, the absence of a representative of the media, the DOJ, and any elected public official to witness the marking and physical inventory of the seized drugs; and

second, although the marking and physical inventory of the seized drugs were done immediately after the arrest, the photograph was done *after* the operation and in the police station by PO2 Francisco, also without the requisite persons who should have witnessed the act.

When asked to explain why there was failure to comply with the procedural requirements, PO2 Catarata simply said that doing so could compromise the buy-bust operation:

x x x x x x x x x

We find this justification insufficient. Other than PO2 Catarata's bare allegation that coordination with the local officials could have compromised the buy-bust operation, the prosecution offered no factual evidence to substantiate this claim. Even if the claim were true, there is no requirement under the law that the elected public official who should witness the operation must be one of those elected in the same locality where the operation is conducted so as not to compromise the police operation in the area. This is clear from the wordings of the law itself which says "*any* elected public official."

We cannot even declare that there was substantial compliance with the law in this case as the police officers invited no other person to witness the procedures that were done *after* the buy-bust operation, *i.e.*, the marking, inventory, and photography of the seized drugs, There was no representative of the media or the DOJ and no allegation that these people could similarly compromise the operation if they had been informed of and present before, during, and after the operation.

The presence of the persons who should witness the post-operation procedures is necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity. The insulating presence of such witnesses would have preserved an unbroken chain of custody. We have noted in several cases that a buy-bust operation is susceptible to abuse, and the only way to prevent this is to ensure that the procedural safeguards provided by the law are strictly observed. In the present case, not only have the prescribed procedures not been followed, but also (and more importantly) the lapses not justifiably explained. x x x

In view of the foregoing, the Court is constrained, to acquit the appellant on the ground of reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The assailed October 28, 2014 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 06347 is **REVERSED** and **SET ASIDE**, Accordingly, appellant Bonifacio Gaylon *y* Robridillo, a.k.a. "Boni", is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause. Let a copy of this Decision be **FURNISHED** to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Decision, the action he has taken. Copies shall also be **FURNISHED** to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency **FOR THEIR INFORMATION**.

FURTHERMORE, Exhibit "F", which had been forwarded to the vault of the Court of Appeals for safekeeping per the Letter dated December 9, 2013 signed by Medella A. Carrera, Chief, Criminal Cases Section, is **ORDERED** to be **FORWARDED** to the Philippine Drug Enforcement Agency for proper disposal in accordance with law.

SO ORDERED.

Leonardo-de Castro,[*] *Peralta,*[**] and *Tijam, JJ.*, concur.

Sereno, C.J., on leave.

---

[29] *People v. Miranda, Jr.*, *supra* note 16 at 239.

[30] G.R. No. 219175, December 14, 2017.

[*] Designated as Acting Chairperson per Special Order No. 2540 dated February 28, 2018.

[**] 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. 230020. March 19, 2018]

PETER L. SO, *petitioner, vs.* **PHILIPPINE DEPOSIT INSURANCE CORPORATION,** *respondent.*

SYLLABUS

MERCANTILE LAW; PHILIPPINE DEPOSIT INSURANCE CORPORATION (CREATED BY REPUBLIC ACT NO. 3591); POWERS AND FUNCTIONS; IT IS THE LEGISLATIVE INTENT TO CREATE THE PHILIPPINE DEPOSIT INSURANCE CORPORATION (PDIC) AS A QUASI-JUDICIAL AGENCY; SUSTAINED.— On June 22, 1963, PDIC was created under RA 3591 as an insurer of deposits in all banks entitled to the benefits of insurance under the said Act to promote and safeguard the interests of the depositing public. As such, PDIC has the duty and authority to determine the validity of and grant or deny deposit insurance claims. Section 16(a) of its Charter, as amended, provides that PDIC shall commence the determination of insured deposits due the depositors of a closed bank upon its actual take over of the closed bank. Also, Section 1 of PDIC's Regulatory Issuance No. 2011-03, provides that as it is tasked to promote and safeguard the interests of the depositing public by way of providing permanent and continuing insurance coverage on all insured deposits, and in helping develop a sound and stable banking system at all times, PDIC shall pay all legitimate deposits held by bona fide depositors and provide a mechanism by which depositors may seek reconsideration from its decision, denying a deposit insurance claim. Further, it bears stressing that as stated in Section 4(f) of its Charter, as amended, PDIC's action, such as denying a deposit insurance claim, is considered as final and executory and may be reviewed by the court only through a petition for *certiorari* on the ground of grave abuse of discretion. x x x In the case of Lintang Bedol *v.* Commission on Elections, cited in Carlito C. Encinas *v.* PO1 Alfredo P. Agustin, Jr. and PO1 Joel S. Caubang, this Court explained the nature of a quasi-judicial agency, *viz.*: x x x **In carrying out their quasi-judicial functions the administrative officers**

> **or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature**. The Court has laid down the test for determining whether an administrative body is exercising judicial or merely investigatory functions: **adjudication signifies the exercise of the power and authority to adjudicate upon the rights and obligations of the parties**. x x x Thus, the legislative intent in creating PDIC as a quasi-judicial agency is clearly manifest. Indeed, PDIC exercises judicial discretion and judgment in determining whether a claimant is entitled to a deposit insurance claim, which determination results from its investigation of facts and weighing of evidence presented before it. Noteworthy also is the fact that the law considers PDIC's action as final and executory and may be reviewed only on the ground of grave abuse of discretion.

APPEARANCES OF COUNSEL

Pelaez Gregorio Gregorio & Lim for petitioner.
Office of the Government Corporate Counsel for respondent.

D E C I S I O N

TIJAM, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated November 7, 2016 and Order[3] dated February 17, 2017 of the Regional Trial Court (RTC) of Makati, Branch 138, in Special Civil Case No. 16-031, which dismissed Peter L. So's (petitioner's) Petition for *Certiorari*[4] on the ground of lack of jurisdiction.

---

[1] *Rollo*, pp. 13-26.

[2] Penned by Presiding Judge Josefino A. Subia, *id*. at 28-36.

[3] *Id*. at 37-38.

[4] *Id*. at 39-46.

Factual Antecedents

Petitioner opened an account with the Cooperative Rural Bank Bulacan (CRBB) on April 17, 2013, amounting to ₱300,000, for which he was assigned the Special Incentive Savings Account (SISA) No. 05-15712-1.[5]

On the same year, however, petitioner learned that CRBB closed its operations and was placed under Philippine Deposit Insurance Corporation's (PDIC's) receivership. This prompted petitioner, together with other depositors, to file an insurance claim with the PDIC on November 8, 2013.[6]

Acting upon such claim, PDIC sent a letter/notice dated November 22, 2013, requiring petitioner to submit additional documents, which petitioner averred of having complied with.[7]

Upon investigation, the PDIC found that petitioner's account originated from and was funded by the proceeds of a terminated SISA (mother account), jointly owned by a certain Reyes family.[8] Thus, based on the determination that petitioner's account was among the product of the splitting of the said mother account which is prohibited by law, PDIC denied petitioner's claim for payment of deposit insurance.[9] Petitioner filed a Request for Reconsideration, which was likewise denied by the PDIC on January 6, 2016.[10]

Aggrieved, petitioner filed a Petition for *Certiorari*[11] under Rule 65 before the RTC.

RTC Ruling

In its November 7, 2016 assailed Decision, the RTC upheld the factual findings and conclusions of the PDIC. According

---

[5] *Id*. at 16.

[6] *Id*.

[7] *Id*.

[8] *Id*. at 83.

[9] *Id*. at 87.

[10] *Id*. at 17.

[11] *Id*. at 39-46.

to the RTC, based on the records, the PDIC correctly denied petitioner's claim for insurance on the ground of splitting of deposits which is prohibited by law.[12]

It also declared that, pursuant to its Charter (RA 3591), PDIC is empowered to determine and pass upon the validity of the insurance deposits claims, it being the deposit insurer. As such, when it rules on such claims, it is exercising a quasi-judicial function. Thus, it was held that petitioner's remedy to the dismissal of his claim is to file a petition for *certiorari* with the Court of Appeals under Section 4,[13] Rule 65, stating that if the petition involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or the rules, it shall be filed in and cognizable only by the Court of Appeals (CA).[14]

In addition, the RTC also cited Section 22[15] of Republic Act (RA) No. 3591, as amended, which essentially states that only

---

[12] *Id*. at 35.

[13] *Section 4. When and where petition filed.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

x x x x x x x x x.

[14] *Id*.

[15] SECTION 22. No court, except the Court of Appeals, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the Corporation for any action under this Act (as added by RA 9302).

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, the insured bank, or any shareholder of the insured bank (as added by RA 9302).

x x x x x x x x x.

the CA shall issue temporary restraining orders, preliminary injunctions or preliminary mandatory injunctions against the PDIC for any action under the said Act.

The RTC disposed, thus:

> WHEREFORE, in view of the foregoing, for lack of jurisdiction, the petition for *certiorari* filed by the petitioner is hereby DISMISSED.
>
> **SO ORDERED**.[16]

In its February 17, 2017 Order, the RTC denied petitioner's motion for reconsideration.

Hence, this petition, filed directly to this Court on pure question of law.

Issue

Does the RTC have jurisdiction over a petition for *certiorari* filed under Rule 65, assailing the PDIC's denial of a deposit insurance claim?

Our Ruling

The petition lacks merit.

There is no controversy as to the proper remedy to question the PDIC's denial of petitioner's deposit insurance claim. Section 4(f) of its Charter, as amended, clearly provides that:

> x x x x x x x x x
>
> **The actions of the Corporation taken under this section shall be final and executory, and may not be restrained or set aside by the court, except on appropriate petition for *certiorari* on the ground that the action was taken in excess of jurisdiction or with such grave abuse of discretion as to amount to a lack or excess of jurisdiction.** The petition for *certiorari* may only be filed within thirty (30) days from notice of denial of claim for deposit insurance. (emphasis supplied)

---

[16] *Rollo*, p. 36.

The issue, however, is which court has jurisdiction over such petition.

Petitioner's stance is that the petition for *certiorari*, questioning PDIC's action, denying a deposit insurance claim should be filed with the RTC, arguing in this manner: PDIC is not a quasi-judicial agency and it does not possess any quasi-judicial power under its Charter; It merely performs fact-finding functions based on its regulatory power. As such, applying Section 4, Rule 65 of the Rules of Court, as amended by A.M. 07-7-12-SC, which in part states that if the petition relates to an act or omission of a corporation, such as the PDIC, it shall be filed with the RTC exercising jurisdiction over the territorial area as defined by this Court; Also, Batas Pambansa Blg. 129 or the Judiciary Reorganization Act provides that this Court, the CA, and the RTC have original concurrent jurisdiction over petitions for *certiorari*, prohibition, and mandamus. Applying the principle of hierarchy of courts, the RTC indeed has jurisdiction over such petition for *certiorari*.

We do not agree.

On June 22, 1963, PDIC was created under RA 3591 as an insurer of deposits in all banks entitled to the benefits of insurance under the said Act to promote and safeguard the interests of the depositing public.[17] As such, PDIC has the duty and authority to determine the validity of and grant or deny deposit insurance claims. Section 16(a) of its Charter, as amended, provides that PDIC shall commence the determination of insured deposits due the depositors of a closed bank upon its actual take over of the closed bank. Also, Section 1 of PDIC's Regulatory Issuance No. 2011-03, provides that as it is tasked to promote and safeguard the interests of the depositing public by way of providing permanent and continuing insurance coverage on all insured deposits, and in helping develop a sound and stable banking system at all times, PDIC shall pay all legitimate deposits

---

[17] *Philippine Deposit Insurance Corporation v. Phil. Countryside Rural Bank, Inc., et al.*, 655 Phil. 313, 337 (2011).

held by bona fide depositors and provide a mechanism by which depositors may seek reconsideration from its decision, denying a deposit insurance claim. Further, it bears stressing that as stated in Section 4(f) of its Charter, as amended, PDIC's action, such as denying a deposit insurance claim, is considered as final and executory and may be reviewed by the court only through a petition for *certiorari* on the ground of grave abuse of discretion.

Considering the foregoing, the legislative intent in creating the PDIC as a quasi-judicial agency is clearly manifest.

In the case of *Lintang Bedol v. Commission on Elections*,[18] cited in *Carlito C. Encinas v. PO1 Alfredo P. Agustin, Jr. and PO1 Joel S. Caubang*,[19] this Court explained the nature of a quasi-judicial agency, *viz.*:

> Quasi-judicial or administrative adjudicatory power on the other hand is the power of the administrative agency to adjudicate the rights of persons before it. It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. **In carrying out their quasi-judicial functions the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.**

The Court has laid down the test for determining whether an administrative body is exercising judicial or merely investigatory functions: **adjudication signifies the exercise of the power and authority to adjudicate upon the rights and obligations of the parties.** Hence, if the only purpose of an investigation is to evaluate

---

[18] 621 Phil. 498, 511 (2009).

[19] 709 Phil. 236, 256-257 (2013).

the evidence submitted to an agency based on the facts and circumstances presented to it, and if the agency is not authorized to make a final pronouncement affecting the parties, then there is an absence of **judicial discretion and judgment**. (emphasis supplied)

Thus, the legislative intent in creating PDIC as a quasi-judicial agency is clearly manifest. Indeed, PDIC exercises judicial discretion and judgment in determining whether a claimant is entitled to a deposit insurance claim, which determination results from its investigation of facts and weighing of evidence presented before it. Noteworthy also is the fact that the law considers PDIC's action as final and executory and may be reviewed only on the ground of grave abuse of discretion.

That being established, We proceed to determine where such petition for *certiorari* should be filed. In this matter, We cite the very provision invoked by the petitioner, *i.e.*, Section 4, Rule 65 of the Rules, as amended by A.M. No. 07-7-12-SC:

> Sec. 4. When and where to file the petition. - The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.
>
> If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. **If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.**(emphasis supplied)

Clearly, a petition for *certiorari*, questioning the PDIC's denial of a deposit insurance claim should be filed before the CA, not the RTC. This further finds support in Section 22 of the PDIC's Charter, as amended, which states that:

Section 22. **No court, except the Court of Appeals**, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the Corporation for any action under this Act. xxx.

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, the insured bank, or any shareholder of the insured bank. xxx.

x x x x x x x x x

Finally, the new amendment in PDIC's Charter under RA 10846, specifically Section 5(g) thereof, confirms such conclusion, *viz.*:

The actions of the Corporation taken under Section 5(g) shall be **final and executory, and may only be restrained or set aside by the Court of Appeals**, upon appropriate petition for *certiorari* on the ground that the action was taken in excess of jurisdiction or with such grave abuse of discretion as to amount to a lack or excess of jurisdiction. The petition for *certiorari* may only be filed within thirty (30) days from notice of denial of claim for deposit insurance. (Emphasis Ours)

As it stands, the controversy as to which court has jurisdiction over a petition for *certiorari* filed to question the PDIC's action is already settled. Therefore, We find no reversible error from the findings and conclusion of the court *a quo*.

WHEREFORE, the instant petition is **DENIED** for lack of merit.

SO ORDERED.

Leonardo-de Castro,[*] *del Castillo*, and *Jardeleza, JJ.*, concur.

Sereno, C.J., on leave.

---

[*] Designated as Acting Chairperson pursuant to Special Order No. 2540 dated February 28, 2018.

FIRST DIVISION

[G.R. No. 230037. March 19, 2018]

SPOUSES KISHORE LADHO CHUGANI and PRISHA KISHORE CHUGANI, *et al., petitioners, vs.* **PHILIPPINE DEPOSIT INSURANCE CORPORATION,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; PHILIPPINE DEPOSIT INSURANCE CORPORATION (CREATED BY REPUBLIC ACT NO. 3591); POWERS AND FUNCTIONS; THE POWER OF THE PHILIPPINE DEPOSIT INSURANCE CORPORATION (PDIC) AS TO WHETHER IT WILL DENY OR GRANT THE CLAIM FOR DEPOSIT INSURANCE BASED ON ITS RULES AND REGULATIONS PARTAKES OF A QUASI-JUDICIAL FUNCTION.— The PDIC was created by Republic Act (R.A.) No. 3591 on June 22, 1963 as an insurer of deposits in all banks entitled to the benefits of insurance under the PDIC Charter to promote and safeguard the interests of the depositing public by way of providing permanent and continuing insurance coverage of all insured deposits. Based on its charter, the PDIC has the duty to grant or deny claims for deposit insurance. Specifically, under Section 4(f) of R.A. No. 3591, as amended by R.A. No. 9576, x x x As held in the case of *Monetary Board, et al., v. Philippine Veterans Bank*, this Court defined a quasi-judicial agency, to wit: **A quasi-judicial agency or body is an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making**. x x x In the instant case, the PDIC has the power to prepare and issue rules and regulations to effectively discharge its responsibilities. The power of the PDIC as to whether it will deny or grant the claim for deposit insurance based on its rules and regulations partakes of a quasi-judicial function. Also, the fact that decisions of the PDIC as to deposit insurance shall be final and executory, such that it can only be set aside by a petition for *certiorari* evinces the intention of the Congress to make PDIC as a quasi-judicial agency.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE REMEDY TO QUESTION THE DECISIONS OF THE PDIC IS THROUGH A PETITION FOR *CERTIORARI* UNDER RULE 65 AND FILED BEFORE THE COURT OF APPEALS; CLARIFIED.— Consistent with Section 4, Rule 65, the CA has the jurisdiction to rule on the alleged grave abuse of discretion of the PDIC. Therefore, the CA is correct when it held that the RTC has no jurisdiction over the Petitions for *Certiorari* filed by the petitioners questioning the PDIC's denial of their claim for deposit insurance. Nevertheless, any question as to where the petition for *certiorari* should be filed to question PDIC's decision on claims for deposit insurance has been put to rest by R.A. No. 10846. Section 7 therein provides: x x x x "The actions of the Corporation taken under Section 5(g) shall be final and executory, and **may only be restrained or set aside by the Court of Appeals, upon appropriate petition for *certiorari*** on the ground that the action was taken in excess of jurisdiction or with such grave abuse of discretion as to amount to a lack or excess of jurisdiction. The petition for *certiorari* may only be filed within thirty (30) days from notice of denial of claim for deposit insurance. As it now stands, the remedy to question the decisions of the PDIC is through a Petition for *Certiorari* under Rule 65 and filed before the CA.

3. ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, DEFINED; THE PDIC DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN DENYING THE CLAIM FOR DEPOSIT INSURANCE WHEN THE SAME WERE VALIDLY GROUNDED ON THE FACTS, LAW AND REGULATIONS ISSUED BY THE PDIC; CASE AT BAR.— Grave abuse of discretion is the capricious and whimsical exercise of the judgment of a court, tribunal or quasi-judicial agency that is equivalent to lack of jurisdiction. It must be so grave such that the power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility. In this case, it cannot be said that PDIC committed grave abuse of discretion in denying petitioners claim for deposit insurance. x x x Section 2(d) of PDIC Regulatory Issuance No. 2011-02 states that for deposit to be considered as legitimate, it should be 1) received by a bank as a deposit in the usual course of business; 2) recorded in the books of the bank as such; 3) opened in accordance with

established forms and requirements of the BSP and/or the PDIC. Further, in *Phil. Deposit Insurance Corp. v. CA*, this Court held that in order for the claim for deposit insurance with the PDIC may prosper, it is necessary that the corresponding deposit must be placed in the insured bank. Here, upon investigation by the PDIC, it was discovered that 1) the money allegedly placed by the petitioners in RBMI was in fact credited to the personal account of Garan, hence, they could not be construed as valid liabilities of RBMI to petitioners; 2) based on bank records and the certified list of the bank's outstanding deposit liabilities, the alleged deposits of petitioners are not part of RBMI's outstanding liabilities; and 3) the CTDs are not validly issued by RBMI, but were mere replicas of the unissued and unused CTDs still included in the inventory of RBMI. Further, the act of petitioners in opening Time Deposits and thereafter depositing several amounts of money through inter-branch deposits with Metrobank and China Bank for the account of RBMI can hardly be considered as in the ordinary course of business. Considering the above disquisitions, it is sufficiently established that the PDIC, did not commit any grave abuse of discretion in denying petitioners' claim for deposit insurance as the same were validly grounded on the facts, law and regulations issued by the PDIC.

APPEARANCES OF COUNSEL

Adonis J. Basa for petitioners.
Office of the Government Corporate Counsel for respondent.

D E C I S I O N

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari* filed by the petitioners assailing the Decision[1] dated June 29, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 141770 dismissing

---

[1] Penned by Associate Justice Ramon A. Cruz with Associate Justices Marlene B. Gonzales-Sison and Henri Jean Paul B. Inting, concurring. *Rollo*, pp. 44-55.

the appeal of the petitioners and affirming the Consolidated Order[2] dated December 27, 2013 of the Regional Trial Court (RTC), Branch 62 of Makati City in SCA Nos. 13-763, 13-764, 13-765, 13-801, 13-802, 13-803, 13-807, 13-1049, and 13-1050, which dismissed the Petition for *Certiorari* for lack of jurisdiction.

The factual antecedents of the case are as follows:

Petitioners, upon the invitation of Raymundo Garan (Garan), the President of Rural Bank of Mawab (Davao), Inc., (RBMI), signified their intention to open Time Deposits with RBMI.[3]

RBMI then sent to petitioners, through courier, the Time Deposit Specimen Signature Cards and Personal Information Sheet with the instruction that petitioners send them back, through mail, to RBMI.[4]

Petitioners then opened Time Deposit Accounts with RBMI through inter-branch deposits to the accounts of RBMI maintained in Metrobank and China Bank- Tagum, Davao Branches. Thereafter, Certificates of Time Deposits (CTDs) and Official Receipts were issued to petitioners.[5]

Sometime in September 2011, petitioners came to know that the Monetary Board of the Bangko Sentral ng Pilipinas placed RBMI under receivership and thereafter closed the latter. Petitioners, then filed claims for insurance of their time deposits.[6]

Respondent Philippine Deposit Insurance Corporation (PDIC) denied the claims on the following grounds: 1.) based on bank records submitted by RBMI, petitioners' deposit accounts are not part of RBMI's outstanding deposit liabilities; 2.) the time deposits of petitioners are fraudulent and their CTDs were not duly issued by RBMI, but were mere replicas of unissued CTD's

---

[2] *Id.* at 47.

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

[4] *Id.* at 14.

[5] *Id.*

[6] *Id.*

in the inventory submitted by RBMI to PDIC; and 3.) the amounts purportedly deposited by the petitioners were credited to the personal account of Garan, hence, they could not be construed as valid liabilities of RBMI.[7]

Petitioners filed a request for reconsideration of PDIC's denial of their claim. PDIC however rejected the same in its Letter[8] dated May 22, 2013.

Hence, petitioners filed a Petition for *Certiorari* under Rule 65 of the Rules of Court with the Regional Trial Court (RTC).

On December 27, 2013, the RTC issued a Consolidated Order[9] dismissing the Petition for *Certiorari* filed by the petitioners, to wit:

> WHEREFORE, the instant petitions docketed as SCA Nos. 13-763, 13-764, 13-765, 13-801, 13-802, 13-803, 13-807, 13-1049, and 13-1050 are all DISMISSED for lack of jurisdiction
>
> SO ORDERED.

Aggrieved, the petitioners appealed the RTC's Decision to the CA.

The CA in its Decision[10] dated June 29, 2016, denied the appeal of the petitioners, thus:

> WHEREFORE, premises considered, the appeal is hereby DISMISSED, and the Consolidated Order dated December 27, 2013 of the Regional Trial Court of Makati City, Branch 62 in SCA Nos. 13-763, 13-764, 13-765, 13-801, 13-802, 13-803, 13-807, 13-1049, and 13-1050 is AFFIRMED.
>
> SO ORDERED.[11]

---

[7] *Id*. at 54.

[8] *Id*. at 64-65.

[9] The Consolidated Order was not attached in the records, but was merely quoted in the CA Decision. *Id*. at 47.

[10] *Id*. at 44-55.

[11] *Id*. at 54.

Petitioners now come before Us raising the issues of 1) Whether the CA is correct in ruling that the RTC has no jurisdiction over the Petitions for *Certiorari* filed by the petitioners; and 2) Whether the PDIC committed grave abuse of discretion in denying petitioners claim for deposit insurance.

The petition has no merit.

The PDIC was created by Republic Act (R.A.) No. 3591[12] on June 22, 1963 as an insurer of deposits in all banks entitled to the benefits of insurance under the PDIC Charter to promote and safeguard the interests of the depositing public by way of providing permanent and continuing insurance coverage of all insured deposits.[13]

Based on its charter, the PDIC has the duty to grant or deny claims for deposit insurance. Specifically, under Section 4(f) of R.A. No. 3591, as amended by R.A. No. 9576,[14] provides that:

"(f) The term "deposit" means the unpaid balance of money or its equivalent received by a bank in the usual course of business and for which it has given or is obliged to give credit to a commercial, checking, savings, time or thrift account, or issued in accordance with Bangko Sentral rules and regulations and other applicable laws, together with such other obligations of a bank, which, consistent with banking usage and practices, the Board of Directors shall

---

[12] AN ACT ESTABLISHING THE PHILIPPINE DEPOSIT INSURANCE CORPORATION, DEFINING ITS POWERS AND DUTIES AND FOR OTHER PURPOSES.

[13] *Phil. Deposit Insurance Corp. v. Phil. Countryside Rural Bank, Inc., et al.*, 655 Phil. 313 (2011).

[14] AN ACT INCREASING THE MAXIMUM DEPOSIT INSURANCE COVERAGE, AND IN CONNECTION THEREWITH, TO STRENGTHEN THE REGULATORY AND ADMINISTRATIVE AUTHORITY, AND FINANCIAL CAPABILITY OF THE PHILIPPINE DEPOSIT INSURANCE CORPORATION (PDIC), AMENDING FOR THIS PURPOSE REPUBLIC ACT NUMBERED THREE THOUSAND FIVE HUNDRED NINETY-ONE, AS AMENDED, OTHERWISE KNOWN AS THE PDIC CHARTER, AND FOR OTHER PURPOSES.

determine and prescribe by regulations to be deposit liabilities of the bank: *Provided*, That any obligation of a bank which is payable at the office of the bank located outside of the Philippines shall not be a deposit for any of the purposes of this Act or included as part of the total deposits or of insured deposits:*Provided, further*, That, subject to the approval of the Board of Directors, any insured bank which is incorporated under the laws of the Philippines which maintains a branch outside the Philippines may elect to include for insurance its deposit obligations payable only at such branch.

The corporation shall not pay deposit insurance for the following accounts or transactions, whether denominated, documented, recorded or booked as deposit by the bank:

> "(1) investment products such as bonds and securities, trust accounts, and other similar instruments;
> "(2) Deposit accounts or transactions which are unfunded, or that are fictitious or fraudulent;
> "(3) Deposits accounts or transactions constituting, and/or emanating from, unsage and unsound banking practice/s, as determined by the Corporation, in consultation with the BSP, after due notice and hearing, and publication of a cease and desist order issued by the Corporation against such deposit accounts or transactions; and
> "(4) Deposits that are determined to be the proceeds of an unlawful activity as defined under republic act 9160, as amended.
>
> "The actions of the Corporation taken under this section shall be final and executory, and may not be restrained or set aside by the court, except on appropriate petition for *certiorari* on the ground that the action was taken in excess of jurisdiction or with such grave abuse of discretion as to amount to a lack or excess of jurisdiction. The petition for *certiorari* may only be filed within thirty (30) days from notice of denial of claim for deposit insurance."

As held in the case of *Monetary Board, et al. v. Philippine Veterans Bank*,[15] this Court defined a quasi-judicial agency, to wit:

A quasi-judicial agency or body is an organ of government other than a court and other than a legislature, which affects

---

[15] 751 Phil. 176 (2015).

the rights of private parties through either adjudication or rule-making. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts. **A "quasi-judicial function" is a term which applies to the action, discretion, etc. of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.**[16]

In the instant case, the PDIC has the power to prepare and issue rules and regulations to effectively discharge its responsibilities.[17] The power of the PDIC as to whether it will deny or grant the claim for deposit insurance based on its rules and regulations partakes of a quasi-judicial function. Also, the fact that decisions of the PDIC as to deposit insurance shall be final and executory, such that it can only be set aside by a petition for *certiorari* evinces the intention of the Congress to make PDIC as a quasi-judicial agency.

Consistent with Section 4,[18] Rule 65, the CA has the jurisdiction to rule on the alleged grave abuse of discretion of

---

[16] *Id*. at 186.

[17] Section 2(1) of R.A. No. 3591.

[18] **Section 4.** *When and where petition filed.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

If it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals or with the Sandigan Bayan whether or not the same is in aid of its appellate jurisdiction. **If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.**

the PDIC. Therefore, the CA is correct when it held that the RTC has no jurisdiction over the Petitions for *Certiorari* filed by the petitioners questioning the PDIC's denial of their claim for deposit insurance. Nevertheless, any question as to where the petition for *certiorari* should be filed to question PDIC's decision on claims for deposit insurance has been put to rest by R.A. No. 10846.[19] Section 7 therein provides:

x x x x x x x x x

> "The actions of the Corporation taken under Section 5(g) shall be final and executory, and **may only be restrained or set aside by the Court of Appeals, upon appropriate petition for** certiorari on the ground that the action was taken in excess of jurisdiction or with such grave abuse of discretion as to amount to a lack or excess of jurisdiction. The petition for certiorari may only be filed within thirty (30) days from notice of denial of claim for deposit insurance. (Emphasis ours)

As it now stands, the remedy to question the decisions of the PDIC is through a Petition for *Certiorari* under Rule 65 and filed before the CA.

Nevertheless, even if We treat the appeal filed by the petitioners to the CA as a Petition for *Certiorari*, the same is still without merit.

Grave abuse of discretion is the capricious and whimsical exercise of the judgment of a court, tribunal or quasi-judicial agency that is equivalent to lack of jurisdiction. It must be so grave such that the power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility.[20]

---

x x x (*As amended by A.M. No. 07-7-12-SC, December 12, 2007*). (Emphasis ours)

[19] AN ACT ENHANCING THE RESOLUTION AND LIQUIDATION FRAMEWORK FOR BANKS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 3591, AS AMENDED, AND OTHER RELATED LAWS.

[20] *Pascual v. Burgos, et al.*, 776 Phil. 167 (2016) citing *United Coconut Planters Bank v. Looyuko*, 560 Phil. 581, 591-592 (2007).

In this case, it cannot be said that PDIC committed grave abuse of discretion in denying petitioners claim for deposit insurance.

Section 4(f) of R.A. No. 3591, as amended by R.A. No. 9576 states that deposit means *the unpaid balance of money or its equivalent received by a bank in the usual course of business and for which it has given or is obliged to give credit to a commercial, checking, savings, time or thrift account, or issued in accordance with Bangko Sentral rules and regulations and other applicable laws, together with such other obligations of a bank, which, consistent with banking usage and practices.*

Section 2(d) of PDIC Regulatory Issuance No. 2011-02[21] states that for deposit to be considered as legitimate, it should be 1) received by a bank as a deposit in the usual course of business; 2) recorded in the books of the bank as such; 3) opened in accordance with established forms and requirements of the BSP and/or the PDIC.

Further, in *Phil. Deposit Insurance Corp. v. CA*,[22] this Court held that in order for the claim for deposit insurance with the PDIC may prosper, it is necessary that the corresponding deposit must be placed in the insured bank.

Here, upon investigation by the PDIC, it was discovered that 1) the money allegedly placed by the petitioners in RBMI was in fact credited to the personal account of Garan, hence, they could not be construed as valid liabilities of RBMI to petitioners; 2) based on bank records and the certified list of the bank's outstanding deposit liabilities, the alleged deposits of petitioners are not part of RBMI's outstanding liabilities; and 3) the CTDs are not validly issued by RBMI, but were mere replicas of the unissued and unused CTDs still included in the inventory of RBMI. Further, the act of petitioners in opening Time Deposits and thereafter depositing several amounts of money through

---

[21] Rules and Regulations Governing Deposit Accounts or Transactions Excluded from the Coverage of Deposit Insurance.

[22] 347 Phil. 741 (1997).

inter-branch deposits with Metrobank and China Bank for the account of RBMI can hardly be considered as in the ordinary course of business.

Considering the above disquisitions, it is sufficiently established that the PDIC, did not commit any grave abuse of discretion in denying petitioners' claim for deposit insurance as the same were validly grounded on the facts, law and regulations issued by the PDIC.

WHEREFORE, the petition is **DENIED**. The Decision dated June 29, 2016 of the Court of Appeals in CA-G.R. SP No. 141770 is hereby **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro,[*] *del Castillo*, and *Jardeleza, JJ.,* concur.

Sereno, C.J., on leave.

EN BANC

[A.M. No. P-17-3659. March 20, 2018]

ANONYMOUS COMPLAINT AGAINST EMELIANO C. CAMAY, JR., UTILITY WORKER I, BRANCH 61, REGIONAL TRIAL COURT, BOGO CITY, CEBU.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS); DISGRACEFUL AND IMMORAL

---

[*] Designated as Acting Chairperson pursuant to Special Order No. 2540 dated February 28, 2018.

CONDUCT, AS A GRAVE OFENSE; IF THE FATHER OF THE CHILD BORN OUT OF WEDLOCK IS HIMSELF MARRIED TO A WOMAN OTHER THAN THE MOTHER, THERE IS A CAUSE FOR ADMINISTRATIVE SANCTION AGAINST EITHER THE FATHER OR THE MOTHER, IN WHICH CASE THE DISGRACEFUL AND IMMORAL CONDUCT CONSISTS OF HAVING EXTRAMARITAL RELATIONS WITH A MARRIED PERSON; CASE AT BAR.— On the issue of immorality, Camay admitted to cohabiting with a woman who was not his wife and to having a child with her despite his marriage to his wife not having been legally severed. As such, the finding of the OCA that Camay was guilty of disgraceful and immoral conduct is upheld. In *Anonymous v. Radam*, the Court declared that "if the father of the child born out of wedlock is himself married to a woman other than the mother, there is a cause for administrative sanction against either the father or the mother. In such a case, the 'disgraceful and immoral conduct' consists of having extramarital relations with a married person." Disgraceful and immoral conduct is an offense classified under the RRACCS as a grave offense punishable by suspension of six months and one day to one year for the first offense.

2. ID.; ID.; ID.; IF THE RESPONDENT IS FOUND GUILTY OF TWO OR MORE CHARGES OR COUNTS, THE PENALTY TO BE IMPOSED SHOULD BE THAT CORRESPONDING TO THE MOST SERIOUS CHARGE, AND THE OTHER CHARGES SHALL BE CONSIDERED AS AGGRAVATING CIRCUMSTANCES; APPLICATION IN CASE AT BAR.— Under Section 50, Rule 10 of the RRACCS, if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge, and the other charges shall be considered as aggravating circumstances. Although the charge of disgraceful and immoral conduct, classified as a grave offense, is the most serious charge herein, and should be the base for determining the penalty for Camay, his dismissal from the service with forfeiture of all his retirement benefits should be meted on him. His combined offenses have firmly demonstrated his total unfitness to continue in the service of the Judiciary. His being guilty of such offenses has been like a cancerous tumor that slowly consumed the healthy tissues of

the Judiciary, and even destroyed its good name and reputation in the area where he served. For sure, his remaining in the service would erode the Judiciary's institutional prestige in the eyes and estimation of the community. It is time to dismiss him in order to fully excise the tumor before more damage could be inflicted.

3. ID.; ID.; COURT PERSONNEL; ADMINISTRATIVE CIRCULAR NO. 5 ISSUED ON OCTOBER 4, 1988 (PROHIBITION TO WORK AS INSURANCE AGENT); NOTWITHSTANDING THE LACK OF EVIDENCE TO PROVE FINANCIAL GAIN FROM THE BOND TRANSACTION, THE FACT OF ASSISTING AND FACILITATING THE PROCESSING OF THE BAIL REQUIREMENTS FOR THE PARTIES WITH CASES IN THE RTC CONSTITUTED SUBSTANTIAL EVIDENCE OF SUCH FINANCIAL GAIN, IN VIOLATION OF THE ADMINISTRATIVE CIRCULAR.— Prosecutor Moralde attested that it was public knowledge in the RTC that Camay was the man to approach if any party wanted to post surety bail because he could facilitate the reduction of the recommended amounts of the bail; and that Camay transacted in behalf of the Plaridel Surety and Insurance Company, the only surety company authorized to transact in Branch 61 of the RTC. Notwithstanding the lack of direct evidence proving his having acquired financial gain from the bond transactions, the fact that he had assisted and facilitated the processing of the bail requirements for parties with cases in the RTC constituted substantial evidence of such financial gain on his part. Substantial evidence is that amount of relevant evidence that a reasonable man may accept as adequate to justify a conclusion. The penalty for him is a fine of ₱5,000.00, which was the penalty imposed in *Concerned Citizen v. Bautista*, where the respondent was held guilty of violating Administrative Circular No. 5, series of 1988 (*Re: Prohibition to Work as Insurance Agent*).

4. ID.; ID.; REPUBLIC ACT 6713 (CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES); ALL PUBLIC OFFICIALS AND EMPLOYEES ARE REQUIRED TO ACCOMPLISH AND SUBMIT A DECLARATION OF ASSETS, LIABILITIES, NET WORTH AND FINANCIAL AND BUSINESS INTERESTS, INCLUDING INFORMATION ON REAL

PROPERTY, ITS IMPROVEMENTS, ACQUISITION COSTS, ASSESSED VALUE AND CURRENT FAIR MARKET VALUE; PENALTY FOR VIOLATION.— [T]he finding that Camay did not consistently declare his true assets and actual net worth in his SALNs is upheld. He declared the house and lot located in Taytayan Hills in his SALNs for 2001, 2003, and 2004 but did not indicate the date of acquisition of such property. He again intermittently declared the property in 2009 and 2011. He did not declare the property in 2002, 2007, 2008 and 2010. His omissions violated the letter and spirit of Section 8 of Republic Act No. 6713, which requires all public officials and employees to accomplish and submit a declaration of assets, liabilities, net worth and financial and business interests, including information on real property, its improvements, acquisition costs, assessed value and current fair market value. Section 11 of the same law provides that a violation of the requirement is penalized by fine not exceeding the equivalent of the public official or employee's salary for six months.

D E C I S I O N

***PER CURIAM*:**

This administrative matter involves a utility worker of the Judiciary charged with various serious offenses, including immorality for living with a woman other than his legitimate spouse and siring a child with her; bail fixing; failing to truthfully disclose his assets in his sworn statement of assets and net worth (SALNs) filed in several years; trafficking in women; and living a lavish lifestyle.

Antecedents

By letter dated February 18, 2003, an anonymous complainant charged Emeliano C. Camay, Jr., the Utility Worker 1 of Branch 61 of the Regional Trial Court (RTC) in Bogo City, Cebu with the aforestated offenses.[1]

---

[1] *Rollo*, p. 48.

The complainant alleged that Camay, a married man, had been cohabiting with a woman who was not his wife, and they had a son by the name of Junmar; that he had been serving as the contact person of a surety company in the posting of surety bonds in the RTC; that for every 10 bonds processed, he would receive the proceeds for the 11th bond; that he had allowed a representative of the surety company to wait at his table, beside the desk of the clerk of court; that he was the owner of a big house, a motorcycle, and an iPhone; that he had demanded ₱20,000.00 for the entertainment of the Presiding Judge Antonio D. Marigomen; and that he had a collection of pictures of naked girls in his phone that he showed to anyone interested in engaging in sexual activity for money.[2]

In his comment dated December 10, 2013,[3] Camay denied the allegations against him. He attached a photocopy of the certificate issued by the National Statistics Office (NSO) to the effect that he had no son by the name of Junmar Camay;[4] a photocopy of the certificate issued by the Bogo City Assessor's Office attesting that he did not own or possess any real property located in Bogo City;[5] and his payslips showing his Supreme Court Savings and Loans Association (SCSLA) loan deductions (where the loan proceeds had been used to pay for his motorcycle).[6]

The complaint was referred to Executive Judge Teresita Abarquez-Galandia of the RTC in Mandaue City for discreet investigation.[7]

In her report,[8] Judge Galandia confirmed most of the allegations in the complaint based on the verbal statements given by two witnesses under the veil of anonymity.

---

[2] *Id*.

[3] *Id*. at 62-64.

[4] *Id*. at 64-b.

[5] *Id*. at 66.

[6] *Id*. at 65.

[7] *Id*. at 53.

[8] *Id*. at 55-57.

The files of Camay in the Office of Administrative Services of the Office of the Court Administrator (OCA) showed that Camay was married to Mary Joy Y. Santiago; that his Personal Data Sheet (PDS), BIR form No. 2305 and SALN for 2003 carried the notation of "married/but separated in fact" regarding his civil status; that he had left blank the space for the name of his spouse in the forms for 2002; that he declared as a dependent child in his undated BIR Form No. 2305 one "Jumar Guevarra Camay," who was born on July 25, 2001; and that his PDS and SALN for various periods from 2005 to 2011 revealed a Jumar Camay, born on July 25, 2002, as one of his children below 18 years of age.[9]

It appeared in Camay's SALNs for 2001, 2003 and 2004 that he had a house worth between ₱40,000.00 and ₱60,000.00 in Taytayan Hills, Bogo City but without any indication on the date of his acquisition; that in 2009, he declared his acquisition in that year of a house and lot worth ₱350,000.00 in Taytayan; that in his 2011 SALN, he declared the same property to be worth at ₱500,000.00; that he did not declare any real property in his SALNs for 2002, 2007 and 2008; that he also declared in his SALN dated April 20, 2012 a motorcycle worth ₱45,000.00 acquired in 2002, and another one worth ₱68,900.00 acquired in 2012; that his SALNs showed that he did not have any other source of income like business interests or financial connections; and that his monthly salary was his only source of income.[10]

Based on a verification with the SCSLA, Camay took several loans in 2012 totalling ₱85,000.00. His payslips also reflected GSIS loans, consolidated salary loan plus, enhanced salary loan, emergency loan, and policy loan, but the amounts were not substantial enough for use in the purchase of real property.[11]

On November 9, 2015, the Court referred the complaint to Judge Galanida for a more thorough investigation.[12]

---

[9] *Id*. at 157-158.

[10] *Id*. at 158.

[11] *Id*. at 159.

[12] *Id*. at 67.

In due course, Judge Galanida interviewed two private lawyers, three public prosecutors, and three female employees of another government agency. Of the eight informants, only Bogo City Prosecutor Ivy Tejano-Moralde executed an affidavit after the rest opted to remain incognito to avoid reprisal from Camay.[13]

In her report and recommendation,[14] Judge Galanida described Camay as a tattooed man with an imposing aura and built, with piercing eyes that could generate fear and intimidation in another. She recalled that during the investigation, he admitted having been separated in fact from his wife, and that he had been living with another woman named Maria Fe G. Guevarra, with whom he had a child named Jumar Guevarra Camay; and that he denied having an illegitimate child because the name of the child indicated in the complaint was wrong, as the name was Jumar, not Junmar.

Judge Galanida further stated that on the matter of bail fixing, three of the informants stated that they had personally heard from Camay about the 10+1 scheme; that an unnamed agent of Plaridel Surety and Insurance Company, who refused to be identified, confirmed that Camay was their contact person in the RTC; that City Prosecutor Moralde declared that in cases of illegal possession of drugs where the recommended bail was the amount of ₱200,000.00, Camay usually assisted the accused in obtaining the reduction of the amounts to half in exchange for 30% of the premiums for the surety bail bond; that none of the informants actually witnessed the solicitation of money in behalf of Judge Marigomen; that anent the allegations against Camay's lavish lifestyle, she observed his house in Taytayan to be made of concrete with a steel perimeter fence; that a certain Climaco had donated the land to Camay's father; that there was a warehouse-like structure thereon; and that he had only spent for the construction and renovation of the structure thereon using funds sourced from his loans and from the remittances of his son who was working as a seafarer; and that the tax

---

[13] *Id*. at 74-81.

[14] *Id*. at 71-78.

declarations relating to the property were issued in the name of Camay and his live-in partner.[15]

Judge Galanida opined that sufficient substantial evidence established Camay's lavish lifestyle given his rank; that his basic salary and allowances amounted to only ₱11,000.00 a month, but he could host lavish parties for himself and for the birthdays of his live-in partner and their illegitimate child; and that he owned a car and motorcycle but not the iPhone, although he later on admitted during the investigation that he had an iPhone with the clarification that his legitimate son had bought the iPhone for him.[16]

Judge Galanida indicated that there was insufficient evidence to sufficiently prove the offense of child abuse/trafficking against Camay; that the informants confirmed that Camay had shown them pictures of nude girls stored in his phone; and that Prosecutor Moralde testified that Camay claimed that the girls would sell themselves out anyway, and that he was just helping them fetch a higher price.[17]

Accordingly, Judge Galanida recommended that Camay be found and held guilty of immorality, disgraceful conduct, and bail bond fixing.[18]

In its memorandum dated January 18, 2017,[19] the OCA, agreeing with the report and recommendation of Judge Galanida, recommended that Camay be found and declared guilty of disgraceful and immoral conduct punishable under Section 46, Rule 10 of the *Revised Rules on Administrative Cases in the Civil Service* (RRACCS) for cohabiting with a woman who was not his wife, and having a child with her; that he be also held to have violated Section 8, in relation to Section 11, of

---

[15] *Id*. at 75-77.

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

[17] *Id*. at 77.

[18] *Id*. at 78.

[19] *Id*. at 156-165.

Republic Act No. 6713 for failing to properly disclose his real property in several of his SALNs; and that on the matter of bail bond fixing, he be found to have facilitated or secured bail bonds in violation of Administrative Circular No. 5, series of 1988.

Ruling of the Court

On the issue of immorality, Camay admitted to cohabiting with a woman who was not his wife and to having a child with her despite his marriage to his wife not having been legally severed. As such, the finding of the OCA that Camay was guilty of disgraceful and immoral conduct is upheld. In *Anonymous v. Radam*,[20] the Court declared that "if the father of the child born out of wedlock is himself married to a woman other than the mother, there is a cause for administrative sanction against either the father or the mother. In such a case, the 'disgraceful and immoral conduct' consists of having extramarital relations with a married person."

Disgraceful and immoral conduct is an offense classified under the RRACCS as a grave offense punishable by suspension of six months and one day to one year for the first offense.

We also uphold the recommendation of the OCA on Camay's surety bail fixing activities. Prosecutor Moralde attested that it was public knowledge in the RTC that Camay was the man to approach if any party wanted to post surety bail because he could facilitate the reduction of the recommended amounts of the bail; and that Camay transacted in behalf of the Plaridel Surety and Insurance Company, the only surety company authorized to transact in Branch 61 of the RTC. Notwithstanding the lack of direct evidence proving his having acquired financial gain from the bond transactions, the fact that he had assisted and facilitated the processing of the bail requirements for parties with cases in the RTC constituted substantial evidence of such financial gain on his part. Substantial evidence is that amount

---

[20] A.M. No. P-07-2333, December 19, 2007, 541 SCRA 12, 19.

of relevant evidence that a reasonable man may accept as adequate to justify a conclusion.[21] The penalty for him is a fine of ₱5,000.00, which was the penalty imposed in *Concerned Citizen v. Bautista*,[22] where the respondent was held guilty of violating Administrative Circular No. 5, series of 1988 (*Re: Prohibition to Work as Insurance Agent*).

The charge of child abuse or trafficking is dismissed for lack of substantial evidence to support it. Although Prosecutor Moralde attested that Camay had collected pictures of naked girls in his phone, and that he had claimed to others to have been pimping the girls depicted therein to help them financially, the records do not show any actual or overt acts on his part that could serve as basis for holding him administratively liable for such charge.

Finally, the finding that Camay did not consistently declare his true assets and actual net worth in his SALNs is upheld. He declared the house and lot located in Taytayan Hills in his SALNs for 2001, 2003, and 2004 but did not indicate the date of acquisition of such property. He again intermittently declared the property in 2009 and 2011. He did not declare the property in 2002, 2007, 2008 and 2010. His omissions violated the letter and spirit of Section 8 of Republic Act No. 6713, which requires all public officials and employees to accomplish and submit a declaration of assets, liabilities, net worth and financial and business interests, including information on real property, its improvements, acquisition costs, assessed value and current fair market value. Section 11 of the same law provides that a violation of the requirement is penalized by fine not exceeding the equivalent of the public official or employee's salary for six months.

Under Section 50, Rule 10 of the RRACCS, if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious

---

[21] Section 5, Rule 133 of the *Rules of Court.*

[22] A.M. No. P-04-1876, August 31, 2004, 437 SCRA 234.

charge, and the other charges shall be considered as aggravating circumstances. Although the charge of disgraceful and immoral conduct, classified as a grave offense, is the most serious charge herein, and should be the base for determining the penalty for Camay, his dismissal from the service with forfeiture of all his retirement benefits should be meted on him. His combined offenses have firmly demonstrated his total unfitness to continue in the service of the Judiciary. His being guilty of such offenses has been like a cancerous tumor that slowly consumed the healthy tissues of the Judiciary, and even destroyed its good name and reputation in the area where he served. For sure, his remaining in the service would erode the Judiciary's institutional prestige in the eyes and estimation of the community. It is time to dismiss him in order to fully excise the tumor before more damage could be inflicted.

A final word needs to be uttered. The Court will never tire to insist that everyone of its officials and employees comes under the strict and immediate obligation to maintain the highest standard of conduct and decorum while serving in the Judiciary. Indeed, every person who serves in the Judiciary should heed the following reminder issued in *Office of the Court Administrator v. Juan*:[23]

> x x x [C]ourt employees, from the presiding judge to the lowliest clerk, being public servants in an office dispensing justice, should always act with a high degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must also be in accordance with the law and court regulations. No position demands greater moral righteousness and uprightness from its holder than an office in the judiciary. **Court employees should be models of uprightness, fairness and honesty to maintain the people's respect and faith in the judiciary. They should avoid any act or conduct that would diminish public trust and confidence in the courts. Indeed, those connected with dispensing justice bear a heavy burden of responsibility**. (Bold underscoring supplied for emphasis)

---

[23] A.M. No. P-03-1726, July 22, 2004, 434 SCRA 654, 659.

WHEREFORE, the Court **FINDS** and **DECLARES** respondent **EMELIANO C. CAMAY, JR.,** Utility Worker 1 of Branch 61, Regional Trial Court in Bogo City, Cebu **GUILTY** of **DISGRACEFUL AND IMMORAL CONDUCT, VIOLATION OF ADMINISTRATIVE CIRCULAR NO. 5, SERIES OF 1988,** and **VIOLATION OF SECTION 8 OF REPUBLIC ACT NO. 6713;** and**, ACCORDINGLY, DISMISSES** him from the service with forfeiture of all retirement benefits (excluding earned leave credits), with prejudice to his re-employment in the Government, including in government-owned or government-controlled corporations.

The Court **DIRECTS** the Employees Leave Division, Office of Administrative Services, Office of the Court Administrator, to determine the balance of his earned leave credits; and to report thereon to the Finance Division, Fiscal Management Office, Office of the Court Administrator for purposes of computing the monetary value of his earned leave credits for release to him.

SO ORDERED.

Carpio,[*] *Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Jardeleza, Caguioa, Martires, Tijam, Reyes, Jr.,* and *Gesmundo, JJ.,* concur.

Sereno, C.J., on indefinite leave.

Leonen, J., on official leave.

---

[*] *Acting Chief Justice* per Special Order No. 2539 dated February 28, 2018.

EN BANC

[G.R. No. 231164. March 20, 2018]

MAYOR TOMAS R. OSMEÑA, in his capacity as City Mayor of Cebu, *petitioner, vs.* **JOEL CAPILI GARGANERA, for and on his behalf, and in representation of the People of the Cities of Cebu and Talisay, and the future generations, including the unborn,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE FOR ENVIRONMENTAL CASES (A.M. NO. 09-6-8-SC); WRIT OF *KALIKASAN*; A WRIT OF *KALIKASAN* IS AN EXTRAORDINARY REMEDY COVERING ENVIRONMENTAL DAMAGE OF SUCH MAGNITUDE THAT WILL PREJUDICE THE LIFE, HEALTH OR PROPERTY OF INHABITANTS IN TWO OR MORE CITIES OR PROVINCES; THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES (RPEC) ALLOWS DIRECT RESORT TO THE SUPREME COURT OR WITH ANY OF THE STATIONS OF THE COURT OF APPEALS.— Here, the present petition for writ of *kalikasan* under the RPEC (Rules of Procedure for Environmental Cases) is a separate and distinct action from R.A. 9003 (Ecological Solid Waste Management Act of 2000) and R.A. 8749 (Philippine Clean Air Act of 1999). A writ of *kalikasan* is an extraordinary remedy covering environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities or provinces. It is designed for a narrow but special purpose: to accord a stronger protection for environmental rights, aiming, among others, to provide a speedy and effective resolution of a case involving the violation of one's constitutional right to a healthful and balanced ecology that transcends political and territorial boundaries, and to address the potentially exponential nature of large-scale ecological threats. x x x Moreover, Section 3, Rule 7 of RPEC allows direct resort to this Court or with any of the stations of the CA, x x x Given that the writ of *kalikasan* is an extraordinary remedy and the RPEC allows direct action to this Court and the CA where it is dictated by public welfare, this Court is of the view that the

prior 30 day notice requirement for citizen suits under R.A. 9003 and R.A. 8749 is inapplicable. It is ultimately within the Court's discretion whether or not to accept petitions brought directly before it.

2. ID.; ID.; ID.; TO AVAIL OF THE EXTRAORDINARY REMEDY, REQUISITES.— Under Section 1 of Rule 7 of the RPEC, the following requisites must be present to avail of this extraordinary remedy: (1) there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; (2) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3) the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces. Expectedly, the Rules do not define the exact nature or degree of environmental damage but only that it must be sufficiently grave, in terms of the territorial scope of such damage, so as to call for the grant of this extraordinary remedy. The gravity of environmental damage sufficient to grant the writ is, thus, to be decided on a case-to-case basis.

APPEARANCES OF COUNSEL

Cebu City Legal Office for petitioner.
Seno Law Office and Associates for respondent.

D E C I S I O N

TIJAM, *J.*:

Before Us is Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, as provided under the Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC) filed by petitioner Mayor Tomas R. Osmeña, in his capacity as City Mayor of Cebu (Mayor Osmeña), which seeks to reverse or set aside the Decision[2]

---

[1] *Rollo*, pp. 17-39.

[2] Penned by CA Associate Justice Edgardo L. Delos Santos and concurred in by Associate Justices Edward B. Contreras and Germano Francisco D. Legaspi, *id*. at 42-66.

dated December 15, 2016 and Resolution[3] dated March 14, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 004WK, that granted the privilege of the writ of *kalikasan* and ordered Mayor Osmeña, and/or his representatives, to permanently cease and desist from dumping or disposing garbage or solid waste at the Inayawan landfill and to continue to rehabilitate the same.

The Antecedents

On April 6, 1993, the Department of Environment and Natural Resources (DENR) issued an Environmental Compliance Certificate (ECC) to the Solid Waste Sanitary Landfill Project at Inayawan landfill proposed by the Metro Cebu Development Project Office (MCDPO). Thereafter, the Inayawan landfill served as the garbage disposal area of Cebu City.[4]

Sometime in 2011, the Cebu City Local Government (City Government) resolved to close the Inayawan landfill per Cebu City Sangguniang Panlunsod (SP) Resolution and Executive Order of former Cebu City Mayor Michael Rama (former Mayor Rama).[5]

Subsequently, SP Resolution No. 12-0582-2011[6] dated August 24, 2011, was issued to charge the amount of ₱1,204,500 in the next supplemental budget to cover the cost in the preparation of closure and rehabilitation plan of Inayawan landfill.[7] Another SP Resolution with No. 12-2617-2012[8] dated March 21, 2012 was issued to proceed with the bidding process for the said preparation of closure and rehabilitation plan. As a result, the Inayawan landfill was partially closed and all wastes from Cebu City were disposed in a privately operated landfill in Consolacion.[9]

---

[3] *Id.* at 68-72.

[4] *Id.* at 43.

[5] *Id.*

[6] *Id.* at 261-262.

[7] *Id.* at 262.

[8] *Id.* at 264-265.

[9] *Id.* at 206-207.

On June 15, 2015, through former Mayor Rama's directive, Inayawan landfill was formally closed.[10]

In 2016, however, under the administration of Mayor Osmeña, the City Government sought to temporarily open the Inayawan landfill, through a letter dated June 8, 2016, by then Acting Cebu City Mayor Margot Osmeña (Acting Mayor Margot) addressed to Regional Director Engr. William Cuñado (Engr. Cuñado) of the Environmental Management Bureau (EMB) of the DENR.[11] In response thereto, Engr. Cuñado invited Acting Mayor Margot to a technical conference. Thereafter, on June 27, 2016, Acting Mayor Margot sent another letter to Engr. Cuñado submitting the City Government's commitments for the establishment of a new Solid Waste Management System pursuant to the mandate under Republic Act (R.A.) No. 9003,[12] and accordingly, requested for the issuance of a Notice to Proceed for the temporary reopening of the Inayawan landfill.[13]

In his reply letter dated June 27, 2016, Engr. Cuñado informed Acting Mayor Margot that although the EMB had no authority to issue the requested notice, it interposed no objection to the proposed temporary opening of the Inayawan landfill provided that the Cebu City will faithfully comply with all its commitments and subject to regular monitoring by the EMB.[14]

Thus, in July 2016, the Inayawan landfill was officially re-opened by Acting Mayor Margot.[15]

On September 2, 2016, a Notice of Violation and Technical Conference[16] was issued by the EMB to Mayor Osmeña,

---

[10] *Id*. at 208.

[11] *Id*. at 44.

[12] Ecological Solid Waste Management Act of 2000.

[13] *Rollo*, p. 44.

[14] *Id*.

[15] *Id*. at 44-45.

[16] *Id*. at 426-429.

regarding City Government's operation of the Inayawan Landfill and its violations of the ECC.

On September 6, 2016, the Department of Health (DOH) issued an Inspection Report[17], wherein it recommended, among others, the immediate closure of the landfill due to the lack of sanitary requirements, environmental, health and community safety issues, as conducted by the DOH Regional Sanitary Engineer, Henry D. Saludar.[18]

On September 23, 2016, Joel Capili Garganera for and on his behalf, and in representation of the People of the Cities of Cebu and Talisay and the future generations, including the unborn (respondent) filed a petition for writ of *kalikasan* with prayer for the issuance of a Temporary Environmental Protection Order (TEPO) before the CA.[19]

Respondent asserted that the continued operation of the Inayawan landfill causes serious environmental damage which threatens and violates their right to a balanced and healthful ecology.[20] Respondent also asserted that the Inayawan landfill has already outgrown its usefulness and has become ill-suited for its purpose.[21] Respondent further asserted that its reopening and continued operation violates several environmental laws and government regulations, such as: R.A. 9003; R.A. 8749 or the "Philippine Clean Air Act of 1999"; R.A. 9275 or the "Philippine Clean Water Act of 2004"; Presidential Decree (P.D.) No. 856 or the "Code on Sanitation of the Philippines"; and DENR Administrative Order (DAO) No. 2003-30 or the "Implementing Rules and Regulation (IRR) for the Philippine Environmental Impact Statement System."[22]

---

[17] *Id*. at 414-417.

[18] *Id*. at 45.

[19] *Id*. at 199-234.

[20] *Id*. at 211.

[21] *Id*. at 213-220.

[22] *Id*. at 221-226.

The CA, in a Resolution dated October 6, 2016, granted a writ of *kalikasan*, required petitioner to file a verified return and a summary hearing was set for the application of TEPO.[23]

In petitioner's verified return, he alleged that respondent failed to comply with the condition precedent which requires 30-day notice to the public officer concerned prior to the filing of a citizens suit under R.A. 9003 and R.A. 8749. Respondent further alleged that Inayawan landfill operated as early as 1998 and it conformed to the standards and requirements then applicable.[24]

The CA, in a Decision[25] dated December 15, 2016, granted the privilege of the writ of *kalikasan* which ordered Mayor Osmeña and/or his representatives to permanently cease and desist from dumping or disposing of garbage or solid waste at the Inayawan landfill and to continue to rehabilitate the same. The dispositive portion of the CA Decision, provides:

WHEREFORE, in view of the foregoing premises, the privilege of the writ of kalikasan is hereby GRANTED. Accordingly, pursuant to Section 15, Rule 7 of the RPEC:

1) the respondent Mayor and/or his representatives are ordered to permanently cease and desist from dumping or disposing of garbage or solid waste at the Inayawan landfill;

2) the respondent Mayor and/or his representatives are ordered to continue the rehabilitation of the Inayawan landfill;

3) the DENR-EMB is directed to regularly monitor the City Government's strict compliance with the Court's judgment herein;

4) in case of non-compliance, the DENR-EMB is directed to file and/or recommend the filing of appropriate criminal, civil and administrative charges before the proper authorities against the responsible persons; and

5) the DENR-EMB is ordered to submit to the Court a monthly progress report on the City Government's compliance/non-compliance

---

[23] *Id*. at 46.

[24] *Id*. at 47.

[25] *Id*. at 42-66.

until such time that the rehabilitation of the Inayawan landfill is complete and sufficient according to the standards of the DENR-EMB.

SO ORDERED.[26]

Mayor Osmeña's motion for reconsideration was likewise denied by the CA in its Resolution[27] dated March 14, 2017, to wit:

WHEREFORE, in view of the foregoing premises, the Motion for Reconsideration filed by respondent Mayor Osmeña is hereby DENIED.

The Compliances with attached Compliance Monitoring Reports for the months of January and February 2017, which were filed by the public respondents through the Office of the Solicitor General (OSG), are hereby NOTED.

Pursuant to the recommendation of the public respondents in their Compliance Monitoring Reports, the Court hereby DIRECT'S respondent Mayor Osmeña to comply with the DENR-EMB's request for the submission of the local government's Safe Closure and Rehabilitation Plan (SCRP) for the Inayawan landfill within thirty days (30) days from notice.

SO ORDERED.[28]

Hence, this instant petition.

The Issues

For resolution of the Court are the following issues: 1) whether the 30-day prior notice requirement for citizen suits under R.A. 9003 and R.A. 8749 is needed prior to the filing of the instant petition; 2) whether the CA correctly ruled that the requirements for the grant of the privilege of the writ of *kalikasan* were sufficiently established.

---

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

[27] *Id*. at 68-72.

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

The Ruling of the Court

The petition is without merit.

Petitioner argues that respondent brushed aside the 30-day prior notice requirement for citizen suits under R.A. 9003[29] and R.A. 8749.[30]

Petitioner's argument does not persuade.

Section 5, Rule 2 of the Rules of Procedure for Environmental Cases (RPEC), is instructive on the matter:

Section 5. *Citizen suit.*— Any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws. Upon the

---

[29] Section 52. *Citizens Suits*- For the purposes of enforcing the provisions of this Act or its implementing rules and regulations, any citizen may file an appropriate civil, criminal or administrative action in the proper courts/ bodies against:

x x x x x x x x x

(c) Any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act or its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any many improperly performs his duties under this Act or its implementing rules and regulations; *Provided*, *however*, That no suit can be filed until after thirty-day (30) notice has been given to the public officer and the alleged violator concerned and no appropriate action has been taken thereon.

x x x x x x x x x (Underscoring Ours)

[30] Section 41. Citizen Suits.- For purposes of enforcing the provisions of this Act or its implementing rules and regulations, any citizen may file an appropriate civil, criminal or administrative action in the proper courts against:

x x x x x x x x x

(c) Any public officer who willfully or grossly neglects the performance of an act specifically enjoined as a duty by this Act or its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any manner, improperly performs his duties under this Act or its implementing rules and regulations: *Provided, however*, That no suit can be filed until thirty-day (30) notice has been taken thereon. (Underscoring Ours)

filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected barangays copies of said order.

Citizen suits filed under R.A. No. 8749 and R.A. No. 9003 shall be governed by their respective provisions. (Underscoring Ours)

Section 1, Rule 7 of RPEC also provides:

Section 1. *Nature of the writ.*— The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

Here, the present petition for writ of *kalikasan* under the RPEC is a separate and distinct action from R.A. 9003 and R.A. 8749. A writ of *kalikasan* is an extraordinary remedy covering environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities or provinces.[31] It is designed for a narrow but special purpose: to accord a stronger protection for environmental rights, aiming, among others, to provide a speedy and effective resolution of a case involving the violation of one's constitutional right to a healthful and balanced ecology that transcends political and territorial boundaries, and to address the potentially exponential nature of large-scale ecological threats.[32]

---

[31] Section 1, Rule 7 of RPEC.

[32] *Segovia, et al. v. The Climate Change Commission,* G.R. No. 211010, March 7, 2017, citing *Hon. Paje v. Casiño, et al.*, 752 Phil. 498, 538 (2015).

Moreover, Section 3, Rule 7 of RPEC allows direct resort to this Court or with any of the stations of the CA, which states:

> Section 3. Where to file. - The petition shall be filed with the Supreme Court or with any of the stations of the Court of Appeals.

Given that the writ of *kalikasan* is an extraordinary remedy and the RPEC allows direct action to this Court and the CA where it is dictated by public welfare,[33] this Court is of the view that the prior 30-day notice requirement for citizen suits under R.A. 9003 and R.A. 8749 is inapplicable. It is ultimately within the Court's discretion whether or not to accept petitions brought directly before it.[34]

We affirm the CA when it ruled that the requirements for the grant of the privilege of the writ of *kalikasan* were sufficiently established.

Under Section 1 of Rule 7 of the RPEC, the following requisites must be present to avail of this extraordinary remedy: (1) there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; (2) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3) the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.[35]

Expectedly, the Rules do not define the exact nature or degree of environmental damage but only that it must be sufficiently grave, in terms of the territorial scope of such damage, so as to call for the grant of this extraordinary remedy. The gravity of environmental damage sufficient to grant the writ is, thus, to be decided on a case-to-case basis.[36]

---

[33] See *Segovia, et al. v. The Climate Change Commission, supra*.

[34] *Id*.

[35] *Hon. Paje v. Hon. Casiño, et al., supra*, at 539.

[36] *Id*.

The Court is convinced from the evidence on record that the respondent has sufficiently established the aforementioned requirements for the grant of the privilege of the writ of *kalikasan*. The record discloses that the City Government's resumption of the garbage dumping operations at the Inayawan landfill has raised serious environmental concerns. As aptly and extensively discussed by the appellate court in its Decision based from the EMB Compliance Evaluation Report (CER)[37] dated August 18, 2016 and the Notice of Violation and Technical Conference[38] dated September 2, 2016, issued by the EMB to Mayor Osmeña, to wit:

> Moreover, based on the CER drafted by the EMB, the dumping operation at the Inayawan landfill has violated the criteria specified under DENR Administrative Order No. 34-01 specifically as to the proper leachate collection and treatment at the landfill and the regular water quality monitoring of surface and ground waters and effluent, as well as gas emissions thereat. At the same time, as admitted by Mr. Marco Silberon from the DENR-7 during the Cebu SP Executive Session[39] dated 16 August 2016, the Inayawan landfill has already been converted to a dumpsite operation despite its original design as sanitary landfill, which is violative of Section 17(h)[40]

---

[37] *Rollo*, pp. 430-439.

[38] *Id*. at 426-429.

[39] *Id*. at 394-413.

[40] (h) Solid waste facility capacity and final disposal — The solid waste facility component shall include, but shall not be limited to, a projection of the amount of disposal capacity needed to accommodate the solid waste generated, reduced by the following:

x x x x x x x x x

Open dump sites shall not be allowed as final disposal sites. If an open dump site is existing within the city or municipality, the plan shall make provisions for its closure or eventual phase out within the period specified under the framework and pursuant to the provisions under Sec. 37 of this Act. As an alternative, sanitary landfill sites shall be developed and operated as a final disposal site for solid and, eventually, residual wastes of a municipality or city or a cluster of municipality and/or cities. Sanitary landfills shall be designed and operated in accordance with the guidelines set under Secs. 40 and 41 of this Act. (Underscoring Ours)

of R.A. 9003 expressly prohibiting open dumps as final disposal sites.[41]

x x x x x x x x x

Contrary to respondents' belief, the magnitude of the environmental damage can be gleaned from the fact that the air pollution has affected residents not just from Cebu City but also from the neighboring city of Talisay. Also, in light of the EMB's finding that the proper treatment of the leachate at the Inayawan landfill has not been complied with prior to its discharge to the Cebu strait, there is no question that the scope of the possible environmental damage herein has expanded to encompass not just the City of Cebu but other localities as well that connects to such strait. Since leachate is contaminated liquid from decomposed waste,[42] it is not difficult to consider the magnitude of the potential environment harm it can unleash if this is released to a receiving water body without being sufficiently treated first, as in this case. In view of the foregoing, the Court finds that that (sic) the closure of the Inayawan landfill is warranted in this case.[43]

It may not be amiss to mention that even the EMB's own official has recognized the need of closing the Inayawan landfill due to the environmental violations committed by the City Government in its operation. This was the sentiment expressed by Mr. Amancio Dongcoy, a representative from the DENR-EMB, during the Cebu SP Executive Session on 20 February 2015, thus:[44]

x x x x x x x x x

Actually, DENR, way back in late 2010, my companion conducted Water Quality Monitoring and we took samples of the waste water coming from the leachate pond and it is not complying with the Clean Water Act. We wrote a letter to Mayor Rama, advising him to take measures, so that the Clean Water Act can be complied with. So,

---

[41] *Id*. at 61-62.

[42] *Leachate* shall refer to the liquid produced when waste undergo decomposition, and when water percolate through solid waste undergoing decomposition. It is contaminated liquid that contains dissolved and suspended materials; Article 2, Section 3 (q) of R.A. 9003.

[43] *Id*. at 62-63.

[44] *Id*. at 63.

that's why, the first reaction of Mayor Rama, is to decide that it must be closed because it is necessary that it must stop operation.[45]

Also, the air and water quality impact assessment of the EMB Compliance Evaluation Report (CER)[46] dated August 18, 2016, made remarks that the air quality poses a threat to nearby surroundings/habitat while the water quality (leachate) poses threat of water pollution.[47] The report also stated that the foul odor from the landfill already reached neighboring communities as far as SM Seaside and UC Mambaling which have disrupted activities causing economic loss and other activities for improvement particularly for SM Seaside.[48] Further, most of the conditions stipulated in the ECC were not complied with.[49]

In addition, the EMB's findings particularly as to the air quality is corroborated by 15 affidavits executed by affected residents and/or business owners from Cebu and Talisay Cities who affirmed smelling a foul odor coming from the Inayawan landfill, and some even noted the appearance of flies.[50]

Moreover, the DOH Inspection Report[51] dated September 6, 2016, observed that the Inayawan landfill had been in operation for 17 years, which exceeded the 7-year estimated duration period in the projected design data. This caused the over pile-up of refuse/garbage in the perimeter and boarder of the landfill, having a height slope distance of approximately 120 meters at the side portion of Fil-Invest Subdivision, Cogon Pardo Side portion has approximately height of 40 meters and at Inayawan side portion is approximately from 10-20 meters from the original

---

[45] *Id*. at 64.

[46] *Id*. at 430-439.

[47] *Id*. at 437.

[48] *Id*.

[49] *Id*. at 438.

[50] *Id*. at 378-392.

[51] *Id*. at 414-416.

ground level. The standard process procedure management was poorly implemented.[52]

As to the health impact, the DOH found that the residents, commercial centers, shanties and scavengers near the dump site are at high risk of acquiring different types of illness due to pollution, considering the current status of the dump site.[53]

The DOH highly recommended the immediate closure of the Inayawan sanitary landfill. It was further stated that the disposal area is not anymore suitable as a sanitary landfill even if rehabilitated considering its location within the city, the number of residents and the increasing population of the city, the neighboring cities and towns, and the expected increase in number of commercial centers, transportation and tourist concerns.[54]

Prescinding from the above, the EMB, DOH, Mr. Amancio Dongcoy, a representative from the DENR-EMB, and the Cebu and Talisay residents are all in agreement as to the need of closing the Inayawan landfill due to the environmental violations committed by the City Government in its operation. The Court, while it has the jurisdiction and power to decide cases, is not precluded from utilizing the findings and recommendations of the administrative agency on questions that demand "the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact.[55]

Lastly, as much as this Court recognizes the parties' good intention and sympathize with the dilemma of Mayor Osmeña or the City Government in looking for its final disposal site,

---

[52] *Id*. at 416.

[53] *Id*.

[54] *Id*. at 417.

[55] *West Tower Condominium Corporation v. First Philippine Industrial Corporation, et al.,* 760 Phil. 304, 339 (2015) citing *Saavedra v. Securities and Exchange Commission*, 242 Phil. 584, 589 (1988).

considering the garbage daily disposal of 600 tons generated by the city and its duty to provide basic services and facilities of garbage collection and disposal system,[56] We agree with the appellate court that the continued operation of the Inayawan landfill poses a serious and pressing danger to the environment that could result in injurious consequences to the health and lives of the nearby residents, thereby warranting the issuance of a writ of *kalikasan*.

WHEREFORE, the petition is **DENIED**. The Decision dated December 15, 2016 and Resolution dated March 14, 2017 of the Court of Appeals, which granted the privilege of the writ of *kalikasan* and ordered petitioner Mayor Tomas R. Osmeña, in his capacity as City Mayor of Cebu and/or his representatives, to permanently cease and desist from dumping or disposing of garbage or solid waste at the Inayawan landfill and to continue to rehabilitate the same, are hereby **AFFIRMED.**

SO ORDERED.

Carpio, [*] *Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires, Reyes, Jr.,* and *Gesmundo, JJ.,* concur.

Sereno, [**] *C.J.,* on leave.

---

[56] *Rollo*, pp. 454-459.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

[**] On Wellness leave, but left a vote.

SECOND DIVISION

[A.C. No. 11774. March 21, 2018]
(Formerly CBD Case No. 14-4186)

READY FORM INCORPORATED, *complainant, vs.* **ATTY. EGMEDIO J. CASTILLON, JR.,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; RULES 1.01, 1.02, AND 1.03 OF CANON 1 THEREOF ARE NOT VIOLATED BY A LAWYER WHO USED A PUBLICLY-AVAILABLE DOCUMENT TO SUPPORT ALLEGATIONS IN A PLEADING SIGNED BY HIM; CASE AT BAR.— Ready Form's central issue against Atty. Castillon is that he allegedly violated the law, particularly the NIRC, when he supposedly attached a copy of its ITR for 2006 when he filed the Petition for Blacklisting. A perusal of the records will reveal, however, that what Atty. Castillon attached in the Petition for Blacklisting is Ready Form's audited financial statement for the year 2006 and not the latter's ITR. x x x Clearly, therefore, the complainant wants this Court to penalize the respondent for using a publicly-available document to support allegations in a pleading signed by him. This, the Court refuses to do. x x x The Court takes judicial notice of the fact that audited financial statements submitted by corporations, as required by Section 141 of the Corporation Code, are made available to the public by the SEC. Hence, the Court fails to see how Atty. Castillon violated any law when he attached a copy of Ready Form's audited financial statements in the Petition for Blacklisting he filed with the NPO. x x x All told, the Court finds that the evidence adduced is wholly insufficient to support the allegations against Atty. Castillon. As such, the Court fails to see how Atty. Castillon had violated Rules 1.01, 1.02, and 1.03 of Canon 1 of the Code of Professional Responsibility. Hence, the Court affirms the IBP's recommendation to dismiss the Complaint.

APPEARANCES OF COUNSEL

Ramoncito C. Mison for complainant.

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is an administrative complaint[1] filed with the Commission on Bar Discipline of the Integrated Bar of the Philippines (CBD-IBP) by Complainant Ready Form, Inc. (Ready Form) against Respondent Atty. Egmedio J. Castillon, Jr. (Atty. Castillon), for his alleged violation of Rules 1.01, 1.02, and 1.03 of Canon 1 of the Code of Professional Responsibility when he allegedly used Ready Form's Income Tax Return (ITR) in filing a Petition for Suspension and Blacklisting[2] (Petition for Blacklisting) against Ready Form before the National Printing Office (NPO).

The Factual Antecedents

Ready Form was one of the companies who participated in a public bidding conducted by the NPO on October 17, 2008. Thereafter, the NPO Bids and Awards Committee (NPO-BAC) required all bidders to re-submit their eligibility documents, which includes the bidders' past ITRs and financial documents stamp received by the Bureau of Internal Revenue (BIR).[3] After reviewing these submissions, the NPO-BAC imposed a suspension of one (1) year against Ready Form effective from December 22, 2008 to December 21, 2009[4] due to the supposed misrepresentation and misdeclaration it committed when it submitted alleged false ITRs and financial statements for the calendar year 2007.

Subsequently, on September 18, 2009, Eastland Printink Corporation (Eastland) filed a Petition for Blacklisting with the NPO against Ready Form, wherein Eastland alleged that Ready Form had committed other violations, such as (1)

---

[1] *Rollo*, pp. 2-26.

[2] *Id*. at 46-52.

[3] *Id*. at 5.

[4] *Id*. at 6.

misrepresentation, when it also filed with the NPO false ITRs for the year 2006, (2) unlawfully soliciting printing jobs and services from various local government offices or agencies, and (3) undermining the authority and jurisdiction of the NPO by disseminating letters which suggested that the NPO no longer has exclusive jurisdiction over printing services.[5] As Eastland's counsel, Atty. Castillon signed the Petition on behalf of his client.

The NPO then asked both parties to file position papers in relation to the Petition for Blacklisting. Eastland filed a position paper[6] which stated that:

> The figures declared by respondent in its financial statement submitted to the Securities and Exchange Commission indicate that (*sic*) a total net sale of ₱78,639,134.73, but respondent net sales with NPO alone yielded ₱80,063.932, (*sic*) or a discrepancy of ₱1,424,797.27. The figures speak for themselves where false statements and/or information were clearly resorted to by the respondent. These documents are material for eligibility requirements which bespeak of respondent's deliberate act of misrepresentation.
>
> The respondent has intentionally and consciously falsified its Financial Statement and Income Tax Return for 2006 by stating and declaring the reduced and wrong amount of annual net sales to gainfully reduce payment of taxes due the government.
>
> It has been a pattern of respondent in reporting the reduced and incorrect net sales for two (2) years in a row. It did in 2006 and 2007. In fact, it was duly reflected in its 2006 and 2007 falsified Financial Statements submitted before the Securities and Exchange Commission.[7]

On December 1, 2009, the NPO issued a Resolution[8] suspending and blacklisting Ready Form for a period of five (5) years after finding, among others, that:

---

[5] *Id*. at 47-49.

[6] *Id*. at 53-64.

[7] *Id*. at 59.

[8] *Id*. at 80-89.

Respondent (*sic*) 2006 Financial Statement contains false information; hence, it is a falsified document. As part of its eligibility requirements, respondent submitted to NPO its 2006 Financial Statement (earlier submitted to the Securities and Exchange Commission in compliance with its reportorial requirements) which contains false information. Evidently, the same is (*sic*) fictitious, false and falsified document.

Respondent intentionally reported the reduced amount of its net sales for 2006 in its Financial Statement by declaring only **Seventy Eight Million Six Hundred Thirty Nine Thousand One Hundred Thirty Four and Seventy Three Centavos (₱78,639,134.73)**. However, its net sales alone in NPO reached **Eighty Million Sixty Three Thousand Nine Hundred Thirty Two and Twenty Nine Centavos (₱80,063,932.29)**. The under declaration was not only conscious and deliberate but also it was purposely done by respondent two (2) years in a row solely intended to evade payment of correct taxes due to government.

Its (*sic*) worth recalling that in 2007, respondent also under declared its nets (*sic*) sales by stating in its 2007 Financial Statement the amount of **Seventy Four Million Three Hundred Seventy Seven Thousand Five Hundred Ninety Three Pesos and Twenty Three Centavos (₱74,377,593.23)**. But in truth and in fact, its net sales for NPO alone hit **One Hundred Seven Million Three Hundred One Thousand Twelve Pesos and Ninety Four Centavos (₱107,301,012.94)**. In fact, the respondent was suspended for one (1) year from 22 December 2008 up to 22 December 2009 for that reason. An appeal was filed by respondent to the Office of the Press Secretary. However, the appeal was dismissed and the imposition of administrative sanction of one (1) year was affirmed. The same has already become final and executory since respondent neither filed a motion for reconsideration nor a Petition for Review to the Court of Appeals timely filed.[9] (Emphasis and underscoring in the original)

On April 4, 2014, Ready Form filed a Complaint-Affidavit (Complaint) before the CBD-IBP praying that Atty. Castillon be disbarred due to allegedly violating Rules 1.01, 1.02, and 1.03 of Canon 1 of the Code of Professional Responsibility, alleging as a ground therefor Atty. Castillon's supposed unlawful

---

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

use of Ready Form's ITRs. Complainant alleges that this is in violation of Sections 4 and 278 of Republic Act No. 8424,[10] otherwise known as the National Internal Revenue Code (NIRC), which state that:

> **SEC. 4.** ***Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.*** - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.
>
> x x x x x x x x x
>
> **SEC. 278.** ***Procuring Unlawful Divulgence of Trade Secrets.*** - Any person who causes or procures an officer or employee of the Bureau of Internal Revenue to divulge any confidential information regarding the business, income or inheritance of any taxpayer, knowledge of which was acquired by him in the discharge of his official duties, and which it is unlawful for him to reveal, and any person who publishes or prints in any manner whatever, not provided by law, any income, profit, loss or expenditure appearing in any income tax return, shall be punished by a fine of not more than Two thousand pesos (₱2,000), or suffer imprisonment of not less than six (6) months nor more than five (5) years, or both. (Emphasis and italics in the original)

Complainant further alleges that Atty. Castillon's supposed act was in violation of Section 30.1 of the Implementing Rules and Regulations of Republic Act No. 9184[11] or the Government Procurement Reform Act which mandates that the Bids and Awards Committee concerned shall use a non-discretionary

---

[10] *Id*. at 9.

[11] *Id*. at 8.

"pass/fail" criterion in determining the eligibility of bidding documents submitted to it. The said section states that:

> 30.1. The BAC shall open the first bid envelopes in public to determine each bidder's compliance with the documents required to be submitted for eligibility and for the technical requirements, as prescribed in this IRR. For this purpose, the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present, using a non- discretionary "pass/fail" criterion, as stated in the Instructions to Bidders. If a bidder submits the required document, it shall be rated "passed" for that particular requirement. In this regard, bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as "failed." Otherwise, the BAC shall rate the said first bid envelope as "passed."

During the mandatory conference of the case before the CBD-IBP, the parties agreed to limit the issue on whether or not Atty. Castillon's act of attaching Ready Form's audited financial statements in the Petition for Blacklisting he filed with the NPO constitutes a violation of Sections 4 and 238 of the NIRC.[12] Consequently, the answer to the said question also determines whether Atty. Castillon violated Rules 1.01, 1.02, and 1.03 of Canon 1 of the Code of Professional Responsibility.

Atty. Castillon, in his position paper submitted to the CBD-IBP, stressed that what was submitted in support of the Petition for Blacklisting with the NPO was Ready Form's audited financial statements which were acquired from the Securities and Exchange Commission (SEC). Atty. Castillon categorically denied that he acquired, much less attached, an ITR of complainant Ready Form.[13]

After due proceedings, Commissioner Maria Editha A. Go-Biñas (Commissioner Go-Biñas) rendered a Report and Recommendation[14]

---

[12] *Id*. at 184-185.

[13] *Id*. at 206-207.

[14] *Id*. at 224-227.

on July 21, 2016, absolving Atty. Castillon from the charges filed by Ready Form. Commissioner Go-Biñas found that Ready Form's claims were unfounded, as there is no proof that Atty. Castillon procured Ready Form's ITR, or that he used it in the Petition for Blacklisting. The dispositive portion of Commissioner Go-Biñas' Report and Recommendation reads as follows:

> **WHEREFORE**, IN VIEW OF THE FOREGOING, it is most respectfully recommended that the instant case be dismissed for utter lack of merit.[15]

On September 23, 2016, the IBP Board of Governors passed a Resolution adopting the findings of fact and recommendation of Commissioner Go-Biñas and resolved to dismiss the complaint, thus:

> *RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner dismissing the complaint.*[16]

The Court's Ruling

After a judicious examination of the records and submission of the parties, the Court finds no compelling reason to diverge from the factual findings of Commissioner Go-Biñas as adopted by IBP Board of Governors.

Ready Form's central issue against Atty. Castillon is that he allegedly violated the law, particularly the NIRC, when he supposedly attached a copy of its ITR for 2006 when he filed the Petition for Blacklisting. A perusal of the records will reveal, however, that what Atty. Castillon attached in the Petition for Blacklisting is Ready Form's audited financial statement for the year 2006 and not the latter's ITR. Ready Form harps on the fact that the following paragraphs, which mentions Ready Form's ITR, were in the Petition for Blacklisting signed by Atty. Castillon:[17]

---

[15] *Id*. at 227.

[16] *Id*. at 222.

[17] *Id*. at 59.

4. The aforecited suspension was brought about by the misrepresentation and misdeclaration committed by herein respondent on its Income Tax Return and Financial Statement and other documents submitted before this Office covering the period 2007;

5. Previous to the said violation, respondent had committed acts of similar nature in their Income Tax Returns and Financial Statements and other documents submitted before this office covering the year 2006, among other things, which underscores a deliberate scheme of submitting false declarations. A photocopy of the 2006 Financial Statement is hereto attached and marked as Annexes "B" and made integral part hereof.[18]

Ready Form repeatedly made an issue out of the fact that its ITR was mentioned in the Petition for Blacklisting, and later on in the Position Paper filed by Eastland, both signed by Atty. Castillon. They did not, however, offer proof to substantiate its claims that its ITR was attached to the Petition for Blacklisting despite the clear and express statement therein that only its audited financial statement, which is available to the public through the SEC, was attached thereto. During the mandatory conference, it was clear that only an audited financial statement was attached by Atty. Castillon. Ready Form only wants the IBP, and consequently this Court, to hold that Atty. Castillon used confidential information by doing such act:

ATTY. MISON [counsel for Ready Form]:

> This is Annex "G" to the complaint. Also paragraph 5 if I may mention, previous to this a photocopy of the 2006 Financial Statement is hereto attached and marked as Annex "B" so that is admitted?

ATTY. CASTILLON:

> That Financial Statement no ITR as mentioned previously.

ATTY. MISON:

> But the premise of the paragraph it made mentioned (*sic*) of that.

---

[18] *Id*. at 47.

ATTY. CASTILLON:

There is that phrase, Your Honor, but meaning attaching ITR there really was none, Your Honor.

x x x x x x x x x

COMM. BINAS:

If any of these pleadings that you have there and the cases, I'm sure you have the files, right?

ATTY. MISON:

Yes.

COMM. BINAS:

Did you notice any attachment about the ITR as submitted by the respondent? Because I'm sure it should have been an annexed (*sic*) there or .....

ATTY. MISON:

Well, Your Honor, if the Commission should take somehow judicial notice that the financial statement is attached to the ITR, the ITR merely contains the summary, the total amount but the details of the total amount appearing in the Income Tax Return, they are all reflected in the Financial Statement. Meaning, the Financial Statements contains the details while the ITR itself is just a summary. So, you cannot say, o (*sic*) I just filed the financial statement I did not file the ITR. But all the information appearing on the Financial Statement necessarily appears in the ITR.

x x x x x x x x x

COMM. BINAS:

So, as of now the complainant is pounding on the fact that there was this use of confidential data.

ATTY. MISON:

Yes, Your Honor.

COMM. BINAS:

That is the meat of the complaint.

ATTY. MISON:

> Yes, Your Honor. Violation and not only that, Section 4, Your Honor, where no person has the power to interpret even to make allegations that base (*sic*) on financial statements falsified, they have usurp (*sic*) the power exclusively vested to the BIR and the Court of Tax Appeals, Section 4 of R.A. 8424 and Section 278 of R.A. 8424.

COMM. BINAS:

> So, insofar as the complainant is concerned the act of using the confidential tax data emanated from the fact that he submitted the financial statement.

ATTY. MISON:

> Yes, Your Honor. And we contend, Your Honor, that the financial statement contains a more detailed figures vis-a-vis the income tax return.[19]

Clearly, therefore, the complainant wants this Court to penalize the respondent for using a publicly-available document to support allegations in a pleading signed by him. This, the Court refuses to do.

The Court takes judicial notice[20] of the fact that audited financial statements submitted by corporations, as required by Section 141 of the Corporation Code, are made available to the public by the SEC. Hence, the Court fails to see how Atty. Castillon violated any law when he attached a copy of Ready Form's audited financial statements in the Petition for Blacklisting he filed with the NPO.

Thus, the Court agrees with Commissioner Go-Biñas when she correctly said:

> He who alleges should prove his case in a very clear and convincing manner.

---

[19] TSN, October 14,2014, pp. 7-13, *id*. at 164-170.

[20] RULES OF COURT, Rule 129, Sec. 1.

An individual should not be allowed to claim **relief just because a lawyer is aiding or was hired by an opponent**. To do so would create more injustice and lead to an even more erroneous practice.

"While courts will not hesitate to mete out proper disciplinary punishment upon lawyers who fail to live up to their sworn duties, they will on the other hand, protect them from the unjust accusations of dissatisfied litigants. The success of a lawyer in his profession depends most entirely on his reputation. Anything which will harm his good name is to be deplored. **Private persons and particularly disgruntled opponents, may not, therefore, be permitted to use the courts as vehicles through which to vent their rancor on members of the Bar**" (Santos vs. Dichoso, Adm. Case No. 1825, August 22, 1978).[21] (Emphasis in the original)

All told, the Court finds that the evidence adduced is wholly insufficient to support the allegations against Atty. Castillon. As such, the Court fails to see how Atty. Castillon had violated Rules 1.01, 1.02, and 1.03 of Canon 1 of the Code of Professional Responsibility. Hence, the Court affirms the IBP's recommendation to dismiss the Complaint.

WHEREFORE, premises considered, the Complaint filed by Ready Form, Inc. against Atty. Egmedio J. Castillon, Jr. is hereby **DISMISSED** for lack of merit.

SO ORDERED.

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

---

[21] *Rollo*, pp. 226-227.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

SECOND DIVISION

[A.M. No. 15-02-47-RTC. March 21, 2018]

RE: REPORT OF EXECUTIVE JUDGE SOLIVER C. PERAS, REGIONAL TRIAL COURT OF CEBU CITY (RTC), BRANCH 10, ON THE ACTS OF INSUBORDINATION OF UTILITY WORKER I CATALINA Z. CAMASO, OFFICE OF THE CLERK OF COURT, RTC.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS); THE RULES AUTHORIZES AND PROVIDES THE PROCEDURE FOR THE DROPPING FROM THE ROLLS OF EMPLOYEES WHO ARE NO LONGER FIT TO PERFORM HIS OR HER DUTIES; CASE AT BAR.— Section 93 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) authorizes and provides the procedure for the dropping from the rolls of employees who, ***inter alia*****,** are no longer fit to perform his or her duties. x x x In this case, Judge Peras received reports from Camaso's colleagues regarding the latter's strange and abnormal behavior, thus, prompting the OCA to recommend that Camaso be subjected to a series of tests to evaluate her neuro-psychiatric well-being. After conducting such tests, the psychologist found that there are already: (*a*) deterioration in almost all facets of Camaso's mental functioning; and (*b*) distortion in her perception of things, making a limited grasp of reality. These findings are then corroborated by the psychiatrist, who found Camaso to be suffering from a psychological impairment, *i.e., Delusional Disorder, Mixed Type (Grandiose and Persecutory)*, which gives her a distorted view of reality that affects her social judgment, planning, and decision-making. Worse, when asked to comment on this case, Camaso not only failed to refute such findings against her, but also exhibited her impaired mental cognition and deteriorating mental health. In view of the foregoing, the Court is constrained to drop Camaso from the rolls. At this

point, the Court deems it worthy to stress that the instant case is non-disciplinary in nature. Thus, Camaso's separation from the service shall neither result in the forfeiture of any benefits which have accrued in her favor, nor in her disqualification from re-employment in the government service.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This administrative matter stemmed from a Complaint for Gross Insubordination (With a Request for Psychiatric Evaluation)[1] dated November 5, 2014 filed before the Office of the Court Administrator (OCA) by Executive Judge Soliver C. Peras (Judge Peras) of the Regional Trial Court of Cebu City (RTC), Branch 10, against Catalina Z. Camaso (Camaso), Utility Worker I, Office of the Clerk of Court, RTC.

The Facts

In his complaint, Judge Peras alleged that on September 10, 2014, he issued a Memorandum[2] temporarily detailing Camaso to Branch 10 to assist in the filing, delivery, and mailing of letters and correspondences in the said court.[3] As Camaso neither reported to the same branch nor proffered an explanation therefor, Judge Peras sent her two (2) subsequent memoranda[4] directing her to explain in writing such non-compliance; however, Camaso ignored such directives.[5] Further, Judge Peras averred that Camaso has been acting and behaving "strangely and abnormally," as exhibited by the latter's following acts: (*a*) claiming that she will not retire upon reaching the age of 65,

---

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

[2] *Id.* at 3.

[3] *Id.*

[4] See Memoranda dated September 17, 2014 (*id.* at 4) and October 2, 2014 (*id.* at 5).

[5] See *id.* at 1.

citing that she is a "national employee;" and (*b*) sitting on top of the backrest of a chair and resting her feet on the seat of the same chair, placing herself in danger of falling.[6] In view of the foregoing, Judge Peras requested the OCA to conduct a psychiatric evaluation on Camaso to determine her fitness to work. Further, should the evaluation yield normal results, he requested the conduct of an administrative investigation against Camaso on the ground of gross insubordination.[7]

On the basis of Judge Peras's allegations, the OCA issued a Memorandum[8] dated September 10, 2015 recommending that the matter be referred to Dr. Prudencio P. Banzon, Jr. (Dr. Banzon), Senior Chief Staff Officer of the Court's Medical and Dental Services, for the conduct of a neuro-psychiatric evaluation on Camaso and a report be submitted thereafter.[9] Subsequently, Dr. Banzon submitted a letter[10] dated April 28, 2016, attaching thereto the Neuro-Psychiatric Evaluation Report,[11] as well as the Psychological Report[12] of Camaso. In the said letter, Dr. Banzon stated that the examinations done on Camaso indicate that she is suffering from *Delusional Disorder, Mixed Type (Grandiose and Persecutory)*, and that in the absence of psychiatric management, she will be unable to maintain good inter-personal relationships with her co-workers.[13] In light thereof, the OCA issued a Memorandum[14]

---

[6] *Id*. at 2.

[7] *Id*.

[8] *Id*. at 6-7. Signed by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino.

[9] *Id*. at 7. See also Court Resolution dated December 2, 2015; *id.* at 8-9.

[10] *Id*. at 10.

[11] Dated April 10, 2016, signed by Psychiatrist Georgina Gozo-Oliver; *id*. at 11-13.

[12] Dated April 5, 2016, signed by Psychologist III Beatriz O. Cruz; *id.* at 14-16.

[13] *Id*. at 10.

[14] *Id*. at 20-23.

dated January 23, 2017 recommending that Camaso be required to comment on why she should not be dropped from the rolls for being mentally unfit.[15]

In her handwritten Letter-Comment,[16] Camaso averred that she was just following a certain administrative order which provides that employees of the lower court are not required to be assigned to any office outside of their job description. She further maintained that Judge Peras's imputation of gross insubordination has no basis, contending that Judge Peras has no jurisdiction over her as she is assigned to the RTC Library, which is under the supervision of the OCA.[17]

The OCA's Report and Recommendation

In a Memorandum[18] dated December 6, 2017, the OCA recommended that Camaso be dropped from the rolls without forfeiture of any benefits due her, for being mentally unfit to perform her duties.[19]

Giving credence to the findings of the psychologist and psychiatrist who examined Camaso, the OCA found that the latter's mental incapacity impairs her efficiency and usefulness in the workplace and her ability to relate to her fellow employees. In this regard, the OCA opined that her situation would adversely affect the performance of her co-employees and that it would be unfair to them, to other deserving applicants, and to the public if Camaso is allowed to continue her employment in the name of mercy and compassion.[20]

---

[15] *Id*. at 23. See also Court Resolution dated March 15, 2017; *id.* at 24.

[16] *Id*. at 25.

[17] See *id*. See also *id*. at 32.

[18] *Id*. at 29-34.

[19] *Id*. at 34.

[20] *Id*.

The Issue Before the Court

The essential issue in this case is whether or not Camaso should be dropped from the rolls for being mentally unfit to perform her duties.

The Court's Ruling

The Court adopts the findings and the recommendations of the OCA.

Section 93 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS)[21] authorizes and provides the procedure for the dropping from the rolls of employees who, *inter alia*, are no longer fit to perform his or her duties. Portions of this provision pertinent to this case read:

> Section 93. *Grounds and Procedure for Dropping from the Rolls*. — Officers and employees who are x x x shown to be physically and mentally unfit to perform their duties may be dropped from the rolls subject to the following procedures:
>
> c. Physically Unfit
>
> x x x x x x x x x
>
> 3. An officer or employee who is behaving abnormally and manifests continuing mental disorder and incapacity to work as reported by his/her co-workers or immediate supervisor and confirmed by a competent physician, may likewise be dropped from the rolls.
>
> 4. For the purpose of the three (3) preceding paragraphs, notice shall be given to the officer or employee concerned containing a brief statement of the nature of his/her incapacity to work.

In this case, Judge Peras received reports from Camaso's colleagues regarding the latter's strange and abnormal behavior, thus, prompting the OCA to recommend that Camaso be subjected

---

[21] The 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) took effect on August 17, 2017. However, since the instant case was instituted sometime in late 2014 to early 2015, or during the effectivity of the RRACCS, the latter rule should apply in this case.

to a series of tests to evaluate her neuro-psychiatric well-being.[22] After conducting such tests, the psychologist found that there are already: (*a*) deterioration in almost all facets of Camaso's mental functioning; and (*b*) distortion in her perception of things, making a limited grasp of reality.[23] These findings are then corroborated by the psychiatrist, who found Camaso to be suffering from a psychological impairment, *i.e., Delusional Disorder, Mixed Type (Grandiose and Persecutory)*, which gives her a distorted view of reality that affects her social judgment, planning, and decision-making.[24] Worse, when asked to comment on this case, Camaso not only failed to refute such findings against her, but also exhibited her impaired mental cognition and deteriorating mental health.

In view of the foregoing, the Court is constrained to drop Camaso from the rolls. At this point, the Court deems it worthy to stress that the instant case is non-disciplinary in nature. Thus, Camaso's separation from the service shall neither result in the forfeiture of any benefits which have accrued in her favor, nor in her disqualification from re-employment in the government service.[25]

WHEREFORE, the Court resolves to:

(*a*) **DROP FROM THE ROLLS** the name of Catalina Z. Camaso (Camaso), Utility Worker I, Office of the Clerk of Court, Regional Trial Court of Cebu City, Branch 10 for being mentally unfit to perform her duties. However, she is still qualified to receive the benefits she may be entitled to under existing laws and may still be reemployed in the government;

(*b*) **DECLARE** as **VACANT** the position held by Camaso; and

---

[22] *Rollo*, p. 33.

[23] *Id*. at 15.

[24] *Id*. at 13.

[25] See Section 96 of the RRACCS.

(*c*) **INFORM** Camaso of her separation from the service or dropping from the rolls at her last known address appearing in her 201 file.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 201763. March 21, 2018]

SULTAN CAWAL P. MANGONDAYA (HADJI ABDULLATIF), *petitioner, vs.* **NAGA AMPASO,** *respondent.*

SYLLABUS

REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE ISSUE IS LIMITED TO THE REVIEW OF PURE QUESTIONS OF LAW; THE QUESTION, TO BE ONE OF LAW, MUST REST SOLELY ON WHAT THE LAW PROVIDES ON THE GIVEN SET OF CIRCUMSTANCES AND SHOULD AVOID THE SCRUTINY OF THE PROBATIVE VALUE OF THE PARTIES' EVIDENCE; VIOLATION IN CASE AT BAR.— Our jurisdiction in a Rule 45 petition is limited to the review of pure questions of law. Negatively put, Rule 45 does not allow the review of questions of fact because we are not a trier of facts. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question

---

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

of fact when the doubt arises as to the truth or falsity of the alleged facts. The question, to be one of law, must rest solely on what the law provides on the given set of circumstances and should avoid the scrutiny of the probative value of the parties' evidence. The test of whether a question is one of law or fact is not the appellation given to such question by the party raising the same. It is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence and would only limit itself to the inquiry of whether the law was properly applied given the facts and supporting evidence. In this case, we find that while the petition categorizes the issues which we must resolve as issues which involve questions of law, we find that they are actually questions of fact. x x x The resolution of who between petitioner and respondent is the real owner of the land and able to prove their title and claim over it require the reception and evaluation of evidence. In questioning the SDC's failure to conduct a trial to determine this issue, petitioner is in fact asking us to make our own factual determination, which unfortunately, is outside of our authority to act upon in a petition for review on *certiorari.* The same applies with the issues of prescription and laches. The question of prescription of an action involves the ascertainment of factual matters such as the date when the period to bring the action commenced to run. Similarly, well-settled is the rule that the elements of laches must be proved positively. Laches is evidentiary in nature which could not be established by mere allegations in the pleadings. Whether or not the elements of laches are present is a question involving a factual determination by the trial court and each case is to be determined according to its particular circumstances. The records, however, are bereft of any evidence establishing these. The assailed Orders are also without any basis for its conclusions that prescription and laches have set in. We thus find that ruling on these matters would once again require us to determine facts. Meanwhile, the questions whether the customary law or *'äda* in Calanogas exists and whether it applies with respect to respondent's possession and occupation of the land are also questions of fact.

APPEARANCES OF COUNSEL

Asnawil G. Ronsing for petitioner.
Osop B. Omar for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Orders dated January 31, 2011,[2] January 16, 2012,[3] and March 23, 2012[4] of the Shari'a District Court (SDC), Fourth Shari'a Judicial District, Marawi City in Civil Case No. 206-10. These Orders dismissed petitioner Sultan Cawal P. Mangondaya's (petitioner) complaint for recovery of possession and ownership of a parcel of land.

On May 25, 2010, petitioner filed with the SDC a complaint[5] against respondent Naga Ampaso (respondent) for "Restitution of a Parcel of Land to the Owner and Damages." Petitioner claimed that he is the owner of a parcel of land situated in Dimayon, Calanogas, Lanao Del Sur, which he inherited from his mother, Pagompatun M. Marohom. In 1989, respondent cultivated it under *'äda* or customary law in Calanogas, which provides that a person can live and cultivate an uncultivated land even without the owner's consent but he cannot buy it from a person who is not the owner or sell it.[6]

In 2007, respondent informed petitioner that he will sell the land. Petitioner objected and prohibited respondent from selling the land as it violates the *'äda.* In 2008, after petitioner learned that respondent already sold the land, petitioner demanded that respondent return it, but the latter refused.[7]

As a result, petitioner brought the matter before the Sultanate Community Civic Leader, Inc. of Brgy. Calalanoan, Calanogas,

---

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

[2] Records, pp. 59-61.

[3] *Rollo,* pp. 13-14.

[4] *Id.* at 15.

[5] Records, pp. 9-12.

[6] *Id.* at 11-12.

[7] *Id.* at 11.

Lanao del Sur for resolution. It resolved the controversy in favor of petitioner.[8] Despite this ruling, however, respondent still refused to return the land to petitioner.

On November 5, 2010, respondent filed his answer[9] with affirmative defenses and prayer for damages. He alleged that the SDC had no jurisdiction over the subject matter of the action as no customary contract was involved. He also argued that the filing of the complaint with the SDC was premature since petitioner failed to bring the controversy before the *lupon* of the barangay and no barangay certification to file action was attached to the complaint.[10]

On the merits, respondent argued that he bought the land from its actual and lawful owner on July 21, 1987 evidenced by a deed of sale written in traditional Arabic writing. In good faith and in the concept of an owner, he occupied the land, built his family home, and cultivated it by planting trees and seasonal crops. Granting that petitioner has a claim over the land, petitioner's claim is already barred by laches. He also denied that the Sultanate Community Civic Leader, Inc. of Brgy. Calalanoan, Calanogas, Lanao del Sur has already resolved the controversy in favor of petitioner. In fact, its alleged decision, which petitioner attached to his complaint, was a forgery.[11] Respondent attached to his answer a joint affidavit[12] executed by the purported members of the group attesting that they have not conducted any proceeding nor issued any decision resolving the controversy between petitioner and respondent.

The case was initially scheduled for pre-trial conference on December 13, 2010.[13] On December 13, 2010, the SDC heard

---

[8] *Id.*

[9] Records, pp. 37-40.

[10] *Id.* at 38.

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

[12] *Id.* at 3.

[13] *Id.* at 4

respondent on his defenses and treated his answer as his motion to dismiss. The SDC ordered that after the parties filed their respective pleadings, respondent's motion to dismiss will be submitted for resolution.[14]

Subsequently, without conducting a trial the SDC on January 31, 2011 issued its first assailed Order[15] dismissing petitioner's complaint. According to the SDC, petitioner failed to support his claim over the land. It gave more weight to respondent's assertion that he has been occupying the land for more than 20 years in good faith and in the concept of an owner under color of title and valid ownership. The SDC further held that assuming petitioner has a right to recover the land, he is already barred by laches since he failed to assert his right for an unreasonable and unexplained length of time. He already knew of the respondent's occupancy of the land in 1989 yet sought the recovery of the land only in 2010. Last, the SDC declared that petitioner's reliance on the *'äda* in Calanogas, granting it exists, cannot be considered as it is against the law on laches, prescription, the Civil Code, public policy and public interest.[16]

On February 22, 2011, petitioner moved to reconsider[17] the SDC's January 31, 2011 Order. After respondent filed his comment,[18] the SDC required petitioner to submit evidence showing he is the owner of the land.[19]

On May 31,2011, petitioner complied with the order of the SDC.[20] He submitted the following documents to prove his ownership of the land: (1) his own affidavit attesting that he inherited the land from his mother;[21] (2) an affidavit of Sultan

---

[14] *Id.* at 51.

[15] *Supra* note 2.

[16] Records, pp. 59-60.

[17] *Id.* at 62-65.

[18] *Id.* at 66-68.

[19] *Id.* at 74.

[20] *Id.* at 75-82.

[21] *Id.* at 92.

Gaos Daud D. Bongaros stating that petitioner's father was buried in the land and a picture of the graveyard;[22] and (3) an affidavit of Macadaag B. Saliling stating that petitioner's great grandfather planted a mango tree in the land and a picture of the tree.[23]

On June 13, 2011, respondent filed his comment[24] and submitted affidavits of individuals disputing and denying the pieces of evidence petitioner submitted. Attached to his comment are the affidavits of: (1) Pundato Atampar Alug attesting that the picture of the land which petitioner submitted is not the land in dispute;[25] and (2) Camar Maruhom attesting that the graveyard shown in the picture which petitioner submitted is the graveyard of the former's father and not petitioner's father.[26]

On same date, the SDC issued its Order[27] granting petitioner's motion for reconsideration, reinstating the complaint and setting the case for pre-trial conference.

Respondent moved to reconsider[28] the above Order. Petitioner filed his comment[29] on September 19, 2011. On October 17, 2011, instead of conducting the scheduled pre-trial conference, the SDC issued an Order[30] stating that the court's efforts to amicably settle the case have failed and that both parties wanted to proceed with the trial. It thus directed the parties to file their respective position papers or memoranda and submitted for resolution respondent's motion for reconsideration of the SDC's Order dated June 13, 2011 reinstating the petition.

---

[22] *Id.* at 95-96.

[23] *Id.* at 93-94.

[24] *Id.* at 102-103.

[25] *Id.* at 101.

[26] *Id.* at 100.

[27] *Id.* at 91.

[28] *Id.* at 107-110.

[29] *Id.* at 113-115.

[30] *Id.* at 116.

Respondent filed his memorandum[31] on November 2, 2011. He reiterated his position that he purchased the land from its original owner on July 21, 1987 and has, since then, possessed, occupied and cultivated the land.[32] He claimed that petitioner's evidence are all false and non-existent. For his part, petitioner repeated in his memorandum[33] his claim over the land and asserted that the deed of sale respondent relies on cannot be the basis of respondent's title since respondent was not a party to it.[34]

On January 16, 2012, the SDC issued its second assailed Order[35] granting respondent's motion for reconsideration. It reinstated its first assailed Order dated January 31, 2011 which dismissed the complaint. The SDC also denied petitioner's motion for reconsideration[36] via its third assailed Order[37] dated March 23, 2012. Hence, this petition.

Petitioner argues that the assailed Orders violate the principle of procedural due process which requires that every litigant is entitled to his day in court, to cross-examine the witnesses of the adverse party and introduce rebuttal evidence. The SDC violated the mandate of the law when it issued the assailed Orders without trial.[38]

Petitioner asserts that the assailed Orders are also contrary to Section 7 of the Special Rules of Procedure in Shari'a Courts which provides:

Sec. 7. *Hearing or trial.* – (1) The plaintiff *(mudda 'i)* has the burden of proof, and the taking of an oath *(yamin)* rests upon the defendant

---

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

[32] *Id.* at 119.

[33] *Id.* at 120-122.

[34] *Id.* at 121.

[35] *Supra* note 3.

[36] Records, pp. 125-127.

[37] *Supra* note 4.

[38] *Rollo,* p. 5.

(mudda 'alai). If the plaintiff has no evidence to prove his claim, the defendant shall take an oath and judgment shall be rendered in his favor by the court. Should the defendant refuse to take an oath, the plaintiff shall affirm his claim under oath in which case judgment shall be rendered in his favor. Should the plaintiff refuse to affirm his claim under oath, the case shall be dismissed. x x x (Italics in the original.)

As the SDC issued the assailed Orders without respondent's oath, petitioner contends that they must be reversed and judgment be rendered in his favor.

Our jurisdiction in a Rule 45 petition is limited to the review of pure questions of law. Negatively put, Rule 45 does not allow the review of questions of fact because we are not a trier of facts.[39] A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. The question, to be one of law, must rest solely on what the law provides on the given set of circumstances and should avoid the scrutiny of the probative value of the parties' evidence.[40]

The test of whether a question is one of law or fact is not the appellation given to such question by the party raising the same. It is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence and would only limit itself to the inquiry of whether the law was properly applied given the facts and supporting evidence.[41]

In this case, we find that while the petition categorizes the issues which we must resolve as issues which involve questions of law, we find that they are actually questions of fact.

---

[39] *General Mariano Alvarez Services Cooperative, Inc. (GEMASCO) v. National Housing Authority (NHA),* G.R. No. 175417, February 9, 2015, 750 SCRA 156, 162.

[40] *Chu, Jr. v. Caparas,* G.R. No. 175428, April 15, 2013, 696 SCRA 324, 332-333. Citation omitted.

[41] *Mandaue Realty & Resources Corporation v. Court of Appeals,* G.R. No. 185082, November 28, 2016, 810 SCRA 447, 456-457. Citation omitted.

In its first assailed Order dated January 31, 2011, the SDC made the following findings of fact:

1) Respondent occupied the land in good faith after buying it and in the concept of an owner. He has been occupying the land for more than 20 years.
2) Petitioner's right of action to recover ownership of the land in question, supposing he has any, has prescribed and is barred by laches. Petitioner failed to assert his right for an unreasonable and unexplained length of time as he knew of respondent's occupancy of the land in 1989 without his consent but he filed the case only on June 25, 2010. Respondent's occupation/possession of the land with color of title and good faith for more than 20 years satisfies the jurisprudential requirement of 10 years.
3) Petitioner's reliance on the *'äda* in Calanogas, granting it existed, cannot be given effect for such is contrary to the Constitution, Presidential Decree (P.D.) No. 1083,[42] Muslim law, public order, public policy or public interest.[43]

Petitioner disputes these findings. The resolution of who between petitioner and respondent is the real owner of the land and able to prove their title and claim over it require the reception and evaluation of evidence.[44] In questioning the SDC's failure to conduct a trial to determine this issue, petitioner is in fact asking us to make our own factual determination, which unfortunately, is outside of our authority to act upon in a petition for review on *certiorari.*

The same applies with the issues of prescription and laches. The question of prescription of an action involves the ascertainment of factual matters such as the date when the period

---

[42] Code of Muslim Personal Laws of the Philippines.

[43] Records, pp. 59-60.

[44] *Rollo,* p. 5.

to bring the action commenced to run.[45] Similarly, well-settled is the rule that the elements of laches must be proved positively. Laches is evidentiary in nature which could not be established by mere allegations in the pleadings. Whether or not the elements of laches are present is a question involving a factual determination by the trial court and each case is to be determined according to its particular circumstances.[46] The records, however, are bereft of any evidence establishing these. The assailed Orders are also without any basis for its conclusions that prescription and laches have set in. We thus find that ruling on these matters would once again require us to determine facts.

Meanwhile, the questions whether the customary law or *'äda* in Calanogas exists and whether it applies with respect to respondent's possession and occupation of the land are also questions of fact. Article 5 of P.D. No. 1083 provides:

> Art. 5. *Proof of Muslim law and 'äda.* Muslim law and *'äda* not embodied in this Code shall be proven in evidence as a fact. No *'äda* which is contrary to the Constitution of the Philippines, this Code, Muslim law, public order, public policy or public interest shall be given any legal effect.

Here, petitioner presented an affidavit from the supposed members of the Sultanate Community Civic Leader, Inc. of Brgy. Calalanoan, Calanogas, Lanao del Sur to prove the existence of the *'äda* and that it has resolved the dispute in favor of petitioner. Respondent, on the other hand, presented countervailing affidavit disputing petitioner's evidence. Unfortunately, it is not our function to resolve conflicting evidence. Again, we are not a trier of facts[47] and it is not our function to analyze and weigh evidence.[48]

---

[45] *Crisostomo v. Garcia, Jr.,* G.R. No. 164787, January 31, 2006, 481 SCRA 402, 410. Citation omitted.

[46] *Pineda v. Heirs of Eliseo Guevara,* G.R. No. 143188, February 14, 2007, 515 SCRA 627, 635. Citation omitted.

[47] *Supra* note 42.

[48] *Miano, Jr. v. Manila Electric Company (MERALCO),* G.R. No. 205035, November 16, 2016, 809 SCRA 193, 198.

Regarding petitioner's argument that it was erroneous for the SDC to rule in favor of respondent without requiring the latter to take an oath in accordance with Section 7 of the Special Rules of Procedure in Shari'a Courts, we hold that the issue of whether the circumstances in this case call for the application of Section 7 likewise requires the determination of facts.

We emphasize the provisions of the Special Rules of Procedure in Shari'a Courts which should have been followed:

Sec. 6. *Pre-Trial.* – (1) Not later than thirty (30) days after the answer is filed, the case shall be calendared for pre-trial. Should the parties fail to arrive at an amicable settlement *(sulkh),* the court shall clarify and define the issues of the case which shall be set forth in a pre-trial order.

(2) Within then (10) days from receipt of such order, the parties or counsels shall forthwith submit to the court the statement of witnesses *(shuhud)* and other evidence *(bayyina)* pertinent to the issues so clarified and defined, together with the memoranda setting forth the law and the facts relied upon by them.

(3) Should the court find, upon consideration of the pleadings, evidence and memoranda, that a judgment may be rendered without need of a formal hearing, the court may do so within fifteen (15) days from the submission of the case for decision.

Sec. 7. *Hearing or Trial.* – (1) The plaintiff *(mudda 'i)* has the burden of proof, and the taking of an oath *(yamin)* rests upon the defendant *(mudda 'alai).* If the plaintiff has no evidence to prove his claim, the defendant shall take an oath and judgment shall be rendered in his favor by the court. Should the defendant refuse to take an oath, the plaintiff shall affirm his claim under oath in which case judgment shall be rendered in his favor. Should the plaintiff refuse to affirm his claim under oath, the case shall be dismissed.

(2) If the defendant admits the claim of the plaintiff, judgment shall be rendered in his favor by the court without further receiving evidence.

(3) If the defendant desires to offer defense, the party against whom judgment would be given on the pleadings and admission made, if no evidence was submitted, shall have the burden to prove his case. The statements submitted by the parties at the pre-trial shall

constitute the direct testimony of the witnesses as basis for cross-examination. (Italics in the original.)

To recall, no pre-trial was conducted in this case. While the pre-trial conference was set and rescheduled for various reasons at least four times,[49] none was conducted. Rather than conducting a pre-trial in order to clarify and define the issues and proceeding with the trial as both parties had wanted, the SDC dismissed the case. Worse, the SDC's second and third assailed Orders dated January 16, 2012 and March 23, 2012, dismissing the complaint only summarized the parties' contending arguments; they were bereft of any discussion on the factual and legal basis for the dismissal itself.

Indeed, it was erroneous for the SDC to peremptorily conclude, on the basis of the parties' pleadings and their attachments, that petitioner failed to prove his claim over the land, that prescription and laches have set in, and that the *'ädа,* assuming it exists, is contrary to the Constitution, laws and public policy. Had the SDC proceeded with the pre-trial and trial of the case, the parties would have had the opportunity to define and clarify the issues and matters to be resolved, present all their available evidence, both documentary and testimonial, and cross-examine, test and dispel each other's evidence. The SDC would, in turn, have the opportunity to carefully weigh, evaluate, and scrutinize them and have such sufficient evidence on which to anchor its factual findings. What appears to have happened though is a cursory determination of facts and termination of the case without the conduct of full-blown proceedings before the SDC. We affirm the following observation on the Special Rules of Procedure in Shari'a Courts:

> When the plaintiff has evidence to prove his claim, and the defendant desires to offer defense, trial on the merits becomes necessary. The parties then will prove their respective claims and defenses by the introduction of testimonial *(shuhud)* and other evidence *(bayyina).* The statements of witnesses submitted at the pre-trial by the parties shall constitute the direct testimony as the basis for cross-examination.[50]

---

[49] Records, pp. 51, 91, 111-112.

[50] Gubat, Mangontawar M., *Special Rules of Procedure Governing Philippine Shari'a Courts Annotated.* (2016), p. 93.

In view of the foregoing, we remand the case to the SDC for the conduct of pre-trial and further proceedings for the reception of evidence in order for it to thoroughly examine the claims and defenses of the parties, their respective evidence and make its conclusions after trial on the merits.

WHEREFORE, we **GRANT** the petition **IN PART** and **SET ASIDE** the Orders dated January 31, 2010, January 16, 2012, and March 23, 2012 of the Shari'a District Court. Civil Case No. 206-10 is **REMANDED** to the Shari'a District Court for further proceedings and trial on the merits. The Shari'a District Court is ordered to resolve Civil Case No. 206-10 with utmost dispatch.

SO ORDERED.

Leonardo-de Castro,[*] *del Castillo,* and *Tijam, JJ.,* concur.

Sereno, C.J., on leave.

SECOND DIVISION

[G.R. No. 204895. March 21, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOEL DOMINGO**, *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; RIGHT TO SPEEDY TRIAL, WHEN

---

[*] Designated as Acting Chairperson of the First Division per Special Order No. 2540 dated February 28, 2018.

VIOLATED; FACTORS TO CONSIDER; EXPLAINED.— To determine whether accused-appellant's right to speedy trial was violated, "four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant." These factors were laid down in the US Supreme Court case of *Barker v. Wingo*, (*Barker*) where Barker's prosecution was delayed for four years due to the State's inability to prosecute one of Barker's co-accused who they intended to turn into a state witness. x x x In *Barker*, the US Supreme Court observed that: "The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance. Nevertheless, because of the imprecision of the right to speedy trial, the length of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstances of the case." The Court has also ruled in *People v. Tampal* that "[i]n determining the right of an accused to speedy trial, courts should do more than a mathematical computation of the number of postponements of the scheduled hearings of the case. What offends the right of the accused to speedy trial are *unjustified* postponements which prolong trial for an unreasonable length of time." x x x In *Barker*, the US Supreme Court further explained the nature of the accused's right to assert his right to speedy trial as closely related to the other factors; and the more serious the deprivation, the more likely the accused will complain, thus: x x x The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial. x x x Prejudice to the accused is determined through its effect on three interests of the accused that the right to a speedy trial is designed to protect, which are: "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired."

2. ID.; ID.; ID.; ID.; ID.; THE PREJUDICE TO THE ACCUSED ARISING FROM INCARCERATION OR ANXIETY FROM CRIMINAL PROSECUTION SHOULD BE WEIGHED AGAINST THE DUE PROCESS RIGHT OF THE STATE, WHICH IS THE RIGHT TO PROSECUTE THE CASE AND

PROVE THE CRIMINAL LIABILITY OF THE ACCUSED FOR THE CRIME CHARGED.— Accused-appellant was therefore prejudiced when the prosecution failed to present its evidence during all the settings that were given to it. **Every day spent in jail is oppressive, more so when the reason for the prolongation of incarceration is the prosecution's unreasonable motions for postponement.** Weighed against the prejudice to the accused is the right of the State to be given a fair opportunity to present its evidence or to prosecute the case. Otherwise stated, the prejudice to the accused arising from incarceration or anxiety from criminal prosecution should be weighed against the due process right of the State — which is its right to prosecute the case and prove the criminal liability of the accused for the crime charged. For the State to sustain its right to prosecute despite the existence of a delay, the following must be present: "(a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice." Effectively, and as the Court ruled in *Dimatulac v. Villon*, the Court must balance the interest of society and the State with that of the accused, for justice to prevail, x x x The dismissal of the cases in the February Order, predicated on the violation of the right of accused-appellant to a speedy trial, amounted to an acquittal which bars another prosecution of accused-appellant for the same offense. Thus, when the RTC reconsidered its February Order in its June Order, the RTC placed accused-appellant twice in jeopardy for the same offense and acted with grave abuse of discretion. To the mind of the Court, an accused cannot be made to needlessly and baselessly suffer incarceration or any anxiety arising from criminal prosecution, no matter the duration. Any day in jail or in fear of criminal prosecution has a grave impact on the accused. When the prosecution is needlessly and baselessly prolonged, causing him prejudice, the Court is constrained, as in this case, to arrive at a finding that accused-appellant's right to a speedy trial was violated.

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; SELF-CONTRADICTIONS AND INCONSISTENCIES ON THE VERY MATERIAL AND SUBSTANTIAL MATTER SERIOUSLY ERODES THE CREDIBILITY OF A WITNESS; CASE AT BAR.— The Court has held that "[s]elf-

> contradictions and inconsistencies on a very material and substantial matter seriously erodes the credibility of a witness." x x x Here, the testimony of Bareng, the prosecution's only witness, is inconsistent in *material points* making it weak and incredible. x x x Against the inconsistent statements of the lone eyewitness, accused-appellant's evidence establishing his alibi gains significance and is, indeed, more credible. x x x Bareng's testimony, given its material inconsistencies, cannot be given full faith and credit. Accused-appellant, on the other hand, was able to prove his alibi. "[W]here, as in the cases at bar, the evidence for the prosecution is inherently weak and betrays lack of concreteness on the question of whether or not appellants are the authors of the crimes charged, alibi as a defense becomes significant."

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Sandro Marie N. Obra for accused-appellant.

D E C I S I O N

CAGUIOA, *J.*:

This is an Appeal[1] under Section 13, Rule 124 of the Rules of Court from the Decision[2] dated May 31, 2012 of the Court of Appeals, Ninth Division (CA) in CA-G.R. CR-H.C. No. 04278. The CA Decision affirmed the Joint Judgment[3] dated August 18, 2009 rendered by the Regional Trial Court (RTC) of Laoag City, Branch 14, in Criminal Cases Nos. 11741-14, 11742-14, 11743-14,[4] which found accused-appellant Joel Domingo

---

[1] CA *rollo*, pp. 209-210.

[2] *Rollo*, pp. 2-31. Penned by Associate Justice Ramon A. Cruz, with Associate Justices Rosalinda Asuncion-Vicente and Antonio L. Villamor concurring.

[3] Records (Crim. Case No. 11741-14), pp. 246-275. Penned by Presiding Judge Francisco R.D. Quilala.

[4] Criminal Cases Nos. 11741-15, 11742-15, and 11743-15 when they were pending before Branch 15 of the RTC of Laoag City; see records (Crim. Case No. 11741-14), p. 54.

(accused-appellant) guilty of two counts of the crime of Murder and one count of Attempted Murder.

Facts

Three Informations were filed against accused-appellant and Roel Domingo (Roel). In Criminal Case No. 11741-14, the Information states:

> That in the evening of February 26, 2005 at Brgy. Sta. Maria, in the municipality of Piddig, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously shoot VIRGILIO DALERE with the use of an unlicensed firearm causing his instantaneous death.[5]

In Criminal Case No. 11742-14, the Information regarding the death of Glenn Rodriguez[6] states:

> That in the evening of February 26, 2005 at Brgy. Sta. Maria, in the municipality of Piddig, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously shoot GLENN RODRIGUEZ with the use of an unlicensed firearm causing his instantaneous death. [7]

In Criminal Case No. 11743-14, the Information, charging accused-appellant and Roel with Attempted Murder of Roque Bareng (Bareng), states:

> That in the evening of February 26, 2005 at Brgy. #21, Sta. Maria, in the municipality of Piddig, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named

---

[5] Records (Crim. Case No. 11741-14), p. 1.

[6] Also referred to as Glen Rodriguez and Glen Rodrigues in some parts of the records.

[7] Records (Crim. Case No. 11742-14), p. 1.

accused, conspiring, confederating and mutually helping one another, with intent to kill and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously assault, attack and shoot ROQUE BARENG with the use of an unlicensed firearm but was not able to hit him, thereby commencing by overt acts the commission of the crime of Murder but did not perform all the acts of execution which should have produced it by reason of some causes other than the spontaneous desistance of said accused.[8]

The CA summarized the subsequent proceedings as follows:

The three cases were originally raffled to Branch 15 of the Regional Trial Court (RTC) of Laoag City. With the assistance of counsel, the Accused Roel Domingo and Joel Domingo were arraigned before Branch 15 and pleaded not guilty to each charge.

Subsequently, the accused through counsel filed a Motion praying for the re-raffle of these cases to another branch since proceedings had not gone beyond the pre-trial stage although they had been detained for more than a year. The Motion was granted by Branch 15, and the cases were re-raffled to Branch 14 of the same Court.

Pre-trial conference ensued. There, it was agreed that the prosecution would present its evidence in four settings of a joint trial. **The prosecution failed to present a single witness in each of those four settings**. **Thus, the Court in an Order dated February 7, 2007 dismissed the cases and directed the release of the two accused.**

On February 14, 2007, the Office of the Provincial Prosecutor filed a Motion for Reconsideration, claiming that notices to the prosecution witnesses had not been served because they constantly transferred to other places due to persistent threats to their lives as a result of these cases.

In an Order dated June 14, 2007, the Court granted the Motion for Reconsideration, reasoning that "the State in the present cases was deprived of its right to due process, for it was not given a fair opportunity to present its witnesses. Accordingly, double jeopardy cannot bar the reconsideration of the assailed Order, and due process mandates that the prosecution be allowed to present its witnesses."

---

[8] Records (Crim. Case No. 11743-14), p. 1.

Accused Joel Domingo was rearrested; his co-accused Roel Domingo was not. Parenthetically, the cases against Roel Domingo were dismissed in an Order dated April 28, 2009, after the defense submitted a death certificate showing that he died on April 8, 2009 in Lopez, Quezon due to multiple hack wounds.

Thereafter, the prosecution presented its evidence. Its only witness was private complainant Roque Bareng. It dispensed with the presentation of Dr. Diophantes M. Acob who conducted the post-mortem examination on Deceased Glenn Rodriguez and Virgilio Dalere, upon the agreement of the parties during the pre-trial conference that his reports thereon show the cause and the fact of death of the two deceased.[9] (Emphasis and underscoring supplied)

The CA summarized the version of the prosecution as follows:

The prosecution sought to prove that three men armed with M-14 and M-16 rifles attacked and shot Roque Bareng, Virgilio Dalere, Glenn Rodriguez and Edwin Andres at the Abadilla Farm in Brgy. Sta[.] Maria, Piddig, Ilocos Norte, around 11:30 PM on February 26, 2005. Virgilio Dalere and Glenn Rodriguez died from gunshot wounds. Roque Bareng, who managed to escape unharmed, identified Joel Domingo as one of the assailants.

The prosecution's evidence showed that Roque Bareng was with Edwin Andres, Glenn Rodriguez and Virgilio Dalere at the bunkhouse of the Abadilla Farm at the time of the shooting incident. While Roque Bareng and his companions were having coffee, three men bearing M-14 and M-16 rifles appeared; one of them stayed outside the kitchen door, while the other two entered. Roque Bareng was on the southern edge of the kitchen, facing north; the armed men came from the northern portion of the kitchen.

The assailant with the M-14 rifle asked, "Are you the tough guys here?" The other one with the M-16 rifle ordered them not to move. The assailant with the M-16 rifle pointed his firearm towards Virgilio Dalere, and the one with the M-14 rifle pointed it towards Glenn Rodriguez. Around two seconds after the gunmen entered, each fired a single shot inside the kitchen.

Roque Bareng ran toward the fence. Upon reaching the fence, he looked back and saw the assailant with the M-14 rifle pointing it at

---

[9] *Rollo*, pp. 5-6.

him. He then crouched toward the irrigation and proceeded to the house of Edwin Andres where he stayed for the night. He could no longer recall how many gunshots were fired while he was running.

Roque Bareng testified that Edwin Andres ran ahead of him. He further testified that Glenn Rodri[g]uez also ran away. He did not notice Virgilio Dalere, but heard the latter moan, "Apo."

The following morning, Piddig policemen fetched him at the house of Edwin Andres, and they proceeded to the Abadilla Farm. There, they found the lifeless bodies of Glenn Rodriguez and Virgilio Dalere outside the bunkhouse. He further testified that policemen found one empty M-14 shell and one empty M-16 shell at the kitchen of the bunkhouse.

After taking Roque Bareng to a hospital in Piddig for treatment of the wounds he sustained during his flight from the bunkhouse, the policemen brought him to the police station.

In an answer to the query of the policemen, Roque Bareng told them that he could recognize the assailants. He also testified that there was a fluorescent lamp just above the dining table during the shooting, and the moon also illuminated the place.

Three (3) days later, Roque Bareng was brought to the Ilocos Norte Police Provincial Office in Camp Juan, Laoag City, where he gave his statement. On March 2, 2005, he was called back to Camp Juan. An artist asked him to describe the assailants; out of that description, the artist prepared cartographic sketches of two of the assailants. He signed the cartographic sketches afterward.

The policemen continued interviewing Roque Bareng. They showed him a logbook containing several photographs. He identified the two assailants from the photographs in the logbook.

Several days later, Roque Bareng was again invited to the Piddig police station. During his stay, he saw two persons being interviewed. He recognized them to be the assailants with the M-14 and M-16 rifles.

During the trial, he identified herein accused Joel Domingo as the gunman with an M-14 rifle.[10]

---

[10] *Id*. at 6-8.

On the other hand, the accused-appellant's evidence is summarized as follows:

The defense sought to prove that Accused Joel Domingo was attending a social dance in Brgy. Dupitac, Piddig, Ilocos Norte when the victims were shot at Brgy. Sta[.] Maria of that town. It also sought to establish that the descriptions given by Roque Bareng to the policemen and the cartographic sketches differed from the actual appearance of the Accused Joel Domingo.

It presented Edwin Andres, Pastor Virgilio Notarte, Noel Esteban, Norman Pablo and the Accused Joel Domingo as witnesses.

Edwin Andres testified that the shooting incident transpired while he was having coffee with Roque Bareng, Virgilio Dalere and Glenn Rodriguez at the bunkhouse of the Abadilla Farm in Sta. Maria, Piddig, Ilocos Norte on February 26, 2005. Somebody arrived from the western portion of the bunkhouse. He then heard a voice that he did not recognize; the voice was followed by a gunshot. He immediately ran toward the gate and took a circuitous route to his house. Edwin Andres claimed that he was not able to see the assailants. He could not tell how many he saw as he did not see them.

Upon reaching his house, Edwin Andres found Roque Bareng already there. When he asked Roque Bareng about the incident, the latter replied that he saw the assailants and that they were "small thin persons wearing hats". He could no longer recall how many assailants were seen by Roque Bareng.

The following day, he and Roque Bareng went back to the bunkhouse. They found the dead bodies of Glenn Rodri[g]uez and Virgilio Dalere outside the building. They reported the matter to the chief tanod, who in turn informed Pastor Virgilio Notarte, a kagawad, who then called the police.

The policemen recovered the bodies and questioned Roque Bareng and him. He told them that he did not see anything. He heard Roque Bareng describe the assailants to the police as "small thin persons wearing hat with a brim."

Pastor Virgilio Notarte testified that he was a barangay kagawad of Brgy. Sta. Maria, Piddig, Ilocos Norte at the time of the x x x shooting incident. After the chief tanod had informed him of the matter, he reported it to the police. He accompanied the policemen when they inspected the Abadilla Farm.

Nobody was at the Abadilla Farm when they arrived. On their way to the barracks located on an elevated part at the center of the farm, they passed by the body of Virgilio Dalere lying face down. When they moved further west, they also found the body of Glenn Rodriguez.

Pastor Notarte picked up around six empty M-14 shells east of the dirty kitchen and one empty M-16 shell north of that kitchen.

He heard Roque Bareng telling the policemen that he and his companions had come from a drinking spree when he heard a dog barking and saw two men at the dirty kitchen of the barracks. He further heard Roque Bareng describe the assailants as "tall, thin, wearing a hat with a brim and the other man was short and stout."

For his part, Accused Joel Domingo invoked the defense of denial and alibi. He claimed he was at Brgy. Dupitac in Piddig, Ilocos Norte attending a social dance between 10:00 PM of that date until 2:00 AM the next day. He, together with Norman Pablo and Rexon Domingo walked from his residence at Brgy. Estancia to Brgy. Dupitac that night.

He testified that Brgy[.] Dupitac was less than ten (10) kilometers away from Brgy. Sta. Maria where the shooting incident happened. He did not know how long it would take to travel from Brgy. Dupitac to Brgy. Sta. Maria by foot, as he had never done it. However, he said that if one would travel from Brgy. Dupitac to Brgy. Sta. Maria on a motorcycle, it would take more than an hour because the route passed through mountains.

He also averred that Brgy. Estancia, where he resided, was around ten (10) kilometers away from Brgy. Sta. Maria where the victims were shot. The travel time between the two barangays was more than one hour.

He stressed that he never had any grudge or misunderstanding with the deceased Glenn Rodriguez or Virgilio Dalere. He also opined that the police pinned him as an author of the crime to enable them to say that they had solved the case; he added that he was facing other charges at that time. He learned about the incident only when the policemen came to arrest him.

The alibi of the accused was corroborated by Norman Pablo. He did not take the witness stand, but the parties stipulated that if he would testify, Norman Pablo would say that he was with the accused

from 6:00 PM of February 26, 2005 until 4:00 AM the following day, that within that time frame they went from Brgy. Estancia to Brgy. Dupitac to attend a social dance, and that the travel time between Brgy. Dupitac and Brgy. Sta. Maria was more than one hour on foot or by motorcycle.

Brgy. Chairman Noel Esteban of Dupitac testified that the social dance in his barangay started around 9:00 PM on February 26, 2005 and lasted until 2:15 AM the following day. In his sworn statement adopted as his direct testimony, the witness claimed that he saw the Accused Joel Domingo with two (2) companions from Brgy. Estancia. They did not dance; they merely drank with some other persons. The witness also averred that the Abadilla Farm where the shooting took place was around ten (10) kilometers away from Brgy. Dupitac, and the travel time between the two, on foot or by motorcycle, was more than an hour. He further testified that between 9:30 PM and 2:15 AM that night, he saw the Accused Joel Domingo several times.[11]

In its Joint Judgment,[12] the RTC convicted accused-appellant, the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered as follows:

(a) In Crim. Case No. 11741-14, accused Joel Domingo is found GUILTY beyond reasonable doubt of MURDER and is sentenced to *reclusion perpetua* without eligibility for parole. He is ordered to pay the heirs of deceased Virgilio Dalere ₱75,000.00 as indemnity for his death, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱25,000.00 as exemplary damages.

(b) In Crim. Case No. 11742-14, accused Joel Domingo is found GUILTY beyond reasonable doubt of MURDER and is sentenced to *reclusion perpetua* without eligibility for parole. He is ordered to pay the heirs of deceased Glenn Rodriguez ₱75,000.00 as indemnity for his death, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱25,000.00 as exemplary damages.

---

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

[12] Records (Crim. Case No. 11741-14), pp. 246-275.

(c) In Crim. Case No. 11743-14, accused Joel Domingo is found GUILTY beyond reasonable doubt of ATTEMPTED MURDER and is sentenced to an indeterminate penalty ranging from three years of *prision correccional* as minimum to eight years and one day of *prision mayor* as maximum. He is ordered to pay Roque Bareng ₱20,000.00 as indemnity and ₱10,000.00 as exemplary damages.

In the three cases, accused Joel Domingo is further ordered to pay interest on the said amounts at the legal rate of six percent (6%) per annum, from the finality of this Joint Judgment until full payment of the obligation.

SO ORDERED.[13]

On appeal with the CA, the CA affirmed the RTC Joint Judgment with modifications, as follows:

WHEREFORE, premises considered, the Joint Judgment dated August 18, 2009 rendered by the Regional Trial Court of Laoag City, Branch 14, in Criminal Cases No[s]. 11741-14, 11742-14 and 11743-14 is AFFIRMED with MODIFICATION, in that:

(a) In Crim. Case No. 11741-14, accused Joel Domingo is found GUILTY beyond reasonable doubt of MURDER and is sentenced to *reclusion perpetua* without eligibility for parole. He is ordered to pay the heirs of deceased Virgilio Dalere ₱75,000.00 as indemnity for his death, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱30,000.00 as exemplary damages.

(b) In Crim. Case No. 11742-14, accused Joel Domingo is found GUILTY beyond reasonable doubt of MURDER and is sentenced to *reclusion perpetua* without eligibility for parole. He is ordered to pay the heirs of deceased Glenn Rodriguez ₱75,000.00 as indemnity for his death, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱30,000.00 as exemplary damages.

(c) In Crim. Case No. 11743-14, accused Joel Domingo is found GUILTY beyond reasonable doubt of ATTEMPTED MURDER and is sentenced to an indeterminate penalty

---

[13] *Id*. at 274-275.

ranging from three (3) years of *prision correccional* as minimum to ten (10) years and one (1) day of *prision mayor* as maximum. He is ordered to pay Roque Bareng ₱20,000.00 as indemnity and ₱30,000.00 as exemplary damages.

SO ORDERED.[14]

Accused-appellant notified the CA of his intention to appeal with the Court.[15] Hence, this Appeal.

Issues

The issues that accused-appellant raised are as follows:

THE COURT A QUO COMMITTED A SERIOUS ERROR WHEN IT SET ASIDE THE DISMISSAL OF THE PRESENT CASES TRANSGRESSING THE APPELLANT'S CONSTITUTIONAL RIGHT AGAINST DOUBLE JEOPARDY

THE COURT A QUO COMMITTED A GRAVE ERROR IN RULING THAT THE SOLE TESTIMONY OF ROQUE BARENG IS SUFFICIENT TO PROVE THE GUILT OF APPELLANT BEYOND REASONABLE DOUBT, CONSEQUENTLY, DISREGARDING THE TESTIMONIES OF DEFENSE WITNESSES[16]

The Court's Ruling

By this Decision, the Court acquits accused-appellant principally on the ground that he was deprived of his right to a speedy trial, and with the consequent dismissal[17] by the RTC of the criminal cases, the reconsideration[18] of the RTC's Order dated February 7, 2007 (February Order) placed accused-appellant in double jeopardy. To be sure, even if accused-appellant were not placed in double jeopardy, the prosecution

---

[14] *Rollo*, pp. 27-28.

[15] CA *rollo*, pp. 209-210.

[16] *Id*. at 70.

[17] See Order dated February 7, 2007; records (Crim. Case No. 11741-14), pp. 118-119.

[18] See Order dated June 14, 2007; *id*. at 139-145.

witness's testimony is weak and unconvincing, while accused-appellant's alibi was satisfactorily proven.

Right to a speedy trial

To determine whether accused-appellant's right to speedy trial was violated, "four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant."[19] These factors were laid down in the US Supreme Court case of *Barker v. Wingo*,[20] (*Barker*) where Barker's prosecution was delayed for four years due to the State's inability to prosecute one of Barker's co-accused who they intended to turn into a state witness. The US Supreme Court ruled that although there was a delay, Barker was not seriously prejudiced because he was only in jail for 10 months as he was granted bail, and that Barker himself did not want a speedy trial. In arriving at this conclusion, the US Supreme Court laid down the four factors above, and implored courts to apply the balancing test on an *ad hoc* basis, thus:

> A balancing test necessarily compels courts to approach speedy trial cases on an ad hoc basis. We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.[21]

Length of and reason for delay

In *Barker*, the US Supreme Court observed that: "The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance. Nevertheless, because of the imprecision of the right to speedy trial, the length of delay that will provoke such

---

[19] *People v. Hernandez*, 531 Phil. 289, 309 (2006); emphasis omitted.

[20] *Barker v. Wingo*, 407 US 514, 530 (1972).

[21] *Id*. at 530.

an inquiry is necessarily dependent upon the peculiar circumstances of the case."[22]

The Court has also ruled in *People v. Tampal*[23] that "[i]n determining the right of an accused to speedy trial, courts should do more than a mathematical computation of the number of postponements of the scheduled hearings of the case. What offends the right of the accused to speedy trial are *unjustified* postponements which prolong trial for an unreasonable length of time."[24]

Here, accused-appellant was arrested on March 3, 2005.[25] When there was a delay in the setting of the pre-trial conference, it was accused-appellant himself who moved for the re-raffle of the cases on August 10, 2006 because the judge of RTC Branch 15 of Laoag City was assigned to three trial courts in different locations.[26] The judge granted this motion[27] and the case was raffled to RTC Branch 14 of Laoag City.

The pre-trial conference was conducted on December 12, 2006. In the Pre-Trial Order,[28] the prosecution was given four settings to present its evidence: January 17, 2007 at 2:00 P.M., January 26, 2007 at 9:00 A.M., January 31, 2007 at 9:00 A.M., and February 7, 2007 at 9:00 A.M.[29]

The prosecution, however, failed to present any evidence on the foregoing settings. Thus, in the February Order, the RTC dismissed the criminal cases upon motion of accused-appellant's counsel for the prosecution's failure to present evidence on the four settings. The February Order states:

---

[22] *Id*. at 530-531.

[23] 314 Phil. 35 (1995).

[24] *Id*. at 43.

[25] Records (Crim. Case No. 11741-14), back of p. 35.

[26] *Id*. at 96-97.

[27] *Id*. at 98.

[28] *Id*. at 102-105.

[29] *Id*. at 104.

Pre-trial conference ensued before this Branch. During that conference, the parties agreed that the prosecution will present its four witnesses in the following four settings: January 17, 2007; January 26, 2007; January 31, 2007; and February 7, 2007.

On January 17, 2007, the prosecution witnesses failed to appear without any justification. The public prosecutor also manifested that the witnesses had not been responding to his communications to them. Thus, in an Order issued that day, the Court, noting the failure of the prosecution to present evidence, scheduled the cases for hearing again on January 26, 2007, as previously scheduled. It also sent a copy of the said Order to the Ilocos Norte Police Provincial Office, which initiated the filing of the present cases. On January 26, 2007 and again on January 31, 2007, the prosecution witnesses still failed to appear without any justification. In an Order dated January 31, 2007, the Court warned the prosecution that its failure to present evidence at the hearing on February 7, 2007 shall warrant the dismissal of these cases. A copy of the said Order was also served on the Ilocos Norte Police Provincial Office. In today's hearing, the prosecution witnesses again failed to appear without any justification.

Consistent therefore with the warning in the January 31, 2007 Order, the Court hereby GRANTS the prayer of the defense counsel for the DISMISSAL of these three cases for failure of the prosecution to present even a single shred of evidence in the four settings agreed upon during the pre-trial conference. Unless there is some other lawful cause for their continued detention, the accused Roel Domingo and Joel Domingo are ordered IMMEDIATELY RELEASED from the custody of peace officers.

Let a copy of this Order be served on the Ilocos Norte Police Provincial Office.

SO ORDERED.[30]

In the public prosecutor's Motion for Reconsideration[31] of the February Order, the prosecution admitted that it failed to present any evidence on the four settings and that no private

---

[30] *Id.* at 118-119.

[31] *Id.* at 122-124.

complainant or witness appeared before the Office of the Provincial Prosecutor prior and during the hearings of these cases.[32] The public prosecutor argued, however, that the failure to present any evidence on the four settings was because the private complainants left their places of residence because of persistent threats to their lives, thus they failed to receive the subpoenas sent to them:

> A few days however, after the issuance of the Order, the private complainants namely, JOSIE DALERE and ROQUE BARENG appeared before the Office of the Provincial Prosecutor manifesting their surprise of what they were informed that the accused were roaming freely in their locality and after further verification they learned that the cases filed against the accused were already DISMISSED.
>
> That the said private complainants allege that indeed they have left their former residences after the incident because of the persistent threats on their lives owing to their personal knowledge about the incident.
>
> That because of the said threats, they continuously changed their respective residences and kept their whereabouts unknown.
>
> That as a consequence thereof they never personally received the subpoenas sent to them or any information relative to the development of these cases.
>
> In view thereof the prosecution is constrained to ask the Honorable Court for the reconsideration of its Order dated February 7, 2007 in order that substantive justice may be served thereby, considering that two lives were lost in the said incident.[33]

The private prosecutor also argued that "[a] perusal of the reasons posited by private complainants of their failure to appear on the scheduled hearings will therefore show that the same were not vexatious, capricious, and oppressive as in fact they were justified because of the persistent and imminent dangers o[n] their lives. That parenthetically, the said private complainants are very able, willing and interested in testifying

---

[32] *Id*. at 122.

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

before this Honorable Court and pursue their case until the termination of the proceedings and undertake to [be] present whenever called upon by the Honorable Court."[34]

In an Order[35] dated June 14, 2007 (June Order), the RTC granted the prosecution's Motion for Reconsideration. The RTC ruled that the witnesses did not receive any of the notices from it regarding the hearings, except for Josie Dalere (Dalere) and only for the February Order that dismissed the cases.[36]

However, a thorough review of the records shows that the prosecution unreasonably requested for the postponement of **all hearing dates** given to it, and to which it had previously agreed during the pre-trial conference. The June Order's blanket statement that the witnesses did not receive any of the notices except for Dalere and only as to the February Order is belied by the records.

During the pre-trial conference, the prosecution was already aware that it had four settings to present its intended witnesses: January 17, 2007, January 26, 2007, January 31, 2007, and February 7, 2007.[37] Its intended witnesses were Bareng, Raymundo Tomas (Tomas), Dalere, and one of the responding officers.[38] Only Dalere was sent a copy of the Pre-Trial Order but this was returned unserved with a notation "moved."[39]

During the January 17, 2007 hearing, the public prosecutor moved for continuance as all his intended witnesses were unavailable. Despite the accused-appellant's opposition, the RTC granted this.[40] The RTC, however, emphasized that the

---

[34] *Id*. at 123.

[35] *Id*. at 139-145.

[36] *Id*. at 141.

[37] *Id*. at 104.

[38] *Id*.

[39] *Id*. at 105 to 105-A.

[40] *Id*. at 107.

prosecution had only three more settings to present its evidence.[41] **A review of the records reveal that the copy of the January 17, 2007 Order was received by the Ilocos Norte Police Provincial Office (Provincial Police) on January 18, 2007 and by Tomas on January 23, 2007**.[42] On the other hand, the copies of the Order addressed to Bareng and Dalere were returned unserved with a notation "unknown" for Bareng and "moved" for Dalere.[43]

At the January 26, 2007 hearing, the public prosecutor manifested that he had no available witness because the witnesses were not responding to his notices.[44] The RTC stressed that the prosecution had only two more settings within which to present its witnesses.[45] Subpoenas were also issued to the prosecution witnesses and a copy of the Order dated January 26, 2007 was sent to the Provincial Police which had initiated the filing of the charges against the accused.

The Provincial Police received its copy of the January 26, 2007 Order on the same day through a certain PO1 Quiao.[46] **Tomas received a copy of the Order and Subpoena on January 30, 2007**,[47] while the copies sent to Bareng and Dalere were returned unserved with a notation "unknown."[48]

The public prosecutor again manifested that he had no witness during the January 31, 2007 hearing. The RTC again reminded the prosecution that its failure to present evidence on the next hearing on February 7, 2007 would warrant the dismissal of the cases. Once more, subpoenas were sent to the prosecution

---

[41] *Id*.

[42] *Id*.; see Return Card, back of p. 107.

[43] *Id*. at 108 to 110-A.

[44] *Id*. at 112.

[45] *Id*.

[46] *Id*.

[47] See Return Card, back of p. 112.

[48] See back of p. 113.

witnesses and the Provincial Police was sent a copy of the January 31, 2007 Order.[49]

The Provincial Police received a copy of the January 31, 2007 Order on January 31, 2007 through a certain PO2 Marlon D. Manuel.[50] **The subpoena and Order were received by Tomas on February 7, 2007** and on behalf of Dalere on February 26, 2007.[51] The copy sent to Bareng was returned unserved with a notation "unknown."[52]

As discussed above, during the February 7, 2007 hearing, the prosecution **still failed to present evidence**, prompting the RTC, upon motion of accused-appellant, to dismiss the criminal cases and to direct the release of accused-appellant from detention.[53] Tomas received a copy of the February Order on February 13, 2007. Copies sent to Dalere and Bareng were returned unserved with a notation "moved" for Dalere's copy[54] and an illegible notation for Bareng's copy.[55]

From the foregoing, the State's motion for postponement **despite notice to two of its witnesses** is an unreasonable delay of the prosecution of the case. It was wrong for the RTC to claim that the witnesses failed to receive the notices and subpoenas. The Provincial Police and Tomas received notices of hearings in the cases. From this alone, the State cannot claim that it was deprived of a fair opportunity to present its evidence when the RTC dismissed the cases in the February Order.

The prosecution's failure to present a single piece of evidence in all the four settings given to it was an unreasonable prolongation of the length of the trial. Further, the reasons the

---

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

[50] *Id*. at 115.

[51] See Return Cards, back of p. 116.

[52] *Id*.

[53] *Id*. at 118-119.

[54] *Id*. at 120.

[55] *Id*. at 121.

prosecution offered for the failure to present its witnesses are not even supported by any evidence other than the mere say-so of the public prosecutor. The witnesses did not even present any affidavit or any proof of the threats to their lives which prompted them to change their places of residence.

As stated above, prior to this, the cases were pending with RTC Branch 15 for more than a year and no pre-trial conference was being conducted, thus impelling accused-appellant, who was incarcerated, to himself file a motion for the cases to be re-raffled. The unreasonable delay of the prosecution needlessly prolonged the incarceration of accused-appellant.

It is incumbent upon the State and the private complainants, where applicable, to exert reasonable efforts to prosecute the case, especially in cases where the accused is incarcerated. The Court understands that there are instances of delay in the ordinary course of the trial, but the delay here shows that the prosecution and the private complainants failed to exert the reasonable efforts to even present any evidence. The reason for their failure is likewise unsubstantiated. If, after the February Order, the private complainants were able to talk to the public prosecutor, they could have easily talked to him any time after the pre-trial and before the February Order.

Assertion of right to speedy trial

In *Barker*, the US Supreme Court further explained the nature of the accused's right to assert his right to speedy trial as closely related to the other factors; and the more serious the deprivation, the more likely the accused will complain, thus:

> We have already discussed the third factor, the defendant's responsibility to assert his right. Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize

that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.[56]

Here, on February 7, 2007, when the prosecution failed to present any evidence during the four trial dates given to it, accused-appellant moved for the dismissal of the cases, which was granted by the RTC. Accused-appellant also raised this as an issue on appeal with the CA. In fact, as early as August 2006, accused-appellant had already raised his right to a speedy trial when he moved for the cases to be re-raffled because of the delay in the conduct of the pre-trial conference.

Given the foregoing, the Court is of the considered belief that accused-appellant had indeed asserted his right to a speedy trial.

Prejudice to accused-appellant

Prejudice to the accused is determined through its effect on three interests of the accused that the right to a speedy trial is designed to protect, which are: "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired."[57]

Accused-appellant was arrested on March 3, 2005.[58] Thus, at the time of the first setting for the prosecution's presentation of evidence, he had already been incarcerated for almost two years. As earlier stated, accused-appellant had in fact moved for the re-raffle of the case on August 10, 2006 because of the delay in the setting of the pre-trial conference[59] which was finally granted by the judge.[60]

---

[56] *Barker v. Wingo*, *supra* note 20, at 531-532.

[57] *Id*. at 532.

[58] Records (Crim. Case No. 11741-14), back of p. 35.

[59] *Id*. at 96-97.

[60] *Id*. at 98.

Accused-appellant was therefore prejudiced when the prosecution failed to present its evidence during all the settings that were given to it. **Every day spent in jail is oppressive, more so when the reason for the prolongation of incarceration is the prosecution's unreasonable motions for postponement**.

Weighed against the prejudice to the accused is the right of the State to be given a fair opportunity to present its evidence or to prosecute the case. Otherwise stated, the prejudice to the accused arising from incarceration or anxiety from criminal prosecution should be weighed against the due process right of the State — which is its right to prosecute the case and prove the criminal liability of the accused for the crime charged.[61] For the State to sustain its right to prosecute despite the existence of a delay, the following must be present: "(a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice."[62]

Effectively, and as the Court ruled in *Dimatulac v. Villon,*[63] the Court must balance the interest of society and the State with that of the accused, for justice to prevail, thus:

> Indeed, for justice to prevail, the scales must balance; justice is not to be dispensed for the accused alone. The interests of society and the offended parties which have been wronged must be equally considered. Verily, a verdict of conviction is not necessarily a denial of justice; and an acquittal is not necessarily a triumph of justice, for, to the society offended and the party wronged, it could also mean injustice. Justice then must be rendered even-handedly to both the accused, on one hand, and the State and offended party, on the other.[64]

---

[61] See *People v. Tac-an*, 446 Phil. 496, 505 (2003).

[62] *Corpuz v. Sandiganbayan*, 484 Phil. 899, 918 (2004).

[63] 358 Phil. 328 (1998).

[64] *Id*. at 365.

This right of the State for fair opportunity to present its evidence is, in fact, what led the RTC to reconsider its February Order. The RTC ruled that although the prosecution was given an opportunity to present evidence, it was denied a fair opportunity to do so given the failure to serve notices to the witnesses because they had changed addresses.[65] For the RTC, the lack of effective notice to the witnesses made the opportunity given to the prosecution to present the witnesses more illusory than real.[66]

The CA agreed with the RTC and ruled that double jeopardy did not attach because "the State was deprived of a fair opportunity to prosecute and prove its case prior to the order of dismissal. The trial court did not commit a serious error when it ordered the re-arrest of the accused-appellant and proceeded with trial."[67]

The RTC held that since the State was deprived of its right to due process, double jeopardy cannot bar the reconsideration of the February Order[68] and that "due process mandates that the prosecution be allowed to present its witnesses."[69] In support of its conclusions, the RTC cited *Portugal v. Reantaso*,[70] *People v. Pablo*,[71] *Merciales v. Court of Appeals*,[72] *Valencia v. Sandiganbayan*,[73] *People v. Castañeda, Jr.*,[74] and *People v. Leviste*.[75]

---

[65] Records (Crim. Case No. 11741-14), p. 141.

[66] *Id*.

[67] *Rollo*, p. 15.

[68] Records (Crim. Case No. 11741-14), pp. 143-144.

[69] *Id*. at 144.

[70] 249 Phil. 671 (1988).

[71] 187 Phil. 190 (1980).

[72] 429 Phil. 70 (2002).

[73] 510 Phil. 70 (2005).

[74] 247-A Phil. 420 (1988).

[75] 325 Phil. 525 (1996).

The cases cited by the RTC are inapplicable. The *ratio* of these cases is that for there to be a finding of grave abuse of discretion in a trial court's dismissal of a criminal case, there should be a finding that the State was denied a fair opportunity to present its evidence. But in this case before the Court, the State was given a fair opportunity to present its evidence.

The RTC's dismissal of the cases in its February Order was justified. Again, the public prosecutor had at least a month from the date of the pre-trial to the date of the initial presentation of evidence to contact and prepare any of his witnesses. Further, the prosecution witnesses knew of at least three of the hearing dates as they received copies of the notices and subpoenas. The Provincial Police were likewise notified of the proceedings. The excuse of the witnesses about the fear for their lives is also unsubstantiated and it was incumbent upon them to inform the RTC and the public prosecutor of their new addresses. In fact, after the dismissal of the cases, they went to the public prosecutor voluntarily. They could have done so anytime from the pre-trial until the last day given to the prosecution to present evidence. All this time, accused-appellant was incarcerated and deprived of his freedom.

The RTC had also repeatedly reminded the prosecution that it should present its evidence on the dates it was given and to which it had agreed during pre-trial. The RTC aided the prosecution by issuing subpoenas to the witnesses, which some of them received. Again, the Provincial Police was even notified. The totality of the foregoing circumstances show that the State was given more than a fair opportunity to present its case.

In instances where the State has been given every opportunity to present its evidence, yet it failed to do so, it cannot claim to have been deprived of a fair opportunity to present its evidence. **Such failure and the resulting dismissal of the case is deemed an acquittal of the accused even if it is the accused who moved for the dismissal of the case**. This is the Court's ruling in a series of cases outlined in *Salcedo v. Mendoza,*[76] (*Salcedo*) where the Court held as follows:

---

[76] 177 Phil. 749 (1979).

In the present case, the respondent Judge dismissed the criminal case, upon the motion of the petitioner invoking his constitutional right to speedy trial because the prosecution failed to appear on the day of the trial on March 28, 1978 after it had previously been postponed twice, the first on January 25, 1978 and the second on February 22, 1978.

The effect of such dismissal is at once clear. **Following the established jurisprudence, a dismissal predicated on the right of the accused to speedy trial upon his own motion or express consent, amounts to an acquittal which will bar another prosecution of the accused for the same offense.** This is an exception to the rule that a dismissal, upon the motion or with the express consent of the accused, will not be a bar to the subsequent prosecution of the accused for the same offense as provided for in Section 9, Rule 117 of the Rules of Court. **The moment the dismissal of a criminal case is predicated on the right of the accused to speedy trial, even if it is upon his own motion or express consent, such dismissal is equivalent to acquittal. And any attempt to prosecute the accused for the same offense will violate the constitutional prohibition that "no person shall be twice put in jeopardy of punishment for the same offense"** (New Constitution, Article IV, Sec. 22).[77] (Emphasis supplied)

The Court reiterates and applies *Salcedo*. The dismissal of the cases in the February Order, predicated on the violation of the right of accused-appellant to a speedy trial, amounted to an acquittal which bars another prosecution of accused-appellant for the same offense. Thus, when the RTC reconsidered its February Order in its June Order, the RTC placed accused-appellant twice in jeopardy for the same offense and acted with grave abuse of discretion.

To the mind of the Court, an accused cannot be made to needlessly and baselessly suffer incarceration or any anxiety arising from criminal prosecution, no matter the duration. Any day in jail or in fear of criminal prosecution has a grave impact on the accused. When the prosecution is needlessly and baselessly prolonged, causing him prejudice, the Court is constrained, as

---

[77] *Id*. at 756-757.

in this case, to arrive at a finding that accused-appellant's right to a speedy trial was violated.

Guilt of accused-appellant was not proven beyond reasonable doubt

In view of the foregoing, the resolution of the issue of whether the prosecution was able to prove the guilt of accused-appellant beyond reasonable doubt becomes unnecessary. Nonetheless, a review of the evidence shows that the prosecution failed to prove the guilt of accused-appellant beyond reasonable doubt.

The Court has held that "[s]elf-contradictions and inconsistencies on a very material and substantial matter seriously erodes the credibility of a witness."[78] As the Court further held in *People v. Amon*:[79]

> For evidence to be believed "must not only proceed from the mouth of a credible witness, but must be *credible in itself* — such as the *common experience* and *observation* of mankind can approve *as probable* under the circumstances. There is no test of the truth of human testimony, except its *conformity* to *our knowledge, observation* and *experience*. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance."[80]

Here, the testimony of Bareng, the prosecution's only witness, is inconsistent in **material points** making it weak and incredible.

Bareng testified in open court on December 11, 2007 that the two assailants pointed their guns towards the two other victims, Virgilio Dalere and Glenn Rodriguez, thus:

> Q When you said they fired their gun towards you did you actually see where the gun was pointed?
>
> Atty. Obra:
>
> Misleading, Your Honor.

---

[78] *People v. Amon,* 218 Phil. 355, 361 (1984).

[79] *Id*.

[80] *Id*. at 361.

Court:

Overruled.

A Yes, sir.

Q Where?

A The person bearing M16 rifle pointed his firearm towards Virgilio Dalere while the person bearing M14 pointed his gun towards Glen Rodriguez, sir.

Q Can [y]ou recall Mr. Witness how many gun shots did they fire at you?

A When they were inside there were 2 gun shots, sir.

Q What do you mean by that, Mr. Witness, can you explain to this Court?

A The person bearing M14 rifle fired his gun first then followed by the person bearing M16 rifle, sir.

Court:

Q How many gun shots were fired inside the house?

A Just 2, sir.

Q [W]hat is meant by that?

A One ammo was fired by the person bearing M16 rifle and one was fired by the person bearing M14 rifle, sir.

Q Single shot, Mr. Witness?

A Yes, sir. Single shot.

Fiscal Calupig:

Q After the 2 gun shots, what happened next?

A I heard Virgilio Dalere moaned Apo, sir.

Q Then what did you do next after hearing Virgilio Dalere moaned Apo?

A I ran going down towards the fence, sir.

Q What did you do?

A I crouched, sir.[81]

But during cross-examination, he changed his tune and testified that immediately after the utterance of the two assailants, the assailant holding the M-14 rifle immediately shot at him, thus:

Atty. Obra:

Q Will you tell this Court from the time the assailants bearing M14 and M16 rifle entered the kitchen and began shooting at you?

A About seconds, sir.

Q You mean one second?

A About 2 seconds, sir.

Q Of course the person holding the M14 rifle immediately shot at you?

A Yes, sir after the utterance.

Q So you immediately jumped falling down backwards?

A Yes, sir. [82]

In fact, his statement during his cross-examination is the same as his statements in his affidavit that he executed before the investigating police officers on March 2, 2005.[83] He stated in his affidavit that the assailant with the M-14 rifle shot at him, and in fact he was shot at three times — once after the utterance of the two assailants and twice while he was trying to escape:

05. Q. And when these three men entered as you said, what did they do if there was any?

A. There was sir, the one bearing M-14 armalite rifle uttered the following "Nobody moves" and the one bearing

---

[81] TSN, December 11, 2007, pp. 10-11.

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

[83] Exhibits "A" to "A-7", records (Crim. Case No. 11741-14), pp. 3-6, 179-183.

M-14 rifle told us the following "Are you the tough guys" while their guns were pointed towards us. The third man was standing in front of the kitchen door.

06. Q. After that, what happened next if there is any?

A. **After said utterance, they immediately fired upon the four of us** reason for which Glen Rodriguez and Virgilio Dalere died, sir.

07. Q. You said that they fired at you, what if any did you do?

A. I jumped from my sit (*sic*) and fell on my back. I rolled down the hill and crouched, after which, I ran away when I notice (*sic*) their attention was no longer focused on me. **But when I looked up I saw the person holding an M 14 rifle pointed his gun and again fired at me so I immediately went down with my belly on the ground and rolled down towards the irrigation and upon reaching the same I was again fired upon once.**[84] (Emphasis and underscoring supplied)

This version that he was shot at twice while he was trying to escape is totally absent when he testified in open court. He just testified that when he tried to escape, the assailant with the M-14 rifle aimed at him twice yet did not shoot him, thus:

Q Mr. Witness, when you were already there, what happened when you went to the fence north of the bunkhouse?

A When I was here on the fence I looked back and again I saw the person bearing M14 rifle, sir.

Q What happened next Mr. Witness?

A He again pointed his gun towards me reason for which I tried to go out from the fence, sir.

Q After you were able to go out from the fence, where did you proceed?

A I crouched going down, sir.

---

[84] *Id*. at 180.

Q Going down to where?

A To the irrigation, sir.

Q After reaching the irrigation, what happened next?

A I then again looked back and I saw them pointing their gun towards me, sir. So I crossed the irrigation.[85]

Bareng's identification of accused-appellant is also questionable given his inconsistent statements and when weighed against the testimony of the defense witnesses. In open court, when asked to describe the assailants, Bareng merely stated that they were wearing brim *buri* hats.[86] In his affidavit dated March 2, 2005, he, however, provided a more detailed description of both assailants as follows:

13. Q. What are the descriptions that would make you recognize your assailants?

A The men (sic) bearing M14 rifle has a long big nose and has a mannerism of moving his head sideways. His eyes are big and sharp. He has a big body built and tall, while the man bearing M16 rifle has a round face and he is a look alike of the man holding M14 rifle, tall and big in body built, sir.[87]

Edwin Andres (Andres), one of the defense witnesses and who was also present during the attack by the assailants, however, testified that immediately after the incident and while Bareng was in Andres's house, Bareng told Andres that all he saw were small thin persons wearing hats and that he could not recognize the assailants, thus:

Q Now, Mr. witness after you run (sic) from the bunkhouse towards the gate, what happen (sic) next?

A I ran towards our house, sir.

---

[85] TSN, December 11, 2007, pp. 12-13.

[86] *Id*. at 11-12.

[87] Records (Crim. Case No. 11741-14), p. 181.

Q After you ran to your house, what happened next?

A When I reached our house Roque Bareng was already there, sir.

Q When you saw Roque Bareng at your house, what did you do?

A I asked him what was it.

Q And what was the reply of Roque Bareng?

A I asked him if he saw and he said yes.

Q When Roque Bareng answered you in affirmative that he saw the assailant, what did you do?

Court

There was no mention of what Roque Bareng saw?

Atty. Obra

May I withdraw my question, your Honor.

Q What did Roque Bareng or who did Roque Bareng see?

A Small thin persons and wearing hats, sir.

Q And who were these small persons whom Roque Bareng saw?

A He could not recognized (sic) them, sir he said they are small persons.[88]

Pastor Virgilio Notarte also testified that Bareng described the two assailants as tall and thin and short and stout the day after the incident when asked by the police officers when they visited the crime scene, thus:

Q And when the certain Roque arrived at the Abadilla farm, what happened next?

A When Roque arrived at the Abadilla farm he was met by PO3 Pascual and asked him what happened, Roque told them that they just came from a drinking spree and when they went back to the barracks he heard a dog barking and saw two (2) men at the dirty kitchen of the barracks, sir.

---

[88] TSN, June 11, 2008, pp. 9-10.

Q After that certain Roque told to PO3 Pascual that they went to have a drink and when they went back at the farm they saw two (2) men at the dirty kitchen, what happened next?

A Roque described the appearance of the two (2) men whom he saw at the dirty kitchen, one of them was tall, thin wearing hat with a brim and the other man was short and stout, sir.[89]

Against the inconsistent statements of the lone eyewitness, accused-appellant's evidence establishing his alibi gains significance and is, indeed, more credible. Accused-appellant testified that he was in the barangay hall of Brgy. Dupitac, Piddig, Ilocos Norte from 10:00 P.M. of February 26, 2005 until 2:00 A.M. of the following day and that the crimes were committed in Brgy. Sta. Maria, Piddig, Ilocos Norte.[90] He also testified that it would take an hour to travel from Brgy. Dupitac to Brgy. Sta. Maria using a motorcycle.[91] He testified as follows:

Q Now, Mr. Witness, you mentioned that you were at the barangay hall of Brgy. Dupitac, Piddig, Ilocos Norte from 10:00 P.M. of February 26, 2005 until 2:00 of the following day and you also mentioned that the crimes were committed in Sta. Maria, Piddig, Ilocos Norte, kindly tell us the distance between Brgy. Dupitac to Brgy. Sta. Maria?

A Less than ten (10) kilometers, sir.

Q And if you travel from Brgy. Dupitac to Sta. Maria by foot, how long will it take you?

A I don't know I haven't yet experience (sic) walking going to Brgy. Dupitac from St[a]. Maria, sir.

Q How about if you ride on a motorcycle, how long it will take you to travel from Brgy. Dupitac to St[a]. Maria?

A It takes you more than one (1) hour because you pass through mountains and you also have to pass around, sir.[92]

---

[89] TSN, July 23, 2008, pp. 7-8.

[90] TSN, April 28, 2009, p. 7.

[91] *Id*. at 8.

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

The fact that accused-appellant was in another barangay attending social dance from around 9:00 P.M. of February 26, 2005 until the early morning of the next day was corroborated by the testimony of Norman Pablo,[93] who was with accused-appellant in attending the social dance.[94]

That is not all. The defense also presented the testimony of Noel Esteban, the barangay chairman of Brgy. Sta. Maria, who also testified that he saw accused-appellant in the social dance many times between 9:30 P.M. to 2:15 A.M., thus:

> Q Between 9:30 to 2:15 in the morning, how many times did you see Joel Domingo?
>
> A I have seen them many times because I could directly [see] the place where they were seated in the camarin, your Honor[.][95]

The foregoing testimonies convince the Court that accused-appellant could not have committed the crime. Bareng's testimony, given its material inconsistencies, cannot be given full faith and credit. Accused-appellant, on the other hand, was able to prove his alibi. "[W]here, as in the cases at bar, the evidence for the prosecution is inherently weak and betrays lack of concreteness on the question of whether or not appellants are the authors of the crimes charged, alibi as a defense becomes significant."[96] As the Court held in *People v. Pampaluna*:[97]

> As a consequence of Our finding that Besa's testimony does not deserve full faith and credit, appellants' defense of *alibi* assumes importance since there is a total absence of positive and clear proof that the appellants were the ones responsible for the crimes charged in the information which gave rise to the instant appeal. Of course, We have time and time again stressed that *alibi* is the weakest of all defenses. It is easy to concoct, difficult to disprove (*People vs.*

---

[93] TSN, August 6, 2008, pp. 5, 7.

[94] *Id*.; TSN, April 28, 2009, p. 8.

[95] TSN, March 24, 2009, p. 14.

[96] *People v. Pampaluna*, 185 Phil. 567, 592-593 (1980).

[97] *Id*.

Cunanan, L-17599, April 24, 1967, 19 SCRA 769, 783, citing *U.S. vs. Olais*, 36 Phil. 828, 829; *People vs. Pili*, 51 Phil. 965, 966; *People vs. Dizon*, 76 Phil. 265, 272; *People vs. Bautista*, L-17772, Oct. 31, 1962, 6 SCRA 522, 529; *People vs. Dayday*, L-20806 & L-20807, Aug. 14, 1965, 14 SCRA 935, 942). Nonetheless, where, as in the cases at bar, the evidence for the prosecution is inherently weak and betrays lack of concreteness on the question of whether or not appellants are the authors of the crimes charged, alibi as a defense becomes significant. It is noteworthy to reiterate here what former Justice J.B.L. Reyes, speaking for this Court in the case of *People vs. Fraga, et al.* (L-12005, Aug. 31, 1960, 109 Phil. 241, 250), said: "The rule that alibi must be satisfactorily proven was never intended to change the burden of proof in criminal cases; otherwise, we will see the absurdity of an accused being put in a more difficult position where the prosecution's evidence is vague and weak than where it is strong." (Cited also in *People vs. Bulawin*, 29 SCRA 710, 722).[98]

WHEREFORE, premises considered, the Appeal is hereby **GRANTED.** The Decision of the Court of Appeals dated May 31, 2012 in CA-G.R. CR-H.C. No. 04278 is hereby **SET ASIDE**. The dismissal of Criminal Cases Nos. 11741-14, 11742-14 and 11743-14 by the Regional Trial Court of Laoag City, Branch 14 in its Order dated February 7, 2007 is hereby declared final and accused-appellant Joel Domingo is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to the Court, within five (5) days from receipt of this Decision, the action he has taken. Let a copy of this Decision be sent also to the Secretary of Justice for his information.

SO ORDERED.

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

---

[98] *Id*. at 592-593.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

FIRST DIVISION

[G.R. No. 211118. March 21, 2018]

IN THE MATTER OF THE PETITION FOR ADMISSION TO CITIZENSHIP OF MANISH C. MAHTANI, MANISH C. MAHTANI, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CITIZENSHIP BY NATURALIZATION; COMMONWEALTH ACT NO. 473 (REVISED NATURALIZATION LAW); NATURALIZATION LAWS SHOULD BE RIGIDLY ENFORCED AND STRICTLY CONSTRUED IN FAVOR OF THE GOVERNMENT AND AGAINST THE APPLICANT, COROLLARILY, THE BURDEN OF PROOF RESTS UPON THE APPLICANT TO SHOW FULL AND COMPLETE COMPLIANCE WITH THE REQUIREMENTS OF LAW.— This Court takes this occasion to once again emphasize that admission to citizenship is one of the highest privileges that our Republic can confer upon an alien. It is everyone's duty, especially the courts, to ensure that this valuable privilege be not bestowed except upon person fully qualified for it, and upon strict compliance with the law. In as early as the 1960's, We have already been strict in the adjudication of an application for conferment of citizenship. We have consistently held that in matters of privilege, no presumption can be indulged in favor of a claimant. Neither is the absence of opposition an excuse for scrutinizing attentively the records of a petition for naturalization. Courts must always be mindful that naturalization proceedings are imbued with the highest public interest. The courts are mandated to see to it that the letter and spirit of the law are satisfied beyond any doubt.Thus, naturalization laws should be rigidly enforced and strictly construed in favor of the government and against the applicant. Corollarily, the burden of proof rests upon the applicant to show full and complete compliance with the requirements of law.

2. ID.; ID.; ID.; ID.; ID.; THE CONCEPT OF A LUCRATIVE TRADE, PROFESSION, OR LAWFUL OCCUPATION IN

THE CONTEMPLATION OF LAW SPEAKS OF ADEQUACY AND SUSTAINABILITY; NOT ESTABLISHED IN CASE AT BAR.—Jurisprudence is to the effect that the requirement of "some known lucrative trade, profession, or lawful occupation means not only that the person having the employment gets enough for his ordinary necessities in life." Neither does it simply mean that one is engaged in a trade, profession, or occupation which gives him and his family the luxuries in life or enables him and his family to have a way of living above an average person. As aptly put by this Court in *Rep. of the Phils. v. Ong*: It must be shown that the employment gives one an income such that there is an *appreciable margin of his income over his expenses* as to be able to provide for an adequate support in the event of unemployment, sickness, or disability to work and thus avoid ones becoming the object of charity or a public charge. After judiciously scrutinizing the records of this case, We find nothing herein that would support his claim that he has a lucrative occupation. Admittedly, Mahtani did not provide any documentary evidence that would show his actual financial status, which would support such finding. x x x The presentation of his income tax return on his motion for reconsideration before the CA will not help his case even if We consider the same despite being belatedly presented. x x x Considering the costly lifestyle that Mahtani is trying to impress to the courts with such income, We are constrained to conclude that while the same may have been sufficient to fufill his and his family's basic needs and comfort, again, there is no ample proof that it was enough to create an appreciable margin of income over expenses.The concept of a lucrative trade, profession, or lawful occupation in the contemplation of law speaks of adequacy *and* sustainability.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for petitioner.

The Solicitor General for respondent.

D E C I S I O N

TIJAM, *J.*:

This Petition for *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated August 1, 2013 and Resolution[3] dated January 28, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 97125, which reversed and set aside the Decision[4] dated April 26, 2011 of the Regional Trial Court (RTC) of Pasig City, Branch 153 in Naturalization Case No. 847-TG.

On January 2, 2007, Manish C. Mahtani (Mahtani), a citizen of the Republic of India, filed a Declaration of Intent to become a citizen of the Philippines with the Office of the Solicitor General (OSG).

On April 18, 2008, Mahtani filed a Petition for Naturalization[5] dated April 15, 2008, which alleged that:

(i) His present address is 224 San Jose St., Ayala Alabang Village, Muntinlupa City and he transferred thereat on (sic) November 2007;

(ii) He previously resided at (i) 1582 Cypress Street, Dasmariñas Village, Makati City; (ii) 1614 Cypress Street, Dasmariñas Village, Makati City; (iii) 1626 Cypress Street, Dasmariñas Village, Makati City; (iv) 2402 Mabolo Street, Dasmariñas Village, Makati City; (v) 15C South, Pacific Plaza Tower, Fort Bonifacio, Taguig City; and (vi) 20C Lawton Tower, Essensa Condominium, 21st Drive corner 5thAvenue, Fort Bonifacio, Taguig City;

(iii) He was born on 4 August 1970 in Bombay, Republic of India. He is currently a citizen of the Republic of India;

---

[1] *Rollo*, pp. 26-45.

[2] Penned by Associate Justice Agnes Reyes-Carpio, concurred in by Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla; *id*. at 47-54.

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

[4] Rendered by Judge Briccio C. Ygaña; *id*. at 304-312.

[5] *Id*. at 64-69.

(iv) He is married to Anna (Ana) Patricia Celdran-Mahtani with whom he has (3) children;

(v) His child, Adriana Ysabel, currently studies at Rosemont School, which is an extension of Woodrose School, a school recognized by the Department of Education, Culture, and Sports. His other two (2) daughters, Amala Mireya and Anisha Solana, are not yet of school age;

(vi) He first arrived in the Philippines with his mother, Vandana Chandru Mahtani, on 21 May 1971 on board Philippine Airlines Flight No. PR 307 when he was nine (9) months old. He returned to India shortly thereafter and pursued his studies there. He would, however, visit the Philippines every so often;

(vii) He has continuously resided in the Philippines for more than fifteen (15) years since 21 August 1992 – the date when he arrived to establish his permanent residence in the Philippines;

(viii) He is of good moral character and believes in the principles underlying the Philippine Constitution;

(ix) He has conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relation with the constituted government as well as the community in which he lives in;

(x) He is engaged in a lawful lucrative occupation. He is currently the Vice-President for Operations of Sprint International, Inc., which is the importer, manufacturer, and exclusive distributor of Speedo swimwear and athletic gear in the Philippines;

(xi) He speaks and writes fluent English and Filipino;

(xii) He is not opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized governments;

(xiii) He neither defends nor teaches the necessity or propriety of violence, personal assault, or assassination for the success and predominance of one's ideas;

(xiv) He is not a polygamist or a believer in the practice of polygamy;

(xv) He has not been convicted of a crime involving moral turpitude, or any other crime for that matter;

(xvi) He is not suffering from mental alienation or incurable contagious diseases;

(xvii) He has done his best, during the period of his residence in the Philippines, to mingle socially with Filipinos, and to evince a sincere desire to learn and embrace the customs, traditions and ideals of Filipinos;

(xviii) He is a citizen of the Republic of India, which is not at war with the Philippines and whose laws grant Filipinos the right to become naturalized citizens or subjects thereof;

(xix) He is currently a holder of a Special Resident Retiree's Visa No. 887 issued by the Philippine Retirement Authority (PRA). By virtue of Executive Order No. 1037 and its implementing rules and regulations, he is exempted from securing an Alien Certificate of Registration or any other registration required from aliens by the Board of Investments (BOI);

(xx) It is his intention in good faith to become a citizen of the Philippines and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to the Republic of India of which he is a citizen at this time; and

(xxi) He will continue to reside in the Philippines from the date of the filing of his petition up to the time of his admission to Philippine citizenship.[6]

In a Decision[7] dated April 26, 2011, the RTC of Pasig City, Branch 153, granted the petition. According to the RTC, it appears that Mahtani has all the qualifications and none of the disqualifications required under the law to become a naturalized Filipino citizen. The RTC found, among others: that Mahtani was already 37 years old when the petition was filed; that he had met the residency requirement; that he has three children, two of which are studying in Paref Rosemont School, a school recognized and accredited by the Department of Education,

---

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

[7] *Id*. at 304-312.

Culture, and Sports, which teaches Philippine history, government and civics as part of its curriculum; that he speaks fluent Filipino and English and is gainfully employed as Vice President of Operations of Sprint International, Inc.; that he is a person of good moral character and believes in the principles underlying the Philippine Constitution, and have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relation with the constituted government as well as with the community in which he is living; that he is not opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized government and does not defend or teach the necessity or propriety of violence personal assault, or assassination for the success and predominance of their ideas; that he is not a polygamist or believes in the practice of polygamy; that he was not convicted of any crime, which was proven by the Certifications issued by the concerned courts and government agencies; that he does not suffer from mental alienation or incurable contagious diseases as testified to by Mahtani himself and his family friend doctor, Dr. Melchor B. Tuquero (Dr. Tuquero); that he mingled socially with Filipinos and has evinced a sincere desire to learn and embrace the customs, traditions, and ideals of the Filipinos; that he has established business connections and built special friendships with distinguished citizens of the country, notably, Mr. Ernesto Lopez (Mr. Lopez) of the prominent Lopez clan and Dr. Tuquero, among others; and that Mr. Lopez and Dr. Tuquero have attested to Mahtani's good moral character not only in their Affidavits but also in open court while no substantial evidence to the contrary has been adduced by the OSG.[8]

The RTC disposed, thus:

> WHEREFORE, finding the Petition for Admission To Philippine Citizenship to be meritorious, the same is hereby GRANTED. [MAHTANI] is hereby admitted as a Filipino citizen.

---

[8] *Id.* at 310-312.

Pursuant to Commonwealth Act No. 473, as amended, [MAHTANI] shall be allowed to take his oath of allegiance two (2) years after this Decision shall have become final and executory, and after the finding of this Court, upon due hearing, with Notice to the Office of the Solicitor General that, during the intervening time: (1) the petitioner has not left the Philippines; (2) has dedicated himself continuously to a lawful calling or profession; (3) has not been convicted of any offense or violation of government promulgated rules; or (4) committed any act prejudicial to the interest of the nation or contrary to any government policies.

SO ORDERED.[9]

On appeal, the Republic of the Philippines (the Republic), through the OSG, faulted the RTC for granting the petition despite Mahtani's failure to prove that he has a lucrative trade, profession, or occupation. Also, the Republic averred that Mahtani failed to present credible persons as character witnesses.

The Republic argued that while Mahtani may have proved that he is employed as the Vice President for Operations of Sprint International, Inc., he failed to present any evidence to support that he is engaged in a "lucrative" occupation, except his own testimony. More specifically, the Republic pointed out that no documentary evidence was presented to prove this requirement, citing jurisprudence that states, in effect, that the testimony of a petitioner for naturalization, together with the testimonies of the witnesses, sans documentary evidence are not sufficient to prove material allegations as regards the statutory qualifications.[10]

Moreover, the Republic averred that Mahtani failed to present evidence that he has been paying taxes to the government, which is not only related to the requirement of having a lucrative occupation but also to the requirement of conducting himself in a proper and irreproachable manner during the entire period of his residence in the Philippines, citing *Co v. Republic of the*

---

[9] *Id.* at 312.

[10] See *In Re: Petition for Admission as Citizens of the Phils., Shewak A. Keswani and Kavita S. Keswani v. Rep. of the Phils.*, 551 Phil. 582 (2007).

Philippines[11] wherein the Court pronounced that failure to file an income tax return (ITR) is an indication that the petitioner has not conducted himself properly in relation with the government.[12]

The Republic also questioned the sufficiency of the testimonies of the character witnesses presented by Mahtani. The Republic posited that Mr. Lopez and Dr. Tuquero's testimonies were deficient to prove that Mahtani has conducted himself in an irreproachable manner during his entire stay in the Philippines considering that they get to know him only during periodic visits and meetings.[13]

For his part, Mahtani averred that the word "lucrative" under the provision refers only to "trade" and not to "profession" or "lawful occupation", hence, he need prove that his lawful occupation is lucrative. Even assuming arguendo that a petitioner's lawful occupation must be lucrative, he has presented enough evidence to prove the same. According to Mahtani, the term "lucrative" in the Revised Naturalization Law means that "his income permits him and the members of his family to live with reasonable comfort, in accordance with the prevailing standard of living, and consistently with the demands of human dignity, at this stage of our civilization." Hence, it is Mahtani's position that the following pieces of evidence that he presented are sufficient proof that his occupation permits him and his family to live with reasonable comfort, to wit: (1) his testimony that (a) he is the Vice President of Sprint International, Inc.; (b) he resides in Ayala Alabang, an exclusive and first class subdivision; and (c) his children go to Rosemont School, a private elementary school, and also (2) Mr. Lopez's testimony that (a) they were members of the Entrepreneurs Organization, an international business and have sales of at least US$100 Million; (b) they play squash around once a week at exclusive clubs in

---

[11] 108 Phil. 265 (1960).

[12] *Id.* at 269.

[13] *Id.* at 329-331.

Metro Manila like the Manila Polo Club, the Rockwell Club, and the Pacific Plaza; and (c) that Mr. Lopez is an accomplished and renowned individual in the business community, who will not risk tainting his good reputation by untruthfully endorsing and testifying that Mahtani has a lucrative trade and profession; and (3) the following documentary evidence: (a) Mahtani's Alien Employment Permit issued by the Department of Labor and Employment, as the issuance of the same requires that engagement in a gainful employment; (b) Mahtani's Special Resident Retiree's Visa, which is only granted to a foreign individual 35 to 49 years old when he has put up a deposit of at least US$50,000 which shall be remitted to a Philippine Retirement Authority accredited bank.[14]

In its assailed August 1, 2013 Decision,[15] the CA reversed the RTC ruling, finding that Mahtani failed to prove an essential qualification, *i.e.*, that he has a lucrative occupation and that there is no showing that he paid taxes due to the government, thus:

WHEREFORE, the appeal is **GRANTED**. The Decision dated April 26, 2011 of the [RTC], Branch 153, Pasig City, is **REVERSED and SET ASIDE**. Accordingly, Naturalization Case No. 847-TG is **DISMISSED**.

SO ORDERED.[16]

On Motion for Reconsideration with Motion to Take Judicial Notice,[17] Mahtani insisted that the law does not require a "lawful occupation" to be "lucrative" under the principles of statutory construction. Nonetheless, it is his position that he was able to sufficiently prove that his occupation is lucrative under the prevailing standard of living. He argued that it is not necessary to present proof of income in terms of actual amount of money

---

[14] *Id*. at 355-358.

[15] *Id*. at 47-54.

[16] *Id*. at 54.

[17] *Id*. at 369-385.

earned on a monthly or yearly basis to prove that one has a lucrative occupation as in fact, this could be better demonstrated by a person's actual lifestyle or living condition.[18] Hence, it is Mahtani's theory that his allegations as regards the circumstances of his place of residence, his daughters' education, memberships in civic organizations, social interactions, his Alien Employment Permit, and Special Resident Retiree's Visa, are clear proof that he has lucrative occupation.

In this motion, Mahtani also argued that there is no provision in the law that requires an applicant for naturalization to present proof that he has made his tax payments.[19] Nevertheless, he submitted copies of his income tax returns during fiscal years 2006 to 2013, which shows that from 2006 to 2008, he was earning ₱620,000 annually while for the years 2009 to 2012, he was earning ₱682,375 annually, which are much higher than an average income during the period.[20]

The CA, however, denied Mahtani's motion for reconsideration, finding no compelling reasons or substantial arguments to reconsider its August 1, 2013 Decision, thus:

WHEREFORE, the Motion for Reconsideration (with Motion to Take Judicial Notice) is **DENIED**.

SO ORDERED.[21]

Hence, this petition.

Essentially, the only issue for Our resolution is: was Mahtani able to prove that he has some known lucrative trade, profession or lawful occupation in accordance with Section 2, paragraph 4 of Commonwealth Act No. 473 as amended?

We resolve.

---

[18] *Id*. at 371.

[19] *Id*. at 377.

[20] *Id*. at 379-380.

[21] *Id*. at 60.

This Court takes this occasion to once again emphasize that admission to citizenship is one of the highest privileges that our Republic can confer upon an alien. It is everyone's duty, especially the courts, to ensure that this valuable privilege be not bestowed except upon person fully qualified for it, and upon strict compliance with the law. In as early as the 1960's, We have already been strict in the adjudication of an application for conferment of citizenship. We have consistently held that in matters of privilege, no presumption can be indulged in favor of a claimant. Neither is the absence of opposition an excuse for scrutinizing attentively the records of a petition for naturalization.[22] Courts must always be mindful that naturalization proceedings are imbued with the highest public interest. The courts are mandated to see to it that the letter and spirit of the law are satisfied beyond any doubt.[23] Thus, naturalization laws should be rigidly enforced and strictly construed in favor of the government and against the applicant. Corollarily, the burden of proof rests upon the applicant to show full and complete compliance with the requirements of law.[24]

Guided by the foregoing, We find that Mahtani indeed failed to prove that the requirement under Section 2, Paragraph 4 of Commonwealth Act No. 473 as amended was complied with.

Jurisprudence is to the effect that the requirement of "some known lucrative trade, profession, or lawful occupation means not only that the person having the employment gets enough for his ordinary necessities in life."[25] Neither does it simply mean that one is engaged in a trade, profession, or occupation which gives him and his family the luxuries in life or enables him and his family to have a way of living above an average person. As aptly put by this Court in *Rep. of the Phils. v. Ong*:[26]

---

[22] *Lee Ng Len v. Rep. of the Phils.*, 121 Phil. 506, 509 (1965).

[23] *Id*.

[24] *Rep. of the Phils. v. Ong*, 688 Phil. 136, 139 (2012).

[25] *Id*. at 150.

[26] 688 Phil. 136 (2012).

It must be shown that the employment gives one an income such that there is an *appreciable margin of his income over his expenses* as to be able to provide for an adequate support in the event of unemployment, sickness, or disability to work and thus avoid ones becoming the object of charity or a public charge.[27] (Citation omitted)

After judiciously scrutinizing the records of this case, We find nothing herein that would support his claim that he has a lucrative occupation. Admittedly, Mahtani did not provide any documentary evidence that would show his actual financial status, which would support such finding. At most, the evidence presented by Mahtani merely proves that he and his family live in comfort or that their cost of living is above that of an average person or family. In simple terms, what Mahtani accomplished to demonstrate with the pieces of evidence that he presented are just "expenses", nothing more. As it appears, Mahtani's income may be sufficient to meet his family's basic needs, but there is simply no sufficient proof that it is enough to create an appreciable margin of income over expenses.[28]

In the first place, it bears stressing that he did not present anything to apprise the courts *a quo* of his income or financial status. Moreover, the testimonies of Mr. Lopez and Dr. Tuquero, likewise, cannot be considered as ample proof of Mahtani's claimed gainful occupation as required under the law. To be sure, doing business and socializing with prominent personalities do not, in any way, satisfy such strict requirement of the law.

The presentation of his income tax return on his motion for reconsideration before the CA will not help his case even if We consider the same despite being belatedly presented. As correctly pointed out by the OSG, it appears on the said tax returns that Mahtani's income ranges from ₱620,000 to ₱715,000 annually or ₱51,000 to ₱60,000 per month. Considering the costly lifestyle that Mahtani is trying to impress to the courts with such income, We are constrained to conclude that while

---

[27] *Id*. at 150-151.

[28] *Id*. at 154.

the same may have been sufficient to fufill his and his family's basic needs and comfort, again, there is no ample proof that it was enough to create an appreciable margin of income over expenses.

The concept of a lucrative trade, profession, or lawful occupation in the contemplation of law speaks of adequacy *and* sustainability. A careful review of the records available in this case constrains Us to sustain the CA's ruling that Mahtani has not proven his possession of a known lucrative trade, profession, or lawful occupation to qualify for naturalization.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated August 1, 2013 and Resolution dated January 28, 2014 of the Court of Appeals in CA-G.R. CV No. 97125 are hereby **AFFIRMED**. The Petition for Naturalization of Manish C. Mahtani is **DENIED** for failure to comply with Section 2, Paragraph 4, of Commonwealth Act No. 473, as amended.

SO ORDERED.

Leonardo-de Castro[*] (*Acting Chairperson*), *Leonen*,[**] and *Reyes, Jr.*,[***] *JJ.*, concur.

Sereno, C.J., on leave.

---

[*] Designated as Acting Chairperson pursuant to Special Order No. 2540 dated February 28, 2018.

[**] Designated additional Member per Raffle dated March 12, 2018 *vice* Associate Justice Francis H. Jardeleza.

[***] Designated additional Member per Raffle dated February 28, 2018 *vice* Associate Justice Mariano C. Del Castillo, no part due to his close relation to a member of the law firm representing a party.

FIRST DIVISION

[G.R. Nos. 217985-86. March 21, 2018]

APO FRUITS CORPORATION, *petitioner, vs.* **THE LAND BANK OF THE PHILIPPINES and DEPARTMENT OF AGRARIAN REFORM,** *respondents.*

[G.R. Nos. 218020-21. March 21, 2018]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **APO FRUITS CORPORATION,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; POWERS OF THE STATE; EMINENT DOMAIN; MANDATORY REQUIREMENTS BEFORE THE GOVERNMENT CAN EXERCISE THE RIGHT OF EMINENT DOMAIN, ENUMERATED.—** "The right of eminent domain is the ultimate right of the sovereign power to appropriate, not only the public but the private property of all citizens within the territorial sovereignty, its public purpose." There are two mandatory requirements before the government may exercise such right, namely: 1) that it is for a particular public purpose; and (2) that just compensation be paid to the property owner. "Notably, in agrarian reform cases, the taking of private property for distribution to landless farmers is considered to be one for public use."

2. **ID.; ID.; ID.; ID.; JUST COMPENSATION; DEFINED AND CONSTRUED.—** In the case of *National Power Corporation v. Spouses Zabala*, this Court defined just compensation as: Just compensation has been defined as "the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word 'just' is used to qualify the meaning of the word 'compensation' and to convey thereby the idea that the amount to be tendered for the property to be taken shall be real, substantial, full and ample. Further, in *LBP v. Avanceña*, the Court states that: Just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered

just inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.

3. ID.; ID.; ID.; ID.; ID.; AWARD OF INTEREST; THE AWARD OF LEGAL INTEREST IS PROPER DUE TO THE DELAY IN FULLY SATISFYING THE PAYMENT OF JUST COMPENSATION; CASE AT BAR.— The award of interest is intended to compensate the property owner for the income it would have made had it been properly compensated for its property at the time of the taking. "The need for prompt payment and the necessity of the payment of interest is to compensate for any delay in the payment of compensation for property already taken." "The award of interest is imposed in the nature of damages for delay in payment which, in effect, makes the obligation on the part of the government one of forbearance to ensure prompt payment of the value of the land and limit the opportunity loss of the owner." In the recent case of *Land Bank of the Philippines v. Phil-Agro Industrial Corporation*, We had the occasion to rule that the mere fact that the LBP made an initial payment of the just compensation does not mean that the government is not liable for any delay in the payment of just compensation, x x x In the present case, LBP merely deposited the amount of Php 3,814,053.53 as initial payment of the just compensation. The RTC's valuation in its decision as just compensation for the subject property is Php 149,783,000.27. There is a staggering difference between the initial payment made by the LBP and the amount of the just compensation due to Apo. It should be noted that the subject property has already been taken by the government on December 9, 1996. Up to this date, the just compensation has not been fully paid. During the interim, Apo is deprived of the income it would have made had it been properly compensated for the properties at the time of the taking. It is therefore necessary to hold LBP liable to pay for the legal interest due to its delay in fully satisfying the payment of the just compensation. Thus, LBP is liable to pay legal interest of 12% counted from December 9, 1996, the time of the taking until June 30, 2013. Thereafter, or beginning July 1, 2013 until fully paid, the just compensation shall earn 6% legal interest in accordance with Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, Series of 2013.

4. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; THE AWARD OF ATTORNEY'S FEES IS JUSTIFIED DUE TO THE PARTY'S REFUSAL TO SATISFY THE CLAIMS WHICH FORCED THE OTHER PARTY TO LITIGATE IN ORDER TO PROTECT THE LATTER'S PROPERTY RIGHTS; CASE AT BAR.— As to the award of attorney's fees, while the general rule is that attorney's fees cannot be recovered as part of the damages because no premium should be placed on the right to litigate, We deem it proper to affirm the award of 10% attorney's fees in favor of Apo. x x x It must be emphasized that the subject property has been transferred in the name of the government as early as December 9, 1996 despite Apo's rejection of LBP's valuation of the subject property. To make matters worse, when Apo filed a complaint for determination of just compensation with the DARAB, the latter unjustifiably and without any reason failed to act upon the complaint for almost six years, thus, prompting Apo to file a complaint with the RTC for determination of just compensation. Further, despite the ruling that the valuation of the subject property is Php 130.00, LBP still maintained its conviction that only the amount of Php 16.50 per square meter is due to Apo. The award of attorney's fees is justified by LBP's refusal to satisfy Apo's valid claim which forced the latter to litigate to protect its property rights.

APPEARANCES OF COUNSEL

Villaraza & Angangco for APO Fruits Corporation.
Dar Legal Affairs Office for Department of Agrarian Reform.
Lbp Legal Services Group for Land Bank.

D E C I S I O N

TIJAM, *J.*:

Before Us are the separate Petitions for Review on *Certiorari*[1] filed by Apo Fruits Corporation (Apo) and Land Bank of the

[1] *Rollo* (G.R. Nos. 217985-86), pp. 11-49; *rollo* (G.R. Nos. 218020-21), pp. 12-69.

Philippines (LBP) assailing the Decision[2] dated September 25, 2012 and Resolution[3] dated April 21, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 00633-MIN and CA-G.R. SP No. 00656-MIN.

The Antecedent Facts

Apo was the registered owner of a 115.2179 hectare land situated in San Isidro, Tagum City, Davao del Norte covered by Transfer Certificate of Title (TCT) No. T-113359 (subject property).[4]

On October 12, 1995, Apo voluntarily offered to sell the subject property to the government for purposes of the Comprehensive Agrarian Reform Program (CARP). In processing Apo's voluntary offer of sale (VOS) application, the latter was referred to LBP for initial valuation of the subject property.[5]

On October 16, 1996, Apo received from the Department of Agrarian Reform (DAR) Provincial Agrarian Reform Office (PARO) in Davao a Notice of Land Valuation and Acquisition informing Apo that the value of the subject property was Php 16.5484 per square meter or only for the total amount of Php 165,484.47 per ha.[6] Finding the said valuation low, Apo rejected the offer.[7]

Meanwhile, the DAR requested LBP to deposit the amount of Php 3,814,053.53 as initial payment for the subject property, at the rate of Php 3.3102 per sq m.[8] Thereafter, the PARO directed the Register of Deeds of Tagum City to cancel TCT No. 113359.

---

[2] Penned by Associate Justice Edgardo A. Camello, concurred in by Associate Justices Marilyn B. Lagura-Yap and Renato C. Francisco; *rollo* (G.R. Nos. 218020-21), pp. 76-89.

[3] *Id*. at 91-97.

[4] *Id*. at 77.

[5] *Id*.

[6] *Rollo* (G.R. Nos. 217985-86), p. 14.

[7] *Rollo* (G.R. Nos. 218020-21), p. 77.

[8] *Rollo* (G.R. Nos. 217985-86), p. 14.

On December 9, 1996, TCT No. 113359 was cancelled and the subject property was transferred in the name of the Republic of the Philippines. Corollarily, several Certificates of Land Ownership (CLOAs) were issued in favor of farmer-beneficiaries.[9]

Not satisfied with the valuation of LBP, Apo filed a complaint for determination of just compensation with the Department of Agrarian Reform Adjudication Board (DARAB). Unfortunately, the said case remained pending for almost six (6) years without resolution.[10]

Apo then filed a Complaint[11] on June 20, 2002 for determination of just compensation before the Regional Trial Court (RTC) of Tagum City, Branch 2, acting as a special agrarian court (SAC). The said complaint was docketed as Agrarian Case No. 77-2002.[12]

During the proceedings, the RTC appointed Atty. Susan L. Rivero, Mrs. Lydia Gonzales and Mr. Alfredo Silawan as commissioners to ascertain the just, fair and reasonable value of the subject property.[13]

On April 24, 2004, the commissioners submitted a Report[14] finding a valuation of Php 134.42 per sq m.[15] The commissioners relied on its "research gathering of primary data from concerned line agencies, the plaintiff and other sources such as the Tax Declaration, Deeds of Sale of properties found near or adjacent to the properties to be valuated."[16] Further, upon ocular inspection, the commissioners found that the subject property was planted with commercial bamboos.[17] The commissioners

---

[9] *Id*. at 14-15.

[10] *Id*. at 15.

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

[12] *Id*.

[13] *Id*. at 17.

[14] *Id*. at 120-130.

[15] *Id*. at 129.

[16] *Id*. at 127.

[17] *Id*. at 123.

took into consideration the Php 130.00 appraisal of Apo's own assessment done by Cuervo Appraisers Inc. Since the Php 134.42 value determined by the commissioners was even higher than the Php 130.00 valuation of Apo's own appraisers, the commissioners recommended the amount of Php 130.00 per sq m or the amount of Php 149,783,000.00 for the entire 115.2179 has as just compensation.[18]

Ruling of the RTC

On February 25, 2005, the RTC rendered a Decision[19] adopting the findings of the commissioners, thus:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of [Apo] and against [DAR and LBP] ordering the latter:

1. To pay[Apo] jointly and severally the just compensation of the land subject of this proceeding in the total amount of One Hundred Forty-Nine Million Seven Hundred Eighty-Three Thousand and 27/100 (₱149,783,000.27) Pesos;

2. To pay [Apo] jointly and severally interest on the said amount of ₱149,783,000.27 based on the interest rate of a 91-day treasury bills from December 9, 1996 until fully paid;

3. To pay the panel of commissioners jointly and severally commissioners' fees at the rate of 2 ½ percent of the total sum of ₱149,783,000.27 taxed as part of the cost as provided: for in Section 12, Rule 67 of the 1997 Rules of Civil Procedure, as amended;

4. To pay [Apo] jointly and severally the equivalent of 10% of the total amount of ₱149,783,000.27 as attorney's fees; and

5. To pay the costs of the suit.

SO ORDERED.[20]

---

[18] *Id*. at 127 and 129.

[19] Rendered by Judge Justino G. Aventurado; *rollo* (G.R. Nos. 218020-21), pp. 151-161.

[20] *Id*. at 161.

The separate motions for reconsideration filed by LBP and DAR were denied by the RTC in its Order[21] dated September 7, 2005.

Ruling of the CA

Aggrieved, LBP and DAR filed separate Petitions for Review before the CA. On September 5, 2006, the CA consolidated the two cases. Thus, on September 25, 2012, the CA rendered a Decision[22] modifying the RTC decision, the *fallo* thereof reads:

> **ACCORDINGLY**, the petitions for review are DENIED. The February 25, 2005 Decision and September 7, 2005 Resolution of [RTC] are AFFIRMED with MODIFICATIONS. We rule that:
>
> 1. The just compensation is set at ₱103.33 per [sq m]. There shall be 12% interest *per annum* on the unpaid balance of the just compensation, computed from December 9, 1996, the date when the Government took the land, to May 9, 2008, the time when [LBP] paid the balance on the principal amount, following the Supreme Court Decision and Resolution in *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, dated February 6, 2007 and October 12, 2010, respectively;
>
> 2. The case is remanded to the [RTC] for the proper determination of commissioners' fees;
>
> 3. [LBP] and [DAR] are liable, jointly and severally for attorney's fees equivalent to 10% of the total amount of the just compensation for the 115.2179 [has] of land.
>
> 4. Costs against [LBP] and [DAR].
>
> **SO ORDERED.**[23]

The motions for reconsideration filed by LBP, DAR and Apo were denied by the CA in its Resolution[24] dated April 21, 2015.

Hence, the instant petitions.

---

[21] *Id*. at 162-166.

[22] *Id*. at 76-89.

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

[24] *Id*. at 91-97.

The Issues

Apo raised the following assignment of errors in its Petition:

I. WHETHER THE [CA] FAILED TO ACT IN ACCORDANCE WITH LAW AND JURISPRUDENCE WHEN IT DISREGARDED THE PHP 130.00 PER [SQ M]-VALUATION OF THE SUBJECT PROPERTY RECOMMENDED BY THE PANEL OF COMMISSIONERS AND AFFIRMED BY THE [SAC], UNLIKE WHAT THE HONORABLE COURT DID IN THE CASE OF *APO FRUITS CORPORATION VS. COURT OF APPEALS*, G.R. NO. 164195 DATED 06 FEBRUARY 2007 AND 12 OCTOBER 2010 ("G.R NO. 164195"), WHICH DID NOT DISTURB THE FINDINGS OF THE [SAC] AS TO THE MANNER OF DETERMINING JUST COMPENSATION.

II. WHETHER THE [CA] FAILED TO ACT IN ACCORDANCE WITH LAW AND JURISPRUDENCE WHEN IT ORDERED THAT THE LEGAL INTEREST AT 12% *PER ANNUM* ON THE UNPAID BALANCE OF THE JUST COMPENSATION COMPUTED FROM 09 DECEMBER 1996 (WHEN THE GOVERNMENT TOOK THE SUBJECT PROPERTY) SHOULD END ON 9 MAY 2008, INSTEAD OF CONTINUOUSLY UNTIL FULL PAYMENT SHALL HAVE BEEN MADE BY [LBP].[25]

For its part, LBP raised the following assignment of errors in its petition:

I. WHETHER THE [CA] FAILED TO EXERCISE ITS POWER TO MAKE AN INDEPENDENT DETERMINATION OF JUST COMPENSATION IN ACCORDANCE WITH THE FACTS, APPLICABLE LAWS, RULES AND JURISPRUDENCE IN THE PRESENT CASE.

II. WHETHER THE [CA] UNNECESSARILY DELAYED THE RESOLUTION OF THE PARTIES' MOTIONS FOR RECONSIDERATION.

---

[25] *Rollo* (G.R. Nos. 217985-86), p. 25.

III. WHETHER THE [CA] FAILED TO DETERMINE JUST COMPENSATION STRICTLY IN ACCORDANCE WITH THE DAR ADMINISTRATIVE FORMULA AS MANDATED BY JURISPRUDENCE.

IV. WHETHER THE DETERMINATION OF JUST COMPENSATION SHOULD BE BASED PRIMARILY ON ITS PRODUCTION AND PRICE AS AN AGRICULTURAL LAND INSTEAD OF ITS POTENTIAL USE AS RESIDENTIAL OR INDUSTRIAL LAND.

V. WHETHER LBP IS LIABLE FOR THE PAYMENT OF LEGAL INTEREST DESPITE THE DEPOSIT OF THE INITIAL VALUATION AND OBLIGATED TO IMMEDIATELY RELEASE THE VALUATION DETERMINED BY THE COURTS PENDING THE FINAL DETERMINATION OF JUST COMPENSATION.

VI. WHETHER LBP IS LIABLE FOR THE PAYMENT OF ATTORNEY'S FEES, COST OF SUIT AND COMMISSIONER'S FEES.[26]

Ultimately, the issues to be resolved are 1) whether the CA erred in finding the amount of Php 103.33 per sq m is the just compensation for the subject property contrary to the findings of the commissioners and the RTC, and 2) whether the 12% interest on the unpaid just compensation should be counted from December 9, 1996, the time of the taking until full payment or only until May 9, 2008 as based by the CA in *Apo Fruits Corporation v. CA*, G.R. No. 164195.

Ruling of the Court

"The right of eminent domain is the ultimate right of the sovereign power to appropriate, not only the public but the private property of all citizens within the territorial sovereignty, its public purpose."[27] There are two mandatory requirements before the government may exercise such right, namely: 1) that

---

[26] *Rollo* (G.R. Nos. 218020-21), pp. 28-29.

[27] *Rep. of the Phils. v. Heirs of Saturnino Q. Borbon, et al.*, 750 Phil. 37, 48 (2015).

it is for a particular public purpose; and (2) that just compensation be paid to the property owner.[28] "Notably, in agrarian reform cases, the taking of private property for distribution to landless farmers is considered to be one for public use."[29]

In the case of *National Power Corporation v. Spouses Zabala*,[30] this Court defined just compensation as:

> Just compensation has been defined as "the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word 'just' is used to qualify the meaning of the word 'compensation' and to convey thereby the idea that the amount to be tendered for the property to be taken shall be real, substantial, full and ample.[31]

Further, in *LBP v. Avanceña*,[32] the Court states that:

> Just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered just inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.[33] (Citations omitted)

Apo argued that while the doctrines of law laid down in the case of *Apo Fruits Corporation v. CA*[34] are applicable in the instant case, the amount of valuation of the subject property at Php 103.33 per sq m found by this Court in G.R. No. 164195 is not applicable in the present case. The findings of the

---

[28] *Id*.

[29] *Spouses Mercado v. LBP*, 760 Phil. 846, 856 (2015).

[30] 702 Phil. 491 (2013).

[31] *Id*. at 499-500.

[32] G.R. No. 190520, May 30, 2016, 791 SCRA 319.

[33] *Id*. at 330.

[34] 543 Phil. 497 (2007).

commissioners, which were considered by the RTC in awarding the just compensation of Php 130.00 per sq m due to Apo was based on evidence and standards imposed by law. Apo further claimed that there is basis to consider the valuation of Php 130.00 per sq m as just compensation since the subject property is almost at the heart of Tagum City.[35]

On the other hand, LBP also alleged that the Php 103.33 valuation merely copied by the CA in G.R. No. 164195 should not be adopted in the instant case because the properties involved in the earlier case involve banana plantations while the subject property is planted with bamboo.[36] LBP claimed that the factors to be considered in computing just compensation should be 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, tax declarations and the assessment made by government assessors.[37] LBP argued that the full reliance by the RTC on the commissioner's report based primarily on the market value is inconsistent with Republic Act (R.A.) No. 6657,[38] also known as the Comprehensive Agrarian Reform Law of 1998.[39]

The amount of Php 130.00 per sq m is reasonable and just considering the nature of the property involved.

Section 17 of R.A. No. 6657 provides:

Sec. 17. ***Determination of Just Compensation.*** — In determining just compensation, the cost of acquisition of the land, the current value of the like properties, its nature, actual use and income, the

---

[35] *Rollo* (G.R. Nos. 217985-86), pp. 34 and 39.

[36] *Rollo* (G.R. Nos. 218020-21), p. 32.

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

[38] AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES. Approved on June 10, 1988.

[39] *Rollo* (G.R. Nos. 218020-21), p. 48.

sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall 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.

The RTC provided the following explanations in adopting the Commissioners' Report:

The Court is aware that the Comprehensive Agrarian Reform Law was enacted to promote social justice. Distributing tracts of land to the landless. Nevertheless, it cannot look with favor at the valuation of the Land Bank. The sum of 33,102.96 per hectare is too unjust and unconscionably low. This is the price of grassy, mountainous, unregistered land is hundred kilometers away from Tagum City. But the property in question is located just almost in the heart of Tagum City. As a matter of fact, the old Poblacion of Tagum town, Madaum, is situated in that part. And this very land is ideal for conversion into residential or industrial purposes. If that happens, the price will not anymore be ₱130.00 per [sq m] as recommended by the panel of commissioners but it will be ten fold.

If truth be told, the only thing that hold its owners from such conversion is that this land is the source of bamboos which are used as proppings of the Cavendish bananas growing in the adjacent vast Hijo Plantations which earns by the dollars. Certainly, it will be ludicrously doing violence to everyone's sense of fairness to take that property from those who own it for a song. Situations like this call to mind [in] the words of Abraham Lincoln. Born in a log cabin and the liberator of the slaves of the United States, no doubt, he was one if not the greatest promoter of social justice of all times. Yet he said 'Governments can not enrich the poor by impoverishing the rich". To this Court, that always serves as a guiding light in cases of this sort.

Consequently, this Court views the report of the Panel of Commissioners with ease. It finds its recommendation at ₱130.00 per [sq m] as just and proper.[40]

---

[40] *Rollo* (G.R. Nos. 217985-86), p. 171.

In the case of *Ramon Alfonso v. Land Bank of the Philippines and Department of Agrarian Reform*,[41] this Court ruled that the determination of just compensation is a judicial function. To guide the RTC-SAC in the exercise of its function, Section 17 of R.A. No. 6657 enumerates the factors required to be taken into account to correctly determine just compensation. The law likewise empowers the DAR to issue rules for its implementation. The DAR, thus, issued DAR Administrative Order (A.O) 5-98[42] incorporating the law's listed factors in determining just compensation into a basic formula[43] that contains the details that take these factors into account.[44]

Further, in the recent case of *Land Bank of the Philippines v. Miguel Omengan*,[45] We held that:

Emphatically, the Court En Banc held in the case of *Ramon M. Alfonso v. LBP and Department of Agrarian Reform, and also in LBP, et al. v. Heirs of Lorenzo Tañada and Expedita Ebarle*, that:

> For clarity, we restate the body of rules as follows: The factors listed under Section 17 of RA 6657 and its resulting formulas provide a uniform framework or structure for the computation of just compensation which ensures that the amounts to be paid to affected landowners are not arbitrary, absurd or even contradictory to the objectives of agrarian reform. Until and unless declared invalid in a proper case, the DAR formulas partake of the nature of statutes, which under the 2009

---

[41] G.R. Nos. 181912 & 183347, November 29, 2016.

[42] Revised Rules and Regulations Governing the Valuation of Lands Voluntarily Offered or Compulsorily Acquired Pursuant to Republic Act No. 6657.

[43] LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where:

LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV= Market Value

[44] *Supra* note 41.

[45] G.R. No. 196412, July 19, 2017.

> amendment became law itself, and thus have in their favor the presumption of legality, such that courts shall consider, and not disregard, these formulas in the determination of just compensation for properties covered by the CARP. When faced with situations which do not warrant the formula's strict application, courts may, in the exercise of their judicial discretion, relax the formula's application to fit the factual situations before them, subject only to the condition that they clearly explain in their Decision their reasons (as borne by the evidence on record) for the deviation undertaken. It is thus entirely allowable for a court to allow a landowner's claim for an amount higher than what would otherwise have been offered (based on an application of the formula) for as long as there is evidence on record sufficient to support the award.

The commissioners and the RTC in arriving at their conclusion took into account and meticulously considered the different factors provided for in Section 17 of R.A. No. 6657. The commissioners even found the value of Php 134.42 as just compensation higher than the value determined by the Cuervo Appraisers. The amount of Php 16.5484[46] per sq m as just compensation to Apo's 115.2179 has land is unconscionably low and unjust. It should be noted that the subject property is planted with commercial bamboos and is located almost in the heart of Tagum City.[47] In fact even in the earlier case of Apo, We found that the parcels of land adjacent thereto were sold at a higher rate, specifically from a low of Php 146.02 per sq m to as high as Php 580.00 per sq m.[48]

This Court, thus, finds that the just compensation for the subject property taking into account the distance of the subject property to different landmarks in Tagum City,[49] the fact that it is planted with commercial bamboos, the Average of Sales Data used by the commissioners, the Deeds of Sale of properties

---

[46] *Rollo* (G.R. Nos. 217985-86), p.14.

[47] *Id*. at 171.

[48] *Apo Fruits Corporation v. CA*, *supra* note 34.

[49] *Rollo* (G.R. Nos. 217985-86), pp. 124-125.

found near and adjacent to the subject property, is hereby fixed at Php 130.00 per sq m.

The valuation of Php 103.33 as ruled by the CA, following the pronouncement of this Court in G.R. No. 164195, cannot be adopted in the present case. Note should be taken that while the subject property was mentioned in the said case, the subject property is not included in the cases appealed before this Court in G.R. No. 164195. In the said case, only Agrarian Case No. 54-2000, involving the property of Apo covered by TCT No. 11336 measuring 525.1304 has[50] and Agrarian Case No. 55-2000, involving the property of Hijo Plantation Inc. covered by TCT Nos. 10361, 10362 and 10363 measuring 805.5308 has[51] were resolved by this Court in G.R. No. 164195. While the subject of the instant case is the decision of the RTC in Agrarian Case No. 77-2002 covering the subject property. Thus, it is error to apply in the instant case, the same valuation found by this Court in G.R. No. 164195. Here, the commissioners arrived at a different valuation for the subject property which this Court finds reasonable and just considering the nature of the property involved.

LBP is liable to pay legal interest from the time of the taking of the property until full payment thereof.

The Commission has determined and established that the distances of the property subject matter of this case to the different land marks in Tagum City are as follows:

1. From the National Highway taking the road going to the Home for the Aged in Visayan Village it is 2.8 kilometers, more or less.

2. From Villa Apura Subdivision, a low cost housing subdivision with 369 units it is 1.2 kilometers, more or less.

3. To Nicoles Subdivision, a low cost housing project with at least 15 housing units it is 1.10 kilometers, more or less.

4. To Apo Estate, a proposed multi-million agro-industrial zone, it is 6 kilometers more or less.

[50] *Rollo* (G.R. Nos. 218020-21), p. 18.

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

As to the manner of interest, Apo claimed that the 12% legal interest due from LBP because of its delay in paying the just compensation should be computed at the time of the taking of the subject property, *i.e.*, on December 9, 1996, until full payment has been made and not until May 9, 2008.

As to the 12% interest, LBP claimed that there was no delay on its part in the payment of just compensation. LBP already paid in full the initial valuation for the subject property in the amount of Php 3,814,053.53 before TCT No. 113359 was cancelled and transferred in the name of the Republic of the Philippines. Therefore, LBP should not be held liable to pay legal interest if it already paid in full the preliminary valuation of the subject property.[52]

In *Republic of the Phils. v. CA*,[53] this Court held that:

> The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, it fixed at the time of the actual taking by the government. Thus, if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interests on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interests accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.[54]

The award of interest is intended to compensate the property owner for the income it would have made had it been properly compensated for its property at the time of the taking. "The need for prompt payment and the necessity of the payment of

---

[52] *Id.* at 52.

[53] 433 Phil. 106 (2002).

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

interest is to compensate for any delay in the payment of compensation for property already taken."[55] "The award of interest is imposed in the nature of damages for delay in payment which, in effect, makes the obligation on the part of the government one of forbearance to ensure prompt payment of the value of the land and limit the opportunity loss of the owner."[56]

In the recent case of *Land Bank of the Philippines v. Phil-Agro Industrial Corporation*,[57] We had the occasion to rule that the mere fact that the LBP made an initial payment of the just compensation does not mean that the government is not liable for any delay in the payment of just compensation, thus:

> It is doctrinal that to be considered as just, the compensation must be fair and equitable, and the landowners must have received it without any delay. **The requirement of the law is not satisfied by the mere deposit with any accessible bank of the provisional compensation determined by it or by the DAR, and its subsequent release to the landowner after compliance with the legal requirements set forth by R.A. No. 6657.** (Emphasis ours)

In the present case, LBP merely deposited the amount of Php 3,814,053.53 as initial payment of the just compensation. The RTC's valuation in its decision[58] as just compensation for the subject property is Php 149,783,000.27. There is a staggering difference between the initial payment made by the LBP and the amount of the just compensation due to Apo. It should be noted that the subject property has already been taken by the government on December 9, 1996. Up to this date, the just compensation has not been fully paid. During the interim, Apo is deprived of the income it would have made had it been properly compensated for the properties at the time of the taking. It is therefore necessary to hold LBP liable to pay for the legal interest

---

[55] *Land Bank of the Philippines v. Phil-Agro Industrial Corporation*, G.R. No. 193987, March 13, 2017.

[56] *LBP v. Avanceña*, *supra* note 32, at 330.

[57] G.R. Nos. 193987, March 13, 2017.

[58] *Rollo* (G.R. Nos. 218020-21), pp. 151-161.

due to its delay in fully satisfying the payment of the just compensation.

Thus, LBP is liable to pay legal interest of 12% counted from December 9, 1996, the time of the taking until June 30, 2013.[59] Thereafter, or beginning July 1, 2013 until fully paid, the just compensation shall earn 6% legal interest in accordance with Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, Series of 2013.

As to the award of attorney's fees, while the general rule is that attorney's fees cannot be recovered as part of the damages because no premium should be placed on the right to litigate,[60] We deem it proper to affirm the award of 10% attorney's fees in favor of Apo.

We quote with confirmity the ruling of the CA in justifying the award of attorney's fees, thus:

> Despite pragmatic considerations and actualities, convincing figures and statistics, [LBP] and DAR stood firm on their unreasonableness. ₱16.50 per [sq m], the valuation of [LBP] and DAR, is way off ₱134.00. The disparity is too obvious; their stubbornness, impossible (sic). [LBP] and DAR should not delude themselves that they are being robbed merely because another deserves to be paid justly. Every person, especially government entities, 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.
>
> Simple fairness dictates that the [DARAB] should have resolved the matter of just compensation brought before it. The lapse of six years without the adjudication board acting on the case not only compelled Apo Fruits to litigate, this refusal to satisfy Apo Fruits' plainly valid, just and demandable claim is also tantamount to gross and evident bad faith.[61]

It must be emphasized that the subject property has been transferred in the name of the government as early as December

---

[59] *Nacar v. Gallery Frames, et al.*, 716 Phil. 267 (2013).

[60] *LBP v. Ibarra, et al.*, 747 Phil. 691, 697 (2014).

[61] *Rollo* (G.R. Nos. 217985-86), pp. 66-67.

9, 1996 despite Apo's rejection of LBP's valuation of the subject property. To make matters worse, when Apo filed a complaint for determination of just compensation with the DARAB, the latter unjustifiably and without any reason failed to act upon the complaint for almost six years, thus, prompting Apo to file a complaint with the RTC for determination of just compensation. Further, despite the ruling that the valuation of the subject property is Php 130.00, LBP still maintained its conviction that only the amount of Php 16.50 per square meter is due to Apo. The award of attorney's fees is justified by LBP's refusal to satisfy Apo's valid claim which forced the latter to litigate to protect its property rights.

WHEREFORE, premises considered, the Decision dated September 25, 2012 and the Resolution dated April 21, 2015 of the Court of Appeals in CA-G.R. SP No. 00633-MIN and CA-G.R. SP No. 00656-MIN are hereby **AFFIRMED with the following MODIFICATIONS**:

1. Land Bank of the Philippines is ordered to pay the amount of **Php 130.00 per square meter** or the total amount of **Php 149,783,270.00** to Apo Fruits Corporation as just compensation of the subject property.

2. Land Bank of the Philippines is ordered to pay legal interest of twelve percent (12%) *per annum* is imposed on the amount Php 149,783,270.00 counted from December 9, 1996, the time of the taking of the subject property, until June 30, 2013. Thereafter, a legal interest of six percent (6%) *per annum* is imposed counted from July 1, 2013 until full payment thereof.

Other dispositions not herein otherwise modified, **STANDS**.

SO ORDERED.

Leonardo-de Castro[*] (*Acting Chairperson*), *del Castillo*, and *Jardeleza, JJ.*, concur.

Sereno, C.J., on leave.

---

[*] Designated Acting Chairperson, First Division per Special Order No. 2540 dated February 28, 2018.

SECOND DIVISION

[G.R. No. 219164. March 21, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICHAEL LUNA *y* TORSILINO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; STRICT COMPLIANCE WITH THE REQUIREMENTS OF TIME, WITNESSES AND PROOF OF INVENTORY WITH RESPECT TO THE CUSTODY OF SEIZED DANGEROUS DRUGS, MANDATORY; EXCEPTIONS.— The legality of entrapment operations involving illegal drugs begins and ends with Section 21, Article II of RA 9165. x x x Meanwhile, the Implementing Rules and Regulations of RA 9165 (IRR) supplied details as to the place where the physical inventory and photographing of the seized items should be done, *i.e.*, at the place of seizure, at the nearest police station, or at the nearest office of the apprehending officer or team. Further, a "saving clause" was added in case of non-compliance with the requirements under justifiable grounds. x x x In sum, the law puts in place requirements of time, witnesses and proof of inventory with respect to the custody of seized dangerous drugs, to wit: 1. The initial custody requirements must be done **immediately after seizure** or confiscation; 2. The **physical inventory and photographing** must be done **in the presence of**: a. The **accused** or his representative or counsel; b. The **required witnesses**: i. a representative from the **media** and the **Department of Justice (DOJ), and any elected public official** for offenses committed during the effectivity of RA 9165 and prior to its amendment by RA 10640, **as in this case**; ii. an **elected public official** and a representative of the **National Prosecution Service of the DOJ or the media** for offenses committed during the effectivity of RA 10640. As a rule, strict compliance with the foregoing requirements is mandatory. However, following the IRR of RA 9165, the courts **may** allow a deviation from these requirements if the following requisites are availing: **(1) the**

existence of "justifiable grounds" allowing departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. If these two elements concur, the seizure and custody over the confiscated items shall not be rendered void and invalid; *ergo*, the integrity of the *corpus delicti* remains untarnished.

2. ID.; ID.; ID.; IN CASE OF WARRANTLESS SEIZURES, WHILE THE PHYSICAL INVENTORY AND PHOTOGRAPHING IS ALLOWED TO BE DONE AT THE NEAREST POLICE STATION OR AT THE NEAREST OFFICE OF THE APPREHENDING OFFICER/TEAM, WHICHEVER IS PRACTICABLE, THIS DOES NOT DISPENSE WITH THE REQUIREMENT OF HAVING THE DEPARTMENT OF JUSTICE OR MEDIA REPRESENTATIVE AND AN ELECTED PUBLIC OFFICIAL TO BE PHYSICALLY PRESENT AT THE TIME OF APPREHENSION.— To recall, the language of the first paragraph of Section 21 is clear: the apprehending team is duty-bound to conduct a physical inventory of the seized items and photograph the same "**immediately** after seizure and confiscation x x x **in the presence** of the accused x x x, a representative from the media and the [DOJ], and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof." The plain import of the phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be performed immediately **at the place of apprehension**. And, in case this is not practicable, then the inventory and photographing may be done as soon as the apprehending team reaches the nearest police station or office of the apprehending officer/team. Necessarily, **this could only mean that the three (3) witnesses should already be physically present at the time of apprehension** — a requirement that can easily be complied with by the buy-bust team, considering that buy-bust operations, by their very nature, entail meticulous planning and coordination. In other words, in case of warrantless seizures, while the physical inventory and photographing is allowed to be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable," this does **not** dispense with the requirement of having the DOJ or

media representative and an elected public official to be **physically present at the time of apprehension**.

3. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; THE PRESUMPTION OF INNOCENCE IS OVERTURNED IF AND ONLY IF THE PROSECUTION HAS SUCCESSFULLY DISCHARGED ITS DUTY OF PROVING THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.—** The cornerstone of all criminal prosecutions is the right of the accused to be presumed innocent. By this presumption, the Constitution places the *onus probandi* on the prosecution to prove the guilt of the accused on the strength of its own evidence, not on the weakness of the defense. Hence, the accused need not offer evidence on his behalf and may rely on the presumption entirely, should the prosecution fail to overcome its burden of proof. In this respect, the presumption of innocence is overturned if and only if the prosecution has successfully discharged its duty, that is, proving the guilt of the accused beyond reasonable doubt - to prove each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein. To be sure, the concept of moral certainty is subjective. **What remains certain, however, is that the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains reasonable doubt as to his guilt.**

4. **ID.; ID.; ID.; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; APPLIED TO DANGEROUS DRUGS CASES, THE PROSECUTION CANNOT RELY ON THE PRESUMPTION OF REGULARITY WHEN THERE IS A SHOWING THAT THE APPREHENDING OFFICERS FAILED TO COMPLY WITH THE REQUIREMENTS LAID DOWN IN SECTION 21 OF THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; CASE AT BAR.—** The RTC's reliance on the presumption of regularity in the performance of official duty is misplaced considering that there was affirmative proof of irregularity in the records. To say the least, the admitted failure of the police officers to comply with the requirements in Section 21 effectively neutralized the presumption relied upon; there was no basis in fact and law to rely on the same. x x x In this case, the non-compliance with Section 21 without the triggering

of the saving clause is a showing of irregularity that effectively rebuts the presumption. As previously ruled in *People v. Enriquez*, any divergence from the prescribed procedure, when left unjustified, is "an irregularity, a red flag, that casts reasonable doubt on the identity of the *corpus delicti*." Verily, the presumption of regularity of performance of official duty stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. Applied to dangerous drugs cases, the prosecution cannot rely on the presumption when there is a showing that the apprehending officers failed to comply with the requirements laid down in Section 21. And, in any case, the presumption of regularity cannot be stronger than the presumption of innocence in favor of the accused. **Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.**

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

"x x x And when the last law was down, and the Devil turned 'round on you, where would you hide, Roper, the laws all being flat? This country is planted thick with laws, from coast to coast, Man's laws, not God's! And if you cut them down, and you're just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake!"

- Robert Bolt, A Man for All Seasons[1]

---

[1] "*A Man for All Seasons Quotes*," <https://www.goodreads.com/work/quotes/1358325-a-man-for-all-seasons>, last accessed on March 19, 2018; see "*A Man For All Seasons Script - Dialogue Transcript*," transcript from the screenplay and/or the Paul Scofield as Thomas More movie, <http://www.script-o-rama.com/movie_scripts/m/man-for-all-seasons-script.html>, last accessed on March 19, 2018.

The Case

Before the Court is an appeal[2] under Section 13(c), Rule 124 of the Rules of Court from the Decision[3] dated June 13, 2014 (CA Decision) of the Court of Appeals, Special Tenth (10th) Division (CA) in CA-G.R. CR-HC No. 05336. The CA Decision affirmed the Joint Decision[4] dated December 8, 2010 rendered by the Regional Trial Court of Marikina City, Branch 168 (RTC), in Criminal Cases Nos. 2008-3529-D-MK and 2008-3530-D-MK[5] which found herein accused-appellant Richael T. Luna (accused-appellant Luna) guilty ofvio1ation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[6] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

The present appeal stems from two (2) Informations[7] filed before the RTC, separately charging accused-appellant Luna with the crimes of illegal sale and possession of dangerous drugs, as defined under Sections 5[8] and 11,[9] Article II of RA 9165, respectively. The accusatory portions of the Informations read:

---

[2] *Rollo*, pp. 16-18.

[3] *Id*. at 2-15. Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Ramon R. Garcia and Pedro B. Corales concurring.

[4] CA *rollo*, pp. 11-24. Penned by Presiding Judge Lorna F. Catris-Chua Cheng.

[5] Also referred to as Crim. Cases Nos. 08-3529-30-D-MK in some parts of the records.

[6] 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 (2002).

[7] Records, pp. 1, 28.

[8] SEC. 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,

Criminal Case No. 2008-3529-D-MK

That on April 14, 2008, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell to SPO1 Ramiel Soriano, posing as a buyer, a small plastic sachet containing 0.03 gram of white crystalline substance valued at Php. 300.00 which gave positive result to the tests for the presence of Methamphetamine Hydrochloride, a dangerous drug, in violation of the above cited law.

CONTRARY TO LAW.[10]

Criminal Case No. 2008-3530-D-MK

That on or about the 14th day of April 2008, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or otherwise use any dangerous drugs, did then and there willfully, unlawfully and feloniously have in her (*sic*) possession, direct custody and control one (1) plastic sachets (*sic*) containing 0.01 gram of white

---

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.

[9] SEC. 11. *Possession of Dangerous Drugs*. - x x x

x x x x x x x x x

x x x if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x x x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[10] Records, p. 1.

crystalline substance which gave positive result to the tests for Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[11]

When arraigned on September 17, 2008, accused-appellant Luna entered a plea of "not guilty" for both offenses charged.[12] Pre-trial was then held and terminated on October 8, 2008.[13] Trial thereafter ensued.

The prosecution presented three (3) witnesses, namely: (i) Senior Police Officer 1 (SPO1) Ramiel Soriano (SPO1 Soriano), (ii) SPO1 Jose Castelo (SPO1 Castelo), and (iii) Police Chief Inspector (PCI) Lourdeliza Cejes (PCI Cejes). The defense, on the other hand, presented two (2) witnesses: (i) accused-appellant Luna himself, and (ii) Bernardita Banico (Banico), the mother of accused-appellant Luna's common-law spouse.

As gathered from the records, the pertinent facts follow.

The prosecution alleged that on April 14, 2008, a buy-bust operation was organized by the Marikina City Police Station based on a tip from a confidential informant (CI), implicating accused-appellant Luna for suspected drug-related activities.[14] A team was then formed to conduct the said operation and SPO1 Soriano was designated as the poseur-buyer.[15] SPO1 Soriano was given three (3) pieces of One Hundred Peso (₱100.00) bills[16]

---

[11] *Id*. at 28.

[12] CA *Rollo*, p. 12.

[13] *Id*.

[14] *Rollo*, p. 3.

[15] *Id*.

[16] Bearing serial numbers BP966509, PV642138, and WE463138 (records, p. 12). In the Pre-Operational Report and Coordination Form, both dated April 14, 2008, one (1) Five Hundred Peso (₱500.00) bill bearing serial number EL476637 was also issued to be used as buy-bust money (records, pp. 9-10). The said bill was never accounted for during trial nor was any explanation given by the witnesses for its non-use in the buy-bust operation.

that were marked with his initials, "RS."[17] The team was headed by SPO1 Castelo.[18]

After coordinating with the Philippine Drug Enforcement Agency (PDEA), the buy-bust team, together with the CI, proceeded to accused-appellant Luna's residence at Barangay Tumana, Marikina.[19] Upon arrival thereat, SPO1 Soriano and the CI walked toward the direction of accused-appellant Luna's house and saw a man standing outside, who was then identified by the CI to be accused-appellant Luna.[20] Accused-appellant Luna then approached both of them and told the CI, "*pare, score na kayo, mayroon pa ako dito*."[21] At that point, the CI introduced SPO1 Soriano to accused-appellant Luna as an interested buyer.[22] When asked how much worth of *shabu* he would like to buy, SPO1 Soriano answered "*tres lang brod*," while handing accused-appellant Luna the three (3) marked bills.[23] In turn, accused-appellant Luna retrieved from his front pocket two (2) sealed plastic sachets containing suspected *shabu*, but handed only one (1) piece to SPO1 Soriano.[24] Accused-appellant Luna then returned the other sachet in his pocket.[25]

After the exchange, SPO1 Soriano checked the contents of the sachet using a flashlight, which was then the pre-arranged signal to the buy-bust team.[26] Immediately after, the other members of the buy-bust team approached accused-appellant Luna and arrested him after introducing themselves as police officers.[27]

---

[17] *Rollo*, p. 3.
[18] CA *Rollo*, p. 16.
[19] *Rollo*, p. 3.
[20] *Id*. at 3-4.
[21] *Id*. at 4.
[22] *Id*.
[23] *Id*.
[24] *Id*.
[25] *Id*.
[26] *Id*.
[27] *Id*.

SPO1 Soriano then retrieved the marked bills from accused-appellant Luna and also confiscated the other sachet that the latter placed in his front pocket.[28] Thereafter, SPO1 Soriano marked the two (2) sachets and accomplished an Inventory of Confiscated Evidence[29] in the presence of accused-appellant Luna at the place of his arrest.[30] The Inventory of Confiscated Evidence was subsequently signed by Barangay Kagawad Oscar Frank Rabe at the Barangay Hall, while a certain Danny Placides, a representative from the media, signed the same at the police station.[31] Likewise, at the police station, accused-appellant Luna was photographed holding the plastic sachets supposedly recovered from his person.[32]

On the same day, SPO1 Soriano requested for a laboratory examination of the items seized from accused-appellant Luna with the Crime Laboratory of the Eastern Police District.[33] The request was personally received by PCI Cejes, who then conducted a qualitative examination of the contents of the plastic sachets.[34] The contents later tested positive for *methamphetamine hydrochloride* or *shabu*, a dangerous drug.[35]

For his defense, accused-appellant Luna denied all charges against him. He claimed that in the afternoon of April 14, 2008, while he was at his home watching television with his two (2) sons, aged four (4) and three (3) years old, respectively, two (2) men in civilian clothes suddenly barged into his house and introduced themselves as police officers.[36] One of them asked

---

[28] *Id*.

[29] Records, p. 11.

[30] *Rollo*, p. 4.

[31] *Id*.

[32] TSN, April 15, 2009, p.15.

[33] *Rollo*, p. 5.

[34] *Id*.

[35] *Id*. at 6.

[36] *Id*. at 6-7; CA *rollo*, pp. 16 and 17.

if he was "*Bunso*," to which he answered in the affirmative.[37] Meanwhile, the other police officer went inside his room and stayed there for about ten (10) minutes.[38] Later, three (3) more men entered his home who then brought him out of the house.[39] Accused-appellant Luna was then made to board a car and was brought to the police headquarters.[40]

Upon their arrival, one of the police officers, whom accused-appellant Luna identified as SPO1 Soriano, placed three (3) One Hundred Peso (₱100.00) bills in front of accused-appellant Luna together with two (2) plastic sachets.[41] He was then ordered to hold the plastic sachets and was photographed by the police officers while doing so.[42]

Banico, on the other hand, testified that in the afternoon of April 14, 2008, she was resting outside her house at Pipino Street, Barangay Tumana, the same street where the house of accused-appellant Luna was located.[43] From her house, she then saw a person on board a motorcycle passing by the residence of accused-appellant Luna, which was tailed by a car boarded by several men.[44] The rider of the motorcycle then asked her where was the residence of a certain "*Bunso*."[45] Thereafter, the men in the car entered the house of accused-appellant Luna and began searching around the place.[46] Banico also entered the house when she heard the children crying.[47] Upon entering,

---

[37] *Id*. at 7.

[38] *Id*.

[39] *Id*.

[40] *Id*.

[41] *Id*.

[42] *Id*.

[43] CA *Rollo*, p. 17.

[44] *Id*.

[45] *Id*.

[46] *Id*.

[47] *Id*.

she was asked by one of the men, "*Mrs, nasaan ang basura*?," but she did not understand what they were referring to.[48] After about half an hour, when the men were not able to find anything, they went out of the house together with accused-appellant Luna, who was then made to board their car.[49] Banico later learned that accused-appellant Luna was brought to the office of the Station Anti-Illegal Drugs Special Operation Task Force.[50]

Ruling of the RTC

In the Joint Decision dated December 8, 2010, the RTC found accused-appellant Luna guilty of both offenses charged, as follows:

> WHEREFORE, finding the accused RICHAEL LUNA y TORSILINO @ BUNSO guilty beyond reasonable doubt, he is hereby sentenced to suffer the following: (1) In **Criminal Case No. 2008-3529-D** to suffer the penalty of **LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00)**and, (2) In **Criminal Case No. 2008-3530-D** accused is hereby sentenced to suffer x x x an indeterminate prison term ranging **from twelve (12) years, as minimum, to seventeen (17) years as maximum and to pay a fine of ₱300,000.00**[.]
>
> Accused is credited in full of the preventive imprisonment he has already served in confinement.
>
> The dangerous drug submitted as evidence in this case is hereby ordered to be transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.
>
> SO ORDERED.[51]

The RTC found that the prosecution was able to establish the elements necessary for the separate crimes of illegal sale and possession of dangerous drugs.[52] It was held that accused-

---

[48] *Id*.

[49] *Id*.

[50] *Id*.; *rollo*, p. 8.

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

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

appellant Luna's defense of denial could not prevail over the positive allegations of the police officers, who were presumed to be in the regular performance of their official duties.[53] Further, while there was an admitted non-compliance by the officers with the procedure under Section 21 of RA 9165, *i.e.*, the presence of the required witnesses after seizure, the RTC nevertheless held that the integrity and evidentiary value of the items seized were preserved.[54] Accused-appellant Luna filed a Motion for Reconsideration[55] dated December 17, 2010, which was denied by the RTC in an Order[56] dated May 10, 2011.

Aggrieved, accused-appellant Luna elevated his case to the CA via Notice of Appeal.[57]

Ruling of the CA

In the CA Decision, the CA agreed with the RTC's finding that the integrity and evidentiary value of the *corpus delicti* were properly preserved by the police officers.[58] The CA explained that the prosecution's evidence was able to establish an uninterrupted chain of custody from the time the drugs were allegedly seized from accused-appellant Luna until the time it was offered in evidence during trial.[59] The dispositive portion of the CA Decision stated, thus:

WHEREFORE, premises considered, the **APPEAL** is hereby **DENIED**. Accordingly, the Joint Decision of the Regional Trial Court, Branch 168, Marikina on December 8, 2010, which pronounced accused-appellant's guilt beyond reasonable doubt for violation of *Sections 5* and *11, Article II of Republic Act No. 9165*, is hereby **AFFIRMED**.

---

[53] *Id*. at 20.

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

[55] Records, pp. 202-209.

[56] *Id*. at 215-216.

[57] CA *rollo*, pp. 25-26.

[58] *Rollo*, pp. 12-13.

[59] *Id*. at 13.

SO ORDERED.[60]

Hence, this appeal.

In the main, accused-appellant Luna anchors his defense on the failure of the police officers to comply with the procedure under Section 21 of RA 9165, which he argues is mandatory.[61] He argues, among other things, that the government official (Kagawad Oscar Frank Rabe) and media representative (Danny Placides) — both of whom are required witnesses under the law — were not present immediately after seizure and confiscation of the dangerous drugs.[62]

Issue

The principal issue for resolution is whether accused-appellant Luna is guilty beyond reasonable doubt for the crime of violation of Sections 5 and 11, Article II of RA 9165.

The Court's Ruling

The appeal is granted.

The merits of the case are straightforward. In this regard, before disposing of the substantive issues, the Court finds it proper to first review the current literature on Section 21 of RA 9165.

Section 21, Article II of RA 9165, re-examined.

The legality of entrapment operations involving illegal drugs begins and ends with Section 21,[63] Article II of RA 9165. Under the law, the following procedure must be observed in the seizure,

---

[60] *Id*. at 14.

[61] Appellant's Brief dated January 4, 2013; CA *rollo*, p. 68.

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

[63] Section 21 of RA 9165 was amended by RA 10640, entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002'." RA 10640,

custody, and disposition of dangerous drugs and related paraphernalia:

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,**

---

which imposed less stringent requirements in the procedure under Section 21, was approved on July 15, 2014. Section 21, as amended by RA 10640 reads:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/ paraphernalia and/or laboratory equipment shall, **immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof**: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: ***Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items**. (Emphasis supplied)

physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof**[.] (Emphasis supplied; italics in the original)

Meanwhile, the Implementing Rules and Regulations of RA 9165 (IRR) supplied details as to the place where the physical inventory and photographing of the seized items should be done, *i.e.*, at the place of seizure, at the nearest police station, or at the nearest office of the apprehending officer or team. Further, a "saving clause" was added in case of non-compliance with the requirements under justifiable grounds. Section 21(a), Article II of the IRR, thus states:

SECTION 21. x x x

(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**[.]

In sum, the law puts in place requirements of time, witnesses and proof of inventory with respect to the custody of seized dangerous drugs, to wit:

1. The initial custody requirements must be done **immediately after seizure** or confiscation;
2. The **physical inventory and photographing** must be done **in the presence of**:
    a. The **accused** or his representative or counsel;
    b. The **required witnesses**:
        i. a representative from the **media** and the **Department of Justice (DOJ), and any elected public official** for offenses committed during the effectivity of RA 9165 and prior to its amendment by RA 10640, **as in this case**;
        ii. an **elected public official** and a representative of the **National Prosecution Service of the DOJ or the media** for offenses committed during the effectivity of RA 10640.

As a rule, strict compliance with the foregoing requirements is mandatory.[64] However, following the IRR of RA 9165, the courts **may** allow a deviation from these requirements if the following requisites are availing: **(1) the existence of "justifiable grounds" allowing departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team**.[65] If these two elements concur, the seizure and custody over the confiscated items shall not be rendered void and invalid; *ergo*, the integrity of the *corpus delicti* remains untarnished. The Court's disquisition in *People v. Reyes*[66] is particularly illuminating:

Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure

---

[64] See *People v. Cayas*, 789 Phil. 70, 79 (2016); see also *People v. Havana*, 776 Phil. 462, 475 (2016).

[65] RA 9165, Sec. 21(1), as implemented by its IRR.

[66] G.R. No. 199271, October 19, 2016, 806 SCRA 513.

that not every case of noncompliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism.** Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.** With the chain of custody having been compromised, the accused deserves acquittal. x x x[67] (Emphasis supplied; citations omitted)

Following a plain reading of the law, it is now settled that **non-compliance with the mandatory procedure in Section 21 triggers the operation of the saving clause enshrined in the IRR of RA 9165**. *Verba legis non est recedendum* — from the words of a statute there should be no departure. Stated otherwise, in order not to render void and invalid the seizure and custody over the evidence obtained, the prosecution **must**, as a matter of law, establish that such non-compliance was based on justifiable grounds and that the integrity and the evidentiary value of the seized items were preserved.[68] Hence, before the prosecution can rely on this saving mechanism, they (the apprehending team) must first recognize lapses, and, if any are found to exist, they must justify the same accordingly.[69]

Now to this case.

The police officers failed to comply with the mandatory requirements under Section 21 of RA 9165

After a judicious scrutiny of the records of this case, the Court finds that the police officers reneged on their duty to comply with the requirements on the seizure, initial custody, and handling of the seized items pursuant to Section 21. Such

---

[67] *Id*. at 536.

[68] RA 9165, Sec. 21(1), as implemented by its IRR.

[69] See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

lapses, to the mind of the Court, cast serious doubt on the identity and integrity of the *corpus delicti* and, consequently, reasonable doubt on the guilt of accused-appellant Luna.

On the three-witness requirement

To recall, the language of the first paragraph of Section 21 is clear: the apprehending team is duty-bound to conduct a physical inventory of the seized items and photograph the same "**immediately** after seizure and confiscation x x x **in the presence** of the accused x x x, a representative from the media and the [DOJ], and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof."[70]

The plain import of the phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be performed immediately **at the place of apprehension**.[71] And, in case this is not practicable, then the inventory and photographing may be done as soon as the apprehending team reaches the nearest police station or office of the apprehending officer/team. Necessarily, **this could only mean that the three (3) witnesses should already be physically present at the time of apprehension** — a requirement that can easily be complied with by the buy-bust team, considering that buy-bust operations, by their very nature, entail meticulous planning and coordination.

In other words, in case of warrantless seizures, while the physical inventory and photographing is allowed to be done

---

[70] RA 9165, Sec. 21(1); emphasis supplied.

[71] Prior to the 2014 amendment by RA 10640, the Court clarified in *Reyes v. Court of Appeals*, 686 Phil. 137, 150-151 (2012) "that in compliance with Section 21 of R.A. No. 9165, *supra*, the physical inventory and photographing of the seized articles should be conducted, *if practicable*, at the place of seizure or confiscation in cases of warrantless seizure. But that was true only if there were indications that petitioner tried to escape or resisted arrest, which might provide the reason why the arresting team was not able to do the inventory or photographing at petitioner's house; otherwise, the physical inventory and photographing must always be immediately executed at the place of seizure or confiscation."

"at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable," this does **not** dispense with the requirement of having the DOJ or media representative and an elected public official to be **physically present at the time of apprehension**.

The reason for this is dictated by simple logic: these witnesses are presumed to be disinterested third parties insofar as the buy-bust operation is concerned. Hence, it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the insulating presence of the witnesses is most needed, as **it is their presence at the time of seizure and confiscation that would foreclose the pernicious practice of planting of evidence**. Without the actual presence of the representative from the media and the DOJ, and any elected public official during the seizure and marking of the confiscated drugs, the evils of switching, planting or contamination of the *corpus delicti* that had tainted the buy-busts conducted under the regime of RA 6425, otherwise known as the "Dangerous Drugs Act of 1972," could again be resurrected.[72]

Transposing the foregoing to this case, based on the narrative of the prosecution, **none of the witnesses required under Section 21 was present at the time the plastic sachets were allegedly recovered from accused- appellant Luna. Neither were they present during the preparation of the inventory at the place of seizure, *i.e.*, the residence of accused-appellant Luna.** As categorically admitted by SPO1 Soriano, Barangay Kagawad Oscar Frank Rabe was only present at the Barangay Hall where he was made to sign the Inventory of Confiscated Evidence.[73] In the same manner, Danny Placides, the purported media representative, only signed the inventory at the police station.[74]

---

[72] See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[73] *Rollo*, p. 4.

[74] *Id*.

During his direct examination, SPO1 Soriano testified as follows:

PROSECUTOR SUBONG:

x x x x x x x x x

Q Where exactly did you prepare the Inventory of Confiscated Evidence?

A At the crime scene, sir.

x x x x x x x x x

Q On this Inventory of [C]onfiscated Evidence marked as Exhibit "H", there is a note which states "Arrested person refused to sign" why did you put this note on this document?

A To show that he does not want to sign on that document, sir.

Q Who are you referring to as the one who refused to sign this document?

A Rich[a]el Luna, sir.

Q [T]here is a [signature] atop the name Oscar Frank Rabe, Brgy. Kagawad, **where did Kagawad Rabe sign this document**?

A **At the Barangay Hall, sir.**

Q **How about Danny Pla[c]ides, who is the representative of the Media?**

A **Here, sir, in our office.**[75] (Emphasis supplied)

Again, during his cross-examination, SPO1 Soriano confirmed the fact that none of the required witnesses was present at the time of the seizure and during the preparation of the inventory and neither were they furnished a copy of the same, as categorically required by Section 21:

Q: **So the only person present at that time you effected the arrest and at the time that you confiscated this shabu**

[75] TSN, February 23, 2009, pp. 19-20.

from his pocket were you, the accused, PO3 Daño and PO2 Anos?

A: **Yes, sir.**

Q: So there are only four of you?

A: Yes, sir.

Q: Did you turn over any of the pieces of evidence to any of these other police officers?

A: No, sir.

x x x x x x x x x

Q: **Now, where was the accused, Mr. Witness, when the certificate of inventory was being filled up?**

A: **He was in front of me when I filled up the certificate of inventory, sir.**

Q: **The only copy of this certificate of inventory, you turned it over to the Office of the City Prosecutor, is this correct?**

A: **Yes, sir.**

Q: **There was no copy handed to the accused, is this correct?**

A: **None, sir.**

Q: **As well as the barangay and media?**

A: **Yes, sir.**

Q: Now, you testified earlier that the only person present at the time you arrested the accused and at the time you confiscated the pieces of evidence were you, the accused and PO3 Daño and PO2 Anos, is this correct?

A: Yes, sir.

Q: **So the barangay and media representative were not present at that time, correct?**

A: **Yes, sir.**[76] (Emphasis supplied)

---

[76] TSN, April 15, 2009, pp. 14-16.

The fact that only the police officers were present during the apprehension of accused-appellant Luna is enough to raise concern. In such an environment, police impunity becomes inherent. To state the obvious, assuming *arguendo* that there was indeed evidence planted, it would be **virtually impossible** for accused-appellant Luna — or any accused placed in a similar plight — to overcome the oft-favored testimony of police officers through mere denial. This is further aggravated by the known fact that entrapment procedures are inevitably shrouded with secrecy and cunningness to ensure the success of the operation.[77]

To recapitulate, the presence of the three (3) insulating witnesses must be secured and complied with at the time of the warrantless arrest, such that they are required to be at or at least near the intended place of the arrest, and accordingly be ready to witness the inventory and photographing of the seized items "immediately after seizure and confiscation." This is the necessary interpretation of Section 21 if the purpose of the law, which is to insulate the accused from abuse, is to be achieved.

On the photography requirement

In the same vein, the police officers also failed to photograph the seized drugs immediately after and at the place of seizure, as required under Section 21. Instead, it was only at the police station that accused-appellant Luna was photographed while holding the plastic sachets supposedly recovered from his person.[78] SPO1 Soriano testified, thus:

Q: Did you turn over any of the pieces of evidence to any of these other police officers?

A: No, sir.

Q: Now, **there is a photograph here of the accused holding an alleged suspected plastic sachet**. Suspected to contain illegal drug, Mr. Witness. **Was this taken at the police station?**

---

[77] See *People v. Tan*, 401 Phil. 259, 273 (2000).

[78] TSN, April 15, 2009, p. 14.

A: **Yes, sir.**

Q: **Now, did you instruct him to hold this plastic sachet with markings in order for him to be photographed with this specimen?**

A: **Yes, sir.**

x x x x x x x x x

Q: Now, you testified earlier that the only person present at the time you arrested the accused and at the time you confiscated pieces of evidence were you, the accused and PO3 Daño and PO2 Anos, is this correct?

A: Yes, sir.

Q: So the barangay and media representative were not present at that time, correct?

A: Yes, sir.[79] (Emphasis supplied)

Significantly, in the Coordination Form[80] dated April 14, 2008 prepared by the buy-bust team ahead of the operation, a "camera" was among the listed "special equipment" that were to be used in the operation.[81] Hence, considering that the buy-bust team was able to accomplish the Inventory of Confiscated Evidence at the place of seizure (albeit there was belated participation of the required witnesses), **there was no compelling reason for them to defer the photographing requirement until their return to the police station**. Neither was it apparent from the records that the photograph of accused-appellant Luna holding the plastic sachets was taken in the presence of the witnesses, as mandated by Section 21.

The prosecution failed to successfully trigger the saving clause under the IRR of RA 9165

---

[79] *Id*. at 14-16.

[80] Records, p. 10.

[81] *Id*.

All told, given the demonstrable failure of the police officers to faithfully observe the mandatory requirements in Section 21, the question now is whether the saving clause under the IRR of RA 9165 was triggered. For this purpose, the prosecution must satisfy the two-pronged requirement: **first**, present justifiable grounds for the non-compliance, and **second**, show that the integrity and evidentiary value of the seized item were properly preserved.[82]

Based on the circumstances of the present appeal, however, the saving clause was not triggered because the first prong was not satisfied — **the prosecution did not offer any justifiable grounds for the non-compliance**. No explanation was proffered as to why none of the insulating witnesses was present at the place and time of the seizure, or as to the failure to photograph the drugs immediately after seizure in the presence of such witnesses. There was likewise no showing of any efforts exerted by the police officers to at least coordinate with witnesses ahead of the buy-bust operation. In fact, only two (2) out of the three (3) required witnesses under Section 21 were eventually summoned to affix their signature on the pre-accomplished Inventory of Confiscated Evidence. Likewise, as already mentioned above, there was no apparent reason to defer the photographing of the *corpus delicti* immediately after seizure because the buy-bust team was able to perform an inventory at the scene.

Even in the *Sinumpaang Salaysay*[83] of SPO1 Soriano, there was no attempt whatsoever to place on record the reasons for the non-compliance with the procedure in Section 21:

> Na, aking nilagyan ng markang "RTL-RS BUYBUST" 04/14/08 ang aking nabiling isang pirasong transparent plastic sachet na may lamang pinaghihinalaang shabu.
>
> Na, akin ding nilagyan ng markang "RTL-RS POSS" 04/14/08 ang aking nakumpiska sa kanyang pag-iingat na isang pirasong transparent plastic sachet na may lamang pinaghihinalaang shabu.

---

[82] See *People v. Capuno*, 655 Phil. 226, 240-241 (2011), citing *People v. Garcia*, 599 Phil. 416, 432-433 (2009); *People v. Reyes*, *supra* note 66, at 536.

[83] Records, pp. 4-6.

Na, ako ay gumawa ng inventory of confiscated evidence at akin itong pinirmahan at hindi lumagda ang taong suspetsado at pinirmahan ng Brgy[.] Official ng Brgy. Tumana, Lungsod ng Marikina sa katauhan ni Brgy. Kagawad Oscar Frank Rabe at representante ng Media na si Danny Placides ng Saksi/Bomba.

Na, aking kinuhanan ng litrato ang nasabing ebedensiya habang hawak ng taong suspetsado[.]

Na, ang taong suspetsado ay aming dinala sa tanggapan ng EPD Crime Lab para ipadrug test, at kasama ang ebedensiya na nakumpiska sa kaniya para sa isang laboratory examination at amin siyang pinagsakdal sa paglabag sa RA 9165 Article 2 Section 5 (SELLING) at Section 11 (POSSESSION).[84]

In this regard, considering that the first prong of the saving clause was not complied with, any and all evidence tending to establish the chain of custody of the seized drugs become immaterial. Given the fact that patent irregularities were already present **at the point of seizure** — the supposed "first link" in the chain — there is no more practical value to establishing an unbroken chain of custody to show that the integrity and the evidentiary value of the seized items were properly preserved.

To demonstrate, if the movement of the seized items was to be recorded beginning only from SPO1 Soriano, the poseur-buyer, presenting a continuous chain until the items are produced in court **does nothing** to ensure that no foul play or planting was involved at the point of contact with accused-appellant Luna. **In other words, if there is already non-compliance with Section 21 of RA 9165 and no justifiable grounds are presented therefor, proving a chain of custody beginning only with the poseur-buyer is pointless because the planting of evidence is naturally done at the point of seizure. Once more, the entire rationale of placing witnesses at the scene and conducting an inventory and photographing in their presence immediately after seizure of the dangerous drugs is to guarantee with moral certainty that the items were indeed recovered from the accused and not planted by the police officers.**

---

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

Prescinding from the foregoing, the Court finds that the prosecution utterly failed to discharge its duty to acknowledge and explain the reasons for the lapses in the procedure laid down by the law. Accordingly, without the successful triggering of the saving clause, the seizure and custody over the dangerous drugs in this case must perforce be invalidated.

The presumption of innocence vis-a-vis the presumption of regularity

The Court takes this opportunity to stress an important point.

The cornerstone of all criminal prosecutions is the right of the accused to be presumed innocent.[85] By this presumption, the Constitution places the *onus probandi* on the prosecution to prove the guilt of the accused on the strength of its own evidence, not on the weakness of the defense.[86] Hence, the accused need not offer evidence on his behalf and may rely on the presumption entirely, should the prosecution fail to overcome its burden of proof.[87]

In this respect, the presumption of innocence is overturned if and only if the prosecution has successfully discharged its duty, that is, proving the guilt of the accused beyond reasonable doubt[88] — to prove each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[89] To be sure, the concept of moral certainty is subjective. **What remains certain, however, is that the overriding consideration is not**

---

[85] CONSTITUTION, Art. III, Sec. 14, par. (2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved. x x x"

[86] See *People v. Catalan*, 699 Phil. 603, 620 (2012).

[87] *People v. Castro*, 346 Phil. 894, 911-912 (1997).

[88] RULES OF COURT, Rule 133, Sec. 2 provides that proof beyond reasonable doubt does not mean such a degree of proof as excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.

[89] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

whether the court doubts the innocence of the accused but whether it entertains reasonable doubt as to his guilt.[90]

The RTC, in its Joint Decision dated December 8, 2010, which was affirmed by the CA, convicted accused-appellant Luna based on his purported failure to prove that the police officers did not perform their duties regularly, notwithstanding the established lapses in procedure:

> Accused insists that there was no buy-bust operation and that the *shabu* allegedly sold by him to the poseur buyer was planted evidence. His defense of denial cannot prevail over the positive allegation of prosecution witness SPO1 Ramiel Soriano. He did not present evidence that the prosecution witnesses had motive to falsely charge him. **Neither did accused prove that the police officers did not perform their duties regularly.** x x x The Supreme Court has repeatedly ruled that a positive testimony has more weight and credit in law than the bare denials of an accused especially if no motive was attributed to the witness for testifying unfavorably. The police officers went to the area for the simple purpose of performing the task assigned by their superior — to apprehend herein accused for his illegal activity. **As public officers, they were presumed to be in the performance of their duties. Where there is no evidence to the contrary, law enforcers' narration of the incident is worthy of belief and as such, they are presumed to have performed their duties in the regular manner** x x x. It is an established rule that the testimonies of the police officers are entitled to full faith and credit. They are presumed to be in the regular performance of official duties x x x.[91] (Emphasis supplied; citations omitted)

This is grievous error. The RTC's reliance on the presumption of regularity in the performance of official duty is misplaced considering that there was affirmative proof of irregularity in the records.[92] To say the least, the admitted failure of the police officers to comply with the requirements in Section 21 effectively

---

[90] *People v. Pagaura*, 334 Phil. 683, 690 (1997); *People v. Salangga*, 304 Phil. 571, 589 (1994).

[91] CA *rollo*, p. 20.

[92] *People v. Mendoza*, *supra* note 72, at 770.

neutralized the presumption relied upon; there was no basis in fact and law to rely on the same. This Court, in *People v. Catalan*,[93] had already warned the lower courts against this pitfall:

> Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, mainly because the accused did not show that they had ill motive behind his entrapment.
>
> We hold that both lower courts committed gross error in relying on the presumption of regularity.
>
> Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. **We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence.** Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.
>
> **Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air.** To say it differently, it is the established basic fact that *triggers* the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.[94] (Emphasis supplied; italics in the original)

In this case, the non-compliance with Section 21 without the triggering of the saving clause is a showing of irregularity

---

[93] *Supra* note 86.

[94] *Id*. at 621.

that effectively rebuts the presumption. As previously ruled in *People v. Enriquez*,[95] any divergence from the prescribed procedure, when left unjustified, is "an irregularity, a red flag, that casts reasonable doubt on the identity of the *corpus delicti*."[96]

Verily, the presumption of regularity of performance of official duty stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty.[97] Applied to dangerous drugs cases, the prosecution cannot rely on the presumption when there is a showing that the apprehending officers failed to comply with the requirements laid down in Section 21. And, in any case, the presumption of regularity cannot be stronger than the presumption of innocence in favor of the accused.[98] **Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.**[99]

Conclusion

All things considered, the evidence, appreciated in its totality, unequivocally points to an acquittal. *Firstly*, there were patent breaches of the mandatory requirements of Section 21 of RA 9165. *Secondly*, the prosecution utterly failed to trigger the saving clause as they did not present justifiable grounds for such non-compliance. Case law has decreed that the procedure enshrined in Section 21 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.[100] This being so, considering that the State left the

---

[95] 718 Phil. 352 (2013).

[96] *Id.* at 366.

[97] *People v. Mendoza*, *supra* note 72, at 770.

[98] *Id.*

[99] *Id.*

[100] *Gamboa v. People*, G.R. No. 220333, November 14, 2016, 808 SCRA 624, 637, citing *People v. Umipang*, 686 Phil. 1024, 1038-1039 (2012).

lapses of the police officers unacknowledged and unexplained, the integrity and evidentiary value of the *corpus delicti* had been compromised, thereby creating reasonable doubt as to the guilt of accused-appellant Luna for the crimes charged. Hence, his acquittal must follow without delay.

A final note.

The law, being a creature of justice, is blind towards both the guilty and the innocent. The Court, as justice incarnate, must then be relentless in exacting the standards laid down by our laws — in fact, the Court can do no less. For when the fundamental rights of life and liberty are already hanging in the balance, it is the Court that must, at the risk of letting the guilty go unpunished, remain unforgiving in its calling. And if the guilty does go unpunished, then that is on the police and the prosecution — that is for them to explain to the People.

WHEREFORE, premises considered, the Decision dated June 13, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05336 is **REVERSED** and **SET ASIDE**. Accused-appellant Richael Luna y Torsilino is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Decision, the action he has taken. A copy shall also be furnished to the Director General of Philippine National Police for his information.

SO ORDERED.

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

---

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

FIRST DIVISION

[G.R. No. 220490. March 21, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALFREDO OPEÑA *y* BACLAGON,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; DELAY IN REPORTING AN INCIDENT OF RAPE IS NOT NECESSARILY AN INDICATION THAT THE CHARGE IS FABRICATED, PARTICULARLY WHEN THE DELAY CAN BE ATTRIBUTED TO FEAR INSTILLED BY THREATS FROM ONE WHO EXERCISES ASCENDANCY OVER THE VICTIM; CASE AT BAR.—** It has been repeatedly ruled that "delay in reporting an incident of rape is not necessarily an indication that the charge is fabricated, particularly when the delay can be attributed to fear instilled by threats from one who exercises ascendancy over the victim." In *People v. Coloma* cited in *People v. Cañada*, the Court considered an eight-year delay in reporting the long history of rape by the victim's father as understandable and insufficient to render the complaint of a 13-year old daughter incredible. In the present case, the inaction of "AAA" is understandable and may even be expected as she was scared due to the threat on her and her mother if she would divulge the incident done to her. x x x The Court has declared repeatedly that "failure to shout or offer tenacious resistance does not make voluntary the victim's submission to the perpetrator's lust. Besides, physical resistance is not an element of rape." Moreover, "AAA" was threatened and prevented by appellant from making an outcry during the incident.

2. **ID.; ID.; ID.; DENIAL, AS A DEFENSE; DENIAL CANNOT PREVAIL OVER POSITIVE AND CATEGORICAL TESTIMONY AND IDENTIFICATION OF THE ACCUSED BY THE VICTIM AS THE PERPETRATOR OF THE CRIME; APPLICATION IN CASE AT BAR.—** Time and again, "when the credibility of the witness is in issue, the trial court's assessment is accorded great weight" and "when his findings have been affirmed by the [CA], these are generally binding and conclusive upon this Court." x x x Appellant's

defense of denial cannot prevail over "AAA's" positive and categorical testimony and her identification of him as the perpetrator of the crime. "A young girl would not concoct a sordid tale of a crime as serious as rape at the hands of her very own father, allow the examination of her private part, and subject herself to the stigma and embarrassment of a public trial, if her motive was other than a fervent desire to seek justice." With the overwhelming evidence of the prosecution, appellant's guilt of raping his own daughter, "AAA," under the circumstances provided in paragraph 1(a) of Article 266-A of the Revised Penal Code (RPC), as amended, was sufficiently established beyond reasonable doubt.

3. **ID.; ID.; ID.; THE PENALTY OF *RECLUSION PERPETUA* IS SUSTAINED IN CASE AT BAR, WHILE THE AMOUNT OF DAMAGES AWARDED IS MODIFIED IN ACCORDANCE WITH THE RECENT JURISPRUDENCE.—** Under Article 266-B, in relation to Article 266-A of the RPC, carnal knowledge of a woman through force or intimidation shall be punished by *reclusion perpetua*. Though the courts below appreciated the presence of relationship as an aggravating circumstance which was sufficiently alleged in the information and proved during trial, the same, however, will not alter the penalty provided by law. "[T]he presence of an aggravating circumstance[, relationship in this case,] cannot serve to raise the penalty to be imposed because simple rape is punishable by the single indivisible penalty of *reclusion perpetua* [which,] pursuant to the first paragraph of Article 63 of the [RPC], shall be imposed regardless of any modifying circumstance that might have attended the commission of the crime." Thus, the penalty of *reclusion perpetua* was correctly imposed upon appellant. Recent jurisprudence constrains us to modify the amount of damages awarded by the CA. The awards of civil indemnity, moral and exemplary damages have to be modified and increased to ₱75,000.00 each, which amounts shall bear interest at the rate of 6% *per annum* from the 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.*:

This resolves the appeal of Alfredo Opeña *y* Baclagon (appellant) assailing the February 12, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 06527 which affirmed with modification the September 30, 2013 Decision[2] of the Regional Trial Court (RTC), Branch 95, Quezon City, finding appellant guilty of the crime of rape.

The Antecedent Facts

Before noon, on May 3, 2007, "AAA"[3] was inside a room at the second floor of their house in Quezon City, when her father (appellant) suddenly entered, approached her and forcibly removed her shorts and underwear. After removing his shorts, appellant parted "AAA's" legs and inserted his penis into "AAA's" vagina. While appellant was doing this act, "AAA" kept resisting and crying. Appellant told "AAA" to keep quiet and not to shout or else he will inflict harm upon her.

The following day, May 4, 2007, "AAA" sent a text message to her aunt, "CCC," asking the latter's help in getting her and

---

[1] CA *rollo*, pp. 123-145; penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Hakim S. Abdulwahid and Socorro B. Inting.

[2] Records, Vol. II, pp. 440-456; penned by Acting Presiding Judge Jose G. Paneda.

[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, 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).

her mother, "BBB," out of their house as appellant was preventing them from leaving. "AAA" also told "CCC" that she was being raped by appellant since she was 11 years old and that she wanted appellant arrested. Eventually, appellant was arrested and brought to the police station along with "AAA," "BBB" and "CCC". Thereat, "AAA" gave her sworn statement. Thereafter, "AAA" was subjected to a medical examination at Camp Crame, Quezon City and further interviewed by a Clinical Psychologist. The conclusion of the medical examination done by P/Chief Insp. Maria Annalisa dela Cruz, contained in Medico-Legal Report No. R07-902,[4] showed "[d]eep healed laceration at 3, 6 and 9 o'clock position[s]" and was the result of a "blunt force or penetrating trauma to the hymen."

On May 7, 2007, an Information for rape was filed with the RTC against appellant which contained the following accusations:

> The undersigned accuses ALFREDO OPEÑA *y* BACLAGON of the crime of rape, committed as follows:
>
> That on or about the 3rd day of May 2007, in Quezon City, Philippines, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge [of] his daughter ["AAA"] all against her will and without her consent, to the damage and prejudice of the said offended party.
>
> CONTRARY TO LAW.[5]

To exculpate himself from liability, appellant offered nothing but denial. To justify the same, appellant averred that his relationship with his daughter "AAA" was good (*maayos*). He contended that he was hurt by "AAA's" accusation because there was no proof or truth behind it.

Ruling of the Regional Trial Court

After trial, the RTC declared appellant guilty beyond reasonable doubt of the charge lodged against him. The RTC

---

[4] Exhibit "H", Folder of Exhibits, p. 10.

[5] Records, Vol. 1, p. 1.

found "AAA's" narration of the incident straightforward, conclusive and logical. It rejected appellant's proffered denial. It also found no improper motive for "AAA" to accuse her father of rape. Consequently, appellant was condemned to suffer the penalty of *reclusion perpetua* and payment of damages, *viz.*:

> WHEREFORE, the Court finds accused Alfredo Opeña *y* Baclagon GUILTY beyond reasonable doubt of the crime of Rape under paragraph 1 of Article 266-A of the Revised Penal Code against her daughter, complainant ["AAA,"] and he is hereby sentenced to suffer the penalty of *Reclusion Perpetua* and to pay the complainant the sum of Php75,000.00 as civil indemnity and Php50,000.00 as moral damages, plus Php30,000.00 as exemplary damages.
>
> IT IS SO ORDERED.[6]

Not satisfied with the findings of the RTC, appellant appealed to the CA.

Ruling of the Court of Appeals

Like the RTC, the CA was convinced of the veracity of "AAA's" testimony. Thus:

> Here, AAA was unwavering in her account that she was raped by her own father. She positively identified him as her rapist. She even broke down in tears during her recollection of her father's bestial act. The crying of the victim during her testimony is evidence of the credibility of the rape charge which is a matter of judicial cognizance.[7]

On February 12, 2015, the CA affirmed with modification the appealed RTC Decision, to wit:

> WHEREFORE, in view of the foregoing, the herein impugned September 30, 2013 Decision of the Regional Trial Court, Branch 95, Quezon City, finding accused-appellant GUILTY beyond reasonable doubt of the crime of RAPE is hereby AFFIRMED with MODIFICATION in that accused-appellant is ordered to indemnify his daughter 'AAA,' the amount of ₱50,000.00 as civil indemnity,

---

[6] Records, Vol. II, pp. 455-456.

[7] CA *rollo*, p. 135.

another ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.

The rest of the Decision stands.

SO ORDERED.[8]

Appellant is now before us for final relief.

In our Resolution[9] dated November 25, 2015, we required the parties to submit their respective supplemental briefs if they so desired. From their respective Manifestations, the parties informed the Court that they were no longer filing supplemental briefs; and instead, adopted their briefs submitted before the CA.

Appellant reiterates the lone assigned error:

> THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[10]

Our Ruling

The appeal is bereft of merit.

In his quest for acquittal, appellant assails "AAA's" credibility pointing out that her failure to report the alleged incident for nine years rendered her accusation doubtful. He avers that there was no evidence to establish that force or intimidation was employed by him. He contends that "AAA's" failure to shout for help made her actuation unnatural.

The Court finds appellant's submissions untenable.

It has been repeatedly ruled that "delay in reporting an incident of rape is not necessarily an indication that the charge is fabricated, particularly when the delay can be attributed to fear

---

[8] *Id*. at 144-145.

[9] *Rollo*, pp. 30-31.

[10] CA *rollo*, p. 27.

instilled by threats from one who exercises ascendancy over the victim."[11] In *People v. Coloma*[12] cited in *People v. Cañada*,[13] the Court considered an eight-year delay in reporting the long history of rape by the victim's father as understandable and insufficient to render the complaint of a 13-year old daughter incredible. In the present case, the inaction of "AAA" is understandable and may even be expected as she was scared due to the threat on her and her mother if she would divulge the incident done to her.

The question of whether the circumstances of force or intimidation are absent in accomplishing the offense charged gains no valuable significance considering that appellant, being the biological father of "AAA,"[14] undoubtedly exerted a strong moral influence over her which may substitute for actual physical violence and intimidation.[15]

Neither appellant's submission of "AAA's" alleged failure to shout for help during the sexual congress will exonerate him. The Court has declared repeatedly that "failure to shout or offer tenacious resistance does not make voluntary the victim's submission to the perpetrator's lust. Besides, physical resistance is not an element of rape."[16] Moreover, "AAA" was threatened and prevented by appellant from making an outcry during the incident.

The fact that "AAA" kept on texting on her cellphone a day after the rape will not undermine her credibility. As held in *People v. Ducay*,[17] "[t]he range of emotions shown by rape victims

---

[11] *People v. Cañada*, 617 Phil. 587, 604 (2009).

[12] 294 Phil. 286 (1993).

[13] *Supra*

[14] Exhibit "A", "AAA's" Certificate of Live Birth, Folder of Exhibits, p. 1.

[15] See *People v. Galvez*, 765 Phil. 368, 380 (2015).

[16] *People v. Rubio*, 683 Phil. 714, 726 (2012).

[17] 747 Phil. 657, 670 (2014).

is yet to be captured even by the calculus. It is thus unrealistic to expect uniform reactions from rape victims." "We have no standard form of behavior for all rape victims in the aftermath of their defilement, for people react differently to emotional stress."[18]

Essentially, the thrust of appellant's arguments boils down to the issue of "AAA's" credibility. Time and again, "when the credibility of the witness is in issue, the trial court's assessment is accorded great weight"[19] and "when his findings have been affirmed by the [CA], these are generally binding and conclusive upon this Court."[20] While there are recognized exemptions to the rule, nothing has been shown to exist in this case to warrant a reversal of the uniform ruling of the trial and appellate courts respecting "AAA's" credibility.

Appellant's defense of denial cannot prevail over "AAA's" positive and categorical testimony and her identification of him as the perpetrator of the crime. "A young girl would not concoct a sordid tale of a crime as serious as rape at the hands of her very own father, allow the examination of her private part, and subject herself to the stigma and embarrassment of a public trial, if her motive was other than a fervent desire to seek justice."[21]

With the overwhelming evidence of the prosecution, appellant's guilt of raping his own daughter, "AAA," under the circumstances provided in paragraph 1(a) of Article 266-A of the Revised Penal Code (RPC), as amended, was sufficiently established beyond reasonable doubt.

The penalty and civil liability.

Under Article 266-B, in relation to Article 266-A of the RPC, carnal knowledge of a woman through force or intimidation

---

[18] See *People v. Lomaque*, 710 Phil. 338, 352 (2013).

[19] *People v. Mateo*, 588 Phil. 543, 553 (2008).

[20] *People v. Pareja*, 724 Phil. 759, 773 (2014).

[21] *People v. Rayon, Sr.*, 702 Phil. 672, 680 (2013).

shall be punished by *reclusion perpetua.* Though the courts below appreciated the presence of relationship as an aggravating circumstance which was sufficiently alleged in the information and proved during trial, the same, however, will not alter the penalty provided by law. "[T]he presence of an aggravating circumstance[, relationship in this case,] cannot serve to raise the penalty to be imposed because simple rape is punishable by the single indivisible penalty of *reclusion perpetua* [which,] pursuant to the first paragraph of Article 63 of the [RPC], shall be imposed regardless of any modifying circumstance that might have attended the commission of the crime."[22] Thus, the penalty of *reclusion perpetua* was correctly imposed upon appellant.

Recent jurisprudence[23] constrains us to modify the amount of damages awarded by the CA. The awards of civil indemnity, moral and exemplary damages have to be modified and increased to ₱75,000.00 each, which amounts shall bear interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

WHEREFORE, the assailed Decision of the Court of Appeals dated February 12, 2015 in CA-G.R. CR No. 06527, finding appellant Alfredo Opeña *y* Baclagon **GUILTY** beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED with MODIFICATION**. The awards of civil indemnity, moral and exemplary damages are respectively increased to ₱75,000.00. The amounts of damages shall earn interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

Leonardo-de Castro and *Perlas-Bernabe, JJ.,* concur.

Sereno, C.J., on leave.

Leonen, J., on official leave.

---

[22] *People v. Arceo*, 772 Phil. 613, 627 (2015).

[23] *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331.

SPECIAL THIRD DIVISION

[G.R. No. 220926. March 21, 2018]

LUIS JUAN L. VIRATA and UEM-MARA PHILIPPINES CORPORATION (now known as CAVITEX INFRASTRUCTURE CORPORATION), *petitioners, vs.* **ALEJANDRO NG WEE, WESTMONT INVESTMENT CORP., ANTHONY T. REYES, SIMEON CUA, VICENTE CUALOPING, HENRY CUALOPING, MARIZA SANTOS-TAN, and MANUEL ESTRELLA,** *respondents.*

[G.R. No. 221058. March 21, 2018]

WESTMONT INVESTMENT, CORPORATION, *petitioner, vs.* **ALEJANDRO NG WEE,** *respondent.*

[G.R. No. 221109. March 21, 2018]

MANUEL ESTRELLA, *petitioner, vs.* **ALEJANDRO NG WEE,** *respondent.*

[G.R. No. 221135. March 21, 2018]

SIMEON CUA, VICENTE CUALOPING, and HENRY CUALOPING, *petitioners, vs.* **ALEJANDRO NG WEE,** *respondent.*

[G.R. No. 221218. March 21, 2018]

ANTHONY T. REYES, *petitioner, vs.* **ALEJANDRO NG WEE, LUIS JUAN VIRATA, UEM-MARA PHILIPPINES CORP., WESTMONT INVESTMENT CORP., MARIZA SANTOS-TAN, SIMEON CUA, VICENTE CUALOPING, HENRY CUALOPING, and MANUEL ESTRELLA,** *respondents.*

SYLLABUS

MERCANTILE LAW; CORPORATION CODE; BOARD OF DIRECTORS; CONCEPT OF CORPORATE RATIFICATION; FOR AN ACT TO CONSTITUTE AN IMPLIED RATIFICATION, THERE MUST BE NO ACCEPTABLE EXPLANATION FOR THE ACT OTHER THAN THAT THERE IS AN INTENTION TO ADOPT THE ACT AS ITS OWN; EFFECT IN CASE AT BAR.—The Court expounded on the concept of corporate ratification in *Board of Liquidators v. Heirs of Kalaw* in the following wise: Authorities, great in number, are one in the idea that "ratification by a corporation of an unauthorized act or contract by its officers or others relates back to the time of the act or contract ratified, and is equivalent to original authority;" and that "[t]he corporation and the other party to the transaction are in precisely the same position as if the act or contract had been authorized at the time." The language of one case is expressive: "**The adoption or ratification of a contract by a corporation is nothing more nor less than the making of an original contract.** xxx And in *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas*, We have discussed that: **Implied ratification may take the form of silence, acquiescence, acts consistent with approval of the act, or acceptance or retention of benefits.** However, silence, acquiescence, retention of benefits, and acts that may be interpreted as approval of the act do not by themselves constitute implied ratification. For an act to constitute an implied ratification, **there must be no acceptable explanation for the act other than that there is an intention to adopt the act as his or her own.** x x x In the case at bar, it can be inferred from the attendant circumstances that the Wincorp board ratified, if not approved, the Side Agreements. x x x The Wincorp directors are chargeable with knowledge of the surety agreement that Virata executed to secure the Hottick obligations to its investors. However, instead of enforcing the surety agreement against Virata when Hottick defaulted, the Wincorp board approved a resolution excluding Virata as a party respondent in the collection suit to be filed against Hottick and its proprietors. x x x To emphasize, there were clear warning signs that Power Merge would not have been able to pay the almost ₱2.5 billion face value of its promissory notes. To Our mind, the Wincorp board of directors' approval of the credit line agreement,

notwithstanding these telltale signs and the above outlined circumstances, establishes the movant-directors' liability to Ng Wee. For if these do not attest to their privity to Wincorp's fraudulent scheme, they would, at the very least, convincingly prove that the movant –directors are guilty of gross negligence in managing the company affairs. The movant-board directors should not have allowed the exclusion of Virata from the collection suit against Hottick knowing that he is a surety thereof. As revealed by their subsequent actions, this was not a mere error in judgment but a calculated maneuver to defraud its investors. Hence, the Court did not err when it ruled that Sec. 31 of the Corporation Code must be applied, and the separate juridical personality of Wincorp, pierced.

TIJAM, *J.*, *dissenting opinion*:

1. COMMERCIAL LAW; CORPORATION CODE; PIERCING THE VEIL OF CORPORATE FICTION; THE JURIDICAL PERSONALITY OF A CORPORATION MAY BE REMOVED OR ITS CORPORATE VEIL PIERCED WHEN THE CORPORATION IS JUST AN ALTER EGO OF A PERSON OR OF ANOTHER CORPORATION; NOT ESTABLISHED IN CASE AT BAR.—As held by this Court in *Philippine National Bank v. Hydro Resources Contractors Corp.*, a corporation acquires a separate personality from that of its directors and officers, to wit: x xx It is well-settled that the juridical personality of a corporation may be removed or its corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. When the corporation becomes a shield for fraud, illegality or inequity committed against third persons, the corporate veil will, as a result, be disregarded for the interest of justice. "However, the rule is that a court should be careful in assessing the milieu where the doctrine of the corporate veil may be applied. Otherwise an injustice, although unintended, may result from its erroneous application. Thus, cutting through the corporate cover requires an approach characterized by due care and caution." "It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed." Directors, Trustees or Officers can be held personally and

solidarily liable with the corporation in situations enumerated by law and jurisprudence, x x x In the present case, nowhere in the records does it appear that the granting, extending and approving of the Credit Line Agreement and the Amendment to the Credit Line Agreement is a patently unlawful act of the corporation. In fact, the granting and approval of the same falls within the function and purpose of Wincorp as an investment house. Thus, the mere approval of Cua, the Cualopings, Santos-Tan and Estrella of the said credit line agreements cannot be equated to knowingly assenting or approving a patently unlawful act of the corporation. Neither can it be equated to bad faith, fraud nor gross negligence. The records do not show that Cua, the Cualopings, Santos-Tan and Estrella willfully and knowingly voted for or assent to the execution of the Side Agreements that virtually exonerated Power Merge of its liability on the promissory notes, except for the signatories who were Ong and Reyes. Neither are they guilty of gross negligence or bad faith in directing or dealing in the affairs of the corporation, they merely approved the Credit Line Agreements because the screening committee of the corporation and its subordinate departments approved the same.

2. **ID.; ID.; ID.; ID.; ACTS OF AN OFFICER NOT AUTHORIZED BY THE BOARD OF DIRECTORS/ TRUSTEES DO NOT BIND THE CORPORATION; CASE AT BAR.—** "In this case, the Credit Line Agreements of Wincorp as approved by its officers may be called as a business strategy which turned out to be unfavorable. This does not mean however that Cua, the Cualopings, Santos-Tan and Estrella perpetrated fraud as they did not know and intend the effects of such act or omission, nor was there bad faith on their part since there is no dishonest purpose or consciousness in doing such wrong. It is undisputed that Ong and Reyes executed the Side Agreements which exonerated Power Merge from its liabilities to Wincorp. It does not however, show that Ong and Reyes were authorized by the board of directors in executing the Side Agreements. "Acts of an officer that are not authorized by the board of directors/trustees do not bind the corporation unless the corporation ratifies the acts or holds the officer out as a person with authority to transact on its behalf." Here, there is simply nothing that will establish that Cua, the Cualopings, Santos-Tan and Estrella authorized or ratified the acts of Ong and Reyes.

APPEARANCES OF COUNSEL

Cadiz Tabayoyong & Partners for Alejandro Ng Wee.

Reyno Tiu Domingo Santos for Westmont Investment Corp.

Ronald Mark C. Lleno for Luis Juan Virata & UEM-Mara Phils. Corp.

Yorac Sarmiento Arroyo Chua Coronel & Reyes Law Firm for Manuel A. Estrella.

Santos Paruñgao Aquino & Santos for Simeon Cua, Vicente Cualoping & Henry Cualoping.

Abelardo B. Albis, Jr. for Mariza Santos-Tan.

Poblador Bautista & Reyes for Anthony Reyes.

R E S O L U T I O N

VELASCO JR., *J.*:

Before this Court are the following recourses from Our July 5, 2017 Decision:

a. Motion for Partial Reconsideration[1] filed by Luis Juan L. Virata (Virata);

b. Motion for Reconsideration[2] of Mariza Santos-Tan (Santos-Tan);

c. Motion for Reconsideration[3] of Manuel Estrella (Estrella);

d. Motion for Partial Reconsideration[4] of Alejandro Ng Wee (Ng Wee);

e. Motion for Reconsideration[5] of Simeon Cua, Vicente Cualoping, and Henry Cualoping (Cua and the Cualopings);

---

[1] *Rollo* (G.R. No. 221218), Vol. 2, p. 1176.

[2] *Id.* at 1219.

[3] *Id.* at 1229.

[4] *Id.* at 1261.

[5] *Id.* at 1307.

f. Motion for Reconsideration[6] of Anthony T. Reyes (Reyes); and

g. Motion for Reconsideration[7] of Westmont Investment Corporation (Wincorp)

The Court notes that the grounds relied upon by the movants Virata, Estrella, Ng Wee, Cua and the Cualopings, Reyes, and Wincorp are the same or substantially similar to those raised in their respective petitions at bar. The same have been amply discussed, thoroughly considered, exhaustively threshed out and resolved in Our July 5, 2017 Decision. Said motions for reconsideration, perforce, must suffer the same fate of denial. Meanwhile, the Court deems it necessary to discuss the issues raised by Santos-Tan, who is only now participating in the proceedings, in her plea for reconsideration.

Respondent Santos-Tan never appealed the September 30, 2014 Decision and October 14, 2015 Resolution of the Court of Appeals (CA) in CA-G.R. CV. No. 97817 holding her liable with her co-parties to Ng Wee. Hence, she maintains that the Court does not have jurisdiction over her person and that, insofar as she is concerned, the CA ruling had already attained finality and can no longer be modified. And when the Court promulgated its July 5, 2017 Decision granting Virata's cross-claim against her, the Court allegedly altered the CA's final ruling as to her by increasing her exposure, in net effect.

Additionally, Santos-Tan was allegedly deprived of her right to due process since she was not afforded the opportunity to rebut the issue pertaining to Virata's counterclaim, a claim that was allegedly not raised in Virata's appeal but was granted nonetheless.

On the merits, Santos-Tan argues that the cross-claim should not have been granted because the February 15 and March 15, 1999 Side Agreements that served as the basis thereof never

---

[6] *Id*. at 1343.

[7] *Id*. at 1363.

got the imprimatur of the Board of Directors of Wincorp. Moreover, Santos-Tan points out that, as established, Power Merge made a total of ₱2,183,755,253.11 of drawdowns from its Credit Line Facility. Considering Power Merge's receipt of the said amount, it would be iniquitous and immoral to require Santos-Tan and her co-directors in Wincorp to reimburse Virata of whatever the latter would be required to pay Ng Wee.

The arguments do not persuade.

It is at the height of error for respondent Santos-Tan to claim that the Court does not have jurisdiction over her person. Clear in the petitions is that Virata and Reyes specifically impleaded Santos-Tan as one of the party respondents in their petitions, docketed as G.R. Nos. 220926 and 221218, respectively. Through her designation as a party respondent in the said appeals, the Court validly acquired jurisdiction over her person, and prevented the assailed September 30, 2014 Decision and October 14, 2015 Resolution of the CA in CA-G.R CV. No. 97817 from attaining finality as to her.

Santos-Tan's claim that she was denied of due process when the Court granted Virata's cross-claim is likewise unavailing.

Virata raised his claim against his co-parties as early as the filing of his Answer to Ng Wee's Complaint. The claim was then ventilated in trial where the extent of the liability of each party had been ascertained. Virata, Santos-Tan, and their co-parties would contest the findings of the trial court to the CA, but to no avail. Eventually, the controversy was elevated to this Court.

The implication of Virata's persistent plea, up to this Court, to be absolved of civil liability is to shift the burden entirely to his co-parties. Otherwise stated, he was essentially re-asserting his cross-claim, as against Santos-Tan included. However, Santos-Tan inexplicably waived her right to address the allegations in Virata's bid for exoneration in his petition, despite having been impleaded as party respondent.

The perceived denial of due process right is therefore illusory. Santos-Tan had all the opportunity to counter Virata's allegations in his petition, but did not avail of the same. She only has herself to blame, not only for failing to appeal the appellate court's ruling, but also for her conscious refusal to even file a comment on the petitions in the case at bar.

Furthermore, even though the cross-claim was not explicitly raised as an issue in Virata's petition, the request therefor is subsumed under the general prayer for equitable relief. Jurisprudence teaches that the Court's grant of relief is limited to what has been prayed for in the Complaint or related thereto, supported by evidence, and covered by the party's cause of action.[8] Here, the grant of the cross-claim is but the logical consequence of the Court's finding that the Side Agreements, although not binding on Ng Wee and the other investors, are binding against the parties thereto. And under the terms of the Side Agreements, the only liability of Power Merge is not to pay for the promissory notes it issued, but to return and deliver to Wincorp all the rights, titles and interests conveyed to it by Wincorp over the Hottick obligations. It may be, as Santos-Tan argued, that Power Merge made drawdowns from the credit line facility, and that its receipt of a significant sum thereunder makes it liable to the investors. However, any payment made by Virata for this liability would nevertheless still be subject to the right of reimbursement from Wincorp by virtue of the Side Agreements.

In his Dissent, esteemed Associate Justice Noel G. Tijam (Justice Tijam) submits that the Wincorp directors — specifically Cua, the Cualopings, Santos-Tan and Estrella — should not be jointly and solidarily liable with Virata, Wincorp, Ong, and Reyes to pay Ng Wee the amount of his investment. Justice Tijam stressed that there is lack of proof that the said directors assented to the execution of the Side Agreements, barring the Court from holding them personally accountable for fraud.

---

[8] *Philippine Charter Insurance Corporation v. Philippine National Construction Corporation*, G.R. No. 185066, October 2, 2009, 602 SCRA 723, 736.

Neither can they be held liable for gross negligence since they exercised due diligence in conducting the affairs of Wincorp.

The Court finds the submissions meritless.

Section 31 of the Corporation Code expressly states:

> Section 31. *Liability of directors, trustees or officers*. - Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.
>
> When a director, trustee or officer attempts to acquire or acquire, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

In Our July 5, 2017 Decision, the Court explicated the liabilities of the board directors, thus:

> *G.R. No. 221135: The liabilities of Cua and the Cualopings*
>
> On the other hand, the liabilities of Cua and the Cualopings are more straightforward. They admit of approving the Credit Line Agreement and its subsequent Amendment during the special meetings of the Wincorp board of directors, but interpose the defense that they did so because the screening committee found the application to be above board. They deny knowledge of the Side Agreements and of Power Merge's inability to pay.
>
> We are not persuaded.
>
> Cua and the Cualopings cannot effectively distance themselves from liability by raising the defenses they did. As ratiocinated by the CA:

> Such submission creates a loophole, especially in this age of compartmentalization, that would create a nearly fool-proof scheme whereby well-organized enterprises can evade liability for financial fraud. Behind the veil of compartmentalized departments, such enterprise could induce the investing public to invest in a corporation which is financially unable to pay with promises of definite returns on investment. If we follow the reasoning of defendants-appellants, we allow the masterminds and profiteers from the scheme to take the money and run without fear of liability from law simply because the defrauded investor would be hard-pressed to identify or pinpoint from among the various departments of a corporation which directly enticed him to part with his money.

Petitioners Cua and the Cualopings bewail that the above-quoted statement is overarching, sweeping, and bereft of legal or factual basis. But as per the records, the totality of circumstances in this case proves that they are either complicit to the fraud, or at the very least guilty of gross negligence, as regards the "*sans recourse*" transactions from the Power Merge account.

The board of directors is expected to be more than mere rubber stamps of the corporation and its subordinate departments. It wields all corporate powers bestowed by the Corporation Code, including the control over its properties and the conduct of its business. Being stewards of the company, the board is primarily charged with protecting the assets of the corporation in behalf of its stakeholders.

Cua and the Cualopings failed to observe this fiduciary duty when they assented to extending a credit line facility to Power Merge. In PED Case No. 20-2378, the SEC discovered that Power Merge is actually Wincorp's largest borrower at about 30% of the total borrowings. It was then incumbent upon the board of directors to have been more circumspect in approving its credit line facility, and should have made an independent evaluation of Power Merge's application before agreeing to expose it to a ₱2,500,000,000.00 risk.

Had it fulfilled its fiduciary duty, the obvious warning signs would have cautioned it from approving the loan in haste. To recapitulate: (1) Power Merge has only been in existence for two years when it was granted a credit facility; (2) Power Merge was thinly capitalized with only ₱37,500,000.00 subscribed capital; (3) Power Merge was not an ongoing concern since it never secured the necessary permits and licenses to conduct business, it never

engaged in any lucrative business, and it did not file the necessary reports with the SEC; and (4) no security other than its Promissory Notes was demanded by Wincorp or was furnished by Power Merge in relation to the latter's drawdowns.

It cannot also be ignored that prior to Power Merge's application for a credit facility, its controller Virata had already transacted with Wincorp. A perusal of his records with the company would have revealed that he was a surety for the Hottick obligations that were still unpaid at that time. This means that at the time the Credit Line Agreement was executed on February 15, 1999, Virata still had direct obligations to Wincorp under the Hottick account. But instead of impleading him in the collection suit against Hottick, Wincorp's board of directors effectively released Virata from liability, and, ironically, granted him a credit facility in the amount of ₱1,300,000,000.00 on the very same day.

This only goes to show that even if Cua and the Cualopings are not guilty of fraud, they would nevertheless still be liable for gross negligence in managing the affairs of the company, to the prejudice of its clients and stakeholders. Under such circumstances, it becomes immaterial whether or not they approved of the Side Agreements or authorized Reyes to sign the same since this could have all been avoided if they were vigilant enough to disapprove the Power Merge credit application. Neither can the business judgment rule apply herein for it is elementary in corporation law that the doctrine admits of exceptions: bad faith being one of them, gross negligence, another. The CA then correctly held petitioners Cua and the Cualopings liable to respondent Ng Wee in their personal capacity.

G.R. No. 221109: The liability of Manuel Estrella

To refresh, Estrella echoes the defense of Tankiansee, who was exempted from liability by the trial court. He claims that just like Tankiansee, he was not present during Wincorp's special board meetings where Power Merge's credit line was approved and subsequently amended. Both also claimed that they protested and opposed the board's actions. But despite the parallels in their defenses, the trial court was unconvinced that Estrella should be released from liability. Estrella appealed to the CA, but the adverse ruling was sustained.

We agree with the findings of the courts *a quo*.

The minutes of the February 9, 1999 and March 11, 1999 Wincorp Special Board Meetings were considered as damning evidence against Estrella, just as they were for Cua and the Cualopings. Although they were said to be unreliable insofar as Tankiansee is concerned, the trial court rightly distinguished between the circumstances of Estrella and Tankiansee to justify holding Estrella liable.

For perspective, Tankiansee was exempted from liability upon establishing that it was physically impossible for him to have participated in the said meetings since his immigration records clearly show that he was outside the country during those specific dates. In contrast, no similar evidence of impossibility was ever offered by Estrella to support his position that he and Tankiansee are similarly situated.

Estrella submitted his departure records proving that he had left the country in July 1999 and returned only in February of 2000. Be that as it may, this is undoubtedly insufficient to establish his defense that he was not present during the February 9, 1999 and March 11, 1999 board meetings.

Instead, the minutes clearly state that Estrella was present during the meetings when the body approved the grant of a credit line facility to Power Merge. Estrella would even admit being present during the February 9, 1999 meeting, but attempted to evade responsibility by claiming that he left the meeting before the "other matters," including Power Merge's application, could have been discussed.

Unfortunately, no concrete evidence was ever offered to confirm Estrella's alibi. In both special meetings scheduled, Estrella averred that he accompanied his wife to a hospital for her cancer screening and for dialogues on possible treatments. However, this claim was never corroborated by any evidence coming from the hospital or from his wife's physicians. Aside from his mere say-so, no other credible evidence was presented to substantiate his claim. Thus, the Court is not inclined to lend credence to Estrella's self-serving denials.

Neither can petitioner Estrella be permitted to raise the defense that he is a mere nominee of John Anthony Espiritu, the then chairman of the Wincorp board of directors. It is of no moment that he only had one nominal share in the corporation, which he did not even pay for, just as it is inconsequential whether or not Estrella had been receiving compensation or honoraria for attending the meetings of the board.

The practice of installing undiscerning directors cannot be tolerated, let alone allowed to perpetuate. This must be curbed by holding accountable those who fraudulently and negligently perform their duties as corporate directors, regardless of the accident by which they acquired their respective positions.

In this case, the fact remains that petitioner Estrella accepted the directorship in the Wincorp board, along with the obligations attached to the position, without question or qualification. The fiduciary duty of a company director cannot conveniently be separated from the position he occupies on the trifling argument that no monetary benefit was being derived therefrom. The gratuitous performance of his duties and functions is not sufficient justification to do a poor job at steering the company away from foreseeable pitfalls and perils. The careless management of corporate affairs, in itself, amounts to a betrayal of the trust reposed by the corporate investors, clients, and stakeholders, regardless of whether or not the board or its individual members are being paid. The RTC and the CA, therefore, correctly disregarded the defense of Estrella that he is a mere nominee. (citations omitted, emphasis added)

As regards Santos-Tan, she would likewise be liable in her personal capacity under Section 31 of the Corporation Code.[9] Her liability is no different from that of Cua and the Cualopings. She cannot utilize the separate juridical personality of Wincorp as a shield when she, along with the other board members, approved the credit line application of Power Merge in the amount of ₱2,500,000,000.00 despite the glaring signs that it would be unable to make good its obligation, to wit:

---

[9] Section 31. *Liability of directors, trustees or officers*. - Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

When a director, trustee or officer attempts to acquire or acquire, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

(1) Power Merge has only been in existence for two years when it was granted a credit facility;

(2) Power Merge was thinly capitalized with only ₱37,500,000.00 subscribed capital;

(3) Power Merge was not an ongoing concern since it never secured the necessary permits and licenses to conduct business, it never engaged in any lucrative business, and it did not file the necessary reports with the SEC; and

(4) No security other than its Promissory Notes was demanded by Wincorp or was furnished by Power Merge in relation to the latter's drawdowns.

Had Santos-Tan and the members of the board fulfilled their fiduciary duty to protect the corporation for the sake of its stakeholders, the obvious warning signs would have cautioned them from approving Power Merge's loan application and credit limit increase in haste. The failure to heed these warning signs, to Our mind, constitutes gross negligence, if not fraud, for which the members of the board could be held personally accountable.

The contention that the Side Agreements were without the imprimatur of its board of directors cannot be given credence. The totality of circumstances supports the conclusion that the Wincorp directors impliedly ratified, if not furtively authorized, the signing of the Side Agreements in order to lay the groundwork for the fraudulent scheme. Thus, even though it is quite understandable that there is no document traceable to said Wincorp directors expressly authorizing the execution of the said documents, We are not precluded from holding the same.

The Court expounded on the concept of corporate ratification in *Board of Liquidators v. Heirs of Kalaw*[10] in the following wise:

Authorities, great in number, are one in the idea that "ratification by a corporation of an unauthorized act or contract by its officers or others relates back to the time of the act or contract ratified, and is

[10] 127 Phil. 399 (1967).

equivalent to original authority;" and that "[t]he corporation and the other party to the transaction are in precisely the same position as if the act or contract had been authorized at the time." The language of one case is expressive: "**The adoption or ratification of a contract by a corporation is nothing more nor less than the making of an original contract.** The theory of corporate ratification is predicated on the right of a corporation to contract, and **any ratification or adoption is equivalent to a grant of prior authority**." (emphasis added)

And in *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas*,[11] We have discussed that:

Implied ratification may take the form of silence, acquiescence, acts consistent with approval of the act, or acceptance or retention of benefits. However, silence, acquiescence, retention of benefits, and acts that may be interpreted as approval of the act do not by themselves constitute implied ratification. For an act to constitute an implied ratification, **there must be no acceptable explanation for the act other than that there is an intention to adopt the act as his or her own**. x x x (emphasis added)

In the case at bar, it can be inferred from the attendant circumstances that the Wincorp board ratified, if not approved, the Side Agreements. Guilty of reiteration, Virata's prior transactions with Wincorp is recorded in the latter's books. The Wincorp directors are chargeable with knowledge of the surety agreement that Virata executed to secure the Hottick obligations to its investors. However, instead of enforcing the surety agreement against Virata when Hottick defaulted, the Wincorp board approved a resolution excluding Virata as a party respondent in the collection suit to be filed against Hottick and its proprietors. What is more, this resolution was approved by the movant-directors on February 9, 1999, the very same day Virata's credit line application for Power Merge in the maximum amount of ₱1,300,000,000.00 was given the green light.

As further noted in the assailed Decision:

---

[11] G.R. Nos. 194964-65, January 11, 2016.

It must be remembered that the special meeting of Wincorp's board of directors was conducted on February 9 and March 11 of 1999, while the Credit Line Agreement and its Amendment were entered into on February 15 and March 15 of 1999, respectively. But as indicated in Power Merge's schedule of drawdowns, Wincorp already released to Power Merge the sum of ₱1,133,399,958.45 as of February 12, 1999, before the Credit Line Agreement was executed. And as of March 12, 1999, prior to the Amendment, ₱1,805,018,228.05 had already been released to Power Merge.

The fact that the proceeds were released to Power Merge before the signing of the Credit Line Agreement and the Amendment thereto lends credence to Virata's claim that Wincorp did not intend for Power Merge to be strictly bound by the terms of the credit facility; and that there had already been an understanding between the parties on what their respective obligations will be, although this agreement had not yet been reduced into writing. The underlying transaction would later on be revealed in black and white through the Side Agreements, the tenor of which amounted to Wincorp's intentional cancellation of Power Merge and Virata's obligation under their Promissory Notes. In exchange, Virata and Power Merge assumed the obligation to transfer equity shares in UPDI and the tollway project in favor of Wincorp. An arm's length transaction has indeed taken place, substituting Virata and Power Merge's obligations under the Promissory Notes, in pursuance of the Memorandum of Agreement and Waiver and Quitclaim executed by Virata and Wincorp. Thus, as far as Wincorp, Power Merge, and Virata are concerned, the Promissory Notes had already been discharged.

To emphasize, there were clear warning signs that Power Merge would not have been able to pay the almost ₱2.5 billion face value of its promissory notes. To Our mind, the Wincorp board of directors' approval of the credit line agreement, notwithstanding these telltale signs and the above outlined circumstances, establishes the movant-directors' liability to Ng Wee. For if these do not attest to their privity to Wincorp's fraudulent scheme, they would, at the very least, convincingly prove that the movant- directors are guilty of gross negligence in managing the company affairs. The movant-board directors should not have allowed the exclusion of Virata from the collection suit against Hottick knowing that he is a surety thereof. As revealed by their subsequent actions, this was not a mere

error in judgment but a calculated maneuver to defraud its investors. Hence, the Court did not err when it ruled that Sec. 31 of the Corporation Code must be applied, and the separate juridical personality of Wincorp, pierced.

Moreover, the Court finds it highly suspect that the movant-directors, aside from Estrella, did not question why the case proceeded without the board chairman, John Anthony B. Espiritu (Espiritu). There were seventeen (17) named defendants in Civil Case No. 00-99006 with the Regional Trial Court, Branch 39 in Manila, which included the entire composition of the Wincorp board of directors. If the movant-directors truly believed that they are on par with each other in terms of participation, then they should have instituted a cross-claim against Espiritu, or at least objected against his being dropped as a party defendant.

WHEREFORE, premises considered, the following motions are hereby **DENIED** for lack of merit:

a. Motion for Partial Reconsideration filed by Luis Juan L. Virata;

b. Motion for Reconsideration of Mariza Santos-Tan;

c. Motion for Reconsideration of Manuel Estrella;

d. Motion for Partial Reconsideration of Alejandro Ng Wee;

e. Motion for Reconsideration of Simeon Cua, Vicente Cualoping, and Henry Cualoping;

f. Motion for Reconsideration of Anthony T. Reyes; and

g. Motion for Reconsideration of Westmont Investment Corporation.

No further pleadings or motions will be entertained.

Let entry of judgment be issued.

SO ORDERED.

Bersamin, Jardeleza, and *Reyes, Jr., JJ.*, concur.

Tijam, J., see dissenting opinion.

DISSENTING OPINION

TIJAM, *J.*:

On July 5, 2017, this Court issued its Decision in the present consolidated cases. In the said Decision, it was found that Wincorp extended a credit line to Power Merge in the maximum amount of Php 2,500,000,000.00, and allowed the latter to make drawdowns of Php 2,183,755,253.11, despite signs that would show Power Merge's inability to pay. To secure the Credit Line Agreement and the Amendment to Credit Line Agreement, Power Merge executed promissory notes obliging itself to pay Wincorp, for itself or as agent for and on behalf of certain investors the amount of the drawdowns with interest on the maturity of the promissory note. However, unknown to Ng Wee, the promissory notes were rendered useless by the Side Agreements, simultaneously executed by Ong and Reyes with the Credit Line Agreement and the Amendment to Credit Line Agreement, which virtually exonerated Power Merge of its liability on the promissory notes.

The *ponencia* held that the actuations of Wincorp establishes the presence of actionable fraud, for which the corporation can be held liable, while Power Merge is liable to Ng Wee bases on the promissory notes even as an accommodation party.

On the basis of fraud, the *ponencia* pierced the corporate veil of Wincorp and held the directors and officers of the latter as personally liable to Ng Wee. The basis of their liability was grounded on Section 31 of the Corporation Code when they assented to the grant of the Credit Line Agreement and Amendment to the Credit Line Agreement to Power Merge.

I agree with the findings and rulings of the ponencia except for holding the individual petitioners, namely; Simeon Cua, Vicente and Henry Cualoping, Mariza Santos-Tan and Manuel Estrella solidarily liable with Wincorp, Luis L. Virata, Antonio T. Ong and Anthony T. Reyes to pay Ng Wee the amount of Php 213,290,410.36.

As held by this Court in *Philippine National Bank v. Hydro Resources Contractors Corp.*,[1] a corporation acquires a separate personality from that of its directors and officers, to wit:

> A corporation is an artificial entity created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence. It has a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected. As a consequence of its status as a distinct legal entity and as a result of a conscious policy decision to promote capital formation, a corporation incurs its own liabilities and is legally responsible for payment of its obligations. In other words, by virtue of the separate juridical personality of a corporation, the corporate debt or credit is not the debt or credit of the stockholder. This protection from liability for shareholders is the principle of limited liability.[2] (Citations omitted)

It is well-settled that the juridical personality of a corporation may be removed or its corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. When the corporation becomes a shield for fraud, illegality or inequity committed against third persons, the corporate veil will, as a result, be disregarded for the interest of justice.[3]

"However, the rule is that a court should be careful in assessing the milieu where the doctrine of the corporate veil may be applied. Otherwise an injustice, although unintended, may result from its erroneous application. Thus, cutting through the corporate cover requires an approach characterized by due care and caution."[4]

"It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed."[5]

---

[1] 706 Phil. 297 (2013).

[2] *Id.* at 308.

[3] *Id.* at 308-309.

[4] *Id.* at 309.

[5] *Id.*

Directors, Trustees or Officers can be held personally and solidarily liable with the corporation in situations enumerated by law and jurisprudence,[6] thus:

"Personal liability of a corporate director, trustee or officer along (although not necessarily) with the corporation may so validly attach, as a rule, only when —

'1. He assents (a) to a patently unlawful act of the corporation, or (b) for bad faith or gross negligence in directing its affairs, or (c) for conflict of interest, resulting in damages to the corporation, its stockholders or other persons;

'2. He consents to the issuance of watered stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto;

'3. He agrees to hold himself personally and solidarily liable with the corporation; or

'4. He is made, by a specific provision of law, to personally answer for his corporate action.'"[7]

Section 31 of the Corporation Code provides that:

Sec. 31. *Liability of directors, trustees or officers*. - Directors or trustees who **willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation** or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

---

[6] See *Edsa Shangri-La Hotel and Resort, Inc., et al. v. BF Corporation*, 578 Phil. 588, 607 (2008); *Aratea v. Suico*, 547 Phil. 407, 415-416 (2007) citing *MAM Realty Development Corp. v. National Labor Relations Commission*, 314 Phil. 838, 844-845 (1995); *Solidbank Corporation v. Mindanao Ferroalloy Corporation*, 502 Phil. 651, 665 (2005) citing *Tramat Mercantile, Inc. v. Court of Appeals*, 308 Phil. 13, 17 (1994).

[7] *Solidbank Corporation v. Mindanao Ferroalloy Corporation*, *supra* at 665 citing *Tramat Mercantile, Inc. v. Court of Appeals*, *supra* at 17. See also *Aratea v. Suico*, 547 Phil. 407, 415-416 (2007) citing *MAM Realty Development Corp. v. National Labor Relations Commission*, *supra* at 844-845.

When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation. (Emphasis ours)

In the present case, nowhere in the records does it appear that the granting, extending and approving of the Credit Line Agreement and the Amendment to the Credit Line Agreement is a patently unlawful act of the corporation. In fact, the granting and approval of the same falls within the function and purpose of Wincorp as an investment house. Thus, the mere approval of Cua, the Cualopings, Santos-Tan and Estrella of the said credit line agreements cannot be equated to knowingly assenting or approving a patently unlawful act of the corporation. Neither can it be equated to bad faith, fraud nor gross negligence.

The records do not show that Cua, the Cualopings, Santos-Tan and Estrella willfully and knowingly vote for or assent to the execution of the Side Agreements that virtually exonerated Power Merge of its liability on the promissory notes, except for the signatories who were Ong and Reyes. Neither are they guilty of gross negligence or bad faith in directing or dealing in the affairs of the corporation, they merely approved the Credit Line Agreements because the screening committee of the corporation and its subordinate departments approved the same. In the case of *Pioneer Insurance & Surety Corp. v. Morning Star Travel & Tours, Inc., et al.*,[8] "bad faith imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, not simply bad judgment or negligence."[9] "It means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud."[10] "Fraud may be defined as

---

[8] 763 Phil. 428 (2015).

[9] *Id*. at 442.

[10] *Ever Electrical Manufacturing, Inc., et al. v. Samahang Manggagawa ng Ever Electrical/NAMAWU Local 224*, 711 Phil. 529, 539 (2012).

the voluntary execution of a wrongful act, or a willful omission, knowing and intending the effects which naturally and necessarily arise from such act or omission."[11]

In this case, the Credit Line Agreements of Wincorp as approved by its officers may be called as a business strategy which turned out to be unfavorable. This does not mean however that Cua, the Cualopings, Santos-Tan and Estrella perpetrated fraud as they did not know and intend the effects of such act or omission, nor was there bad faith on their part since there is no dishonest purpose or consciousness in doing such wrong.

It is undisputed that Ong and Reyes executed the Side Agreements which exonerated Power Merge from its liabilities to Wincorp. It does not however show that Ong and Reyes were authorized by the board of directors in executing the Side Agreements. "Acts of an officer that are not authorized by the board of directors/trustees do not bind the corporation unless the corporation ratifies the acts or holds the officer out as a person with authority to transact on its behalf."[12] Here, there is simply nothing that will establish that Cua, the Cualopings, Santos-Tan and Estrella authorized or ratified the acts of Ong and Reyes.

I am therefore inclined to rule that there is no basis in holding Cua, the Cualopings, Santos-Tan and Estrella jointly and severally liable with Virata, Wincorp, Ong and Reyes to pay Ng Wee the amount of his investment.

---

[11] *Rep. of the Phils. v. Estate of Alfonso Lim, Sr., et al.*, 611 Phil. 37, 52 (2009).

[12] *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas, et al.*, 776 Phil. 401, 411 (2016).

FIRST DIVISION

[G.R. No. 225328. March 21, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AL MADRELEJOS *y* QUILILAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH HOMICIDE; ELEMENTS.—Jurisprudence enumerates four elements in order to be convicted of robbery with homicide: 1. the taking of personal property with the use of violence or intimidation against the person; 2. the property taken belongs to another; 3. the taking is characterized by intent to gain or *animus lucrandi*; and, 4. on the occasion of the robbery or by reason thereof the crime of homicide was committed. It is necessary that the robbery itself be proved as conclusively as any other essential element of the crime. For there to be robbery, there must be taking of personal property belonging to another, with intent to gain, by means of violence against or intimidation of any person or by using force upon things.

2. ID.; ID.; ID.; IT IS IMMATERIAL THAT THE VICTIM OF HOMICIDE IS OTHER THAN THE VICTIM OF ROBBERY, AS LONG AS HOMICIDE OCCURS BY REASON OF THE ROBBERY OR ON OCCASION THEREOF, THE SPECIAL COMPLEX CRIME OF ROBBERY WITH HOMICIDE IS DEEMED TO HAVE BEEN COMMITTED; CASE AT BAR.— It is evident from the witness' statements that the victim Jovel was shot while accused-appellant and his companion was robbing the passengers of a jeepney. Hence, the RTC was correct that the crime of robbery with homicide was consummated. Even if this Court assumes that Jovel's bag was not taken, the same does not detract from the consistent assertion of the prosecution's witnesses that the belongings of the other passengers were successfully taken from them. As aforestated, it is immaterial that the victim of homicide is other than the victim of robbery, as long as homicide occurs by reason of the robbery or on the occasion thereof, the special complex crime of robbery with homicide is deemed to have been committed.

3.ID.; ID.; CIVIL LIABILITY; AWARD OF DAMAGES; MODIFIED IN CASE AT BAR.— [T]he Court deems it appropriate to adjust the award of damages. In *People v. Jugueta*, the proper amounts of damages for the crime of robbery with homicide are: ₱75,000 as civil indemnity, ₱75,000 as moral damages, ₱75,000 as exemplary damages and ₱50,000 as temperate damages. Here, the CA deleted the RTC's award of exemplary damages and increased the award of civil indemnity to ₱75,000. Hence, the award of exemplary damages must be reinstated, and in addition, an award of temperate damages in the amount of ₱50,000 must likewise be ordered.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J.*:

For review is the Decision[1] of the Court of Appeals (CA) dated May 29, 2015 in CA-G.R. CR-H.C. No. 05913 affirming with modification the Decision[2] of the Regional Trial Court (RTC), Branch 128, Caloocan City, dated November 6, 2012.

The Antecedents

Together with one John Doe, herein accused-appellant Al Madrelejos was charged with the crime of robbery with homicide in an information which reads as follows:

That on or about the 22nd day of January 2008, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually

---

[1] Penned by Associate Justice Melchor Q.C. Sadang and concurred in by Associate Justices Celia C. Librea-Leagogo and Amy C. Lazaro-Javier, *Rollo*, pp. 2-11.

[2] Penned by Judge Eleanor R. Kwong, CA *Rollo*, pp. 26-31.

helping one another, armed with a handgun with intent to gain, by means of force, threats, violence and intimidation employed upon the person of JOVEL FEDERESO JACABAN, did then and there wilfully, unlawfully and feloniously, take, rob and carry away, one (1) bag belonging to said Jovel Federeso Jacaban, and on the occasion of the said offense, said accused, with intent to kill, attack, assault and shot (sic) the said Joven (sic) Federeso Jacaban with the use of firearm, thereby inflicting upon him mortal wounds which were the direct cause of his death thereafter, to the damage and prejudice of the said Jovel Federeso Acaban (sic) with an undetermined amount.

CONTRARY TO LAW[3]

Accused-appellant was arraigned on February 22, 2010, where he pleaded not guilty to the charge.

The Version of the Prosecution

During the trial, the prosecution presented Marina Rubia (Rubia), Simeon Sidera, Jr. (Sidera), Anacleto Jacaban (Anacleto), Bonnie Chua, PO3 Julian Chavez as witnesses.

Their testimonies can be summarized as follows:

On the morning of January 22, 2008, Rubia, Sidera and the victim, Jovel Federeso Jacaban (Jovel) were in a jeepney cruising along Kanlaon St., Bagong Silang, Caloocan City, when two of the other passengers, one of which is accused-appellant, declared a hold-up. Accused-appellant ordered the other to get the passengers' belongings. Jovel refused to give his bag to accused-appellant's companion. Accused-appellant then shot Jovel. Thereafter, accused-appellant and his companion got out of the jeep, followed by the other passengers.[4]

Jovel was brought to the hospital where he eventually died.[5]

---

[3] *Rollo*, pp. 2-3.

[4] CA *rollo*, p. 27.

[5] *Id*.

The Version of the Defense

Accused-appellant, testifying for the defense, denied that he robbed the passengers of the jeepney, and claimed that he shot Joven by accident. He admitted that he rode the same jeepney with the prosecution's witnesses and Jovel on January 22, 2008. He narrated that during the trip, he noticed that his enemy was seated in front of him. He claimed that he fought this person because the latter was rude to his wife, and that he did not know the name of the person.[6]

Accused-appellant claimed that when he was about to get off from the jeepney, his enemy pulled out a gun, saying, "*Natiyempuhan din kita*, " and aimed it at accused. They grappled for possession of the firearm and when accused got hold of the gun, he fired it, accidentally hitting Joven. Shocked by what happened, he got off the jeepney and went to Bulacan.[7]

The Ruling of the RTC

After trial, the RTC, found accused-appellant guilty of robbery with homicide. The *fallo* of the RTC's Decision, is as follows:

> WHEREFORE, finding the accused [g]uilty for Robbery with Homicide, he is hereby sentenced to Reclusion Perpetua and all the accessory penalties attached thereto.
>
> He is likewise directed to pay the heirs of Jovel Jacaban as follows:
>
> 1. Fifty Thousand Pesos (₱50,000.00) as civil indemnity;
>
> 2. Seventy Five Thousand Pesos (₱75,000.00) as moral damages
>
> and
>
> 3. Seventy Five Thousand Pesos (₱75,000.00) as exemplary damages
>
> SO ORDERED.[8]

---

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

[7] *Id.*

[8] *Id.* at 31.

The Ruling of the CA

On May 29, 2015, the CA modified the RTC's Decision by convicting accused-appellant of the crime of attempted robbery with homicide. The dispositive portion of the CA decision reads:

> WHEREFORE, the appeal is DENIED. The November 6, 2012 Decision of the Regional Trial Court, Branch 128, Caloocan City in Criminal Case No. C-83062 is AFFIRMED with MODIFICATION in that accused-appellant Al Madrelejos is instead found GUILTY beyond reasonable doubt of the crime of attempted robbery with homicide under Article 297 of the Revised Penal Code, as amended. Accordingly, he is sentenced to suffer the indeterminate penalty of twelve (12) years, five (5) months and eleven (11) days of *reclusion temporal*, as minimum, to eighteen (18) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum. The award of exemplary damages is deleted and the civil indemnity is increased to ₱75,000.00. All the awards for damages shall be subject to interest of 6% *per annum* from the date of finality of this Decision until fully paid.
>
> SO ORDERED.[9]

The appellate court ruled that accused-appellant should only be held guilty of the crime of attempted robbery with homicide since there is no proof that the taking of the passengers' belongings was consummated.[10]

Unsatisfied with the appellate court's Decision, accused-appellant is now before Us through the instant appeal.

The Issues

Accused raised the following arguments in support of his appeal:

> 1. THE COURT A QUO GRAVELY ERRED IN NOT GIVING CREDENCE TO THE ACCUSED-APPELLANT'S VERSION;
>
> 2. THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED

---

[9] *Rollo*, p. 11.

[10] *Id.* at 10.

DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILTY BEYOND REASONABLE DOUBT.[11]

Summed up, the fundamental issue in the instant case boils down to the propriety of accused-appellant's conviction of the crime of attempted robbery.

The Ruling of the Court

Jurisprudence enumerates four elements in order to be convicted of robbery with homicide:

1. the taking of personal property with the use of violence or intimidation against the person;
2. the property taken belongs to another;
3. the taking is characterized by intent to gain or animus lucrandi; and,
4. on the occasion of the robbery or by reason thereof the crime of homicide was committed.[12]

It is necessary that the robbery itself be proved as conclusively as any other essential element of the crime. For there to be robbery, there must be taking of personal property belonging to another, with intent to gain, by means of violence against or intimidation of any person or by using force upon things.

In *People v. Ebet*[13], this Court explained the nature of the complex crime of robbery with homicide:

In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion or by reason of the robbery. The intent to commit robbery must precede the taking of human life. The homicide may take place before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime that

---

[11] CA *rollo*, pp. 21-22.

[12] See *People v. Obedo*, 451 Phil. 529, 538 (2003).

[13] 649 Phil. 181 (2010).

has to be taken into consideration. There is no such felony of robbery with homicide through reckless imprudence or simple negligence. The constitutive elements of the crime, namely, robbery and homicide, must be consummated.

It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed or that aside from the homicide, rape, intentional mutilation, or usurpation of authority, is committed by reason or on the occasion of the crime. Likewise immaterial is the fact that the victim of homicide is one of the robbers; the felony would still be robbery with homicide. Once a homicide is committed by or on the occasion of the robbery, the felony committed is robbery with homicide. All the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide. The word homicide is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide.

Intent to rob is an internal act but may be inferred from proof of violent unlawful taking of personal property. When the fact of asportation has been established beyond reasonable doubt, conviction of the accused is justified even if the property subject of the robbery is not presented in court. After all, the property stolen may have been abandoned or thrown away and destroyed by the robber or recovered by the owner. The prosecution is not burdened to prove the actual value of the property stolen or amount stolen from the victim. Whether the robber knew the actual amount in the possession of the victim is of no moment because the motive for robbery can exist regardless of the exact amount or value involved.

When 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.

If a robber tries to prevent the commission of homicide after the commission of the robbery, he is guilty only of robbery and not of robbery with homicide. All those who conspire to commit robbery with homicide are guilty as principals of such crime, although not all profited and gained from the robbery. One who joins a criminal conspiracy adopts the criminal designs of his co-conspirators and can no longer repudiate the conspiracy once it has materialized.

Homicide is said to have been committed by reason or on the occasion of robbery if, for instance, it was committed to (a) facilitate the robbery or the escape of the culprit; (b) to preserve the possession by the culprit of the loot; (c) to prevent discovery of the commission of the robbery; or, (d) to eliminate witnesses in the commission of the crime. As long as there is a nexus between the robbery and the homicide, the latter crime may be committed in a place other than the *situs* of the robbery.[14]

In this case, intention to rob was revealed as soon as the robbers announced the hold up. This was fortified when the robbers, particularly accused-appellant's companion started to take the passengers' belongings.[15] It is likewise certain that Jovel was shot while he and accused-appellant's companion was struggling to get hold of Jovel's bag.

We do not agree with the appellate court that the fact of asportation was not proven. Evidently, while it seems unclear from the records that the robbers were able to take Jovel's bag, it was established that the belongings of the other passengers were taken. Thus, Marina Rubia testified:

Q Was there an unusual occurrence while you were traversing in Kanlaon St., Bagong Silang?
A Yes, sir.

Q What was that?
A There were **two men who announced hold-up**.

Q When they announced hold-up, what happened next?
A The other person instructed his companion to get our things, sir.

Q Are any of those two persons who instructed the other to get your things in the courtroom?
A Yes, sir.

Q Can you point to that person?
A (At this juncture, witness pointed to a person inside the

---

[14] *Id.* at 189-190.

[15] See *People v. Quemeggen, et al.*, 611 Phil. 487 (2009).

courtroom and when asked of his name answered Al-Al Madr[e]lejos)

x x x x x x x x x

Q How many passengers were there aside from the four of you?
A The jeep was full of passengers.

Q So after Al-Al Madr[e]lejos instructed the other one to get the things, what transpired next?
A **His companion proceeded to the end of the jeep taking the things and while taking the things of Kuya Jovel, his companion and Kuya Jovel were pulling/grabbing the bag.**[16] (Emphasis ours)

Simeon Sidera, Jr.'s testimony corroborated Rubia's, to wit:

Q Where was he positioned in the jeep when it was happening, if you saw?
A When he declared the hold-up he poke the gun at the driver **while his companion was taking the things of the passengers of the jeepney** and when he turned his back it was then when we hear the gun shot, sir. (Emphasis ours).[17]

It is evident from the foregoing statements that the victim Jovel was shot while accused-appellant and his companion was robbing the passengers of a jeepney.

Hence, the RTC was correct that the crime of robbery with homicide was consummated. Even if this Court assumes that Jovel's bag was not taken, the same does not detract from the consistent assertion of the prosecution's witnesses that the belongings of the other passengers were successfully taken from them. As aforestated, it is immaterial that the victim of homicide is other than the victim of robbery, as long as homicide occurs by reason of the robbery or on the occasion thereof, the special complex crime of robbery with homicide is deemed to have been committed.

---

[16] TSN dated August 10, 2010, pp. 5-7.

[17] TSN dated March 1, 2011, p. 7.

However, the Court deems it appropriate to adjust the award of damages. In *People v. Jugueta*,[18] the proper amounts of damages for the crime of robbery with homicide are: ₱75,000 as civil indemnity, ₱75,000 as moral damages, ₱75,000 as exemplary damages and ₱50,000 as temperate damages. Here, the CA deleted the RTC's award of exemplary damages and increased the award of civil indemnity to ₱75,000. Hence, the award of exemplary damages must be reinstated, and in addition, an award of temperate damages in the amount of ₱50,000 must likewise be ordered.

WHEREFORE, the appeal is **DISMISSED**. The Decision of the Court of Appeals dated May 29, 2015 is hereby **AFFIRMED** with **MODIFICATION** in that accused-appellant is held guilty of robbery with homicide and is hereby ordered to pay the heirs of Jovel Federeso Jacaban the following amounts: 1) ₱75,000 as civil indemnity; 2) ₱75,000 as moral damages; 3) ₱75,000 as exemplary damages; and 4) ₱50,000 as temperate damages and an interest at the rate of 6% *per annum* shall be imposed on all monetary awards from the time of finality of this decision until fully paid.

SO ORDERED.

Leonardo-de Castro[*] (*Acting Chairperson*) and *del Castillo, JJ.*, concur.

Sereno, C.J., on leave.

Leonen,[**] *J.*, on official leave.

---

[18] *People v. Jugueta*, G.R. No. 202125, April 5, 2016, 788 SCRA 331.

[*] Designated as Acting Chairperson pursuant to Special Order No. 2540 dated February 28, 2018.

[**] Designated as additional Member as per Raffle dated February 7, 2018; on official leave.

SECOND DIVISION

[G.R. No. 225695. March 21, 2018]

IRENEO CAHULOGAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; AN APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW, AND IT IS THE DUTY OF THE REVIEWING TRIBUNAL TO CORRECT, CITE AND APPRECIATE ERRORS IN THE APPEALED JUDGMENT WHETHER THEY ARE ASSIGNED OR UNASSIGNED.— "Time and again, it has been held that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

2. CRIMINAL LAW; PRESIDENTIAL DECREE NO. 1612 (ANTI-FENCING LAW OF 1979); FENCING; DEFINED.— Section 2 of PD 1612 defines Fencing as "the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft." The same Section also states that a Fence "includes any person, firm, association, corporation or partnership or other organization who/which commits the act of fencing."

3. ID.; ID.; ID.; ELEMENTS.— The essential elements of the crime of fencing are as follows: (*a*) a crime of robbery or theft has been committed; (*b*) the accused, who is not a principal or an accomplice in the commission of the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells or

disposes, or buys and sells, or in any manner deals in any article, item, object or anything of value, which has been derived from the proceeds of the crime of robbery or theft; (*c*) the accused knew or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft; and (*d*) there is, on the part of one accused, intent to gain for oneself or for another. Notably, Fencing is a *malum prohibitum*, and PD 1612 creates a *prima facie* presumption of Fencing from evidence of possession by the accused of any good, article, item, object or anything of value, which has been the subject of robbery or theft; and prescribes a higher penalty based on the value of the property.

4. ID.; ID.; ID.; PENALTY; WHEN THE NOMENCLATURE OF THE PENALTIES UNDER THE REVISED PENAL CODE (RPC) IS ADOPTED BY THE SPECIAL PENAL LAW, THE ASCERTAINMENT OF THE INDETERMINATE SENTENCE WILL BE BASED ON THE RULES APPLIED FOR THOSE CRIMES PUNISHABLE UNDER THE RPC; CASE AT BAR.— Notably, while the crime of Fencing is defined and penalized by a special penal law, the penalty provided therein is taken from the nomenclature in the Revised Penal Code (RPC). In *Peralta v. People*, the Court discussed the proper treatment of penalties found in special penal laws vis-a-vis Act No. 4103, otherwise known as the "Indeterminate Sentence Law," x x x 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. Applying the foregoing and considering that there are neither mitigating nor aggravating circumstances present in this case, the Court finds it proper to sentence petitioner to suffer the penalty of imprisonment for an indeterminate period of four (4) years, two (2) months, and one (1) day of *prision correccional*, as minimum, to fifteen (15) years of *reclusion temporal*, as maximum.

APPEARANCES OF COUNSEL

Adonis Arc Gumahad 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] filed by petitioner Ireneo Cahulogan (petitioner) assailing the Decision[2] dated November 6, 2015 and the Resolution[3] dated June 8, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 01126-MIN, which affirmed the Judgment[4] dated October 4, 2013 of the Regional Trial Court of Cagayan De Oro City, Misamis Oriental, Branch 41 (RTC) in Crim. Case No. 2011-507, convicting petitioner of the crime of Fencing, defined and penalized under Presidential Decree No. (PD) 1612, otherwise known as the "Anti-Fencing Law of 1979."[5]

The Facts

On April 18, 2011, an Information[6] was filed before the RTC charging petitioner with the crime of Fencing, the accusatory portion of which reads:

> That on or about January 14, 2011 [,] at about 4:00 o'clock [sic] in the afternoon, at Bugo, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without the knowledge and consent of the owner thereof, did then and there wilfully, unlawfully and feloniously buy, receive, possess, keep, acquire, conceal, sell or dispose of, or in any manner deal, Two Hundred Ten (210) cases of Coca Cola products worth Php52,476.00 owned by and belonging to the offended party *Johnson*

---

[1] *Rollo*, pp. 3-12.

[2] *Id*. at 16-30. Penned by Associate Justice Rafael Antonio M. Santos with Associate Justices Edgardo A. Camello and Henri Jean Paul B. Inting, concurring.

[3] *Id*. at 39-41. Penned by Associate Justice Rafael Antonio M. Santos with Associate Justices Edgardo A. Camello and Edgardo T. Lloren, concurring.

[4] CA *rollo*, pp. 28-34. Penned by Presiding Judge Jeoffre W. Acebido.

[5] (March 2, 1979).

[6] Records, p. 2.

Tan which accused know, or should be known to him, to have been derived from the proceeds of the crime of Theft, to the damage and prejudice of said owner in the aforesaid sum of Php52,476.00.

Contrary to Presidential Decree No. 1612, otherwise known as Anti-Fencing Law of 1979.[7]

The prosecution alleged that private complainant Johnson Tan (Tan), a businessman engaged in transporting Coca-Cola products, instructed his truck driver and helper, Braulio Lopez (Lopez) and Loreto Lariosa (Lariosa), to deliver 210 cases of Coca-Cola products (subject items) worth ₱52,476.00 to Demins Store. The next day, Tan discovered that contrary to his instructions, Lopez and Lariosa delivered the subject items to petitioner's store. Tan then went to petitioner and informed him that the delivery to his store was a mistake and that he was pulling out the subject items. However, petitioner refused, claiming that he bought the same from Lariosa for ₱50,000.00, but could not present any receipt evidencing such transaction. Tan insisted that he had the right to pull out the subject items as Lariosa had no authority to sell the same to petitioner, but the latter was adamant in retaining such items. Fearing that his contract with Coca-Cola will be terminated as a result of the wrongful delivery, and in order to minimize losses, Tan negotiated with petitioner to instead deliver to him ₱20,000.00 worth of empty bottles with cases, as evidenced by their Agreement[8] dated January 18, 2011. Nonetheless, Tan felt aggrieved over the foregoing events, thus, prompting him to secure an authorization to file cases from Coca-Cola and charge petitioner with the crime of Fencing. He also claimed to have charged Lariosa with the crime of Theft but he had no update as to the status thereof.[9]

Upon arraignment, petitioner pleaded not guilty,[10] but chose not to present any evidence in his defense. Rather, he merely

---

[7] *Id*.

[8] *Id*. at 17.

[9] See *rollo*, pp. 18-19 and CA *rollo*, pp. 29-30.

[10] *Rollo*, p. 17 and CA *rollo*, p. 29.

submitted his memorandum,[11] maintaining that the prosecution failed to prove his guilt beyond reasonable doubt.[12]

The RTC Ruling

In a Judgment[13] dated October 4, 2013, the RTC found petitioner guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for the indeterminate period of ten (10) years and one (1) day of *prision mayor*, as minimum, to fifteen (15) years of *reclusion temporal*, as maximum.[14]

The RTC found that the prosecution had successfully established the presence of all the elements of the crime of Fencing, considering that Lariosa stole the subject items from his employer, Tan, and that petitioner was found to be in possession of the same. The RTC noted that under the circumstances of the case, petitioner would have been forewarned that the subject items came from an illegal source since Lariosa: (*a*) sold to him the subject items at a discount and without any corresponding delivery and official receipts; and (*b*) did not demand that such items be replaced by empty bottles, a common practice in purchases of soft drink products.[15]

Aggrieved, petitioner appealed[16] to the CA.

The CA Ruling

In a Decision[17] dated November 6, 2015, the CA affirmed petitioner's conviction.[18] It held that Lariosa's act of selling

---

[11] See Memorandum for the Accused dated June 18, 2013; records, pp. 170-171.

[12] See *rollo*, p. 19 and CA *rollo*, p. 30.

[13] CA *rollo*, pp. 28-34.

[14] See *id*. at 34.

[15] See *id*. at 30-33.

[16] See Notice of Appeal dated October 17, 2013; records, pp. 211-212.

[17] *Rollo*, pp. 16-30.

[18] See *id*. at 29.

the subject items to petitioner without the authority and consent from Tan clearly constituted theft. As such, petitioner's possession of the stolen items constituted *prima facie* evidence of Fencing — a presumption which he failed to rebut.[19]

Undaunted, petitioner moved for reconsideration[20] which was, however, denied in a Resolution[21] dated June 8, 2016; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld petitioner's conviction for the crime of Fencing.

The Court's Ruling

The petition is without merit.

"Time and again, it has been held that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[22]

Guided by this consideration, the Court finds no reason to overturn petitioner's conviction for the crime of Fencing.

Section 2 of PD 1612 defines Fencing as "the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or

---

[19] See *id*. at 20-29.

[20] See motion for reconsideration dated January 12, 2016; *id*. at 31-37.

[21] *Id*. at 39-41.

[22] See *Rivac v. People*, G.R. No. 224673, January 22, 2018.

should be known to him, to have been derived from the proceeds of the crime of robbery or theft."[23] The same Section also states that a Fence "includes any person, firm, association, corporation or partnership or other organization who/which commits the act of fencing."[24]

The essential elements of the crime of fencing are as follows: (*a*) a crime of robbery or theft has been committed; (*b*) the accused, who is not a principal or an accomplice in the commission of the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article, item, object or anything of value, which has been derived from the proceeds of the crime of robbery or theft; (*c*) the accused knew or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft; and (*d*) there is, on the part of one accused, intent to gain for oneself or for another.[25] Notably, Fencing is a *malum prohibitum*, and PD 1612 creates a *prima facie* presumption of Fencing from evidence of possession by the accused of any good, article, item, object or anything of value, which has been the subject of robbery or theft; and prescribes a higher penalty based on the value of the property.[26]

In this case, the courts *a quo* correctly found that the prosecution was able to establish beyond reasonable doubt all the elements of the crime of Fencing, as it was shown that: (*a*) Lariosa sold to petitioner the subject items without authority

---

[23] See Section 2 (a) of PD 1612.

[24] See Section 2 (b) of PD 1612.

[25] *Ong v. People*, 708 Phil. 565, 571 (2013); citing *Capili v. CA*, 392 Phil. 577, 592 (2000).

[26] *Ong v. People*; *id*. at 574; citing *Dizon-Pamintuan v. People*, G.R. No. 111426, July 11, 1994, 234 SCRA 63, 72. See also Section 5 of PD 1612 which reads:

Section 5. *Presumption of Fencing*. — Mere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be *prima facie* evidence of fencing.

and consent from his employer, Tan, for his own personal gain, and abusing the trust and confidence reposed upon him as a truck helper;[27] (*b*) petitioner bought the subject items from Lariosa and was in possession of the same; (*c*) under the circumstances, petitioner should have been forewarned that the subject items came from an illegal source, as his transaction with Lariosa did not have any accompanying delivery and official receipts, and that the latter did not demand that such items be replaced with empty bottles, contrary to common practice among dealers of soft drinks;[28] and (*d*) petitioner's intent to gain was made evident by the fact that he bought the subject items for just ₱50,000.00, lower than their value in the amount of ₱52,476.00. "[T]he 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]

---

[27] In *Lim v. People* (G.R. No. 211977, October 12, 2016, 806 SCRA 1, 12), it has been held that conviction of a principal in the crime of theft is not necessary for an accused to be found guilty of the crime of Fencing.

[28] "[Circumstances normally exist to forewarn, for instance, a reasonably vigilant buyer that the object of the sale may have been derived from the proceeds of robbery or theft. Such circumstances include the time and place of the sale, both of which may not be in accord with the usual practices of commerce. The nature and condition of the goods sold, and the fact that the seller is not regularly engaged in the business of selling goods may likewise suggest the illegality of their source, and therefore should caution the buyer. This justifies the presumption found in Section 5 of P.D. No. 1612 that '*mere possession of any goods, . . ., object or anything of value which has been the subject of robbery or thievery shall be prima facie evidence of fencing*' — a presumption that is, according to the Court, '*reasonable for no other natural or logical inference can arise from the established fact of. . . possession of the proceeds of the crime of robbery or theft.*'" (*Ong v. People*, *supra* note 25, at 573; citing *Dela Torre v. COMELEC*, 327 Phil. 1144, 1154-1155 [1996].)

[29] See *Peralta v. People*, G.R. No. 221991, August 30, 2017, citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

Anent the proper penalty to be imposed on petitioner, pertinent portions of Section 3 of PD 1612 read:

> Section 3. *Penalties*.— Any person guilty of fencing shall be punished as hereunder indicated:
>
> a) The penalty of *prision mayor*, if the value of the property involved is more than 12,000 pesos but not exceeding 22,000 pesos; if the value of such property exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, the penalty shall be termed *reclusion temporal* and the accessory penalty pertaining thereto provided in the Revised Penal Code shall also be imposed.
>
> x x x x x x x x x

Notably, while the crime of Fencing is defined and penalized by a special penal law, the penalty provided therein is taken from the nomenclature in the Revised Penal Code (RPC). In *Peralta v. People*,[30] the Court discussed the proper treatment of penalties found in special penal laws vis-a-vis Act No. 4103,[31] 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* 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

---

[30] See *id*.

[31] Entitled "AN ACT TO PROVIDE FOR 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" (December 5, 1933).

such circumstance, the legal effects under the system of penalties native to the Code would also necessarily apply to the special law.[32]

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.[33]

Applying the foregoing and considering that there are neither mitigating nor aggravating circumstances present in this case, the Court finds it proper to sentence petitioner to suffer the penalty of imprisonment for an indeterminate period of four (4) years, two (2) months, and one (1) day of *prision correccional*, as minimum, to fifteen (15) years of *reclusion temporal*, as maximum.

At this point, the Court notes that as may be gleaned from its whereas clauses, PD 1612 was enacted in order to provide harsher penalties to those who would acquire properties which are proceeds of the crimes of Robbery or Theft, who prior to the enactment of said law, were punished merely as accessories after the fact of the said crimes.[34] This rationale was echoed in *Dizon-Pamintuan v. People*[35] where the Court held that while

---

[32] See *Peralta v. People*, *supra* note 29; citing *Quimvel v. People*, G.R. No. 214497, April 18, 2017.

[33] See *Peralta v. People*, *id.*; citing *Mabunot v. People*, G.R. No. 204659, September 19, 2016, 803 SCRA 349, 364.

[34] The whereas clauses of PD 1612 read:

WHEREAS, reports from law enforcement agencies reveal that there is rampant robbery and thievery of government and private properties;

WHEREAS, such robbery and thievery have become profitable on the part of the lawless elements because of the existence of ready buyers, commonly known as fence, of stolen properties;

WHEREAS, under existing law, a fence can be prosecuted only as an accessory after the fact and punished lightly;

WHEREAS, it is imperative to impose heavy penalties on persons who profit by the effects of the crimes of robbery and theft.

[35] *Supra* note 26.

a Fence may be prosecuted either as an accessory of Robbery/Theft or a principal for Fencing, there is a preference for the prosecution of the latter as it provides for harsher penalties:

> Before P.D. No. 1612, a fence could only be prosecuted for and held liable as an *accessory*, as the term is defined in Article 19 of the Revised Penal Code. The penalty applicable to an accessory is obviously light under the rules prescribed in Articles 53, 55, and 57 of the Revised Penal Code, subject to the qualification set forth in Article 60 thereof. Noting, however, the reports from law enforcement agencies that "there is rampant robbery and thievery of government and private properties" and that "such robbery and thievery have become profitable on the part of the lawless elements because of the existence of ready buyers, commonly known as fence, of stolen properties," P.D. No. 1612 was enacted to "impose heavy penalties on persons who profit by the effects of the crimes of robbery and theft." Evidently, the accessory in the crimes of robbery and theft could be prosecuted as such under the Revised Penal Code or under P.D. No. 1612. However, in the latter case, he ceases to be a mere accessory but becomes a *principal* in the crime of fencing. Elsewise stated, the crimes of robbery and theft, on the one hand, and fencing, on the other, are separate and distinct offenses. The state may thus choose to prosecute him either under the Revised Penal Code or P.D. No. 1612, although the preference for the latter would seem inevitable considering that fencing is a *malum prohibitum*, and P.D. No. 1612 creates a presumption of fencing and prescribes a higher penalty based on the value of the property.[36]

While PD 1612 penalizes those who acquire properties which are proceeds of Robbery or Theft, its prescribed penalties are similar to the latter crime in that they are largely dependent on the value of the said properties. In fact, a reading of Section 3 of PD 1612 and Article 309 of the RPC (which provides for the prescribed penalties for the crime of Theft) reveals that both provisions use the same graduations of property value to determine the prescribed penalty; in particular, if the value: (*a*) exceeds ₱22,000.00, with additional penalties for each additional ₱10,000.00; (*b*) is more than ₱12,000.00 but not

---

[36] *Id*. at 71-72; citations omitted.

exceeding ₱22,000.00; (*c*) is more than ₱6,000.00 but not exceeding ₱12,000.00; (*d*) is more than ₱200.00 but not exceeding ₱6,000.00; (*e*) is more than ₱50.00 but not exceeding ₱200.00; and (*f*) does not exceed ₱5.00. However, with the recent enactment of Republic Act No. 10951,[37] which adjusted the values of the property and damage on which various penalties are based, taking into consideration the present value of money, as opposed to its archaic values when the RPC was enacted in 1932,[38] the graduation of values in Article 309 was substantially amended, without any concomitant adjustment for PD 1612. This development would then result in instances where a Fence, which is theoretically a mere accessory to the crime of Robbery/ Theft, will be punished more severely than the principal of such latter crimes. This incongruence in penalties therefore, impels an adjustment of penalties.

However, while it may be the most expeditious approach, a short cut by judicial fiat is a dangerous proposition, lest the Court dare trespass on prohibited judicial legislation.[39] As the Court remains mindful of the fact that the determination of penalties is a policy matter that belongs to the legislative branch of the government, it finds it prudent to instead, furnish both Houses of Congress, as well as the President of the Republic of the Philippines, through the Department of Justice, pursuant to Article 5[40] of the RPC, copies of this ruling in order to alert

---

[37] Entitled "AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS 'THE REVISED PENAL CODE,' AS AMENDED" approved on August 29, 2017.

[38] See *Rivac v. People*, G.R. No. 224673, January 22, 2018, *supra* note 22.

[39] *Corpuz v. People*, 734 Phil. 353, 425 (2014).

[40] Article 5 of the RPC reads:

Article 5. Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties. - Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the

them on the aforestated incongruence of penalties, all with the hope of arriving at the proper solution to this predicament.

WHEREFORE, the petition is **DENIED**. The Decision dated November 6, 2015 and the Resolution dated June 8, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 01126-MIN finding petitioner Ireneo Cahulogan **GUILTY** beyond reasonable doubt of the crime of Fencing defined and penalized under Presidential Decree No. 1612, otherwise known as the "Anti-Fencing Law," are **AFFIRMED** with **MODIFICATION**, sentencing him to suffer the penalty of imprisonment for the indeterminate period of four (4) years, two (2) months, and one (1) day of *prision correccional*, as minimum, to fifteen (15) years of *reclusion temporal*, as maximum.

Pursuant to Article 5 of the Revised Penal Code, let a copy of this Decision be furnished the President of the Republic of the Philippines, through the Department of Justice, the President of the Senate, and the Speaker of the House of Representatives.

SO ORDERED.

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

---

proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of penal legislation.

In the same way, the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

SECOND DIVISION

[G.R. Nos. 228494-96. March 21, 2018]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HONORABLE SANDIGANBAYAN (FOURTH DIVISION) and CAMILO LOYOLA SABIO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENT OF ACQUITTAL; THE PROSECUTION CANNOT APPEAL A JUDGMENT OF ACQUITTAL LEST THE CONSTITUTIONAL PROHIBITION AGAINST DOUBLE JEOPARDY BE VIOLATED; EXCEPTIONS.—**The constitutionally guaranteed right against double jeopardy is enshrined in the Bill of Rights under the 1987 Constitution: x x x This right was further embodied in Section 7 of Rule 117 of the Rules of Court on Criminal Procedure, x x x Generally, a judgment of acquittal is immediately final and executory. The prosecution cannot appeal the acquittal lest the constitutional prohibition against double jeopardy be violated. However, the rule admits of two exceptional grounds that can be challenged in a *certiorari* proceeding under Rule 65 of the Rules of Court: (1) in a judgment of acquittal rendered with grave abuse of discretion by the court; and (2) where the prosecution had been deprived of due process.

2. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AN ACTION FOR *CERTIORARI* DOES NOT CORRECT ERRORS OF JUDGMENT BUT ONLY ERRORS OF JURISDICTION AS THE NATURE OF RULE 65 PETITION DOES NOT ENTAIL A REVIEW OF FACTS AND LAW ON THE MERITS IN THE MANNER DONE IN AN APPEAL; CASE AT BAR.—**A cursory reading of the present petition for *certiorari* demonstrates a prodding to review the judgment of acquittal rendered by the Sandiganbayan on account of grave abuse of discretion. However, though enveloped on a pretext of grave abuse, the petition in actuality aims to overturn the decision of Sandiganbayan due to perceived mistake in the appreciation of facts and evidence. Unfortunately for the petitioner, the correction of this mistake does not fall within

> the ambit of Rule 65. x x x In this case, the prosecution was given adequate opportunity to present several witnesses and all necessary documentary evidence to prove the guilt of Sabio. However, Sandiganbayan warranted the acquittal of Sabio due to insufficiency of evidence engendering reasonable doubt on whether Sabio committed the offenses charged. x x x The "grave abuse of discretion" contemplated by law involves a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. Petitioner failed to discharge the burden that Sandiganbayan blatantly abused its discretion in acquitting Sabio such that it was deprived of its authority to dispense justice. An action for *certiorari* does not correct errors of judgment but only errors of jurisdiction. The nature of a Rule 65 petition does not entail a review of facts and law on the merits in the manner done in an appeal. Misapplication of facts and evidence, and erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion. Even granting that the Sandiganbayan erred in weighing the sufficiency of the prosecution's evidence, such error does not necessarily amount to grave abuse of discretion.

APPEARANCES OF COUNSEL

Asterio G. Rea for private respondent.

Feria Tantoco Daos Law Offices, co-counsel for private respondent.

D E C I S I O N

REYES, JR., *J.*:

Before this Court is a Petition for *Certiorari*[1] under Rule 65 of the 1997 Rules of Court instituted by People of the Philippines (petitioner), represented by the Office of the Ombudsman, assailing the Decision[2] dated April 20, 2016 and

---

[1] *Rollo*, pp. 3-25.

[2] Penned by Associate Justice Maria Cristina J. Cornejo, with Associate Justices Jose R. Hernandez, Rodolfo A. Ponferrada and Michael Frederick L. Musngi, concurring and with Associate Justice Alex L. Quiroz, dissenting; *id*. at 28-66.

Resolution[3] dated October 18, 2016 of the Sandiganbayan acquitting private respondent Camilo Loyola Sabio (Sabio), for having been issued with grave abuse of discretion, amounting to lack or excess of jurisdiction, thereby denying petitioner's right to due process.

The Facts

Sabio, the then Chairperson of the Presidential Commission on Good Government (PCGG) with Salary Grade 30, was charged before the Sandiganbayan with (a) one count for violation of Section 3(e) of Republic Act No. 3019,[4] as amended, otherwise known as the Anti-Graft and Corrupt Practices Act; and (b) two counts for Malversation of Public Funds as defined and penalized under Article 217[5] of the Revised Penal Code.[6] The three sets of Information are quoted as follows:

---

[3] Rendered by Associate Justices Jose R. Hernandez, Rodolfo A. Ponferrada, Alex L. Quiroz, Michael Frederick L. Musngi and Zaldy V. Trespeses (sitting as Special Member in lieu of Associate Justice Maria Cristina J. Cornejo per Administrative Order No. 274-2016 dated September 21, 2016); *id.* at 67-68.

[4] **Section 3.** *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[5] **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 x x x.

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

CRIMINAL CASE NO. SB-11-CRM-0276

(For Violation of Sec. 3 (e), R.A. No. 3019, as amended)

"That on or about the period from **February 14, 2006 to October 3, 2006** or for sometime prior or subsequent thereto, in the City of Mandaluyong, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, [**SABIO**], a high ranking public officer being then the Chairman of the [PCGG] with a Salary Grade of 30 and committing the offense in relation to and/or taking advantage of his official position, did then and there wilfully, unlawfully and criminally cause undue injury to the government through evident bad faith by appropriating, misappropriating, and converting to his own personal use and benefit, the following remittances of Mid-Pasig Land Development Corporation (MPLDC) from the proceeds of the sale of A. Soriano Corporation shares which form part of the ill-gotten wealth of Former President Ferdinand E. Marcos and his cronies in the amount of **TEN MILLION THREE HUNDRED FIFTY THOUSAND PESOS (₱10,350,000.00)** consisting of:

Voucher No.	Check No.	Date	Amount
a. Unnumbered	56626	02/14/2006	₱ 500,000.00
b. 03-45	56643	03/08/2006	1,000,000.00
c. 03-46	56644	03/13/2006	2,000,000.00
d. 04-57	56659	04/21/2006	500,000.00
e. 05-86	56688	05/03/2006	700,000.00
f. 05-94	56696	05/11/2006	350,000.00
g. 05-100	56702	05/25/2006	1,300,000.00
h. 06-125	56722	06/30/2006	1,000,000.00
i. 08-147	56744	08/18/2006	500,000.00
j. 09-150	56747	09/07/2006	1,000,000.00
k. 10-164	56761	10/03/2006	1,500,000.00
TOTAL			₱10,350,000.00

which amount although he received as cash advances was supposed to be remitted to the Bureau of Treasury (BOT) as part of the CARP Fund, thereby causing damage and prejudice to the Philippine Government in the aforementioned amount."[7]

---

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

CRIMINAL CASE NO. SB-11-CRM-0277
(For Malversation of Public Funds under Sec. 217 of the Revised Penal Code)

"That on or about the period from **February 14, 2006 to October 3, 2006** or for sometime prior or subsequent thereto, in the City of Mandaluyong, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, [**SABIO**], a high ranking public officer being then the Chairman of the [PCGG] with a Salary Grade of 30 and as such is accountable for the public funds or property collected and received by reason of his office, committing the offense in relation to and/or taking advantage, of his official position, did then and there wilfully, unlawfully, feloniously and with grave abuse of confidence, appropriate, misappropriate, misapply, embezzle and convert to his own personal use and benefit the following remittances of Mid-Pasig Land Development Corporation (MPLDC) from the proceeds of sale of A. Soriano Corporation shares which form part of the ill-gotten wealth of Former President Ferdinand E. Marcos and his cronies in the amount of **TEN MILLION THREE HUNDRED FIFTY THOUSAND PESOS (₱10,350,000.00),** consisting of:

Voucher No.	Check No.	Date	Amount
a. Unnumbered	56626	02/14/2006	₱ 500,000.00
b. 03-45	56643	03/08/2006	1,000,000.00
c. 03-46	56644	03/13/2006	2,000,000.00
d. 04-57	56659	04/21/2006	500,000.00
e. 05-86	56688	05/03/2006	700,000.00
f. 05-94	56696	05/11/2006	350,000.00
g. 05-100	56702	05/25/2006	1,300,000.00
h. 06-125	56722	06/30/2006	1,000,000.00
i. 08-147	56744	08/18/2006	500,000.00
j. 09-150	56747	09/07/2006	1,000,000.00
k. 10-164	56761	10/03/2006	1,500,000.00
TOTAL			₱10,350,000.00

which amount although he received as cash advances was supposed to be remitted to the Bureau of Treasury (BOT) as part of the CARP Fund, thereby causing damage and prejudice to the Philippine Government in the aforementioned amount."[8]

---

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

CRIMINAL CASE NO. SB-11-CRM-0278[9]
(For Malversation of Public Funds under Sec. 217 of the Revised Penal Code)

"That on or about the period from **May 30, 2007 to August 14, 2008,** or for sometime prior or subsequent thereto, in the City of Mandaluyong, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, [**SABIO**], a high ranking public officer being then the Chairman of the [PCGG] with a Salary Grade of 30 and as such, accountable for the public funds and property collected and received by reason of his office, committing the offense in relation to and/or taking advantage, of his official position, did then and there wilfully, unlawfully, feloniously and with grave abuse of confidence, appropriate, misappropriate, misapply, embezzle and convert to his own personal use and benefit the following cash advances from the [PCGG] to defray expenses in connection with litigation, accommodation and contingency fund in his trip to Kuala Lumpur, Malaysia in the total amount of **ONE MILLION FIVE HUNDRED FIFTY-FIVE THOUSAND EIGHT HUNDRED SIXTY-TWO PESOS AND THREE CENTAVOS (₱1,555,862.03),** consisting of:

Date	Nature / Purpose	Disbursement Voucher No.	Amount
a. 05/30/2007	Emergency / Miscellaneous, etc.	2007-05-0617	₱500,000.00
b. 08/16/2007	Litigation and other related expenses	2007-08-0972	₱450,000.00
c. 09/30/2007	Litigation and other related expenses	2007-09-1122	₱500,000.00
d. 04/17/2008	Plane fare, per diem hotel accommodation, contingency fund re: trip to Kuala Lumpur, Malaysia	2008-04-0358	₱55,862.03
e. 08/14/2008	Litigation and other related expenses	2008-08-0795	₱50,000.00
TOTAL			₱1,555,862.03

Upon arraignment on January 12, 2012, Sabio entered a plea of not guilty on all the three charges filed against him.[10]

---

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

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

After the termination of the pre-trial conference and compliance with the pre-trial order, the trial ensued between the parties.[11]

During the trial, the prosecution presented the testimonies of numerous witnesses and submitted their respective documentary exhibits to prove the guilt of Sabio on the offenses charged.[12]

Among the pertinent testimonies as gathered from the decision of the Sandiganbayan are the following:

Lorna Gaerlan Reyes (Reyes), the Chief Administrative Officer of the Collection Division of the Finance and Administrative Department of the PCGG, testified that she was called to the office of Atty. Manuel Paras (Atty. Paras), the former General Manager of Independent Realty Corporation (IRC) Group of Companies (one of the surrendered companies to PCGG), to receive remittances. In connection thereof, Reyes was given RCBC Check No. 955805 dated November 23, 2006 issued in the name of PCGG from IRC in the amount of ₱26,930,670.99 and PNB Manager's Check No. 1528106 in the amount of ₱13,069,329.01 representing remittances for the Comprehensive Agrarian Reform Program to be remitted to the Bureau of Treasury (BOT). Thereafter, Atty. Paras asked for an official receipt in a total amount of ₱50,350,000.00 which Reyes refused to issue since she only received an amount of ₱40,000,000.00. Reyes then prepared a transmittal letter addressed to the BOT and had it signed by then PCGG Chairman Sabio and Commissioner Ricardo Abcede (Commissioner Abcede). The official receipts were all issued in the name of IRC as payee and the checks issued to her were all in the name of PCGG. The checks, on the other hand, were deposited in the name of BOT. During cross-examination, Reyes admitted that the Chairman of IRC, and not Sabio, determined the amount

---

[11] *Id*. at 32.

[12] *Id*. at 32-49.

to be remitted to BOT. Sabio's participation was only limited to the signing of the transmittal letter to BOT.[13]

Primitiva Solinap Hingco-Millado (Millado), the former Cashier of IRC, testified that she prepared the vouchers, checks (Exhibits S to NN, PP, QQ and SS) and documents of IRC in the name of Sabio. During cross-examination, she disclosed that Atty. Paras verbally instructed her to prepare the voucher marked as Exhibit S, which turned out to be MPLDC Cash Voucher dated February 14, 2007, despite lack of supporting document. She likewise prepared a check marked as Exhibit T, referring to MPLDC dated March 8, 2006 payable to Sabio in the amount of ₱1,000,000.00, upon instruction of Atty. Paras through the IRC Chief Accountant Corazon San Mateo Escorpizo (Escorpizo), even without the approval of the approving officer. Similarly, she prepared MPLDC Cash Voucher No. 03-46 dated March 13, 2006 in the name of Sabio amounting to ₱2,000,000.00 marked as Exhibit W, PNB Check in the name of MPLDC with Sabio as payee in the amount of ₱2,000,000.00 dated March 13, 2006 marked as Exhibit X, MPLDC Cash Voucher No. 04-57 dated April 21, 2006 payable to Sabio amounting to ₱500,000.00 marked as Exhibit Y, all upon verbal instructions of Atty. Paras. During cross-examination, Millado admitted that she has no evidence to show that the checks payable under the name of Sabio were received by the latter.[14]

Escorpizo, testified that the preparation of the check voucher with regard to cash advances and remittances to the National Treasury depended upon the instruction of the Office of the General Manager and/or the President of IRC. She clarified that Commissioners Abcede and Nicasio Conti (Commissioner Conti) facilitated the transaction of the cash advances but the checks must be made in the name of Sabio since he was authorized as the Chairman of PCGG. Escorpizo added further that she facilitated the preparation of the checks and cash advances premised upon the collective promise of Atty. Paras, IRC

---

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

[14] *Id*. at 36, 40-41.

President Ernesto R. Jalandoni (President Jalandoni) and Commissioners Abcede and Conti that a board resolution will be submitted to authorize the cash advance.[15]

Finally, Marcial Velarga Flores, the Chief Administrative Officer of the Finance Department of the PCGG testified that he issued a Memorandum addressed to Sabio for his failure to liquidate the issued cash advances and the same was received by an office staff named Wilson.[16]

On his part, Sabio stood as the lone witness of the defense. He denied having misappropriated, embezzled, misapplied and converted to his own personal use and benefit the amount of ₱10,350,000.00 as remitted by MPLDC. He explained that as the Chairman of the PCGG, he signed and endorsed the checks to be delivered to the cashier for encashment for the operational expense of PCGG in view of the one-peso budget of the office for the year 2006. In the same note, he alleged that he endorsed to his office staff the cash advance of ₱1,550,862.03 for proper liquidation.[17]

On April 20, 2016, the Sandiganbayan rendered the assailed Decision,[18] the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, and for insufficiency of evidence engendering reasonable doubt, judgment is hereby rendered Acquitting herein accused [Sabio] from the charge of Violation of Sec. 3(e), RA 3019 in Crim. Case No. SB-11-CRM-0276 and Malversation in Crim. Cases Nos. SB-11-CRM-0277 and SB-11-CRM-0278.
>
> SO ORDERED.[19]

The petitioner filed its motion for reconsideration which was denied in a Resolution[20] dated October 18, 2016. Thus:

---

[15] *Id*. at 41-45.

[16] *Id*. at 47.

[17] *Id*. at 50-52.

[18] *Id*. at 63.

[19] *Id*.

[20] *Id*. at 67-68.

Acting on the prosecution's ***MOTION FOR RECONSIDERATION (Re: Decision dated April 20, 2016)*** dated May 5, 2016, this Court must emphasize that it had already acquitted the accused after trial on the merits. The rule against double jeopardy proscribes a reconsideration or reversal of a judgment of acquittal on the merits. It is well-settled that acquittal in a criminal case is final and executory upon its promulgation, and that accordingly, the State may not seek its review without placing the accused in double jeopardy.

Accordingly, the subject motion for reconsideration is DENIED.[21]

Hence, this petition.

In this present petition for *certiorari*, the Office of the Ombudsman raises the following issues:

A.

THE HONORABLE SANDIGANBAYAN (FOURTH DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR IN EXCESS OF ITS JURISDICTION WHEN IT CAPRICIOUSLY AND WANTONLY RULED THAT THE PARTIAL REMITTANCES SUBJECT OF CRIMINAL CASES NOS. SB-11-CRM-0276 AND SB-11-CRM-0277 WERE USED AND ISSUED TO THE PCGG AS CASH ADVANCES

B.

SANDIGANBAYAN (FOURTH DIVISION) ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION EFFECTIVELY DENYING PETITIONER OF ITS RIGHT TO DUE PROCESS WHEN IT CONCLUDED IN CRIMINAL CASE SB-11-CRM-0276 AND SB-11-CRM-0277 THAT THERE IS NO SHOWING THAT SABIO MISAPPROPRIATED OR CONVERTED THE FUNDS INVOLVED

---

[21] *Id.* at 67.

C.

THE HONORABLE SANDIGANBAYAN (FOURTH DIVISION) GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF ITS JURISDICTION WHEN IT RULED IN ALL THE CASES THAT THERE IS INSUFFICIENT EVIDENCE THAT SABIO MISAPPROPRIATED OR CONVERTED THE FUNDS INVOLVED.[22]

In his Comment[23] on the petition, Sabio refuted the arguments of the petitioner and emphasized on his constitutional right against double jeopardy. In addition, Sabio disproved grave abuse of discretion on the part of the Sandiganbayan when the latter acquitted him due to insufficiency of evidence engendering reasonable doubt.

In its Reply,[24] petitioner argued that the petition does not place the accused at risk of double jeopardy. Though it has long been settled that the prosecution cannot appeal a decision to reverse an acquittal, the same may be questioned in an action for *certiorari* when a judgment was tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, thus rendering the assailed judgment void. The petitioner argued on Sandiganbayan's capricious disregard that there was indeed a misappropriation of the money which should have been remitted to the BOT. Moreover, Sandiganbayan failed to take in consideration Sabio's blatant failure to liquidate the cash advances he received by virtue of his position as PCGG's Chairperson.

Ruling of the Court

The Court finds the petition unmeritorious.

The constitutionally guaranteed right against double jeopardy is enshrined in the Bill of Rights under the 1987 Constitution:

---

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

[23] *Id*. at 90-122.

[24] *Id*. at 139-148.

Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

This right was further embodied in Section 7 of Rule 117 of the Rules of Court on Criminal Procedure, to wit:

Sec. 7. *Former conviction or acquittal; double jeopardy.* - When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information. x x x.

Generally, a judgment of acquittal is immediately final and executory.[25] The prosecution cannot appeal the acquittal lest the constitutional prohibition against double jeopardy be violated.[26] However, the rule admits of two exceptional grounds that can be challenged in a *certiorari* proceeding under Rule 65 of the Rules of Court: (1) in a judgment of acquittal rendered with grave abuse of discretion by the court; and (2) where the prosecution had been deprived of due process.[27]

A cursory reading of the present petition for *certiorari* demonstrates a prodding to review the judgment of acquittal rendered by the Sandiganbayan on account of grave abuse of discretion. However, though enveloped on a pretext of grave abuse, the petition in actuality aims to overturn the decision of Sandiganbayan due to perceived mistake in the appreciation of facts and evidence. Unfortunately for the petitioner, the correction of this mistake does not fall within the ambit of Rule 65.

---

[25] *Morillo v. People, et al.,* 775 Phil. 192, 211 (2015).

[26] *People, et al. v. CA, et al.,* 755 Phil. 80, 97 (2015).

[27] *Ysidoro v. Justice Leonardo-De Castro, et al.,* 681 Phil. 1, 16 (2012).

In *People v. Hon. Tria-Tirona,*[28] the Court emphasized the limitation of review in *certiorari* proceeding:

> Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari*. An error of judgment is one in which the court may commit in the exercise of its jurisdiction. An error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. *Certiorari* will not be issued to cure errors by the trial court in its appreciation of the evidence of the parties, and its conclusions anchored on the said findings and its conclusions of law. Since no error of jurisdiction can be attributed to public respondent in her assessment of the evidence, *certiorari* will not lie.[29] (Citations omitted)

In this case, the prosecution was given adequate opportunity to present several witnesses and all necessary documentary evidence to prove the guilt of Sabio. However, Sandiganbayan warranted the acquittal of Sabio due to insufficiency of evidence engendering reasonable doubt on whether Sabio committed the offenses charged.

Records show that after taking into consideration the testimonies and evidence of both parties, Sandiganbayan arrived at a conclusion that the participation of Sabio with respect to the ₱10,350,000.00 was limited to the act of signing of the transmittal letter, checks and vouchers. The court likewise opined that the alleged untransmitted amount of ₱10,350,000.00 appearing in the breakdown of ₱50,350,000.00 as "remittance to the National Treasury for 2006" was misleading. The amount was never intended for remittance to the BOT but for the operational expenses of the PCGG.[30] As can be inferred from the testimony of Escorpizo, the cash advance of ₱10,350,000.00 was put in the name of Sabio since he was the Chairperson of

---

[28] 502 Phil. 31 (2005).

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

[30] *Rollo,* p. 55.

PCGG under the instructions of PCGG Commissioners Abcede and Conti, who in turn promised Escorpizo that they will issue a board resolution for the authorization of the cash advance.[31] On the other hand, the charge of malversation was likewise dismissed due to the prosecution's failure to prove that Sabio failed to liquidate or settle the cash advance of ₱1,550,862.03 despite demand.[32] Clearly, an action for *certiorari* will not lie to reverse the judgment of acquittal which was rendered after the court's appreciation of evidence.

Premised on the following factual findings and conclusion, the Court finds no indication that the Sandiganbayan gravely abused its discretion when it gave a verdict of acquittal in favor of Sabio. The "grave abuse of discretion" contemplated by law involves a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.[33] Petitioner failed to discharge the burden that Sandiganbayan blatantly abused its discretion in acquitting Sabio such that it was deprived of its authority to dispense justice.[34]

An action for *certiorari* does not correct errors of judgment but only errors of jurisdiction.[35] The nature of a Rule 65 petition does not entail a review of facts and law on the merits in the manner done in an appeal.[36] Misapplication of facts and evidence, and erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion.[37] Even granting that the Sandiganbayan erred in weighing the sufficiency of the prosecution's evidence, such error does not necessarily amount to grave abuse of discretion.[38]

---

[31] *Id*. at 56-57.

[32] *Id*. at 60-61.

[33] *Bangayan v. Bangayan*, 675 Phil. 656, 668-669 (2011).

[34] *Id*. at 669.

[35] *People v. Sandiganbayan (2nd Division), et al.,* 765 Phil. 845, 858 (2015).

[36] *Ysidoro v. Justice Leonardo-De Castro, et al., supra* note 27, at 16.

[37] *Id*. at 17.

[38] *People v. Sandiganbayan (2nd Division), et al., supra* note 35, at 864.

By way of final note, the Court finds it apt to reiterate the underlying principle behind the general rule of stay judgment of acquittal in *People v. Hon. Velasco*:[39]

> The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into "the humanity of the laws and in a jealous watchfulness over the rights of the citizen, when brought in unequal contest with the State x x x." Thus Green expressed the concern that "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty."
>
> It is axiomatic that on the basis of humanity, fairness and justice, an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal. The philosophy underlying this rule establishing the absolute nature of acquittals is "part of the paramount importance criminal justice system attaches to the protection of the innocent against wrongful conviction." The interest in the finality-of-acquittal rule, confined exclusively to verdicts of not guilty, is easy to understand: it is a need for "repose," a desire to know the exact extent of one's liability. With this right of repose, the criminal justice system has built in a protection to insure that the innocent, even those whose innocence rests upon a jury's leniency, will not be found guilty in a subsequent proceeding.[40] (Citations omitted)

WHEREFORE, petition is **DISMISSED.**

SO ORDERED.

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

---

[39] 394 Phil. 517 (2000).

[40] *Id.* at 555-556.

[*] Designated as Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

THIRD DIVISION

[G.R. No. 229860. March 21, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **XXX, ALFREDO GILLES, NIÑO G. MONTER and CONSTANTE M. CASTIL** *alias* **JUNJUN,** *alias* **TANSYONG,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.— Under the information, appellants are accused of committing rape under Sec. 266-A(1), which states: **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.

2. ID.; ID.; ID.; ESTABLISHED PRINCIPLES ADHERED TO BY THE COURT FOR THE REVIEW OF RAPE CASES, CLARIFIED.— Specifically, for the review of rape cases, the Court has consistently adhered to the following established principles: a) an accusation of rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; b) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and c) 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. Following these principles, the Court has also refined how rape is proved. The credibility of the complainant is the single most important issue in the prosecution of rape cases. The categorical and candid testimony of the complainant suffices, and a culprit may be convicted solely on the basis of her testimony, provided that

it hurdles the test of credibility. It should not just come from the mouth of a credible witness, it should likewise be credible and reasonable in itself, candid, straightforward and in accord with human experience. Where the discrepancies and contradictory statements on important details in the testimony seriously impair its probative value, cast serious doubt on its credibility, and erode the integrity of the testimony, the Court should acquit the accused.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE SUPREME COURT ACCORDS GREAT RESPECT TO THE TRIAL COURT'S FINDINGS ON WITNESSES' CREDIBILITY, EXCEPT WHEN THE TRIAL COURT AND/OR THE COURT OF APPEALS OVERLOOKED OR MISCONSTRUED SUBSTANTIAL FACTS THAT COULD HAVE AFFECTED THE OUTCOME OF THE CASE; CASE AT BAR.— It is true that the Court accords great respect to the trial court's findings on witnesses' credibility. This is because trial provides judges with the opportunity to detect cues and expressions that could suggest sincerity or betray lies and ill will, not reflected in the documentary or object evidence. The exception, of course, is when the trial court and/or the CA overlooked or misconstrued substantial facts that could have affected the outcome of the case. Ultimately, the prosecution has the primordial duty to present its case with clarity and persuasion that conviction becomes the only logical and inevitable conclusion. x x x The fact sought to be established is deduced as a logical consequence from other facts, or a state of facts, already proved or admitted. A review of the records and the transcripts, however, shows that there are numerous inconsistencies in the accounts of the prosecution witnesses that would lead any person with a reasonable mind to doubt the story offered against the appellants, which should lead to their acquittal. This case falls within the exception of giving great respect to the RTC and CA's assessment of the evidence. The transcripts show that there was not enough evidence to say, and not out of mere inference, that appellants had carnal knowledge of AAA and that force, threat, and intimidation were employed upon her person to achieve appellants' supposed lecherous desires.

4. CRIMINAL LAW; REVISED PENAL CODE; RAPE; CONSPIRACY; THE ELEMENTS OF CONSPIRACY

MUST BE PROVEN BEYOND REASONABLE DOUBT SIMILAR TO THE PHYSICAL ACT CONSTITUTING THE CRIME ITSELF; NOT ESTABLISHED IN CASE AT BAR.— The allegation of conspiracy to consummate the illegal act was likewise insufficiently proven. The elements of conspiracy must be proven beyond reasonable doubt, similar to the physical act constituting the crime itself. Evidence of actual cooperation, not only mere cognizance, approval, or mere presence, must be shown. In this case, the mere statement that appellants *appeared* to talk about "doing something to her" should not suffice. Further, prosecution witness Liberty cannot even say that she saw the appellants with AAA, to which AAA positively testified. The four (4) appellants were never seen together with AAA at any point of the night. Instead of corroborating AAA's account that she was with the appellants throughout the night until the following morning, Liberty offered a contrary story.

5. ID.; ID.; ID.; WITHOUT ANY SHOWING OF FORCE, THREAT, OR INTIMIDATION AS ALLEGED IN THE INFORMATION, IT IS NECESSARY TO SHOW THAT THE VICTIM WAS DEPRIVED OF REASON FOR THE SUCCESSFUL PROSECUTION OF THE ACCUSED FOR THE CRIME OF RAPE; NOT ESTABLISHED IN CASE AT BAR.— It appears from the RTC and CA decisions that appellants were convicted of rape because AAA was feeble-minded, and not because of the existence of force, threat, or intimidation. x x x This is not alleged in the information. The Court had previously ruled that an accused cannot be convicted of rape if the information charged him with rape through force, threat, or intimidation when what was proven was sexual congress with a woman deprived of reason, unconscious, or under twelve years of age. The conviction would be a deprivation of the constitutional right to be informed of the accusation against him. Nonetheless, in a more recent case, the Court held that even if the information lacked the allegation of any mental disability on the part of the victim, such allegation was unnecessary to convict the accused provided that sexual congress and mental incapacity, *i.e.* the incapacity to give consent, are proven by clear and convincing evidence. x x x Without any showing of force, threat, or intimidation as alleged in the information, it is necessary to show that AAA was deprived of

reason for the successful prosecution of the appellants for the crime of rape. The prosecution was unable to show this deprivation of reason.

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

GESMUNDO, *J.*:

This is an appeal of herein accused-appellants XXX,[1] Alfredo Gilles *(Gilles)*, Niño G. Monter *(Monter)*, and Constante M. Castil *(Castil),* from the September 27, 2016 Decision[2] of the Court of Appeals-Cebu City (*CA*) in CA-G.R. CR-HC No. 01906. The CA affirmed with modification the April 30, 2014 Decision[3] of the Regional Trial Court of Maasin City, Southern Leyte, Branch 25 (*RTC*), in Crim. Case No. 11-03-3508 finding appellants guilty beyond reasonable doubt of the crime of rape.

The Antecedents

The accusatory portion of the Information[4] against appellants states:

---

[1] Pursuant to Amended Administrative Circular No. 83-15 on the use of fictitious initials and A.M. No. 02-1-18-SC, Rule on Juveniles in Conflict with the Law. The court shall employ measures to protect the confidentiality of proceedings against the minor accused and requiring the adoption of a system of coding to conceal material information leading to the child's identity.

[2] CA *rollo*, pp. 100-114; penned by Associate Justice Edward B. Contreras with Associate Justices Edgardo L. Delos Santos and Geraldine C. Fiel-Macaraig, concurring.

[3] *Id.* at 36-54; penned by Judge Ma. Daisy Paler Gonzalez.

[4] The Court notes that there is only one information for a sole count of rape in the instant case. The victim alleged, in her narration, that several sexual acts were committed by all of the appellants.

That on October 2, 2010, at about 2:00 o'clock dawn, in [deleted], province of Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, with lustful intent and lewd designs, did then and there willfully, unlawfully and feloniously, by means of force, threats and intimidation, successfully have sexual intercourse with the victim [AAA], without her consent and against her will, to the damage and prejudice of the said victim and of social order.

CONTRARY TO LAW.[5]

After the arraignment where the appellants pleaded not guilty,[6] trial commenced. The prosecution presented four (4) witnesses: the offended party AAA, Maria Aina Daclan, records officer of the town's Rural Health Office, FFF, AAA's sister-in-law,[7] and Liberty Pinamungahan (*Liberty*), a female companion who lived in the same household. On the other hand, the defense presented appellant minor XXX as its sole witness.

Version of the Prosecution

AAA lives with the family of her brother BBB[8] and known to be suffering from mental deficiency and exhibits childish behaviour.[9]

Offended party AAA testified that on October 1, 2010, her brother BBB, whom she was living with, hosted a party for his grandchild, with appellants among the visitors. During the party, appellants invited her to go to the seashore and to the karaoke

---

[5] Records, p. 1.

[6] *Id*. at 29.

[7] Pursuant to *People of the Philippines v. Cabalquinto,* 533 Phil. 703 (2006), and Resolution dated September 19, 2006 in A.M. No. 04-11-09-SC, mandating that the Court use fictitious initials in lieu of the real names of the victim/s and immediate family members other than the accused, and delete the exact addressed of the victim.

[8] RTC decision, p. 2; TSN, May 7, 2012, p. 16.

[9] *Id*. at 6; TSN, October 8, 2012, pp. 6-7, 9; Medical Report for Alleged Sexual Abuse, October 5, 2010 (prosecution's Exhibit "C").

bar owned by a certain Amorin. AAA agreed and left the house with the appellants at around 2 o'clock in the morning when all the other occupants of the house were already asleep. They brought with them a watering can full of *tuba* from BBB, with AAA bringing the glasses they can use for drinking.

Because the karaoke bar was already closed, appellants and AAA went to the seashore, sat in the sand and drank the *tuba*. After drinking two (2) glasses of tuba, AAA felt shortness of breath. AAA also noticed that the appellants huddled together "as if they were agreeing to do something." Sometime during the night, AAA felt like urinating, and she did so in front of the appellants after asking them to turn their backs. After urinating, Castil took off her pants and underwear, which she asked to be placed beside her. She asked him what he was doing but the latter told her to keep silent. She did not complain as she felt very sleepy. Castil placed himself on top of her and the next thing she knew, Castil's penis was already in her vagina. After Castil raped her, she remembered XXX followed next, followed by Monter, and then Gilles. When Monter did the same act, she was already awake, but did not resist and told them she wanted to go home. Castil and XXX apparently raped her again, and while this was happening, she heard some people looking for her. Gilles and Monter ran away while Castil and XXX continued raping her even when the people looking for her – who turned out to be Jovita Escobal, Liberty, and a certain Antonio – were approximately 50 meters away. Castil and XXX ran away when they saw Escobal, Liberty, and Antonio near. AAA then stood up and put on her clothes. AAA and Liberty waited by the seashore for Escobal's husband who then fetched their motorcycle.

When they arrived home, AAA did not talk to anybody at their house and instead immediately went inside and slept. She slept the whole day and did not go outside her room until two (2) days later on October 3, 2010. She did not tell anybody about the incident. Her sister-in-law FFF learned of the rape incident when Elizabeth Gilles told FFF that Gilles was one of those who raped AAA. AAA was first brought to Medicare

Hospital and then at the Rural Health unit where she was examined by Dr. Teodorico Esclamado, Jr. (*Dr. Esclamado*).

While appellants were in jail, AAA spoke with Castil, who asked for forgiveness and offered to marry her, which she rejected. She also spoke with Gilles' mother, Monter's sister, and Castil's mother, who all asked for forgiveness and offered to pay her.

On cross-examination, AAA admitted she voluntarily went with appellants when they invited her to go to the karaoke bar and eventually to the seashore. She admitted to providing them with the tuba. She explained the inconsistencies between her sworn statement, where she claimed being dragged to the seashore, as against her testimony, by stating that she told appellants she did not want to go with them to a further distance.

Prosecution's second witness, Maria Aina Daclan, presented the certified true copy of the Medical Report for the Alleged Sexual Abuse issued by Dr. Esclamado. The latter already retired sometime in 2011.

FFF, meanwhile, testified that from the time she married AAA's brother, she already noticed AAA's mental deficiency and childish behavior. She came to know about the incident when Gilles' mother told her that the former's son was the one who raped AAA. Thereafter, FFF and her husband went to the police station to have the incident entered in the police blotter. They then brought AAA to the Rural Health Unit.

The prosecution's last witness, Liberty, testified that she lived with FFF and her husband as the spouses sent her to school as she helped in their vegetable sales business. On October 1, 2010, AAA was drunk during the birthday party. On October 2, 2010, the witness was awoken at around 3 o'clock in the morning to go to the market. Tonio, one of the workers, reported that he saw AAA with some men. FFF asked her and Tonio to look for AAA. They were sent to the seashore upon information from Jovita Escobal. All three went to the seashore where they saw a man who told them AAA was along the seashore. The man and Tonio went to the seashore while Liberty stayed with the

bicycle. When Liberty followed, she saw Monter, who walked past her towards his house, and XXX walking in the opposite direction. She saw AAA, sitting on the sand with Tonio and another man and that AAA had no short pants and her underwear was down to her legs. Liberty asked AAA to go home with them, but AAA insisted she would go home on her own, so they forced AAA to come with them.

Version of the Defense

XXX presented his birth certificate showing that he was born on December 3, 1994. He testified that on October 1, 2010, he went to the billiard hall where he met Castil, Monter, and Gilles. There, they were invited by BBB to his house to attend his grandson's party. The appellants stayed at the party and drank *tuba* until 11:30 in the evening. They eventually transferred to a bench outside the billiard hall. He laid down the bench and AAA appeared in front of him and squeezed his thigh and touched his penis. He rolled over towards his friends to avoid her but she called them gay. They saw Tonio riding a bicycle and they called for him to take AAA away as she was being bothersome. AAA refused but was eventually prevailed upon them. Appellants continued drinking until Castil suggested they transfer to the seashore, where they continued their drinking spree. AAA rejoined them and later removed her pajamas and urinated in front of them. Castil ignored her because she was already drunk as he saw her drinking at the birthday party.

Sometime later, XXX left the group and went 20 meters away to urinate. While he was urinating, AAA embraced and squeezed him from behind. He pleaded for AAA to stop, but the latter called him gay, forced him to lie down on the sand, and placed herself on top of him. XXX tried to free himself but AAA instead held his penis and inserted it into her vagina, and made pressing motions of her body against his. When AAA stood up, XXX was able to get away and he went back to his friends. He did not tell his friends about what happened but told them to go as AAA was being bothersome. He and his friends went home and did not know what happened to AAA after they parted ways.

The RTC Ruling

In its decision, the RTC ruled in favor of the prosecution. The RTC noted that AAA's unrefuted testimony that all the appellants raped her, started by Castil who removed her pants and panty, placed himself on top of her and placed his penis inside her vagina, followed by XXX, Monter, and Gilles who did the same, already established the essential element of sexual congress. To the RTC, XXX's testimony corroborated the fact that there was sexual congress between him and AAA. In contrast to AAA's testimony, described as candid and unwavering, XXX's version appeared contrived and ineffectual.

The RTC further emphasized that Castil's act of asking for forgiveness and even offering marriage, and the relatives of the other appellants asking for forgiveness and wanting an out of court settlement, indicated that AAA's statements regarding the incident were truthful.

The RTC likewise observed that AAA, at 48 years old, appeared to be a mental retardate. AAA's "appearance, focus and demeanor while on the witness stand, and especially her responses to the questions propounded her by the prosecution and the defense counsel, showed that she is a mental retardate."[10] Reinforcing its finding that AAA was deprived of her will to resist the sexual advances of appellants, the RTC pointed to the fact that AAA was inebriated at the time of the incident.

The RTC found that the prosecution established beyond reasonable doubt the guilt of the appellants for simple rape but appreciated the privileged mitigating circumstance of minority in favor of XXX. The dispositive portion of the decision reads:

> WHEREFORE, all the foregoing considered, the court finds each of the four accused GUILTY beyond reasonable doubt of one act of Rape by direct participation.
>
> Accused Alfredo Gilles, Niño G. Monter and Constante M. Castil are hereby sentenced to *reclusion perpetua*.

---

[10] *Rollo*, p. 46.

Accused [XXX] is hereby sentenced to an Indeterminate penalty of 10 years of *prision mayor*, as minimum, to 17 years and 4 months of *reclusion temporal*, as maximum, appreciating in his favor the privileged mitigating circumstance of minority. Pursuant to Section 38 of R.A. No. 9344 and Section 48 of Supreme Court Rule on Juveniles in Conflict with the Law, [XXX] is hereby placed under suspended sentence. Set the disposition conference regarding said accused on May 20, 2014 at 2:00 o'clock in the afternoon.

All named accused are further ordered to jointly and solidarily pay [AAA] the sum of ₱200,000.00 as civil indemnity, the further sum of ₱200,000.00 as moral damages and the sum of ₱90,000.00 as exemplary damages plus costs, without subsidiary imprisonment in case of insolvency.

SO ORDERED.[11]

The CA Ruling

In sustaining the conviction of appellants, the CA noted that the victim was a retardate, and therefore the force or intimidation required to overcome her is of a lesser degree than that used against a normal adult. In this case, considering AAA is feeble-minded, the force required by law is the sexual act itself. The CA highlighted that appellants were convicted of the crime of simple rape through force and intimidation under paragraph 1(a) of Article 266-A of the Revised Penal Code. However, it was established by testimonial evidence of FFF and the medical report of Dr. Esclamado that AAA is known to have mental deficiency. From these pieces of evidence, the CA determined AAA to be mentally deficient.

The CA ruled that the appellants argument that AAA is a woman of loose morals is bereft of merit as the moral character of the victim is immaterial. It held that the sexual act could not have been consensual as AAA was mentally deficient and thus did not have the capacity to give her consent. The CA further stated that resistance is not an element of the crime of rape, AAA's silence cannot be taken against her, and that a delay in

---

[11] *Id*. at 53-54.

reporting the crime of rape does not necessarily cast doubt on AAA's credibility. Finally, as to the credibility of the witnesses, the CA noted that the RTC considered AAA as a credible witness. The CA was fully convinced of her sincerity, candor and truthfulness.

On the subject of the penalty, however, the CA specified that the appellants were not eligible for parole pursuant to Section 3, Republic Act No. 9346.[12] The dispositive portion of the decision reads:

> WHEREFORE, the appeal is hereby DENIED. The April 30, 2014 Decision of the RTC, Branch 25, Maasin City, Southern Leyte, in Criminal Case No. 11-03-3508 finding accused-appellants guilty beyond reasonable doubt of simple rape is AFFIRMED with MODIFICATION that all monetary awards shall be subject to interest at the rate of 6% per annum from the date of finality of this judgment until fully paid.
>
> SO ORDERED.[13]

Hence, this appeal.

Issues

Appellants submit to this Court the following issues for resolution:

1. Whether the courts *a quo* erred in convicting the appellants of the crime charged in giving full weight and credence to the materially unreliable and uncorroborated testimonies of the prosecution witnesses;
2. Whether the courts *a quo* erred in convicting the appellants of the crime charged despite the failure of the prosecution to prove their guilt beyond reasonable doubt.

Arguments for the appellants

Appellants stress that AAA is not mentally deficient. The medical certificate purportedly signed by Dr. Esclamado was

---

[12] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[13] *Rollo*, pp. 17 and 113.

never testified to by the physician. Moreover, the examination conducted by the physician was on AAA's vagina, and not on her mental condition. AAA's actuations were also incompatible with human experience and inconsistent with the acts of a person who allegedly went through a traumatic experience of being raped by four (4) men. Appellants insist that AAA was not deprived of reason at the time of the incident. She fully knew what was going to happen to her. She was not forced to go with the appellants, on the contrary, she consented and freely went with them. Her testimony is likewise inconsistent with the testimony of prosecution witness Liberty. Appellants also point out that FFF and her husband took it upon themselves to report the allegation to the police.

While it is true that the sole testimony of a victim is sufficient to sustain a conviction, appellants argue that the presumption of innocence is not overcome by mere suspicion, conjecture, or a probability that the defendant committed the crime. Even assuming that there was carnal knowledge between AAA and appellants, such was done in accord with their own volition.

Arguments for the appellee

Appellee, through the Office of the Solicitor General, asserts that the testimonies of the prosecution witnesses show that indeed there was sexual congress between appellants and AAA. It insists that the prosecution was able to prove that appellants committed rape through force and intimidation, which was sufficient in consummating the purpose which the appellants had in mind. The conviction is not based on the fact that AAA is a mental retardate, but on the use of force and intimidation. The mental retardation was a circumstance the trial court used to evaluate the degree of the force and intimidation needed. In this case, the force required is only the sexual act itself. Further, the fact that AAA was apparently drunk at that time further demonstrates AAA's inability to give consent to having carnal knowledge.

Appellee likewise emphasizes the existence of the mental abnormality or deficiency on the part of AAA. Other evidence

may prove mental retardation, which includes testimony of witnesses and even the observation by the trial court.

The Court's Ruling

From a review of the records, the Court finds the appeal impressed with merit.

Under the information, appellants are accused of committing rape under Sec. 266-A(1), which states:

Article 266-A. Rape: When And How Committed. - Rape is committed:

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

a) Through force, threat, or intimidation;

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

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

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

x x x x x x x x x

The information against appellants alleged that they committed the heinous act through force, threat, or intimidation. There was no mention in the information that AAA was deprived of reason or was unconscious.

Specifically, for the review of rape cases, the Court has consistently adhered to the following established principles: a) an accusation of rape can be made with facility; it is difficult to prove, but more difficult for the person accused, though innocent, to disprove; b) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and c) 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.[14]

Following these principles, the Court has also refined how rape is proved. The credibility of the complainant is the single most important issue in the prosecution of rape cases. The categorical and candid testimony of the complainant suffices, and a culprit may be convicted solely on the basis of her testimony, provided that it hurdles the test of credibility.[15] It should not just come from the mouth of a credible witness, it should likewise be credible and reasonable in itself, candid, straightforward and in accord with human experience. Where the discrepancies and contradictory statements on important details in the testimony seriously impair its probative value, cast serious doubt on its credibility, and erode the integrity of the testimony,[16] the Court should acquit the accused.

It is true that the Court accords great respect to the trial court's findings on witnesses' credibility. This is because trial provides judges with the opportunity to detect cues and expressions that could suggest sincerity or betray lies and ill will, not reflected in the documentary or object evidence. The exception, of course, is when the trial court and/or the CA overlooked or misconstrued substantial facts that could have affected the outcome of the case.[17]

Ultimately, the prosecution has the primordial duty to present its case with clarity and persuasion that conviction becomes the only logical and inevitable conclusion. The prosecution is required to justify the conviction of the accused with moral certainty. Failing this test, the Court has the constitutional duty to acquit the accused lest its mind be tortured with the thought that it has imprisoned an innocent man for the rest of his life.[18]

---

[14] *People of the Philippines v. Saldivia,* 280 Phil. 501, 511 (1991).

[15] See *People of the Philippines v. Cabingas*, *et al.,* 385 Phil. 653, 662 (2000).

[16] See *People of the Philippines v. Torion*, 366 Phil. 624, 632 (1999).

[17] See *People of the Philippines v. Quintos*, 746 Phil. 809, 820 (2014).

[18] *People of the Philippines v. Aballe*, 410 Phil. 131, 141-142 (2001).

The presumption of innocence is a primordial concern for the Court; thus, resort to inference, or the truth or proposition drawn from another which is supposed or admitted to be true, is not correct. The fact sought to be established is deduced as a logical consequence from other facts, or a state of facts, already proved or admitted.[19]

A review of the records and the transcripts, however, shows that there are numerous inconsistencies in the accounts of the prosecution witnesses that would lead any person with a reasonable mind to doubt the story offered against the appellants, which should lead to their acquittal.

This case falls within the exception of giving great respect to the RTC and CA's assessment of the evidence. The transcripts show that there was not enough evidence to say, and not out of mere inference, that appellants had carnal knowledge of AAA and that force, threat, and intimidation were employed upon her person to achieve appellants' supposed lecherous desires. Below are the relevant portions of AAA's testimony:

Q: You said that at about 2:00 o'clock in the morning you and the four accused went to the vicinity of the karaoke bar owned by a certain Amorin. Were you in fact able to have a sing along party in the karaoke bar?
A: We just passed by at the videoke bar of Amorin because it was already closed.

Q: When you passed by where were you going?
A: Towards the seashore.

Q: Whose idea was it for you to go to the seashore at that time?
A: They. (Witness is referring to the accused).

Q: Who among them if you can remember, all of them or just some of them?
A: Four of them.

Q: Did they tell you what the five of you were going to do at the seashore?

---

[19] *People of the Philippines v. Masalihit*, 360 Phil. 332, 344 (1998).

x x x x x x x x x

A: To have a drinking spree.

Q: What will you be drinking?
A: Tuba.

Q: Where did the tuba come from?
A: From [BBB].

Q: Whose idea was it to bring the tuba from the house of [BBB]?
A: They asked again tuba (sic).

Q: Who particularly among the accused?
A: Junjun.

Q: And did you give them the tuba?
A: Yes.

Q: How much if you can estimate the quantity?
A: Half of the watercan.

Q: And who was carrying this watercan where the tuba was placed in going to the seashore?
A: Niño and Bugoy.

Q: Did you bring anything to use for drinking the tuba?
A: Pitcher and one glass.

Q: And who was carrying the pitcher and one glass?
A: I.

Q: When you got to the seashore of Barangay [redacted] what did you do upon arriving there at the seashore?
A: We were just sitting.

Q: Then what happened next, if any?
A: They held me.

Q: Who held you?
A: Junjun.

Q: In which part of your body was Junjun holding you?
A: My arm. (Witness is raising her left arm).

Q: Did Junjun say anything when he held your left arm?
A: I asked him why are you holding me.

Q: And what was his reply, if any?
A: He said I'm just holding you.

Q: Since you were at that time according to you the five of you were bringing half a watercan of tuba, a pitcher and a glass, the five of you not drink of the tuba?
A: We drank a little.

Q: You how many glasses of tuba were you had a drank? (sic)
A: I did not drink anymore.

Q: You did not drink anymore at that time on October 2, 2010?
A: Maybe two glasses.

Q: Where was it when you drank the two glasses?
A: There at the seashore.

Q: Was it of your own volition that you drank two glasses of tuba?
A: Yes, I drank two glasses.

Q: And with the two glasses of tuba what did you fell (sic) after having drunk the two glasses of tuba?
A: A shortness of breath.

Q: What did you do since you said you suffered from shortness of breath?
A: I was just sitting on the seashore.

Q: Then because you said that you have shortness of breath what happened next, if any?
A: They were having an agreement but I did not know what they were agreeing.

Q: So, what happened next after they had the "sabot-sabot"?
A: That they are going to do something on me.

Q: You said earlier that Junjun who held your left arm?
A: Yes.

Q: After he held your left arm what happened next?
A: He took off my pants.

Q: What kind of pants was it, was it a denim pants or not?
A: Not a denim pants.

Q: Who took off your pants?
A: It was already torn.

Q: In which part of your pants was torn?
A: At the buttocks.

Q: Can you indicate precisely please stand up and demonstrate and point out to your back where was there of your pants?
A: From the back down to the crotch up to the front.

Q: Could you tell the Honorable Court why was it torn?
A: Because when we pass in going to the seashore there was a pumpboat.

Q: So, what cause the tearing of your pants?
A: When I step over at the pumpboat.

Q: Who was it particularly who took off your pants?

A: I was the one who took off my pants up to here only. (Witness is referring to her knees).

Q: Why did you take off your pants?
A: Because it was already torn.

Q: What was your intention when you brought down your pants up to your knees?
A: Because I wanted to urinate.

Q: When you brought down your pants up to your knees where were the four accused at that time?
A: They were just near me, in front of me.

Q: And you did not mind that they were there when you urinate?
A: I let them turned their back.

Q: And did they in fact turned their back?
A: Yes.

Q: Did you in fact urinate?
A: Yes.

Q: Before urinating did you also bring down your panty?
A: Yes.

Q: After urinating did you bring up back your panty and pants?

x x x x x x x x x

A: Yes, including the pants.

Q: You said that you drank two glasses of tuba. What about the accused did they also partake the drinking of tuba?
A: They drank plenty.

Q: Now, after urinating and brought up your panty and your pants what happened next?
A: They already started to do something on me.

Q: What was the particular act that they started something?
A: They raped me.

Q: Who was the one who raped you first?
A: Junjun.

Q: What did Junjun do?
A: He took off my pants and my panty.

x x x x x x x x x

Q: When you said that Junjun took off your pants and your panty what did he do with them the pants and the panty?
A: I told him you just placed it there. (Witness is indicating by pointing the left side of her body).

Q: When he was taking off your pants and your panty what was your reaction to that act?
A: I asked him what is this Jun.

Q: What was his reply, if any?
A: You just keep silent.

Q: Did you say anything after he said "saba na"?
A: Not anymore because I was sleeping.

Q: And then what happened next?
A: I cannot recall anymore when they took turns in raping me.

Q: You said it was Junjun who first raped you. Do you remember that?
A: Yes.

Q: When you said he raped you what exactly did he do?
A: As I have already said they took turns in raping me.

Q: And after Junjun took off your pants and your panty what was his position when he raped you?
A: He placed himself on top of me.

Q: What did you feel when he placed himself on top of you?
A: I did not do anything anymore.

x x x x x x x x x

Q: Why was it that you said you did not do anything anymore?
A: As I have already said I felt very sleepy.

Q: After he inserted his penis into your vagina what did Junjun do with his penis?
A: (Witness is demonstrating by using her left forefinger in pumping manner towards her vagina).

Q: How long if you can estimate was Junjun doing that?
A: I cannot recall anymore.

Q: Then you said that the four accused took turns in raping you. After Junjun who followed next?
A: [XXX].

Q: What did [XXX] do to you, if any?
A: The same.

Q: The same as what?
A: He inserted his penis.

Q: To where?
A: He inserted his penis into my vagina.

x x x x x x x x x

Q: What was your reaction, if any?
A: As I have already said I did not move.

Q: Now this time when [XXX] was raping you why was it that you do not anymore react or move?
A: I did not move anymore because I slept for a while.

Q: And then who followed next after [XXX]?
A: Niño.

Q: When Niño was raping you after [XXX] what did Niño do?
A: The same.

Q: And after Niño who followed next, if any?
A: The last was Bugoy.

Q: After Bugoy what if anything happened next?
A: They rested.

Q: What about you what were you doing after?
A: I slept because I have already slept.

Q: When you said that Niño raped you were you also asleep at that time when he was raping you?
A: I was already awakened.

Q: What about when Bugoy was raping you were you still sleeping also?
A: Not anymore.

Q: After Bugoy who was the last one who raped you what did you do again please?
A: Not anymore I was just sitting.

Q: Why were you sitting?
A: I told them I am already sleepy we will go now.

Q: And then what did they say to your suggestion?
A: I heard that somebody was looking.

Q: Looking for whom?
A: It was looking for me.

Q: What did you hear that made you think that somebody was looking for you?
A: Jovita, Lalang and Tonio and Tonio said as they were bringing with them the flashlight he said there she is.

Q: When you heard Tonio said "naa ra" to what direction was the flashlight pointed?
A: To the place where we were staying.

Q: And what was the reaction of the four accused at that time that the flashlight that Tonio was shown [sic] towards them?
A: Bugoy and Niño ran away.

Q: What about Junjun and [XXX]?
A: Bugoy and Niño were seen that they brought with them tuba.

Q: No. What I am asking is what about Junjun and [XXX]. You said that only Bugoy and Niño ran away. What about Junjun and [XXX] what were they doing when the flashlight was shown [sic] towards all of you?
A: They again raped me.

Q: Who was the first one who raped you again between Junjun and [XXX]?
A: Junjun.

Q: And then after him?
A: [XXX].

Q: You said that Junjun and [XXX] raped you again because Tonio, Lalang and Jovita were still far away?
A: Yes.

Q: How far, if this is the place where you were being raped by Junjun and [XXX]. If you can remember which place were indicate the distance of Tonio, Lalang and Jovita at that time (sic)?
A: There in the house of Jovita.

Q: Can you indicate the distance of the house of Jovita from the place where you were being raped for the second time. For example, that where you are sitting is the place where you were being raped for the second time, where is the house of Jovita can you point to anything inside the courtroom or outside the courtroom to indicate the distance?
A: Maybe 50 meters.

x x x x x x x x x

Q: When Junjun raped you for the second time what was your reaction?
A: I told them to stop now you go away, go away.

Q: And did Junjun say anything in reply?
A: They already ran away because they were already approaching near.

Q: You said that [XXX] raped you also for the second time. Do you remember that?
A: Yes.

Q: When did Junjun and [XXX] ran away before or after [XXX] raped you for the second time?
A: After.

Q: When [XXX] was raping you for the second time what was your reaction, if any, to [XXX]?
A: When [XXX] saw that they were already approaching the two of them ran away?

Q: Who were already approaching?
A: Jovita, Lalang and Tonio.

x x x x x x x x x

Q: Now, after you said that Junjun and [XXX] raped you for the second time and then they ran away what did you do after the four of them ran away?
A: I just stood up and I was just standing.

Q: What about your pants and your panty where were they?
A: I put them back on.

Q: After you had put back your panty and your pants on what happened next, if any?
A: No more I just waited for them when they were fetching the motorcycle.[20]

On cross-examination, AAA stated:

Q: You voluntarily accompanied the accused in going to Karaoke Bar of certain Amorin, am I correct on that?
A: Yes, sir.

Q: And when you found out that the Karaoke Bar was already closed, you decided to go with the accused to the sea shore, am I correct on that?
A: Yes, sir.

Q: And you went there you also provided 'tuba' for the accused you took that 'tuba' from the house of [BBB]. Am I correct on that?
A: Yes, sir.

Q: You were the only woman in the group why you did not going there? (*sic*)
A: I just respected them.

Q: Why did you respect them?
A: Because we are friends.

x x x x x x x x x

[20] TSN, May 7, 2012, pp. 17-32.

Q: Why you did not go home after you pants were torn off when you pass the pump boat? (sic)
A: Because the four of us were together.

Q: Why you did not return home? (sic)
A: Only four o'clock dawn.

Q: You did not go home, because you wanted to be in company (sic) of the accused?
A: Because we respected them and we were drinking.

Q: I see. You want to be in company of the accused and in fact you were the one who provided them 'tuba' (sic)?
A: Yes, sir.

Q: So, whatever may have happened to you you allow it to happen because you wanted to be with them, am I correct on that? (sic)
A: Yes.

x x x x x x x x x

Q: Paragraph 4 of your affidavit, you testified to that effect that you were cleaning the house of Castil alias JunJun and approached you "Day adto sa" and you were asked "what happened next if any?" you declared to the effect that together with [XXX], was holding my hand firmly and simultaneously dragged me to the sea shore. You remember having made that declaration in your sworn statement?
A: Yes, sir.

Q: The declaration in your sworn statement particularly in paragraph 4 to 6 gives the impression that when you cleaning (sic) the house you were dragged by the accused towards the sea shore, now that is different from your testimony last May 17, 2012 to the effect that you accompany them to the Karaoke Bar later to the sea shore, you even provided them with a 'tuba' now, which statement is correct, once (sic) your statement marked as Exhibit "A" or your previous testimony on May 7, 2012 to the effect that you voluntarily accompany to the Karaoke Bar and later on the sea shore?
A: I asked them 'what will we do there at a farther distance, I do not want to go with them.[21]

---

[21] *Id*. at 99-101.

The other prosecution witness, Liberty, offered a different version of the events of the following morning, to wit:

Q: So, when you followed them towards the sea shore, were you able to in fact find or see Tonio and that other man there at the sea shore?
A: When I arrived, I only saw Antonio and the man who told us the whereabouts of [AAA]. I did not catch anymore the others who were with [AAA] because they were already leaving at that time.

Q: When you said that the others were with [AAA] were already leaving, what do you mean by that?
A: I only saw Ate [AAA] there, she was sitting.

Q: Can you describe her condition, her appearance?
A: She was just sitting on the sand.

Q: And what was her physical appearance when (sic) you described it?
A: She was no longer wearing short pants.

Q: And did she have anything, what about an underwear for example?
A: There is. The underwear was already on the lower portion of the leg (witness is pointing to her lower leg).

Q: Can you again point where was the underwear of [AAA]?
A: In the middle of her leg.

Q: Now, you said that the others were already leaving, who were these others that were already leaving if you can tell?
A: Niño and [XXX].

Q: And what was Niño doing when you said that he was leaving?
A: He was hiking towards home.

Q: And when you said he was hiking or walking towards home, was he going to the direction where you were or farther from you?
A: Farther, ma'am.

Q: What about [XXX]?
A: Towards there, they separated ways.

Q: Now, for example, you are where you were there, that I am [AAA], okay, now, where was Niño going in relation to me as [AAA], if you can tell the Honorable Court? (sic)
A: Actually I did not see Niño together with [AAA].

x x x x x x x x x

Q: They were the only two people that you saw?
A: Yes, ma'am.

Q: They were the only two other people aside from Tonio and that other man whom you said that you do not know, and yourself as well as [AAA], they were the only two persons at the seashore at that time, [XXX] and Niño?
A: Yes, ma'am.

Q: So, what happened when you arrived there at the sea shore because you were told to look for [AAA]?
A: We called [AAA] to stand up from where she was seated for her to go home.

Q: What did you do considering her reply that she will just go home by herself?
A: We forced her to go home because [BBB] will scold her because he was previously drunk.

Q: Why do you say that he was previously drunk?
A: On October 1, that was the first birthday of the grand child of [BBB].

Q: So, why do you say that [AAA] was previously drunk?
A: During that time, I slept very late because I was the one who cleaned and washed the dishes and [AAA] was still drinking outside and so I told her to come in as she was already drunk.

Q: And who was she drinking with?
A: I did not know ma'am because I did not go outside I was just up to the gate.

Q: And you did not at any time that evening of October 1, see who [AAA] was drinking with?
A: No, ma'am.

Q: When you asked her to come in and she was already drunk, did she comply?
A: She just said, just let me be.

Q: And then what did you do?
A: I did not call her anymore, I went inside the house because I was already tired.[22]

A careful dissection of the above testimonies reveals inconsistencies, not merely on the inconsequential details but to the very existence of the crime itself, that are far too big to simply ignore.

It was never fully established whether sexual congress took place, especially as to some of the appellants. AAA asserted that Castil placed his penis inside her vagina, followed by XXX. But then as to Gilles and Monter, the story is confusing and unclear. The chronology of events is also hazily narrated. AAA claimed she fell asleep, but in the same testimony, said she was aware of Gilles and Monter raping her. The Court cannot take this as a positive allegation of Gilles and Monter's participation in the defilement. The participation of these appellants is tenuous at best, and based only on conjecture.

More importantly, there was also no clear showing of force, threat, or intimidation from AAA's story. She narrated that only Castil held her arm, without even saying how he held it or describing the force, if any, that was inflicted upon her. This hardly comprises the force, threat, or intimidation contemplated by law.

The allegation of conspiracy to consummate the illegal act was likewise insufficiently proven. The elements of conspiracy must be proven beyond reasonable doubt, similar to the physical act constituting the crime itself. Evidence of actual cooperation, not only mere cognizance, approval, or mere presence, must be shown.[23] In this case, the mere statement that appellants *appeared* to talk about "doing something to her" should not suffice.

---

[22] TSN, December 3, 2012, pp. 112-116.

[23] *People of the Philippines v. Comadre, et al.*, 475 Phil. 293, 306 (2004).

Further, prosecution witness Liberty cannot even say that she saw the appellants with AAA, to which AAA positively testified. The four (4) appellants were never seen together with AAA at any point of the night. Instead of corroborating AAA's account that she was with the appellants throughout the night until the following morning, Liberty offered a contrary story. Also, Liberty even had a conflicting version as to who was seen last in the beach – was it Castil with XXX or Monter and XXX?

AAA's claim of being raped even when Liberty and her companions were already present at the place where the crime allegedly took place not only goes against human experience but likewise not consistent with Liberty's testimony. Another questionable factor in the whole story is the fact that given the family's assertion and recognition of her feeble-mindedness, BBB and FFF would still apparently allow AAA to get drunk and go out even at odd hours of the night. This does not reflect the normal concern and protection towards family members with mental deficiency. On the other hand, it shows that even AAA's family knows that she is a functioning member of their family, who makes and is allowed to make her own autonomous choices based on her own rational decision-making.

As noted earlier, the testimony of the victim should be scrutinized with extreme caution. With AAA's statements taken with Liberty's and the overall evidence presented by the prosecution, the Court is convinced that the burden of proving the occurrence of the crime of rape made in conspiracy among all the appellants, through force, threat, and intimidation, was not met. Serious doubts exist as to the credibility of the statements of the prosecution witnesses. Unlike the candid and straightforward characterization of the RTC of AAA's testimony, the Court finds that the occurrence of rape was not the only conclusion to be had here. All of these factors create a reasonable doubt in the mind of the Court, for which reason the appellants' acquittal is in order.

It appears from the RTC and CA decisions that appellants were convicted of rape because AAA was feeble-minded, and

not because of the existence of force, threat, or intimidation. As emphasized in the CA decision:

> Just like in this case, while there may have been no physical force employed on the victim but considering that she is feeble-minded, there is authority to the effect that the force required by law is the sexual act itself.[24]

This is not alleged in the information. The Court had previously ruled that an accused cannot be convicted of rape if the information charged him with rape through force, threat, or intimidation when what was proven was sexual congress with a woman deprived of reason, unconscious, or under twelve years of age. The conviction would be a deprivation of the constitutional right to be informed of the accusation against him.[25] Nonetheless, in a more recent case, the Court held that even if the information lacked the allegation of any mental disability on the part of the victim, such allegation was unnecessary to convict the accused provided that sexual congress and mental incapacity, *i.e.* the incapacity to give consent, are proven by clear and convincing evidence.[26]

The state of being feeble-minded has been explained as the incapacity of thinking and reasoning like any normal human being, not being able to think and reason from birth, and devoid or deficient in those instincts and other mental faculties that characterize the average and normal mortal. When a woman is feeble-minded, she has no free and voluntary will. She is incapable of freely and voluntarily giving consent which is necessary and essential from lifting coitus from the place of criminality.[27] In *People of the Philippines v. Dalandas,*[28] the Court had the opportunity to distinguish between the various

---

[24] *Rollo*, pp. 13 and 109.

[25] *People of the Philippines v. Capinpin,* 398 Phil. 333, 344 (2000).

[26] *People of the Philippines v. Quintos,* 746 Phil. 809, 834 (2014).

[27] *People of the Philippines v. De Jesus*, 214 Phil. 4, 8-9 (1984).

[28] 442 Phil. 688, 695 (2002).

degrees of mental retardation, and where "feeble-mindedness" fell within the spectrum. The Court held:

> Mental retardation is a chronic condition present from birth or early childhood and characterized by impaired intellectual functioning measured by standardized tests. It manifests itself in impaired adaptation to the daily demands of the individual's own social environment. Commonly, a mental retardate exhibits a slow rate of maturation, physical and/or psychological, as well as impaired learning capacity.
>
> Although mental retardation is often used interchangeably with mental deficiency, the latter term is usually reserved for those without recognizable brain pathology. xxx
>
> x x x x x x x x x
>
> A normal mind is one which in strength and capacity ranks reasonably well with the average of the great body of men and women who make up organized human society in general, and are by common consent recognized as sane and competent to perform the ordinary duties and assume the ordinary responsibilities of life.
>
> **The traditional but now obsolescent terms applied to those degrees of mental retardation were (a) *idiot*, having an IQ of 0 to 19, and a maximum intellectual factor in adult life equivalent to that of the average two-year old child; (b) *imbecile* by an IQ of 20 to 49 and a maximum intellectual function in adult life equivalent to that of the average seven-year old child; *moron* or *feebleminded*, having an IQ of 50 to 69 and a maximum intellectual function in adult life equivalent to that of the average twelve-year old child.** Psychiatrists and psychologists apply the term borderline intelligence to those with IQ between 70 to 89. xxx.[29] (emphasis supplied)

All elements of the crime of rape must be proven beyond reasonable doubt, including the victim's mental condition. Although it is true that mental abnormality or deficiency is enough for a woman to be considered "deprived of reason," thus dispensing with the proof of force, threat, or intimidation, abnormality or deficiency of whatever state or degree should

---

[29] *Id*. at 695-696.

be sufficiently and adequately established by orthodox and reasonably available methods and procedures. It is possible that complainant could well have been merely on the lower end of the acceptable mean for her age group, a condition which would have been aggravated by her lack of education, but this, by any medical or psychological yardstick, does not itself negate autonomous choice or decision-making based on reasoning.[30]

Indeed, the Court has previously decided that other evidence aside from psychiatric evaluation can prove mental retardation or abnormality. The personal observation of the judge would suffice as a measure of determining the impact on her of the force, threat, and intimidation foisted upon the victim.[31] This is the rule relied upon by the RTC. However, the cases cited anent this issue, *People of the Philippines v. Almacin (Almacin)*[32] and *People of the Philippines v. Dumanon (Dumanon),*[33] have different factual settings from the instant case. In *Almacin*, the victim could only read and write her own name, and did not even finish Grade 1 in school. Being illiterate and unschooled, she was considered mentally incapable of intelligently assenting or dissenting to sexual intercourse. In *Dumanon*, the trial court noted numerous pieces of evidence showing the victim's condition, including the mere appearance of the victim and the victim's difficulty in answering the questions while on trial. The trial court, upheld by the Court, remarked on her appearance as mongoloid and that she was suffering from Down's Syndrome.

Here, however, the Court only has the RTC's assessment of AAA to go by and determine that AAA was feeble-minded and therefore sexual congress with her equates to rape. The medical certificate stated that "patient is known to have mental deficiency."[34] However, this was not even testified to by the

---

[30] *People of the Philippines v. Cartuano, Jr.,* 325 Phil. 718, 751 (1996).

[31] *People of the Philippines v. Dumanon,* 401 Phil. 658, 669-670 (2000).

[32] 363 Phil. 18 (1999).

[33] *Supra* note 31.

[34] Exh. "C".

doctor who signed the same. FFF, AAA's sister-in-law, also testified that AAA appeared "childish." Thus, the conclusion by the RTC was made absent Dr. Esclamado's testimony as well as medical proof of AAA's mental state, instead only made upon FFF's statement. It should also be emphasized that FFF's testimony was initially objected to by the counsel for the appellants as she was not included in the initial list of witnesses, and was even presented without the presence of the appellants' counsel. With only testimonial evidence from a partial witness, there is not enough proof of AAA's mental state that would justify the finding of appellants' guilt.

In *People of the Philippines v. Cartuano, Jr. (Cartuano),*[35] where it was held that the deficiency of whatever state or degree should be sufficiently and adequately established by orthodox and reasonably available methods and procedures, there was a dearth of medical records to sustain a finding of mental retardation. In the recent case of *People of the Philippines v. Rodriguez (Rodriguez)*,[36] where *Cartuano* was invoked, the prosecution presented a neuro-psychiatric examination and evaluation conducted by a psychologist, which included the administration of the Standford Binnet Intelligence Test. The latter case shows that the doctrine in *Cartuano*, that there should be clear and convincing proof as to the mental state of the victim, is still good law.

Unlike the cases of *Almacin, Dumanon*, and *Rodriguez*, the instant case shows an obvious lack of clear and convincing evidence of the victim's mental deficiency upon which the conviction of the appellants is based. Without any showing of force, threat, or intimidation as alleged in the information, it is necessary to show that AAA was deprived of reason for the successful prosecution of the appellants for the crime of rape. The prosecution was unable to show this deprivation of reason.

---

[35] *Supra* note 30.

[36] 781 Phil. 826, 837 (2016).

To reiterate, the force, threat, and intimidation, and conspiracy among the appellants as alleged in the information, as well as AAA's mental deficiency, were not proven with moral certainty. The case presented by the prosecution was insufficient to overcome the presumption of innocence accorded by the law to appellants.

WHEREFORE, the appeal is **GRANTED.** The Decision dated September 27, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 01906 is hereby **REVERSED** and **SET ASIDE**. XXX, ALFREDO GILLES, NIÑO G. MONTER and CONSTANTE M. CASTIL alias JUNJUN, alias TANSYONG are **ACQUITTED** based on reasonable doubt. The director of the Bureau of Corrections is ordered to cause the immediate release of appellants, unless they are being lawfully held for another cause; and to inform the Court of the date of appellants' release, or the reasons for their continued confinement, within ten days from notice.

XXX is hereby ordered released from the Department of Social Welfare and Development Regional Rehabilitation Center for Youth at Tanauan, Leyte.

SO ORDERED.

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

Leonen, J., on official leave.

INDEX

INDEX

(People *vs*. Año *y* Del Remedios, G.R. No. 230070, March 14, 2018) p. 439

(People *vs*. Crispo *y* Descalso, G.R. No. 230065, March 14, 2018) p. 416

–– In criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. (People *vs*. Moreno, G.R. No. 217889, March 14, 2018) p. 293

–– 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. (*Id*.)

–– 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 courts 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. (People *vs*. Año *y* Del Remedios, G.R. No. 230070, March 14, 2018) p. 439

Factual findings of administrative or quasi-judicial bodies –– Accorded much respect by the Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence. (Central Azucarera De Bais *vs*. Heirs of Zuelo Apostol, G.R. No. 215314, March 14, 2018) p. 211

Petition for review on certiorari to the Supreme Court under Rule 45 –– A party who files a Rule 45 Petition and asserts that his or her case warrants this Court's review of factual questions bears the burden of proving two (2) things; first is the basic exceptionality of his or her case such that the Supreme Court must go out of its way to

ATTORNEYS

CERTIORARI

—— In a prosecution for the sale and possession of dangerous drugs under R.A. No. 9165, the State carries the heavy burden of proving not only the elements of the offense, but also to prove the integrity of the *corpus delicti,* failing in which, renders the case for the State insufficient to prove the guilt of the accused beyond reasonable doubt. (People *vs*. Crispo *y* Descalso, G.R. No. 230065, March 14, 2018) p. 416

—— In case of warrantless seizures, while the physical inventory and photographing is allowed to be done at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, this does not dispense with the requirement of having the DOJ or media representative and an elected public official to be physically present at the time of apprehension. (People *vs*. Luna *y* Torsilino, G.R. No. 219164, March 21, 2018) p. 671

—— In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense; it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. (People *vs*. Ahmad *y* Salih, G.R. No. 228955, March 14, 2018) p. 396

—— 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; 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-

(People *vs*. Año *y* Del Remedios, G.R. No. 230070, March 14, 2018) p. 439

—— The failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21, Art. II of R.A. No. 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. (People *vs*. Crispo *y* Descalso, G.R. No. 230065, March 14, 2018) p. 416

—— The law puts in place requirements of time, witnesses and proof of inventory with respect to the custody of seized dangerous drugs, to wit: 1) the initial custody requirements must be done immediately after seizure or confiscation; 2) the physical inventory and photographing must be done in the presence of: a. the accused or his representative or counsel; b. the required witnesses: i. a representative from the media and the Department of Justice (DOJ), and any elected public official for offenses committed during the effectivity of R.A. No. 9165 and prior to its amendment by R.A. No. 10640; ii. an elected public official and a representative of the National Prosecution Service of the DOJ or the media for offenses committed during the effectivity of R.A. No. 10640. (People *vs*. Luna *y* Torsilino, G.R. No. 219164, March 21, 2018) p. 671

—— The presence of the so-called insulating witnesses required under Sec. 21, Art. II of R.A. No. 9165 should also either be present during marking or their absence should be with a valid justification; otherwise, a lapse with respect thereto would also result in a gap in the chain of custody. (People *vs*. Gaylon *y* Robridillo, G.R. No. 219086, March 19, 2018) p. 517

—— The procedure in Sec. 21, Art. II of R.A. No. 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.

(People *vs*. Sanchez *y* Salvo, G.R. No. 216014, March 14, 2018) p. 242

Section 21 — As a general rule, the prosecution must endeavor to establish four links in the chain of custody of the confiscated item: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. (People *vs*. Villarta, G.R. No. 217887, March 14, 2018) p. 259

—— In certain cases which has tempered the mandate of strict compliance with the requisite under Sec. 21 of R.A. No. 9165, such liberality, as stated in the Implementing Rules and Regulations can be applied only when the evidentiary value and integrity of the illegal drug are properly preserved. (*Id*.)

—— In prosecuting both illegal sale and illegal possession of dangerous drugs, conviction cannot be sustained if doubt persists on the identity of said drugs; apart from showing that the elements of possession or sale are present, the fact that the dangerous drug illegally possessed and sold is the same drug offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict. (*Id*.)

—— Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimen will use the markings as reference; the marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, 'planting,' or contamination of evidence. (*Id*.)

—— The rule that one who signs a contract is presumed to know its contents has been applied even to contracts of illiterate persons on the ground that if such persons are unable to read, they are negligent if they fail to have the contract read to them; if a person cannot read the instrument, it is as much his duty to procure some reliable persons to read and explain it to him, before he signs it, as it would be to read it before he signed it if he were able to do so and his failure to obtain a reading and explanation of it is such gross negligence as will *estop* him from avoiding it on the ground that he was ignorant of its contents. (*Id.*)

CORPORATION CODE

Board of directors —— Ratification by a corporation of an unauthorized act or contract by its officers or others relates back to the time of the act or contract ratified, and is equivalent to original authority; and that the corporation and the other party to the transaction are in precisely the same position as if the act or contract had been authorized at the time; Implied ratification may take the form of silence, acquiescence, acts consistent with approval of the act, or acceptance or retention of benefits; however, silence, acquiescence, retention of benefits, and acts that may be interpreted as approval of the act do not by themselves constitute implied ratification; for an act to constitute an implied ratification**,** there must be no acceptable explanation for the act other than that there is an intention to adopt the act as his or her own. (Viatra *vs.* Ng Wee, G.R. No. 220926, March 21, 2018) p. 710

CORPORATIONS

Financial Rehabilitation Rules of Procedure — Rehabilitation proceedings seek to give insolvent debtors the opportunity to reorganize their affairs and to efficiently and equitably distribute its remaining assets; the filing of a petition for the rehabilitation of a debtor, when the court finds that it is sufficient in form and substance, is both (1) an acknowledgment that the debtor is presently financially

be notified that as of a particular date, the debtor in question requires rehabilitation and should temporarily be exempt from paying its obligations, unless allowed by the court; once due notice is made, the rehabilitation court may nullify actions inconsistent with the stay order but which may have been taken prior to publication, precisely because prior to publication, creditors may not yet be aware that they are to desist from pursuing claims against the insolvent debtor. (*Id*.)

COURT PERSONNEL

Liability of –– Notwithstanding the lack of direct evidence proving his having acquired financial gain from the bond transactions, the fact that he had assisted and facilitated the processing of the bail requirements for parties with cases in the RTC constituted substantial evidence of such financial gain on his part. (Anonymous Complaint Against Emiliano C. Camay, Jr., Utility Worker I, Br. 61, RTC, Bogo City, Cebu, A.M. No. P-17-3659, March 20, 2018) p. 548

COURTS

Hierarchy of courts –– Adherence to the doctrine on hierarchy of courts ensures that every level of the judiciary performs its designated role in an effective and efficient manner; this practical judicial policy is established to obviate inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction and to prevent the congestion of the Court's docket. (Trillanes IV *vs*. Hon. Castillo-Marigomen, G.R. No. 223451, March 14, 2018) p. 336

CRIMINAL LIABILITY

Extinction of –– Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon; the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from

last resort when other less drastic means have been tried and found to be inadequate. (*Id.*)

–– It is an option validly available to an employer to address losses in the operation of the enterprise, lack of work, or considerable reduction on the volume of business; retrenchment is normally resorted to by management during periods of business reverses and economic difficulties occasioned by such events as recession, industrial depression, or seasonal fluctuations. (*Id.*)

–– Procedural requisites; employers must serve a written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment; they must pay the retrenched employees separation pay equivalent to one month pay or at least 1/2 month pay for every year of service, whichever is higher. (*Id.*)

–– Retrenchment may only be exercised in compliance with substantive and procedural requisites; as to the substantive requisites, an employer must first show that the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer; second, an employer must also show that it exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; third, an employer must demonstrate that it used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status (i.e., whether they are temporary, casual, regular or managerial employees), efficiency, seniority, physical fitness, age, and financial hardship for certain workers. (*Id.*)

–– The employer's liability for backwages may be mitigated by the court where good faith is evident. (*Id.*)

the life, health or property of inhabitants in two or more cities or provinces. (*Id*.)

LABOR RELATIONS

Probationary employee –– A probationary employee engaged to work beyond the probationary period of six months, as provided under Art. 281 of the Labor Code, or for any length of time set forth by the employer shall be considered a regular employee. (Umali *vs*. Hobbywing Solutions, Inc., G.R. No. 221356, March 14, 2018) p. 320

–– Having rendered service even after the lapse of the probationary period, the petitioner had attained regular employment, with all the rights and privileges pertaining thereto. (*Id*.)

–– Since extension of the period is the exception, rather than the rule, the employer has the burden of proof to show that the extension is warranted and not simply a stratagem to preclude the worker's attainment of regular status; without a valid ground, any extension of the probationary period shall be taken against the employer especially since it thwarts the attainment of a fundamental right, that is, security of tenure. (*Id*.)

–– The probationary period of employment is limited to six (6) months; the exception to this general rule is when the parties to an employment contract may agree otherwise, such as when the same is established by company policy or when the same is required by the nature of work to be performed by the employee. (*Id*.)

LEGISLATIVE DEPARTMENT

Speech or debate clause –– Parliamentary non-accountability cannot be invoked when the lawmaker's speech or utterance is made outside sessions, hearings or debates in Congress, extraneous to the due functioning of the legislative process; a lawmaker's participation in media interviews is not a legislative act, but is political in nature, outside the ambit of the immunity conferred under

must be identifiable; any of the imputations covered by Art. 353 is defamatory, and every defamatory imputation is presumed malicious. (*Id*.)

MARRIAGES

Annulment of — A decree of absolute divorce procured abroad is different from annulment as defined by our family laws; A.M. No. 02-11-10-SC only covers void and voidable marriages that are specifically cited and enumerated in the Family Code of the Philippines; void and voidable marriages contemplate a situation wherein the basis for the judicial declaration of absolute nullity or annulment of the marriage exists before or at the time of the marriage; it treats the marriage as if it never existed; divorce, on the other hand, ends a legally valid marriage and is usually due to circumstances arising after the marriage. (Rep. of the Phils. *vs*. Cote, G.R. No. 212860, March 14, 2018) p. 168

Foreign divorce — The reckoning point is not the citizenship of the parties at the time of the celebration of the marriage, but their citizenship at the time a valid divorce is obtained abroad by the alien spouse capacitating the latter to remarry; the Filipino spouse who likewise benefits from the effects of the divorce cannot automatically remarry; before the divorced Filipino spouse can remarry, he or she must file a petition for judicial recognition of the foreign divorce. (Rep. of the Phils. *vs*. Cote, G.R. No. 212860, March 14, 2018) p. 168

MITIGATING CIRCUMSTANCES

Voluntary surrender —The requisites thereof are as follows: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary. (People *vs*. Moreno, G.R. No. 217889, March 14, 2018) p. 293

MOTION TO DISMISS

dismissed regardless of the defenses that may be raised by the defendants. (*Id.*)

–– Sec. 6 disallows a preliminary hearing of affirmative defenses once a motion to dismiss has been filed because such defenses should have already been resolved. (*Id.*)

MOTIVE

Proof of –– Proof of motive for the commission of the offense charged does not show guilt and the absence of proof of such motive and does not establish the innocence of the accused for the crime charged; motive is irrelevant when the accused has been positively identified by an eyewitness; intent is not synonymous with motive; motive alone is not a proof and is hardly ever an essential element of a crime. (People *vs.* Moreno, G.R. No. 217889, March 14, 2018) p. 293

MURDER

Commission of –– Committed by any person who, not falling within the provisions of Art. 246 of the same Code, shall kill another with treachery, taking advantage of superior strength, with the aid of armed men, employing means to weaken the defense; or employing means or persons to insure or afford impunity. (People *vs.* Moreno, G.R. No. 217889, March 14, 2018) p. 293

–– The evidence to prove intent to kill may consist of, *inter alia*, the means used; the nature, location and number of wounds sustained by the victim; and the conduct of the malefactors before, at the time of, or immediately after the killing of the victim. (*Id.*)

2004 RULES ON NOTARIAL PRACTICE

Acknowledgement –– Refers to an act in which an individual on a single occasion: (a) appears in person before the notary public and presents an integrally complete instrument or document; and (b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined

OBLIGATIONS

Extinguishment of –– An obligation may be extinguished by payment; however, two requisites must concur: (1) identity of the prestation; and (2) its integrity; the first means that the very thing due must be delivered or released; and the second, that the prestation be fulfilled completely; in this case, no acknowledgment nor proof of full payment was presented by respondent but merely a pronouncement that there are no longer any outstanding Silver Certificates of Deposits in its books of accounts. (Ong Bun *vs*. Bank of the Phil. Islands, G.R. No. 212362, March 14, 2018) p. 152

PHILIPPINE DEPOSIT INSURANCE CORPORATION (R.A. NO. 3591)

Powers and functions –– Created by R.A. No. 3591on June 22, 1963 as an insurer of deposits in all banks entitled to the benefits of insurance under the PDIC Charter to promote and safeguard the interests of the depositing public by way of providing permanent and continuing insurance coverage of all insured deposits; has the duty to grant or deny claims for deposit insurance. (Sps. Chugani *vs*. Phil. Deposit Insurance Corp., G.R. No. 230037, March 19, 2018) p. 538

–– PDIC shall commence the determination of insured deposits due the depositors of a closed bank upon its actual takeover of the closed bank; in carrying out their quasi-judicial functions the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature; the legislative intent in creating PDIC as a quasi-judicial agency is clearly manifest; PDIC exercises judicial discretion and judgment in determining whether a claimant is entitled to a deposit insurance claim, which determination results from its investigation of facts and

1995 (R.A. No. 7942), the present law on mining, is subject to the following conditions: (1) that the applicant submits the status report, letter of intent and all the lacking requirements as provided by DENR Memorandum Order (DMO) No. 97-07; and (2) that said compliance is performed within the deadlines set. (*Id*.)

2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Disability benefits — Court should not award disability benefits absent a causal relationship between a seafarer's work and ailment. (Ebuenga *vs*. Southfield Agencies, Inc., G.R. No. 208396, March 14, 2018) p. 122

–– In cases where the employer refuses to have the seafarer examined, the seafarer's claim for disability benefits is not hindered by his or her reliance on a physician of his or her own choosing. (*Id*.)

Section 20 (B) –– For disability to be compensable under Sec. 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) that the illness or injury must be work-related; and (2) that the work-related illness or injury must have existed during the term of the seafarer's employment contract; the 2000 POEA-SEC defines "work-related injury" as injury resulting in disability or death arising out of and in the course of employment and "work-related illness" as any sickness resulting to disability or death as a result of an occupational disease listed under Sec. 32-A of the 2000 POEA-SEC. (Ebuenga *vs*. Southfield Agencies, Inc., G.R. No. 208396, March 14, 2018) p. 122

–– It mandates seafarers to see a company-designated physician for a post-employment medical examination, which must be done within three (3) working days from their arrival; failure to comply shall result in the forfeiture of the right to claim disability benefits; the 3-day mandatory reporting requirement must be strictly observed since within 3 days from repatriation, it would be fairly manageable for the physician to identify whether the

—— The obligation imposed by the mandatory reporting requirement under Sec. 20 (B) (3) of the 1996 POEA-SEC is not solely on the seafarer; it requires the employer to likewise act on the report, and in this sense partakes of the nature of a reciprocal obligation; while the mandatory reporting requirement obliges the seafarer to be present for the post-employment medical examination, which must be conducted within three (3) working days upon the seafarer's return, it also poses the employer the implied obligation to conduct a meaningful and timely examination of the seafarer. (*Id*.)

PRESUMPTIONS

Presumption of regularity in the performance of official duties — The presumption of regularity of performance of official duty stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty; applied to dangerous drugs cases, the prosecution cannot rely on the presumption when there is a showing that the apprehending officers failed to comply with the requirements laid down in Sec. 21; in any case, the presumption of regularity cannot be stronger than the presumption of innocence in favor of the accused; otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. (People *vs*. Luna *y* Torsilino, G.R. No. 219164, March 21, 2018) p. 671

—— The presumption only applies when there is nothing to suggest that the police officers deviated from the standard conduct of official duty required by law. (People *vs*. Ahmad *y* Salih, G.R. No. 228955, March 14, 2018) p. 396

PUBLIC LAND ACT (C.A. NO. 141)

Free patents — The subject land inalienable and non-disposable and could not have been the valid subject of a free patent application because only agricultural public lands subject to disposition can be the subject of free patents. (Rep. of the Phils. *vs*. Saromo, G.R. No. 189803, March 14, 2018) p. 11

opportunity being given to the latter to defend himself or to retaliate; and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender. (People *vs*. Moreno, G.R. No. 217889, March 14, 2018) p. 293

–– Must be deliberately sought to ensure the safety of the accused from the defensive acts of the victim; unexpectedness of the attack does not always equate to treachery; there must be evidence to show that the accused deliberately or consciously adopted the means of execution to ensure its success. (*Id*.)

–– Present when the offender commits any of the crimes against a person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. (*Id*.)

–– The attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape the sudden blow. (*Id*.)

–– The essence of treachery is a swift and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim; it is deemed present in the commission of the crime, when two conditions concur, namely, that the means, methods, and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and that such means, methods, and forms of execution were deliberately and consciously adopted by the accused without danger to his person. (People *vs*. Callao *y* Marcelino, G.R. No. 228945, March 14, 2018) p. 372

–– The unexpectedness of an attack cannot be the sole basis of a finding of treachery even if the attack was intended to kill another as long as the victim's position was merely accidental; the existence of treachery should be based on clear and convincing evidence; such evidence must

SOCIAL JUSTICE

Application of –– Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty; those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. (Central Azucarera De Bais *vs*. Heirs of Zuelo Apostol, G.R. No. 215314, March 14, 2018) p. 211

–– The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged; at best it may mitigate the penalty but it certainly will not condone the offense; compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. (*Id*.)

TAXATION

National Internal Revenue Code –– A claim for refund of this tax is in the nature of a tax exemption, which is based on Secs. 110(B) and 112(A) of 1997 NIRC, allowing VAT-registered persons to recover the excess input taxes they have paid in relation to their zero-rated sales; the term "excess" input VAT simply means that the input VAT available as refund credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. (Team Energy Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 197663, March 14, 2018) p. 85

–– Claims for tax refund/credit of excess input tax are governed not by Sec. 229 but only by Sec. 112 of the NIRC; a claim for input VAT refund or credit is construed strictly against the taxpayer; there must be strict compliance with the prescriptive periods and substantive requirements set by law before a claim for tax refund or credit may prosper; the 120+30-day periods in Sec. 112 is not a mere procedural technicality that can be set

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

Page

B. STATUTES

Page

Page

Page

Page

C. OTHERS

Page

D. BOOKS
(Local)

II. FOREIGN AUTHORITIES

A. STATUTES

B. BOOKS