
# PHILIPPINE REPORTS

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APRIL 2, 2018 TO APRIL 17, 2018

**VOLUME 829**

# REPORTS OF CASES

DETERMINED IN THE

# SUPREME COURT

OF THE

# PHILIPPINES

FROM

APRIL 2, 2018 TO APRIL 17, 2018

SUPREME COURT
MANILA
2019

*Prepared*
*by*

The Office of the Reporter
Supreme Court
Manila
2019


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# REPORT OF CASES

DETERMINED IN THE

## SUPREME COURT OF THE PHILIPPINES

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### FIRST DIVISION

[A.C. No. 9676. April 2, 2018]

## IN RE: DECISION DATED SEPTEMBER 26, 2012 IN OMB-M-A-10-023-A, *ETC*. AGAINST ATTY. ROBELITO* B. DIUYAN

### SYLLABUS

**LEGAL ETHICS; ATTORNEYS; THERE IS NOTHING IRREGULAR WITH RESPONDENT'S ACT OF NOTARIZING A DEED ON THE BASIS OF AFFIANTS' RESIDENCE CERTIFICATES AT THE TIME WHEN THE LAWS APPLICABLE REQUIRED ONLY PRESENTATION OF SUCH CERTIFICATE WHEN ACKNOWLEDGING DOCUMENTS.—** This Court finds nothing irregular with respondent's act of notarizing the Deed of Partition on July 23, 2003 on the basis of the affiants' CTCs. The law applicable at the time of the notarization only required the presentation of the CTCs. x x x [R]espondent notarized the Deed of Partition on July 23, 2003, or *prior* to the effectivity of the 2004 Rules on Notarial Practice, of which he is being held accountable by the IBP. However, when the Deed was notarized on July 23, 2003, the applicable law was the notarial law under Title IV, Chapter 11, Article VII of the Revised Administrative Code, Section 251 of which states: SECTION 251. *Requirement as*

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* Also spelled as Robellito in some parts of the records.

> *to notation of payment of (cedula) residence tax.*— Every contract, deed, or other document acknowledged before a notary public shall have certified thereon that the parties thereto have presented their proper (cedula) residence certificates x x x[.] In addition, Commonwealth Act (CA) No. 465 also reiterated the need to present a residence certificate when acknowledging documents before a notary public, x x x[.] Thus, it was incorrect for the IBP to have applied the 2004 Rules on Notarial Practice in holding respondent liable for notarizing the Deed of Partition. To reiterate, the Deed was notarized on July 23, 2003. The 2004 Rules on Notarial Practice were not yet in effect at that time.

## D E C I S I O N

**DEL CASTILLO, *J.*:**

The Office of the Ombudsman (Mindanao) furnished the Court a copy of its September 26, 2012 Decision[1] in Case No. OMB-M-A-10-023-A (Andrea M. Camilo v. Raul C. Brion, Agrarian Reform Program Technologist (SG-10), Municipal Agrarian Reform Office, Mati, Davao Oriental). In the said Decision, the Office of the Ombudsman noted, *viz.*:

> On a final note, this Office finds it unsettling that the Deed of Partition submitted before the DAR was notarized by Atty. Robellito B. Diuyan on 23 July 2003, when one of the signatories therein, Alejandro F. Camilo, had earlier died on 23 August 2001. On this matter, let a copy of this Decision be furnished the Supreme Court of the Philippines for its information and appropriate action.

In a Resolution[2] dated July 24, 2013, this Court treated the September 26, 2012 Decision in OMB-M-A-10-023-A and the Deed of Partition as an administrative complaint against respondent Atty. Robelito B. Diuyan and required the latter to file a comment thereon.[3]

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[1] *Rollo*, pp. 3-10.

[2] *Id*. at 29.

[3] *Id*.

In a letter[4] dated October 30, 2013, and by way of comment, respondent admitted notarizing the Deed of Partition in his capacity as District Public Attorney of the Public Attorney's Office in Mati City and all of Davao Oriental. He claimed that:

> [The] signature as Notary Public in that [July 23, 2003] Deed of Partition subject matter of the complaint was indeed mine. I was still connected with the Public Attorney's Office as District Public Attorney at that time. I retired on April 20, 2008. My function [included] the execution and/or notarization of a document x x x.
>
> 1n the case at bar, eight (8) persons appeared before me with the document deed of partition prepared by them subject matter of the complaint. I asked them one by one if the document is true and correct [and] with their Community Tax Certificates, they answered me in the affirmative and after being satisfied with their answer I notarized the document for free as they are considered as indigents. Of course, they signed it one by one in front of me.[5]

In a Resolution[6] dated February 3, 2014, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

A mandatory conference was set on May 29, 2014[7] in Pasig City; however, respondent was unable to attend the same since he had not fully recovered from a debilitating stroke that he suffered in 2012; he cannot stand or walk unassisted; has difficulty speaking; and only relies on his meager monthly pension of ₱12,000.00. Thus, in an Order[8] dated May 29, 2014, the mandatory conference was terminated and respondent was required to submit his Position Paper.

By way of explanation, respondent narrated in his Position Paper[9] that:

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[4] *Id*. at 28.

[5] *Id*. at 34.

[6] *Id*. at 38.

[7] *Id*. at 41.

[8] *Id*. at 49.

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

x x x I have nothing to do with present [charge]. [A]s public officer[,] I [enjoy] the presumption of good faith and regularity in [the discharge] of my function as Chief Public Attorney in Mati and all in Davao Oriental x x x; there is no showing that I have committed any wrong since x x x becoming a lawyer and member of x x x the [I]ntegrated Bar of the Philippines, as well as [during my] 22 years of x x x service in [the Public Attorney's Office] and in my private life x x x.

With regard to the deed of partition x x x there is no showing that it was done with irregularity x x x.

On July 23, 2003 the parties in the document appeared and requested to have their document notarized for free[. A]s Public Attorney I am bound to do so [since the affiants were indigents] I x x x then read the said document and asked them if this is true and [they] answered in the positive. Then having been satisfied of their answer I let them [sign] one by one in front of me after which I notarized the same for free. [The] parties [were] personally present and acknowledged that they [were the] same parties to the document and [they showed] to me their respective CTC.[10]

In a Report and Recommendation[11] dated September 24, 2014, the IBP-Commission on Bar Discipline (CBD) found respondent guilty of violating the 2004 Rules on Notarial Practice. While it found no deceit or malice on the part of the respondent, and even considered the fact that respondent was a former public official with no previous record of misconduct, as well as the fact that the affiants in the subject Deed of Partition were farmers who did not have any IDs and only had Community Tax Certificates (CTCs) to present and prove their identities, the IBP-CBD nonetheless found him grossly negligent in the performance of his functions.

The IBP-CBD thus recommended as follows:

WHEREFORE, PREMISES CONSIDERED, the undersigned finds respondent guilty of breach of the 2004 Rules on Notarial Practice and accordingly, recommends revocation of his notarial commission, if any, for one (1) year, effective immediately. He is WARNED that

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[10] *Id.* at 52.

[11] *Id.* at 61-64; penned by Commissioner Eldrid C. Antiquiera.

a repetition of the same or similar acts in the future shall be dealt with more severely.[12]

In a Resolution[13] dated December 14, 2014, the IBP-Board of Governors (BOG) adopted the IBP-CBD's Report and Recommendation but increased the recommended penalty, to wit:

> 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", and finding Respondent [guilty] for violation of the 2004 Rules on Notarial Practice, Atty. Robellito R. Diuyan's notarial commission if presently commissioned is immediately REVOKED. Further, he is DISQUALIFIED from being commissioned for two (2) years and SUSPENDED from the practice of law for six (6) months.[14]

The case is now before us for final disposition.

## Issue

Whether respondent should he held administratively liable for notarizing a Deed of Partition on the basis of the affiants' CTCs.

## Our Ruling

This Court finds nothing irregular with respondent's act of notarizing the Deed of Partition on July 23, 2003 on the basis of the affiants' CTCs. The law applicable at the time of the notarization only required the presentation of the CTCs.

In *Mabini v. Atty. Kintanar*,[15] this Court dismissed the administrative complaint filed against the lawyer therein because the lawyer complied with the notarial law extant at the time of notarizing the contested document, to wit:

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[12] *Id.* at 64.

[13] *Id.* at 58.

[14] *Id.*

[15] A.C. No. 9512, February 5, 2018.

It is a truism that the duties performed by a Notary Public are *not* just plain ministerial acts. They are so impressed with public interest and dictated by public policy. Such is the case since notarization makes a private document into a public one; and as a public document, it enjoys full credit on its face. However, a lawyer cannot be held liable for a violation his duties as Notary Public when the law in effect at the time of his complained act does not provide any prohibition to the same, as in the case at bench. (Emphasis supplied; citation omitted)

Similarly, respondent notarized the Deed of Partition on July 23, 2003, or *prior* to the effectivity of the 2004 Rules on Notarial Practice,[16] of which he is being held accountable by the IBP. However, when the Deed was notarized on July 23, 2003, the applicable law was the notarial law under Title IV, Chapter 11, Article VII of the Revised Administrative Code,[17] Section 251 of which states:

SECTION 251. *Requirement as to notation of payment of (cedula) residence tax.*— Every contract, deed, or other document acknowledged before a notary public shall have certified thereon that the parties thereto have presented their proper (cedula) residence certificates or are exempt from the (cedula) residence tax, and there shall be entered by the notary public as a part of such certification the number, place of issue, and date of each (cedula) residence certificate as aforesaid.

In addition, Commonwealth Act (CA) No. 465[18] also reiterated the need to present a residence certificate when acknowledging documents before a notary public, *viz.*:

Section 6. *Presentation of residence certificate upon certain occasions.* — When a person liable to the taxes prescribed in this Act acknowledges any document before a notary public, x x x it shall be the duty of such person or officer of such corporation with whom such transaction is had or business done or from whom any

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[16] A.M. No. 02-8-13-SC.

[17] Act No. 2711; March 10, 1917.

[18] AN ACT TO IMPOSE A RESIDENCE TAX, June 4, 1939.

salary or wage is received to require the exhibition of the residence certificates showing the payment of the residence,taxes by such person: Provided, however, That the presentation of the residence certificate shall not be required in connection with the registration of a voter.

x x x x x x x x x

(Underscoring supplied)

Thus, it was incorrect for the IBP to have applied the 2004 Rules on Notarial Practice in holding respondent liable for notarizing the Deed of Partition. To reiterate, the Deed was notarized on July 23, 2003. The 2004 Rules on Notarial Practice were not yet in effect at that time.

Here, respondent was then the District Public Attorney in Mati, Davao Oriental when affiants, who were indigent farmers and who did not have any personal identification card or any other form of competent evidence save for their CTCs,[19] requested the notarization of the Deed of Partition. These eight individuals who approached him presented themselves to be the affiants of the said Deed and signed the same in respondent's presence. There was nothing irregular on the face of the Deed that would have alerted respondent to ask probing questions or inquire about the circumstances behind the execution of the said instrument. On the contrary, the Deed was a valid exercise of the farmers' right to divide the title in their favor as beneficiaries. The Ombudsman affirmed this when it dismissed the administrative case filed against an agrarian reform officer concerning the Deed. In fact, the Ombudsman ruled that "[t]he eventual breaking of TCT[20] CLOA[21] No. 454 into individual titles in favor of the farmer-beneficiaries named in said collective CLOA is not irregular as it is, in fact, provided by DAR[22] rules and regulations."[23]

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[19] *Rollo*, p. 28, (report and recommendation).

[20] Transfer Certificate of Title.

[21] Certificate of Land Ownership Award.

[22] Department of Agrarian Reform.

[23] *Rollo*, p. 8.

In fine, respondent did not violate any of his duties as Notary Public when he notarized the Deed of Partition on July 23, 2003.

**WHEREFORE,** the Complaint against respondent Atty. Robelito B. Diuyan is **DISMISSED** for lack of merit.

**SO ORDERED.**

*Leonardo-de Castro,*[**] *Jardeleza*, and *Tijam, JJ.*, concur.

*Sereno, C.J.*,[***] on leave.

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**FIRST DIVISION**

[A.C. No. 11821. April 2, 2018]
(Formerly CBD Case No. 15-4477)

**DARIO TANGCAY,** *complainant, vs.* **ATTY. HONESTO ANCHETA CABARROGUIS,** *respondent.*

**SYLLABUS**

**LEGAL ETHICS; ATTORNEYS; PROHIBITED FROM LENDING MONEY TO THEIR CLIENTS.—** x x x Atty. Cabarroguis violated the prohibition against lawyers lending money to their clients. Pertinent to the case at bar is x x x Rule 16.04 [Canon 16 of the Code of Professional Responsibility] which mandates that: A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. **Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal**

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[**] Acting Chairperson per Special Order No. 2540 dated February 28, 2018.

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

**matter he is handling for the client.** There is hardly any doubt or dispute that Atty. Cabarroguis did lend money to his client, Tangcay, this fact being evidenced by a real estate mortgage which the latter signed and executed in favor of the former.

## R E S O L U T I O N

**DEL CASTILLO, *J.*:**

This resolves the Affidavit-Complaint[1] filed by complainant Dario Tangcay (Tangcay) for impropriety against respondent Atty. Honesto A. Cabarroguis (Atty. Cabarroguis) before the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD).

***Factual Antecedents***

Tangcay averred in his complaint that: (1) he inherited a parcel of land from his father and the same was registered in his name under Transfer Certificate of Title (TCT) No. T-288807 (subject property); (2) one Emilia S. Solicar filed a Petition for Probate of a purported Last and Will Testament of his late father docketed as Special Proceedings No. 4833-98 (probate case); (3) he engaged the legal services of Atty. Cabarroguis to defend and represent him in the probate case; (4) while handling the case, Atty. Cabarroguis learned that the subject property was mortgaged[2] with the First Davao Lending Corporation (lending corporation) for ₱100,000.00; (5) Atty. Cabarroguis then offered him a loan of ₱200,000,00 with an interest lower than what the lending corporation imposed; (6) he accepted the same and signed the real estate mortgage[3] unaware of the illegality and impropriety of a lawyer lending money to a client; and (7) when he defaulted in payment, Atty. Cabarroguis instituted a Judicial Foreclosure of the real estate mortgage.

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[1] *Rollo,* pp. 3-5.

[2] See Real Estate Mortgage with First Davao Lending Corporation; *id*. at 20-21.

[3] See Real Estate Mortgage with Spouses Cabarroguis: *id*. at 23-24.

In compliance with the Order[4] of IBP-CBD, Atty. Cabarroguis filed his Answer[5] dated March 11, 2015. Atty. Cabarroguis essentially claimed that, despite his generosity and liberality in the collection of his professional legal fees, he was still not fully paid for the cases he won for Tangcay.

***IBP Report and Recommendation***

In his Report and Recommendation[6] dated May 19, 2015, IBP Commissioner Arsenio P. Adriano (Commissioner Adriano) found Atty. Cabarroguis administratively liable under Canon 16, particularly Rule 16.04, of the Code of Professional Responsibility and recommended that Atty. Cabarroguis be suspended from the practice of law for three months.

In its Resolution No. XXI-2015-429[7] dated June 6, 2015, the IBP-Board of Governors —

> RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", considering [Atty. Cabarroguis'] violation of Canon 16, Rule 16.04 of the Code of Professional Responsibility. Thus, respondent Atty. Honesto Ancheta Cabarroguis is hereby **SUSPENDED from the practice of law for three (3) months,** (Emphasis in the original)

**Our Ruling**

The Court adopts the resolution of the IBP Board of Governors.

Quite clearly, Atty. Cabarroguis violated the prohibition against lawyers lending money to their clients.

Pertinent to the case at bar is Canon 16 of the Code of Professional Responsibility (CPR) which states:

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[4] *Id*. at 35.

[5] *Id*. at 37-48.

[6] *Id*. at 223-224.

[7] *Id*. at 222.

CANON 16 — A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

And Rule 16.04 thereof which mandates that:

A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. **Neither shall a lawyer lead money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client.** (Emphasis ours)

There is hardly any doubt or dispute that Atty. Cabarroguis did lend money to his client, Tangcay, this fact being evidenced by a real estate mortgage which the latter signed and executed in favor of the former.

In fact, Commissioner Adriano noted that "[r]espondent did **not** deny the existence of the mortgage in his favor. His answer did not directly touch on the propriety of his act of extending the loan to Tangcay, a client."[8]

In *Linsangan v. Atty. Tolentino,*[9] this Court explained why the lending of money by a lawyer to his client is frowned upon, *viz.*:

The rule is that a lawyer shall not lend money to his client. The only exception is, when in the interest of justice, he has to advance necessary expenses (such as filing fees, stenographer's fees for transcript of stenographic notes, cash bond or premium for surety bond, etc.) for a matter that he is handling for the client.

The rule is intended to safeguard the lawyer's independence of mind so that the free exercise of his judgment may not be adversely affected. It seeks to ensure his undivided attention to the case he is handling as well as his entire devotion and fidelity to the client's cause. If the lawyer lends money to the client in connection with the client's case, the lawyer in effect acquires an interest in the subject matter of the case or an additional stake in its outcome. Either of these circumstances may lead the lawyer to consider his own recovery

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[8] *Id*. at 353. Emphasis ours.

[9] A.C. No. 6672, 614 Phil. 327, 335 (2009).

rather than that of his client, or to accept a settlement which may take care of his interest in the verdict to the prejudice of the client in violation of his duty of undivided fidelity to the client's cause. (Citations omitted)

The law profession is distinguished from any other calling by the fiduciary duty of a lawyer to his or her client. It is almost trite to say that lawyers are strictly required to maintain the highest degree of public confidence in the fidelity, honesty and integrity of their profession.[10] "Lawyers who obtain an interest in the subject-matter of litigation create a conflict-of-interest situation with their clients and thereby directly violate the fiduciary duties they owe their clients."[11]

In *Anaya v. Alvarez, Jr.*[12] this Court once again reminded lawyers that the legal profession is not a mere money – making occupation but a noble and ennobling calling that is heavily encumbered and hedged about by such salutary and honored strictures as integrity, morality, honesty, fair dealing and, trustworthiness, to wit;

> The practice of law is a privilege granted only to those who possess the strict intellectual and moral qualification required of a lawyer. As vanguards of our legal system, they are expected to maintain not only legal proficiency but also a high standard of morality, honesty, integrity, and fair dealing. Their conduct must always reflect the values and norms of the legal profession as embodied in the CPR.[13]

**WHEREFORE,** respondent. Atty. Honesto A. Cabarroguis is found guilty of violating Rule 16.04, Canon 16 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** from the practice of law for a period of three (3) months effective upon receipt of this Resolution, with a stern warning that a commission of the same or similar acts or

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[10] *Rangwani v. Atty. Diño,* 486 Phil. 8, 20 (2004).

[11] *Roxas v. Republic Real Estate Corporation,* G.R. Nos. 208205 & 208212, June 1, 2016, 792 SCRA 31, 73-74.

[12] A.C. No. 9436, August 1, 2016, 799 SCRA 1.

[13] *Id*. at 4.

offenses will be dealt with more severely. Atty. Cabarroguis is **DIRECTED** to inform the Court of the date of his receipt of this Resolution within ten (10) days from receipt thereof.

Let a copy of this Resolution be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all the courts in the country for their information and guidance.

**SO ORDERED.**

*Leonardo-de Castro,*[*] *Jardeleza,* and *Tijam, JJ.,* concur.

*Sereno, C.J.,*[**] on leave.

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**THIRD DIVISION**

[G.R. No. 217805. April 2, 2018]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **ALSARIF BINTAIB *y* FLORENCIO *a.k.a.* "LENG",** *accused-appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); SECTION 21 THEREOF MANDATES THAT THE PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED ITEMS MUST BE DONE IN THE PRESENCE OF THE ACCUSED AND THE REQUIRED REPRESENTATIVES ENUMERATED**

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[*] Acting Chairperson pursuant to Special Order No. 2540 dated February 28, 2018.

[**] *J.* Carpio designated as Acting Chief Justice pursuant to Special Order No. 2539 dated February 28, 2018.

**UNDER THE LAW; MERE PRESENCE OF THESE REPRESENTATIVES AT THE TIME OF SIGNING THE INVENTORY WOULD NOT SUFFICE.—** Under paragraph (1) of Section 21, the apprehending team shall, **immediately after confiscation**, conduct a physical inventory and photograph the seized items ***in the presence of*** the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice, and any elected public official. The Implementing Rules and Regulations (IRR) of R.A. No. 9165 mirrors Section 21(1) but also fill in the details as to where the physical inventory and photographing of the seized items had to be done: x x x **physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or the nearest office of the apprehending officer/ team, whichever is practicable, in case of warrantless seizures**; x x x While the law allows the physical inventory and photographing to be done at the nearest police station, the presence of the insulating witnesses during this step is vital. Without the insulating presence of these persons, the possibility of switching, planting, or contamination of the evidence negates the credibility of the seized drug and other confiscated items. In the present case, it appears that the media representative, DOJ representative, and the elected public official were only present during the time the certificate of inventory was prepared[.] x x x Mere signature or presence of the insulating witness **at the time of signing** is not enough to comply with what is required under Section 21 of R.A. No. 9165. What the law clearly mandates is that they be present while the actual inventory and photographing of the seized drugs are happening. If we were to allow such circumvention of this requirement, we would open the floodgates to more mistaken drug convictions especially when planting evidence is a common practice.

**2. ID.; ID.; ID.; WHERE THE APPREHENDING TEAM FAILED TO COMPLY WITH SECTION 21 OF RA 9165, PRESUMPTION OF REGULARITY CANNOT WORK IN THEIR FAVOR.—** [S]ince the apprehending team failed to comply with Section 21 of R.A. No. 9165, the presumption of regularity cannot work in their favor. This presumption arises only upon compliance with Section 21 of R.A. No. 9165, or by clearly or convincingly explaining the justifiable grounds for noncompliance. Anything short of observance and compliance

by the arresting officers with what the law required means that the former did not regularly perform their duties. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.

**3. ID.; ID.; ID.; NON-COMPLIANCE WITH THE REQUIREMENTS OF SECTION 21 MAY BE EXCUSED ONLY WHEN THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PRESERVED; BOTH CONDITIONS WERE NOT SATISFIED IN THIS CASE.—** [T]he saving clause in the IRR, which is now incorporated in Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, may operate because non-compliance with the prescribed procedural requirements would not automatically render the seizure and custody of the illegal drug invalid. However, this is true only when: (1) there is a justifiable ground for such noncompliance; and (2) the integrity and evidentiary value of the seized item/s are preserved. In the instant case, the prosecution failed to satisfy both conditions.

**4. ID.; ID.; ID.; PRESERVATION OF THE *CORPUS DELICTI* IS ESSENTIAL IN SUSTAINING A CONVICTION FOR ILLEGAL SALE OF DANGEROUS DRUGS, FAILURE OF THE PROSECUTION TO PROVE IT WARRANTS ACQUITTAL OF THE ACCUSED.—** [W]e must remember that the burden of proof in criminal cases never shifts and the accused is entitled to an acquittal, unless his guilt is proven beyond reasonable doubt. In discharging this burden, the prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt. As an element of the crime, the preservation of the *corpus delicti* is essential in sustaining a conviction for illegal sale of dangerous drugs. Therefore, the prosecution has the duty to prove compliance with the prescribed procedural requirement under Section 21 of R.A. No. 9165 and, should there be noncompliance, to establish that there was an unbroken chain of custody. Otherwise, the accused, like Bintaib, is entitled to an acquittal.

**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.*:**

We resolve the appeal from the 24 April 2015 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR H.C. No. 01045-MIN. The CA affirmed the conviction of Alsarif Bintaib y Florencio a.k.a. "Leng" (*Bintaib*) for illegal sale of shabu.

**THE FACTS**

Bintaib was charged before the Regional Trial Court, Branch 13, Zamboanga City (*RTC*), in Criminal Case No. 23972 for violating Section 5 of R.A. No. 9165.[2] The Information dated 12 November 2008 reads:

> That on or about November 11, 2008, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, deliver, give away to another, transport or distribute, any dangerous drug, did then and there willfully, unlawfully and feloniously sell and deliver to IO2 ABDULSOKOR S. ABDULGANI, a member of the Philippine Drug Enforcement Agency-9 (PDEA), Upper Calarian, Zamboanga City, who acted as poseur-buyer, one (1) heat-sealed transparent plastic sachet containing 0.0344 grams of white crystalline substance which when subjected to qualitative examination gave positive result to the tests for the presence of methamphetamine hydrochloride (shabu), knowing the same to be a dangerous drug.
>
> CONTRARY TO LAW.[3]

On 7 August 2009, Bintaib, with the assistance of counsel, was arraigned and he entered a plea of not guilty. Pre-trial and trial on the merits followed.

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[1] CA *rollo*, pp. 99-108.

[2] The Comprehensive Dangerous Drugs Act of 2002.

[3] RTC records, pp. 1-2.

***The Prosecution's Evidence***

The prosecution presented two (2) witnesses, namely: (1) Intelligence Officer 1 Maria Niña Belo (*IO1 Belo*), and (2) Intelligence Officer 2 Abdulsokor Abdulgani (*IO2 Abdulgani*). Their version of the facts are:

On 11 November 2008, at around 3:00 P.M., a confidential asset came to the PDEA Regional Office at Upper Calarian, Zamboanga City, and reported that a certain "Leng" was actively engaged in illegal drug transactions within the city. He also said that he had just recently bought shabu from Leng who agreed to sell the same to him again. Acting on this information, a buy-bust team was organized, among whom IO2 Abdulgani was designated as the poseur-buyer and IO1 Belo was to act as immediate back up and/or arresting officer.

At about 6:00 P.M., the buy-bust team proceeded to the target area where IO2 Abdulgani and the confidential asset waited for this certain Leng to arrive. Shortly thereafter, Bintaib approached them and spoke to the confidential informant in the *Tausug* language. The confidential informant then introduced IO2 Abdulgani to Bintaib and said: "*Ito ang kaibigan ko, bibili.*" After Bintaib told IO2 Abdulgani to wait, he boarded a tricycle and left.

More than an hour later, Bintaib returned and handed IO2 Abdulgani a transparent plastic sachet containing a white crystalline substance. Suspecting the contents to be *shabu*, IO2 Abdulgani scratched his head to signal IO1 Belo and the rest of the PDEA operatives to aid in the arrest. Bintaib and the plastic sachet suspected to contain shabu were then brought to the PDEA Regional Office.

Upon arrival at their office, IO2 Abdulgani marked the plastic sachet with his initials "ASA" and then turned over the same to Intelligence Officer 3 Thessa B. Albaño (*IO3 Albaño*), who also marked the sachet with her initials "TBA." Afterwards, IO3 Albaño conducted the physical inventory and took a photograph of Bintaib with the confiscated plastic sachet. Representatives from the media, the Depatment of Justice, and

the local government signed the certificate of inventory. IO3 Albaño also prepared the letter-request for laboratory examination which she brought with her, together with the seized item, to the crime laboratory.

In the chemistry report, the forensic chemist declared that the contents of the transparent plastic sachet contained 0.0344 grams of methamphetamine hydrochloride, otherwise known as *shabu*, a dangerous drug.

***The Version of the Defense***

Bintaib, on the other hand, narrates a different story:

At around 8:30 P.M. of the same day, Bintaib was drinking with his childhood friend at Blue Diamond located within the target area. When done, Bintaib and his friend left the place on a tricycle. Bintaib disembarked at a *sari-sari* store to buy TM load, but the storekeeper said they did not carry it.

While he was walking away from the *sari-sari* store, Bintaib noticed that he was being followed. When he turned around, someone who introduced himself as a PDEA agent punched him, poked a gun at him, and forced him to board a van. At the PDEA office, Bintaib was shown a sachet containing "alum or sugar," and was asked about the whereabouts of a person named "Val." Bintaib begged to be released because the sachet shown to him was not his and that he could not pinpoint Val's whereabouts. The following day, Bintaib was formally charged.

***The Ruling of the Trial Court***

In its 28 October 2011 Decision,[4] finding all the essential elements of illegal sale of drugs present and Bintaib's denial and alibi inherently weak, the RTC found him guilty as charged. Hence, the RTC ruled:

WHEREFORE, in light of all the foregoing, this Court finds accused ALSARIF BINTAIB Y FLORENCIO A.K.A. "LENG" GUILTY beyond reasonable doubt for violating Section 5, Article II of the

[4] *Id*. at 76-85.

Comprehensive Dangerous Drugs Act of 2002 (R.A. 9165) and sentences him to suffer the penalty of LIFE IMPRISONMENT and pay a fine of FIVE HUNDRED THOUSAND PESOS (₱500,000.00) without subsidiary imprisonment in case of insolvency.

SO ORDERED.[5]

The RTC held that even if IO2 Abdulgani did not hand Bintaib money, it was established that they agreed that IO2 Abdulgani would buy shabu even before the drugs were handed to him. A clear manifestation that there was already an understanding between IO2 Abdulgani and Bintaib was the fact that the latter left after the conversation to get shabu and returned with a plastic sachet containing the drug. Further, the RTC said that the nonpayment by IO2 Abdulgani does not obviate the sale between them since payment is not an essential element of sale anyway.[6]

As for Bintaib's denial and alibi, the RTC did not give it much weight or credence because (1) he could not give a plausible explanation why he was at the scene of the crime when arrested; and (2) his testimony in itself was self-contradicting aside from being uncorroborated.

***The Assailed CA Decision***

On appeal, Bintaib argued that there was no valid buy-bust operation absent any consideration or payment in exchange for the shabu. He hinged on the fact that the prosecution failed to prove the existence of the marked money, suggesting that the operatives had no plan at all to purchase drugs.

With regard to the *corpus delicti*, Bintaib points out the procedural lapses committed by the PDEA operatives notably their noncompliance with the statutory safeguards: (1) the marking was done at the PDEA office and not immediately after the arrest at the crime scene; (2) the representatives from the media, Department of Justice, and the local government

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[5] *Id*. at 85.

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

were not present during the actual physical inventory but only signed the certification after; (3) the prosecution failed to adduce any valid excuse for non-compliance; and (4) the investigator and forensic chemist failed to testify as to how they handled the seized drugs.

In the assailed decision, the CA affirmed *in toto* the RTC's decision. First, It held that the non-presentation of the buy-bust money is not fatal to the prosecution's case because the moment IO2 Abdulgani went through the entrapment operation as a buyer followed by Bintaib's act of delivery after accepting the offer of sale, the crime had already been consummated. Even granting that the sale did not take place, Bintaib's conviction stands because the very act of delivering, distributing, giving away, dispatching, and transporting a dangerous drug is penalized under Section 5 of R.A. No. 9165.[7]

Meanwhile, in addressing the alleged gaps in the chain of custody, the CA said:

> The evidence on record does not support appellant's position. On the contrary, the records clearly show that the prosecution had sufficiently established the absence of a gap in the chain of custody and that the *shabu* was properly identified at the trial. To reiterate, during the buy-bust operation, Abdulgani received from the appellant the sachet containing the prohibited drug. At the office, Abdulgani marked the sachet of *shabu* "ASA." The designated investigator also marked the same sachet "TBA." After preparing the letter request, the same investigator personally delivered the item to the crime laboratory for forensic examination. The content of the seized sachet was tested by Forensic Chemist Ade-Lazo and was verified to be methamphetamine hydrochloride (*shabu*). Finally, during trial, the marked sachet of *shabu* was clearly identified by Abdulgani and Belo.
>
> Truly, the foregoing facts confirmed that there was indeed no gap in the chain of custody of the *shabu* as the PDEA officers properly complied with the required procedure in the custody of the illegal drug. Verily, We see no doubt that the sachet marked "ASA" and "TBA," which was submitted for laboratory examination and later

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[7] CA *rollo*, p. 104.

to be found positive for *shabu*, was the same one delivered by appellant to Abdulgani on November 11, 2008.

Accordingly, like the RTC, We hold that the integrity and the evidentiary value of the *shabu* coming from appellant was not compromised and that the prosecution was able to establish that the illegal drug presented in court was the very same specimen sold and delivered by appellant at the crime scene.

x x x x x x x x x

WHEREFORE, in light of all the foregoing, We AFFIRM *in toto* the RTC's decision dated November 9, 2011.[8]

From this CA decision, the case is now before us for final review.

## OUR RULING

There is merit in this appeal.

In prosecuting an offense involving illegal drugs, the most crucial element that must be proven is the existence of the drugs itself; without it, there would not be any illegal drug violation to speak of. For illegal sale, the drug itself is the object of the sale; while in illegal possession, it is the very thing that is possessed by the accused. We often say that the dangerous drug constitutes the *corpus delicti* of the offense or the body of facts or evidence that a crime has been committed. We, therefore, have to carefully scrutinize the evidence on record and determine whether it is enough to reasonably establish the existence of the drug itself.

For this reason, both law and jurisprudence have set procedural guidelines on how confiscated drugs should be handled. The fact that the seized drug exists heavily relies on the preservation of its identity and integrity. The identity of the confiscated drugs is preserved when we can say that the drug presented and offered as evidence in court is the exact same item seized or confiscated from the accused at the time of his arrest. The preservation of the drug's integrity, on the other hand, means

[8] *Id*. at 105-108.

that its evidentiary value is intact as it was not subject to planting, switching, tampering or any other circumstance that casts doubt as to its existence.

To remove any doubt or uncertainty on the identity and integrity of the seized drugs, Section 21 of R.A. No. 9165 outlines the prescribed procedure on how to handle confiscated, seized, and/or surrendered dangerous drugs. Over the years, however, the lower courts have misapplied the rule set therein and, as a result, have come out with reversed decisions and improper convictions. We cannot entirely blame the lower courts because we ourselves have not come up with a standard. This is to be expected given that we evaluate each case differently as they have dissimilar factual circumstances. Nevertheless, this should not hinder us from strengthening ways on how we should resolve and dispose of illegal drugs cases.

Section 21 of R.A. No. 9165 provides:

*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 person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject items; *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 the testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the qualities 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; [x x x]

As a general rule, the apprehending team must *strictly* comply with the procedure laid out above because the process itself is a matter of substantive law, which cannot be brushed aside as a simple technicality.[9] These provisions were crafted to address potential police abuses by narrowing the window of opportunity for tampering with evidence.[10]

Under paragraph (1) of Section 21, the apprehending team shall, **immediately after confiscation**, conduct a physical inventory and photograph the seized items ***in the presence of*** the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice, and any elected public official. The Implementing Rules and Regulations (IRR) of R.A. No. 9165 mirrors Section 21(1) but also fill in the details as to where the physical inventory and photographing of the seized items had to be done:

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 apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and

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[9] *Rontos v. People*, 710 Phil. 328, 335 (2013) citing *People v. Umipang*, 686 Phil. 1024, 1038 (2012); *People v. Sabdula*, 733 Phil. 85-102 (2014).

[10] *People v. Umipang*, 686 Phil. 1024, 1038-1039 (2012); *People v. Coreche*, 612 Phil. 1238-1253 (2009).

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 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.[11] [emphasis and underscoring ours]

While the law allows the physical inventory and photographing to be done at the nearest police station, the presence of the insulating witnesses during this step is vital. Without the insulating presence of these persons, the possibility of switching, planting, or contamination of the evidence negates the credibility of the seized drug and other confiscated items.

In the present case, it appears that the media representative, DOJ representative, and the elected public official were only present during the time the certificate of inventory was prepared:

Q: Mr. Witness, you mentioned right after the preparation of the booking sheet and arrest report, your office conducted the inventory, in other words, Mr. Witness, the representative from the media, from the Department of Justice were already there in that office?

A: The OIC called them and after a while they arrived and that was the time they placed their signatures on the inventory, sir.

Q: When you arrested the accused, Mr. Witness, did you ask him to have any representative?

A: No, sir.

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[11] In R.A. No. 10640, the amendment to Section 21 of R.A. No. 9165 was introduced where the last *proviso* in the IRR was incorporated in the law itself.

Q: So, when you arrived at the office, can you recall if there was any representative of the accused?

A: We just told him that he is allowed to call anybody but they never came, sir.

Q: Did you also allow the accused to call any representative from outside?

A: He refused.

Q: Mr. Witness, you mentioned that you marked the shabu, why is it in the inventory the marking was not mentioned in the certificate of inventory?

A: No, sir, we did not put it in the inventory sir, the marking.

Q: Mr. Witness, when you signed the certificate of inventory, [were] the representative from the media, DOJ, and elected official already there?

A: Yes, sir.[12]

Mere signature or presence of the insulating witness **at the time of signing** is not enough to comply with what is required under Section 21 of R.A. No. 9165. What the law clearly mandates is that they be present while the actual inventory and photographing of the seized drugs are happening. If we were to allow such circumvention of this requirement, we would open the floodgates to more mistaken drug convictions especially when planting evidence is a common practice.[13]

In *People v. Pagaura*,[14] the Court said:

The court must be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses. We are aware that in some instances law enforcers resort to the practice of planting evidence to extract information or even

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[12] TSN, 21 April 2010, pp. 29-31.

[13] *Valdez v. People*, 563 Phil. 934, 956 (2007); *People v. Dela Cruz*, 666 Phil. 593, 619 (2011); *Arcilla v. Court of Appeals*, 463 Phil. 914-925 (2003); *People v. Pagaura*, 334 Phil. 683, 689-690 (1997).

[14] 334 Phil. 683-690 (1997).

to harass civilians. Hence, the presumption that the regular duty was performed by the arresting officer could not prevail over the constitutional presumption of innocence of the accused.[15]

Hence, since the apprehending team failed to comply with Section 21 of R.A. No. 9165, the presumption of regularity cannot work in their favor. This presumption arises only upon compliance with Section 21 of R.A. No. 9165, or by clearly or convincingly explaining the justifiable grounds for noncompliance.[16] Anything short of observance and compliance by the arresting officers with what the law required means that the former did not regularly perform their duties.[17] Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.[18]

On this note, the saving clause in the IRR, which is now incorporated in Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, may operate because non-compliance with the prescribed procedural requirements would not automatically render the seizure and custody of the illegal drug invalid. However, this is true only when: (1) there is a justifiable ground for such noncompliance; and (2) the integrity and evidentiary value of the seized item/s are preserved.[19]

In the instant case, the prosecution failed to satisfy both conditions. *First*, the prosecution did not offer any kind of evidence explaining why the insulating witnesses were not present during the actual inventory or, at least, clarify that they were indeed there and witnessed everything. Instead, what came out of IO2 Abdulgani's testimony was that the media representative, DOJ representative, and elected public official only signed the

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[15] *Id.* at 689-690.

[16] *People v. Barte*, G.R. No. 179749, 1 March 2017.

[17] *Id.*

[18] *People v. Mendoza*, 736 Phil. 749, 770 (2014).

[19] *People v. Casacop*, 778 Phil. 369-378 (2016); *People v. Akmad*, 713 Phil. 581, 589 (2015); *People v. Flores*, 765 Phil. 535, 541 (2015).

certificate of inventory without saying they had actually witnessed the process. *Second*, the prosecution failed to establish an unbroken chain of custody over the confiscated item.

In *People v. Gonzalez*,[20] the Court explained that:

> 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 prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence. In short, the marking immediately upon confiscated or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.[21]

The prosecution's version is that IO2 Abdulgani only marked the item he bought from Bintaib at the police station and not immediately after the latter's arrest. The marking was done after a reasonable time of travel from the place of arrest to the police station. Notably, the marking was not done at the place of arrest even if IO2 Abdulgani could have easily placed his initials considering he had backup with him and there was no serious threat to their safety or possibility for Bintaib to escape. At this stage in the chain, there was already a significant break such that there could be no assurance against switching, planting or contamination. We have 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."[22]

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[20] 708 Phil. 121-133 (2013).

[21] *Id.* at 130-131.

[22] *People v. Ismael*, G.R. No. 208093, 20 February 2017 citing *People v. Umipang*, 686 Phil. 1024, 1050 (2012).

As a final note, we must remember that the burden of proof in criminal cases never shifts and the accused is entitled to an acquittal, unless his guilt is proven beyond reasonable doubt. In discharging this burden, the prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt. As an element of the crime, the preservation of the *corpus delicti* is essential in sustaining a conviction for illegal sale of dangerous drugs. Therefore, the prosecution has the duty to prove compliance with the prescribed procedural requirement under Section 21 of R.A. No. 9165 and, should there be noncompliance, to establish that there was an unbroken chain of custody. Otherwise, the accused, like Bintaib, is entitled to an acquittal.

**WHEREFORE,** premises considered, the 24 April 2015 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 01045-MIN is **REVERSED** and **SET ASIDE**. Alsarif Bintaib y Florencio a.k.a. "Leng" 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 detained upon orders of other courts or for any other lawful cause.

Let a copy of this Decision be furnished 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 the action taken within five (5) days from receipt of this Decision.

**SO ORDERED.**

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

**FIRST DIVISION**

[G.R. No. 223660. April 2, 2018]

**LOURDES VALDERAMA,** *petitioner, vs.* **SONIA ARGUELLES and LORNA ARGUELLES,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; APPEALS; RULE 45 PETITION; QUESTIONS OF LAW AND OF FACT, DISTINGUISHED; TEST TO DETERMINE WHETHER A QUESTION IS ONE OF LAW OR OF FACT.—** 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. For a question to be one of law, its resolution must not involve an examination of the probative value of the evidence presented by the litigants, but must rely solely on what the law provides on the given set of facts. If the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact. The test, therefore, is not the appellation given to a question by the party raising it, but whether the appellate court can resolve the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.

**2. ID.; ID.; ID.; APPEAL BY *CERTIORARI* UNDER RULE 45, PROPER REMEDY IN CASE AT BAR.—** As correctly observed by the CA, a careful perusal of the records reveals that the essential facts of the case are not disputed by the parties before the CA. Contrary to the petitioner's claim, the question of whether this Court's ruling in the case of *Villaflor* is applicable to the present case is not a question of fact. Given an undisputed set of facts, an appellate court may resolve the issue on what law or ruling is applicable without examining the probative value of the evidence before it. x x x The CA, therefore, did not err in dismissing the appeal filed by the petitioner for being an improper appeal. The proper mode of appeal is an appeal by *certiorari* before this Court in accordance with Rule 45. Section 2 of the said Rule provides that appellant has a period of 15 days from notice of judgment or final order appealed from within which to perfect her appeal. In this case, petitioner

filed the present petition before Us well beyond the said reglementary period.

**3. ID.; ID.; FAILURE TO PERFECT AN APPEAL WITHIN THE REQUIRED PERIOD RENDERS THE APPEALED JUDGMENT FINAL AND IMMUTABLE; THE COURT OPTED TO RELAX THE RULE AND TAKE COGNIZANCE OF THE CASE AFTER AN IMPROPER APPEAL TO THE COURT OF APPEALS.—** Failure to perfect an appeal within the period provided by law renders the appealed judgment or order final and immutable. However, this rule is not without exceptions. In some cases, this Court opted to relax the rules and take cognizance of a petition for review on *certiorari* after an improper appeal to the CA "in the interest of justice and in order to write *finis* to [the] controversy" and "considering the important questions involved in a [the] case." As such, We proceed to decide the merits of the case considering the confusion brought by conflicting jurisprudence on the issue posed before Us.

**4. CIVIL LAW; PROPERTY REGISTRATION DECREE (PD 1529); AN ADVERSE CLAIM AND A NOTICE OF *LIS PENDENS* ARE BOTH INVOLUNTARY DEALINGS UNDER PD 1529 BUT THEY ARE NOT OF THE SAME NATURE AND DO NOT SERVE THE SAME PURPOSE; DISTINCTIONS, SUMMARIZED.—** An adverse claim and a notice of *lis pendens* are both involuntary dealings expressly recognized under Presidential Decree No. 1529 (P.D. 1529), otherwise known as the Property Registration Decree. x x x As distinguished from an adverse claim, the notice of *lis pendens* is ordinarily recorded without the intervention of the court where the action is pending. Moreover, a notice of *lis pendens* neither affects the merits of a case nor creates a right or a lien. The notice is but an extrajudicial incident in an action. It is intended merely to constructively advise, or warn, all people who deal with the property that they so deal with it at their own risk, and whatever rights they may acquire in the property in any voluntary transaction are subject to the results of the action. Corollarily, unlike the rule in adverse claims, the cancellation of a notice of *lis pendens* is also a mere incident in the action, and may be ordered by the Court having jurisdiction of it at any given time. Its continuance or removal is not contingent on the existence of a final judgment in the action, and ordinarily has no effect

on the merits thereof. Given the foregoing, the law and jurisprudence provide clear distinctions between an annotation of an adverse claim, on one hand, and an annotation of a notice of *lis pendens* on the other. In sum, the main differences between the two are as follows: (1) an adverse claim protects the right of a claimant during the pendency of a **controversy** while a notice of *lis pendens* protects the right of the claimant during the pendency of the **action or litigation**; and (2) an adverse claim may only be cancelled upon filing of a petition before the court which **shall conduct a hearing on its validity** while a notice of *lis pendens* may be cancelled **without a court hearing**.

**5. ID.; ID.; ID.; APPLYING THE RULING IN *TY SIN TEI*, THE COURT HELD THAT A SUBSEQUENT ANNOTATION OF A NOTICE OF *LIS PENDENS* ON A CERTIFICATE OF TITLE DOES NOT NECESSARILY RENDER A PETITION FOR CANCELLATION OF ADVERSE CLAIM ON THE SAME TITLE MOOT AND ACADEMIC; THE TWO REMEDIES MAY BE AVAILED OF AT THE SAME TIME, THEY ARE NOT CONTRADICTORY TO ONE ANOTHER.—** In *Ty Sin Tei*, the only issue presented before this Court is whether the institution of an action and the corresponding annotation of a notice of *lis pendens* at the back of a certificate of title invalidates a prior notation of an adverse claim appearing on the same title, where the aforementioned action and the adverse claim refer to the same right or interest sought to be recovered. Unlike in *Villaflor*, this Court, in *Ty Sin Tei*, set aside the lower court's order directing the cancellation of appellant's adverse claim on the certificate of title. Pertinent portions of the decision are instructive, and reproduced as follows: **x x x the action taken by the lower Court in ordering the cancellation of the adverse claim before its validity could be passed upon, is not sanctioned by law.** x x x In such instances, **it would not only be unreasonable but also oppressive to hold that the subsequent institution of an ordinary civil action would work to divest the adverse claim of its validity, for as We have pointed out, a notice of *lis pendens* may be cancelled even before the action is finally terminated for causes which may not be attributable to the claimant.** x x x **But, if any of the registrations should be considered unnecessary or superfluous, it would be the notice of *lis pendens* and not the annotation of the adverse claim which is more permanent and cannot be cancelled without**

**adequate hearing and proper disposition of the claim.** x x x The aforecited rationale of this Court in *Ty Sin Tei* is more in accordance with the basic tenets of fair play and justice. As previously discussed, a notice of *lis pendens* is a mere incident of an action which does not create any right nor lien. It may be cancelled without a court hearing. In contrast, an adverse claim constitutes a lien on a property. As such, the cancellation of an adverse claim is still necessary to render it ineffective, otherwise, the inscription will remain annotated and shall continue as a lien upon the property. Given the different attributes and characteristics of an adverse claim *vis-a-vis* a notice of *lis pendens*, this Court is led to no other conclusion but that the said two remedies may be availed of at the same time. In fact, in a later case, this Court ruled that the annotation of a notice of *lis pendens* at the back of a certificate of title does not preclude the subsequent registration on the same certificate of title of an adverse claim. Citing the ruling in *Ty Sin Tei*, this Court reasoned that the two remedies are not contradictory to one another.

**6. ID.; ID.; ID.; ID.; EFFECTS WHERE THE ADVERSE CLAIM WOULD BE CANCELLED ON THE SOLE BASIS OF SUBSEQUENT NOTICE OF *LIS PENDENS* ON THE SAME TITLE.—** [U]pholding the right of an opposing party to the outright cancellation of adverse claim on the sole basis of a subsequent notice of *lis pendens* on the same title would not achieve any sound purpose. It may even encourage a party to not avail the remedy of annotation of a notice of *lis pendens* if an adverse claim was already registered and annotated in the same party's favor. Furthermore, such ruling would result to a situation where the subject case of the notice of *lis pendens* may be dismissed on grounds not attributable to the adverse claimant, an example of which is, as pointed out by the petitioner, deliberate forum-shopping of the other party who filed the related case. Thus, the adverse claimant will be left with no other remedy in law to protect his or her rights. To Our mind, this is not the intent of the law.

## APPEARANCES OF COUNSEL

*Jaromay Laurente Pamaos Law Offices* for petitioner.
*Zosimo G. Alegre & Associates* for respondents.

## D E C I S I O N

**TIJAM, *J.*:**

Before this Court is a petition for review[1] under Rule 45 of the Rules of Court filed by Lourdes Valderama (petitioner) assailing the Decision[2] dated December 14, 2015 and Resolution[3] dated February 24, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 103744. In the said Decision, the CA dismissed the petitioner's appeal of the Resolutions[4] dated April 11, 2014 and July 31, 2014 of the Regional Trial Court (RTC) in Case No. P-09-499 LRC REC. No. 2400 ordering the cancellation of the Notice of Adverse Claim made as Entry No. 8957/Vol. 132/T-266311, Registry of Deeds of Manila.

### The Antecedents

On December 11, 2009, Sonia Arguelles and Lorna Arguelles (respondents) filed a petition to cancel adverse claim[5] involving a parcel of land covered by Transfer Certificate of Title (TCT) No. 266311.[6] The petition was docketed as Case No. P-09-499, LRC Record No. 2400 before the RTC, Branch 4, Manila.

In their petition, respondents alleged that on November 18, 2004, Conchita Amongo Francia (Conchita), who was the registered owner of a parcel of land consisting of one thousand (1000) square meters located in Sampaloc, Manila and covered by TCT No. 180198 (subject property), freely and voluntarily executed an absolute deed of sale of the subject property in favor of respondents. The subject property was subsequently registered in the names of respondents under TCT No. 266311.[7]

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[1] *Rollo*, pp. 3-33.

[2] Penned by Associate Justice Magdangal M. De Leon, concurred in by Associate Justices Elihu A. Ybañez and Victoria Isabel A. Paredes; *id.* at 35-46.

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

[4] Penned by Judge Jose Lorenzo R. Dela Rosa; *id.* at 200-201 and 214.

[5] *Id.* at 53-56.

[6] *Id.* at 58-60.

[7] *Id.* at 53-54.

On November 14, 2007, Conchita filed an affidavit of adverse claim[8] which was registered and annotated on TCT No. 266311. On January 24, 2008, Conchita died. As registered owners of the subject property, respondents prayed for the cancellation of the adverse claim in the petition subject of this controversy.[9]

On February 10, 2010, petitioner and Tarcila Lopez (Tarcila), as full-blooded sisters of Conchita, filed an opposition[10] to the petition. They claimed that upon Conchita's death, the latter's claims and rights against the subject property were transmitted to her heirs by operation of law.[11] They also argued that the sale of the subject property to the respondents was simulated as evidenced by the following, among others: (1) Conchita had continuous physical and legal possession over the subject property; (2) Conchita was the one paying for the real estate taxes for the subject property; and (3) Conchita had in her possession, up to the time of her death, the Owner's Duplicate Copy of the TCT No. 266311.[12]

Meanwhile, on September 24, 2013, while the petition to cancel adverse claim was pending before the RTC, respondents filed a complaint[13] for recovery of ownership and physical possession of a piece of realty and its improvements with damages and with prayer for the issuance of temporary restraining order and/or writ of preliminary injunction against petitioner and Tarcila, among others. The complaint was docketed as Civil Case No. 13130761 and raffled to the RTC, Branch 47, Manila.

In light of the respondent's filing of the complaint, petitioner and Tarcila filed a notice of *lis pendens*[14] with respect to the TCT No. 266311 on October 22, 2013.

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[8] *Id*. at 63-66.

[9] *Id*.

[10] *Id*. at 80-96.

[11] *Id*. at 81-82.

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

[13] *Id*. at 121-132.

[14] *Id*. at 166-168.

On November 21, 2013, respondents filed a manifestation and motion[15] praying for the outright cancellation of the adverse claim annotated on the TCT No. 266311 on the ground that petitioner's subsequent filing of notice of *lis pendens* rendered the issue moot and academic.

After an exchange of several pleadings between the parties, the RTC issued a Resolution[16] on April 11, 2014 ordering the cancellation of the adverse claim. In arriving at the said ruling, the RTC reasoned, thus:

> From the examination of pleadings between the parties relative to Civil Case No. 13130761, ownership and physical possession are sufficiently made as issues between the parties in the said case. The parties have effectively submitted themselves to the jurisdiction and disposition of the court relative to claims of ownership and possession over the property covered by Transfer Certificate of Title No. 266311 of the Registry of Deeds for the City of Manila.
>
> **While this court is aware of the case of Spouses Sajonas vs. Court of Appeals, Et Al., G.R. No. 102377 (July 5, 1996), it cannot disregard the pronouncement of the court in Villaflor vs. Juerzan, G.R. No. 35205 (April 17, 1990) which states that a Notice of Lis Pendens between the parties concerning Notice of Adverse Claim calls for the cancellation thereof. Hence, to reconcile with the two cases, this court orders the cancellation of the Adverse Claim in view of the Notice of Lis Pendens annotated on TCT No. 266311.** Considering, however, the case between the parties pending before Branch 47, the cancellation brought about by the Notice of Lis Pendens is in no way in determination as to the veracity and substance of the adverse claim. The cancellation does not touch upon the issues of ownership and possession which is the property left to the jurisdiction disposition of Branch 47 of the Regional Trial Court of Manila. If this court will continue with determining the substance of the questioned adverse claim then there is a possibility that two adverse decisions will result. Thus, this court leaves the issues of ownership on possession of the wisdom of Branch 47 of the Manila Regional Trial Court.

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[15] *Id.* at 115-117.

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

WHEREFORE, premises considered, the Notice of Adverse Claim made as Entry No. 8957/Vol. 132/T-266311, Registry of Deeds of Manila is ordered CANCELLED. However, the cancellation is not a determination of the veracity and substance of the adverse claim and is not a final determination on the issue of ownership and possession.[17] (Emphasis supplied)

Petitioner and Tarcila filed a motion for reconsideration[18] but the same was denied in a Resolution[19] dated July 31, 2014. Aggrieved, petitioner and Tarcila appealed to the CA raising the lone assignment of error:

THE COURT *A QUO* COMMITTED A GRAVE AND REVERSIBLE ERROR IN ORDERING THE CANCELLATION OF THE ADVERSE CLAIM CAUSED TO BE ANNOTATED BY THE LATE CONCHITA FRANCIA SIMPLY BECAUSE A NOTICE OF LIS PENDENS WAS SUBSEQUENTLY CAUSED TO BE ANNOTATED BY OPPOSITORS-APPELLANTS ON *TRANSFER CERTIFICATE OF TITLE NO. 266311*[20]

**Ruling of the CA**

On December 14, 2015, the CA rendered a decision[21] dismissing petitioner's appeal for lack of merit. The CA held that the issue on cancellation of adverse claim is a question of law since its resolution would not involve an examination of the evidence but only an application of the law on a particular set of facts. Having raised a sole question of law, the petition was dismissed by the CA pursuant to Section 2, Rule 50 of the Rules of Court.[22] Nonetheless, the CA found no error in RTC's cancellation of the adverse claim, to *wit*:

In any case, oppositors-appellants' appeal before this Court has no merit. Oppositors-appellants insist that the RTC erred in ordering

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[17] *Id*.

[18] *Id*. at 202-212.

[19] *Id*. at 214.

[20] *Id*. at 221.

[21] *Id*. at 35-46.

[22] *Id*. at 41-43.

the cancellation of the notice of adverse claim annotated at the hack of TCT No. 266311, appearing as Entry No. 8957/Vol. 132.

We do not agree.

In *Villaflor vs. Juezan*, the Supreme Court pronoun(c)ed:

"The principal issue in this appeal is whether or not an adverse claim annotated in a transfer certificate of title may be cancelled when the validity or invalidity of the claim is still subject of inquiry in a civil case pending resolution by the trial court.

x x x x x x x x x

On February 22, 1961 the appellant registered his affidavit of adverse claim in Transfer Certificate of Title No. T-1217 (formerly a part of Original Certificate of Title 806) under primary entry No. 26083 of the Register of Deeds of Davao. The affidavit conformed to the requirements of Section 110, Act 496.

On March 1, 1961, the herein appellant filed Civil Case 3496 seeking from the defendant therein the surrender of owner's duplicate of Transfer Certificate of Title T-1217 in order that the deed of sale in favor of the herein appellant will be registered or annotated in the certificate of title.

In Civil Case No. 3496 the defendant's answer raised the issue of validity of the deed of sale in favor of the herein appellant. In fact, trial was had on this issue and the case until the present is pending decision in view of the death of Judge Abbas.

More than four (4) years after the appellant's adverse claim was annotated that is, on October 15. 1965 and while case No. 3496 is (sic) pending, the herein appellee presented for registration two (2) deeds of sale affecting the land subject of the action, the first dated March 21, 1963 conveying 8.6186 hectares and the second dated September 6, 1986 conveying the remaining 3.0219 hectares and as a consequence, Transfer Certificate of Title T-1217 was cancelled and in lieu thereof Transfer Certificate of Title T-7601 was issued to the appellee wherein the adverse claim annotated was carried on.

It is this adverse claim which the appellee seeks to be cancelled in this case.

x x x x x x x x x

> On August 21, 1968, petitioner-appellee filed a motion to dismiss appeal in the Court of Appeals on the ground that the issue involved has become moot and academic, because oppositor-appellant Jose Juezan filed a notice of *lis pendens* on the property covered by T.C.T. No. T-7601 and in connection with Civil Case No. 3496.
>
> The basis of Civil Case No. 3496 is a deed of absolute sale dated July 7, 1956, allegedly executed by Simon Maghanay in favor of appellant Jose Juezan. This document is also the basis of the Affidavit of Adverse Claim ordered cancelled by the trial court. The purpose of said adverse claim is to protect the interest of the appellant pending this litigation.
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> Thus, considering that a notice of *lis pendens* had been annotated on T.C.T. No. T-7601 of petitioner-appellee, the Court finds no basis for maintaining the adverse claim.
>
> This Court sees no reason for disturbing the questioned order of the trial court dated August 25, 1967 directing the cancellation of the oppositor-appellant's adverse claim at the back of transfer certificate of title No. T-7601. The notice of *lis pendens* filed by the oppositor-appellant affecting the same property in connection with Civil Case No. 3496 is sufficient.
>
> Moreover, in the manifestation that was filed by counsel for appellant on February 8, 1990, it appears that the related case pending in the Court of Appeals docketed as CA-G.R. No. 43818-R was terminated thus affirming the decision of the trial court, and entry of judgment has been made per letter of transmittal dated November 5, 1975.
>
> Consequently, the instant case has been rendered moot and academic.
>
> WHEREFORE, the appeal is DISMISSED.
>
> SO ORDERED.[23]

Petitioner and Tarcila moved for reconsideration[24] of the CA decision but the same was denied in a Resolution[25] dated February 24, 2016.

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[23] *Id.* at 43-45 (citations omitted).

[24] *Id.* at 264-275.

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

Undaunted, petitioner alone brought the instant petition raising the following issues:

1. Whether the appeal filed before the CA involved a pure question of law;
2. Whether the ruling of the Honorable Court in *Villaflor vs. Juezan* is inapplicable to this case; and
3. Whether the adverse claim caused to be annotated by a person on a title may be cancelled merely because another person caused the annotation of a notice of *lis pendens* on the same title.[26]

Simply stated, the core issue to be resolved in this case is whether the subsequent annotation of a notice of *lis pendens* on a certificate of title renders the case for cancellation of adverse claim on the same title moot and academic.

**Ruling of the Court**

***The CA did not err in dismissing the appeal for raising a pure question of law***

Petitioner questions the CA's finding that no question of fact was raised before it. She argues that questions of fact were involved in her appeal, such as whether or not the facts of the case are similar to the facts in *Villaflor vs. Juezan*[27] so as to justify its application. Petitioner also mentioned that in the respondents' brief filed with the CA, the respondents called the attention of the CA to examine the peculiar facts surrounding the instant case and Civil Case No. 13130761. Respondents also questioned the legitimate interest of the petitioner over the subject property. Thus, petitioner posits that the CA should have resolved the appeal taking into consideration the evidence on record because the matters raised require the re-evaluation of the existence or relevance of surrounding circumstances.[28]

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[26] *Id.* at 15.

[27] 263 Phil. 224 (1990).

[28] *Rollo,* pp. 15-17.

We are not persuaded.

Under Section 2, Rule 41 of the Rules of Court, there are three modes of appeal from decisions of the RTC, *viz*:

Section 2. *Modes of appeal*. —

(a) *Ordinary appeal*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where law on these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari*. — **In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with the Rule 45.** (Emphasis Ours)

Moreover, Section 2, Rule 50 of the Rules provide that an appeal to the CA raising only questions of law shall be dismissed outright, thus:

Section 2. *Dismissal of improper appeal to the Court of Appeals*. — An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.

**An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.**(Emphasis Ours)

Applying the foregoing rules, there is no question that an appeal from the RTC to the CA raising only questions of law is an improper appeal which shall be dismissed outright. Thus, We now delve into the issue on whether petitioner's appeal

before the CA raised purely questions of law thereby warranting its outright dismissal.

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. For a question to be one of law, its resolution must not involve an examination of the probative value of the evidence presented by the litigants, but must rely solely on what the law provides on the given set of facts. If the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact. The test, therefore, is not the appellation given to a question by the party raising it, but whether the appellate court can resolve the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[29]

As correctly observed by the CA, a careful perusal of the records reveals that the essential facts of the case are not disputed by the parties before the CA. Contrary to the petitioner's claim, the question of whether this Court's ruling in the case of *Villaflor* is applicable to the present case is not a question of fact. Given an undisputed set of facts, an appellate court may resolve the issue on what law or ruling is applicable without examining the probative value of the evidence before it.

Moreover, no other than the petitioner raised the issue on the cancellation of the adverse claim as the sole issue in her appeal before the CA. As such, the CA correctly concluded that the said issue involved a pure question of law as its resolution would not involve an examination of the evidence but only an application of the law on a particular set of facts. At any rate, the determination of whether an appeal involves only questions of law or both questions of law and fact is best left to the appellate court. All doubts as to the correctness of the conclusions of the appellate court will be resolved in favor of the CA unless it commits an error or commits a grave abuse of discretion.[30]

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[29] *Leoncio, et al. v. Vera, et al.*, 569 Phil. 512 (2008).

[30] *First Bancorp, Inc. v. CA*, 525 Phil. 309, 326 (2006).

The CA, therefore, did not err in dismissing the appeal filed by the petitioner for being an improper appeal. The proper mode of appeal is an appeal by *certiorari* before this Court in accordance with Rule 45. Section 2 of the said Rule provides that appellant has a period of 15 days from notice of judgment or final order appealed from within which to perfect her appeal. In this case, petitioner filed the present petition before Us well beyond the said reglementary period.

Failure to perfect an appeal within the period provided by law renders the appealed judgment or order final and immutable. However, this rule is not without exceptions. In some cases, this Court opted to relax the rules and take cognizance of a petition for review on *certiorari* after an improper appeal to the CA "in the interest of justice and in order to write *finis* to [the] controversy"[31] and "considering the important questions involved in a [the] case."[32] As such, We proceed to decide the merits of the case considering the confusion brought by conflicting jurisprudence on the issue posed before Us.

***Villaflor v. Juezan is not applicable in this case***

At the outset, We rule that *Villaflor v. Juezan* is not applicable in this case. As aptly noted by the RTC, there is a need to reconcile the cases of *Villaflor v. Juezan* and *Sajonas v. CA*.[33] Hence, it is an opportune time for this Court to revisit the cases We decided delving on the issue before Us.

***An adverse claim and a notice of lis pendens under P.D. 1529 are not of the same nature and do not serve the same purpose***

An adverse claim and a notice of *lis pendens* are both involuntary dealings expressly recognized under Presidential

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[31] *Municipality of Pateros v. Hon. CA, et al.*, 607 Phil. 104, 114 (2009).

[32] *City of Lapu-lapu v. Philippine Economic Zone Authority*, 748 Phil. 473, 508 (2014).

[33] 327 Phil. 689 (1996).

Decree No. 1529 (P.D. 1529), otherwise known as the Property Registration Decree.

The remedy of annotation of an adverse claim was introduced under Act 496 or the Land Registration Act, Section 110, which reads:

> Sec. 110. Whoever claims any right or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Act for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land in which the right or interest is claimed.
>
> The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and designate a place at which all notices may be served upon him. The statement shall be entitled to registration as an adverse claim, and **the court, upon a petition of any party in interest, shall grant a speedy hearing upon the question of the validity of such adverse claim and shall enter such decree therein as justice and equity may require**. If the claim is adjudged to be invalid, the registration shall be canceled. If in any case the court after notice and hearing shall find that a claim thus registered was frivolous or vexatious, it may tax the adverse claimant double or treble costs in its discretion. (Emphasis Ours)

Thereafter, P.D. 1529 introduced minor changes in the wordings of the law, as follows:

> Sec. 70 *Adverse Claim* — Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Decree for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, a reference to the number of certificate of title of the registered owner, the name of the registered owner, and a description of the land in which the right or interest is claimed.
>
> The statement shall be signed and sworn to, and shall state the adverse claimants residence, and a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim on the certificate of title. The adverse claim shall

be effective for a period of thirty days from the date of registration. After the lapse of said period, **the annotation of adverse claim may be canceled upon filing of a verified petition therefor by the party in interest: Provided, however, that after cancellation, no second adverse claim based on the same ground shall be registered by the same claimant**.

Before the lapse of thirty days aforesaid, any party in interest may file a petition in the Court of First Instance where the land is situated for the cancellation of the adverse claim, and **the court shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall render judgment as may be just and equitable. If the adverse claim is adjudged to be invalid, the registration thereof shall be ordered canceled.** If, in any case, the court, after notice and hearing shall find that the adverse claim thus registered was frivolous, it may fine the claimant in an amount not less than one thousand pesos nor more than five thousand pesos, in its discretion. Before the lapse of thirty days, the claimant may withdraw his adverse claim by filing with the Register of Deeds a sworn petition to that effect. (Emphasis Ours)

In the case of *Flor Martinez v. Ernesto G. Garcia and Edilberto M. Brua*,[34] the Court held that:

The annotation of an adverse claim is a measure designed to protect the interest of a person over a piece of real property, where the registration of such interest or right is not otherwise provided for by the Land Registration Act or Act No. 496 (now P.D. No. 1529 or the Property Registration Decree), and serves a warning to third parties dealing with said property that someone is claiming an interest on the same or a better right than that of the registered owner thereof.[35]

Also, in the case of *Teresita Rosal Arrazola v. Pedro A. Bernas and Soledad Bernas Alivio*,[36] the Court explained:

The purpose of annotating the adverse claim on the title of the disputed land is to apprise third persons that there is a controversy

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[34] 625 Phil. 377 (2010).

[35] *Id.* at 391-392.

[36] 175 Phil. 452 (1978).

over the ownership of the land and to preserve and protect the right of the adverse claimant during the pendency of the controversy. It is a notice to third persons that any transaction regarding the disputed land is subject to the outcome of the dispute.[37]

As provided under the third paragraph of Section 70 of P.D. 1529:

The validity or efficaciousness of an adverse claim may only be determined by the Court upon petition by an interested party, in which event, the Court shall order the immediate hearing thereof and make the proper adjudication as justice and equity may warrant. And, it is only when such claim is found unmeritorious that the registration of the adverse claim may be cancelled.[38]

On the other hand, the following Sections of P.D. 1529 govern the rule on annotation as well as cancellation of a notice of *lis pendens*:

Section 76. *Notice of lis pendens*. No action to recover possession of real estate, or to quiet title thereto, or to remove clouds upon the title thereof, or for partition, or other proceedings of any kind in court directly affecting the title to land or the use or occupation thereof or the buildings thereon, and no judgment, and no proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a memorandum or notice stating the institution of such action or proceeding and the court wherein the same is pending, as well as the date of the institution thereof, together with a reference to the number of the certificate of title, and an adequate description of the land affected and the registered owner thereof, shall have been filed and registered.

Section 77. *Cancellation of lis pendens*. **Before final judgment, a notice of lis pendens may be canceled upon order of the court**, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be registered.**It may also be canceled by the Register of Deeds upon verified petition** of the party who caused the registration thereof.

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[37] *Id.* at 456-457.

[38] *Atty. Ferrer v. Spouses Diaz, et al.*, 633 Phil. 244, 259 (2010).

At any time after final judgment in favor of the defendant or other disposition of the action such as to terminate finally all rights of the plaintiff in and to the land and/or buildings involved, in any case in which a memorandum or notice of lis pendens has been registered as provided in the preceding section, the notice of lis pendens shall be deemed canceled upon the registration of a certificate of the clerk of court in which the action or proceeding was pending stating the manner of disposal thereof. (Emphasis Ours)

Jurisprudence further provides in the case of *Fernando Carrascoso, Jr. v. The Hon. Court of Appeals*[39] that:

The doctrine of *lis pendens* is founded upon reason of public policy and necessity, the purpose of which is to keep the subject matter of the litigation within the power of the court until the judgment or decree shall have been entered otherwise by successive alienations pending the litigation, its judgment or decree shall be rendered abortive and impossible of execution.[40]

As distinguished from an adverse claim, the notice of *lis pendens* is ordinarily recorded without the intervention of the court where the action is pending.[41]

Moreover, a notice of *lis pendens* neither affects the merits of a case nor creates a right or a lien. The notice is but an extrajudicial incident in an action. It is intended merely to constructively advise, or warn, all people who deal with the property that they so deal with it at their own risk, and whatever rights they may acquire in the property in any voluntary transaction are subject to the results of the action.[42] Corollarily, unlike the rule in adverse claims, the cancellation of a notice of *lis pendens* is also a mere incident in the action, and may be ordered by the Court having jurisdiction of it at any given time. Its continuance or removal is not contingent on the existence

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[39] 514 Phil. 48 (2005).

[40] *Id.* at 79.

[41] *Villanueva v. Court of Appeals*, 346 Phil. 289, 298 (1997).

[42] *Magdalena Homeowners Association, Inc. v. Court of Appeals*, 263 Phil. 235, 241 (1990).

of a final judgment in the action, and ordinarily has no effect on the merits thereof.[43]

Given the foregoing, the law and jurisprudence provide clear distinctions between an annotation of an adverse claim, on one hand, and an annotation of a notice of *lis pendens* on the other. In sum, the main differences between the two are as follows: (1) an adverse claim protects the right of a claimant during the pendency of a **controversy** while a notice of *lis pendens* protects the right of the claimant during the pendency of the **action or litigation**; and (2) an adverse claim may only be cancelled upon filing of a petition before the court which **shall conduct a hearing on its validity** while a notice of *lis pendens* may be cancelled **without a court hearing**.

***A subsequent annotation of a notice of lis pendens on a certificate of title does not necessarily render a petition for cancellation of adverse claim on the same title moot and academic***

Having laid down the differences between an annotation of an adverse claim and of a notice of *lis pendens* on a certificate title, We now delve into the issue of whether both annotations on the same certificate of title automatically constitute a superfluity that would warrant an outright cancellation of adverse claim in a petition for its cancellation on the ground of being moot and academic.

At the crux of the present controversy is this Court's ruling in the case of *Villaflor*.[44] In the said case, the appellant registered and annotated his affidavit of adverse claim on a certificate of title on the basis of a deed of sale issued in his favor pursuant to Section 110, Act 496. Subsequently, he filed a civil case seeking the surrender of defendant's owner's duplicate of the certificate of title in order that the deed of sale in his favor will

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[43] *Id*.

[44] *Villaflor*, *supra* note 27.

be registered or annotated in the same certificate. In the civil case, defendant raised the issue of validity of the deed of sale in favor of appellant. More than four years after and while the civil case was pending, the appellee sought to cancel the annotation of the adverse claim. The lower court first ordered its cancellation, then reconsidered, and finally returned to its original stand. Thus, the sole issue on whether or not an adverse claim annotated in a transfer certificate of title may be cancelled when the validity or invalidity of the claim is still subject of inquiry in a civil case pending resolution by the trial court, reached this Court.[45]

In finding no basis for maintaining the adverse claim, this Court noted the manifestation filed by the appellant's counsel that the related case pending in the CA was terminated thus affirming the decision of the trial court, and entry of judgment has been made. Consequently, this Court ruled in *Villaflor* that the case has been rendered moot and academic.[46]

Admittedly, the present case involves the same issue resolved by this Court in *Villaflor*. However, the *Villaflor* ruling stemmed from a different factual milieu. As pointed out by the petitioner, in the case at bar, the respondents are the ones who filed the case subject of the notice of *lis pendens*. Further, the ruling in *Villaflor* specifically highlighted the fact that the related civil case was already terminated and attained finality. Here, the civil case filed by the respondents is still pending before the RTC.

To Our mind, the termination of the related case subject of the notice of *lis pendens* was a material factor in considering the petition for cancellation of adverse claim moot and academic in the case of *Villaflor*. As such, the ruling in *Villaflor* is still good law if the same factual circumstances are attendant. Unfortunately, the facts in the present case calls for a different ruling.

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[45] *Id*.

[46] *Id*.

***The ruling of this Court in the case of Ty Sin Tei v. Dy Piao is applicable in this case***

In the case of *Paz Ty Sin Tei v. Jose Lee Dy Piao*,[47] this Court sitting *En Banc* discussed in-depth the present issue. Although the said case was decided in 1958, the rules on adverse claim were substantially the same under Act 496 and under P.D. 1529, notwithstanding a few changes in the wordings.

In *Ty Sin Tei*, the only issue presented before this Court is whether the institution of an action and the corresponding annotation of a notice of *lis pendens* at the back of a certificate of title invalidates a prior notation of an adverse claim appearing on the same title, where the aforementioned action and the adverse claim refer to the same right or interest sought to be recovered. Unlike in *Villaflor*, this Court, in *Ty Sin Tei*, set aside the lower court's order directing the cancellation of appellant's adverse claim on the certificate of title. Pertinent portions of the decision are instructive, and reproduced as follows:

**x x x the action taken by the lower Court in ordering the cancellation of the adverse claim before its validity could be passed upon, is not sanctioned by law.**

But We have to give certain consideration to the implication created by the lower court's ruling that the institution of a court action for the purpose of securing or preserving the right which is also the object of an adverse claim invalidates the latter, irrespective of whether a notice of *lis pendens* has been annotated or not, for such a doctrine gives the impression that the 2 remedies are contradictory or repugnant to one another, the existence of one automatically nullifying the other. We are inclined to believe otherwise, for while both registrations have their own characteristics and requisites, it cannot be denied that they are both intended to protect the interest of a claimant by posing as notices and caution to those dealing with the property that same is subject to a claim. But while a notice of *lis pendens* remains during the pendency of the action, although same may be cancelled under certain circumstances as where the case is prolonged

[47] 103 Phil. 858 (1958).

unnecessarily or for failure of the plaintiff to introduce evidence hearing out the allegations of the complaint (Victoriano *vs*. Rovira, 55 Phil., 1000; Municipal Council of Parañaque *vs*. Court of First Instance of Rizal, 40 Off. Gaz., 8th Supp., 196); and it has even been held that a court, in the absence of a statute, has the inherent power to cancel a *lis pendens* notice in a proper case (Victoriano *vs.* Rovira, *supra*), the same is not true in a registered adverse claim, for it may be cancelled only in one instance, i.e., after the claim is adjudged invalid or unmeritorious by the Court, acting either as a land registration court or one of general jurisdiction while passing upon a case before it where the subject of the litigation is the same interest or right which is being secured by the adverse claim. The possibility therefore, that parties claiming an interest in a registered property desire, for any other purpose, to have their cause ventilated in a court of general jurisdiction, may result in giving them two ways of making the registration of their claimed rights. In such instances, **it would not only be unreasonable but also oppressive to hold that the subsequent institution of an ordinary civil action would work to divest the adverse claim of its validity, for as We have pointed out, a notice of *lis pendens* may be cancelled even before the action is finally terminated for causes which may not be attributable to the claimant.** And it would similarly be beyond reason to confine a claimant to the remedy afforded by section 110 of Act 496 if there are other recourses in law which such claimant may avail of. **But, if any of the registrations should be considered unnecessary or superfluous, it would be the notice of *lis pendens* and not the annotation of the adverse claim which is more permanent and cannot be cancelled without adequate hearing and proper disposition of the claim.**

Wherefore, and on the strength of the foregoing considerations, **the order appealed from directing the Register of Deeds of Manila to cancel the annotation of adverse claim at the back of Transfer Certificate of Title No. 58652, is hereby set aside and appellee's petition for cancellation dismissed**, with costs against petitioner-appellee. It is so ordered.[48] (Emphasis Ours)

The aforecited rationale of this Court in *Ty Sin Tei* is more in accordance with the basic tenets of fair play and justice. As previously discussed, a notice of *lis pendens* is a mere incident of an action which does not create any right nor lien. It may be

[48] *Id*. at 868-869.

cancelled without a court hearing. In contrast, an adverse claim constitutes a lien on a property. As such, the cancellation of an adverse claim is still necessary to render it ineffective, otherwise, the inscription will remain annotated and shall continue as a lien upon the property.[49]

Given the different attributes and characteristics of an adverse claim *vis-a-vis* a notice of *lis pendens*, this Court is led to no other conclusion but that the said two remedies may be availed of at the same time. In fact, in a later case,[50] this Court ruled that the annotation of a notice of *lis pendens* at the back of a certificate of title does not preclude the subsequent registration on the same certificate of title of an adverse claim. Citing the ruling in *Ty Sin Tei*, this Court reasoned that the two remedies are not contradictory to one another.

It bears stressing that the court is given a mandate under Section 70 of P.D. 1529, *i.e.*, upon a petition of any party in interest, it shall grant a speedy hearing upon the question of the validity of such adverse claim and shall enter such decree therein as justice and equity may require. Clearly, the validity of the adverse claim in this case was not inquired into by the RTC. The RTC, thus, reasoned that if it will continue to determine the substance of the questioned adverse claim, it may arrive into a decision which is adverse to the possible decision in the related case filed by the respondents. However, We are not swayed by such reasoning. The law is clear as to the mandate of the court hearing the petition for cancellation of adverse claim. Unless the subject controversy of the adverse claim is finally settled by another court in a related case, the court before which the petition for cancellation of adverse claim is filed cannot excuse itself from hearing the validity of the said adverse claim.

Further, upholding the right of an opposing party to the outright cancellation of adverse claim on the sole basis of a subsequent

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[49] *Sajonas v. CA*, 327 Phil. 689, 710 (1996).

[50] *A. Doronila Resources Dev't., Inc. v. Court of Appeals*, 241 Phil. 28 (1988).

notice of *lis pendens* on the same title would not achieve any sound purpose. It may even encourage a party to not avail the remedy of annotation of a notice of *lis pendens* if an adverse claim was already registered and annotated in the same party's favor. Furthermore, such ruling would result to a situation where the subject case of the notice of *lis pendens* may be dismissed on grounds not attributable to the adverse claimant, an example of which is, as pointed out by the petitioner, deliberate forum-shopping of the other party who filed the related case. Thus, the adverse claimant will be left with no other remedy in law to protect his or her rights. To Our mind, this is not the intent of the law.

In light of the foregoing, this Court finds merit in the present petition. The RTC erred in ordering the cancellation of the petitioner's adverse claim on the mere basis of a subsequent annotation of a notice of *lis pendens* on the same certificate of title. We reverse and set aside the Resolutions of the RTC and order the petition for cancellation of adverse claim dismissed.

**WHEREFORE,** premises considered, the petition is **GRANTED**. The Resolutions dated April 11, 2014 and July 31, 2014 of the Regional Trial Court (RTC) in Case No. P-09-499 LRC REC. No. 2400, ordering the cancellation of the Notice of Adverse Claim made as Entry No. 8957/Vol. 132/T-266311, Registry of Deeds of Manila are hereby **SET ASIDE** and respondents Sonia Arguelles and Lorna Arguelles's petition for cancellation **DISMISSED**.

**SO ORDERED.**

*Leonardo-de Castro*,[*] *del Castillo*, and *Jardeleza, JJ.*, concur.

*Sereno, C.J.,* on leave.

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[*] Designated as Acting Chairperson pursuant to Special Order No. 2540 dated February 28, 2018.

**EN BANC**

[A.M. No. MTJ-15-1860. April 3, 2018]
(Formerly OCA I.P.I. No. 09-2224-MTJ)

**ROSILANDA M. KEUPPERS,** *complainant, vs.* **JUDGE VIRGILIO G. MURCIA, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 2, ISLAND GARDEN CITY OF SAMAL,** *respondent.*

**SYLLABUS**

**1. JUDICIAL ETHICS; JUDGES; SOLEMNIZING A MARRIAGE OUTSIDE THE COURT'S JURISDICTION CONSTITUTES GRAVE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; PENALTY IS DISMISSAL FROM THE SERVICE BUT IN VIEW OF RESPONDENT'S RETIREMENT, THE COURT FORFEITS ALL HIS RETIREMENT BENEFITS EXCEPT LEAVE CREDITS.—** We hold and find respondent Judge guilty of grave misconduct and conduct prejudicial to the best interest of the service for solemnizing the marriage of the complainant and her husband outside his territorial jurisdiction, and in the office premises of the DLS Tour and Travel in Davao City. Such place of solemnization was a blatant violation of Article 7 of the *Family Code,* which pertinently provides: Art. 7. Marriage may be solemnized by: (1) **Any incumbent member of the judiciary within the court's jurisdiction;** x x x Respondent Judge was guilty of grave, not simple, misconduct because he had at the very least the wilful intent to violate the *Family Code* on the venue of a marriage solemnized by a judge, and to flagrantly disregard the relevant rules for such solemnization set forth in the law. The office of solemnizing marriages should not be treated as a casual or trivial matter, or as a business activity. For sure, his act, although not criminal, constituted grave misconduct considering that crimes involving moral turpitude are treated as separate grounds for dismissal under the *Administrative Code.* It is relevant to observe, moreover, that his acts of grave misconduct and conduct prejudicial to the best interest of the service seriously undermined

the faith and confidence of the people in the Judiciary. x x x Given that the charge was committed with a wilful intent to violate the letter and the spirit of Article 7 and Article 8 of the *Family Code,* and to flagrantly disregard the relevant rules for the solemnization of marriages set by the *Family Code,* the proper penalty was dismissal from the service. Yet, dismissal from the service can no longer be imposed in view of the intervening retirement from the service of respondent Judge. Instead, the Court forfeits all his retirement benefits except his accrued leaves.

**2. ID.; ID.; ID.; RESPONDENT'S RATIONALIZATION OF HAVING DONE SO OUT OF PITY EVEN HIGHLIGHTED HIS DISMISSIVE AND CAVALIER ATTITUDE TOWARDS STATUTORY REQUIREMENT; BY SOLEMNIZING A MARRIAGE OUTSIDE HIS TERRITORIAL JURISDICTION, HE DEMEANED AND CHEAPENED THE INVIOLABLE SOCIAL INSTITUTION OF MARRIAGE.—** Respondent Judge's explanation of having done so only out of pity for the complainant after she had supposedly claimed that her German fiancé was soon returning to Germany and wanted to bring with him the certified copy of the marriage certificate did not diminish his liability, but instead highlighted his dismissive and cavalier attitude towards express statutory requirements instituted to secure the solemnization of marriages from abuse. By agreeing to solemnize the marriage outside of his territorial jurisdiction and at a place that had nothing to do with the performance of his duties as a Municipal Trial Judge, he demeaned and cheapened the inviolable social institution of marriage. Article 8 of the *Family Code* contains the limiting phrase *and not elsewhere,* which emphasizes that the place of the solemnization of the marriage by a judge like him should only be in his office or courtroom. Indeed, the limiting phrase highlighted the nature and status of the marriage of the complainant and her husband as "a special contract of permanent union between a man and a woman," and as "the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation."

**3. ID.; ID.; ID.; INSTANCES WHERE JUDGES MAY SOLEMNIZE MARRIAGE OUTSIDE THEIR TERRITORIAL JURISDICTION.—** The only exceptions to the limitation are

when the marriage was to be contracted on the point of death of one or both of the complainant and her husband, or in a remote place in accordance with Article 29 of the *Family Code,* or where both of the complainant and her husband had requested him as the solemnizing officer in writing to solemnize the marriage at a house or place designated by them in their sworn statement to that effect.

## D E C I S I O N

**BERSAMIN, *J.*:**

A municipal trial judge who solemnizes a marriage outside of his territorial jurisdiction violates Article 7 of the *Family Code,* and is guilty of grave misconduct and conduct prejudicial to the best interest of the service. He should be properly sanctioned.

### The Case

This administrative matter commenced from the 1st Indorsement dated November 4, 2009,[1] whereby the Office of the Deputy Ombudsman for Mindanao endorsed to the Office of the Court Administrator (OCA) for appropriate action the complete records of the case initiated by affidavit-complaint by complainant Rosilanda Maningo Keuppers against respondent Judge Virgilio G. Murcia, the Presiding Judge of the Municipal Trial Court in Cities, Branch 2, in the Island Garden City of Samal, Davao del Norte. She thereby charged respondent Judge with *estafa;* violation of Republic Act No. 6713; and grave misconduct and conduct prejudicial to the best interest of the service.[2]

The complainant averred in her affidavit-complaint executed on June 6, 2008[3] that on May 12, 2008, she and her husband,

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[1] *Rollo,* p. 1.

[2] *Id*. at 2-5.

[3] *Id*. at 7-9.

Peter Keuppers, went to the Local Civil Registrar's Office (LCRO) of Davao City to apply for a marriage license because they wanted to get married before Peter's departure on May 22, 2008 so that he could bring the marriage certificate with him back to Germany; that Julie Gasatan, an employee of the LCRO, explained the process for securing the license, and apprised them that it would be virtually impossible to solemnize their marriage before May 22, 2008 because of the requirement for the mandatory 10-day posting of the application for the marriage license; that Gasatan then handed a note with the advice for the couple to proceed to the office of DLS Travel and Tours Corporation (DLS Travel and Tours) in Sandawa, Matina, Davao City to look for a person who might be able to help the couple; that in the office of the DLS Travel and Tours, Lorna Siega, the owner, told the couple that the marriage processing fees charged by her office would be higher than the ₱600.00 fee collected in the City Hall in Davao City; that Siega assured that the couple would immediately get the original as well as the National Statistics Office (NSO) copies of the marriage certificate; that Siega then required the couple to fill up forms but instructed the couple to leave the spaces provided for the address and other information blank; that the couple paid ₱15,750.00 to Siega purportedly to cover the fees of the solemnizing Judge, the certification fee, the security fee, the City Hall fee, the service fee and the passport fee; and that Siega later on confirmed to the couple the date, time and place of the solemnization of the marriage.

According to the complainant, respondent Judge solemnized the marriage on May 19, 2008 in the premises of the DLS Travel and Tours in Davao City; that the staff of the DLS Travel and Tours later on handed to the couple the copy of the marriage certificate for their signatures; that on the following day, May 20, 2008, the couple returned to the DLS Travel and Tours to pick up the documents as promised by Siega; that the couple was surprised to find erroneous entries in the marriage certificate as well as on the application for marriage license, specifically: (a) the certificate stating "Office of the MTCC Judge, Island Garden City of Samal" as the place of the solemnization of the

marriage although the marriage had been solemnized in the office of the DLS Travel and Tours in Davao City; (b) the statement in the application for marriage license that she and her husband had applied for the marriage license in Sta. Cruz, Davao City on May 8, 2008 although they had accomplished their application on May 12, 2008 in the office of the DLS Travel and Tours; and (c) the statement in their application for marriage license on having appeared before Mario Tizon, the Civil Registrar of Sta. Cruz, Davao del Sur, which was untrue.

In his comment dated February 2, 2010,[4] the respondent professed no knowledge of how the complainant had processed and secured the documents pertinent to her marriage; denied personally knowing her and the persons she had supposedly approached to help her fast-track the marriage; insisted that he had met her only at the time of the solemnization of the marriage, and that the solemnization of the marriage had been assigned to him; asserted that the documents necessary for a valid marriage were already duly prepared; and claimed that he was entitled to the presumption of regularity in the performance of his duties considering that the documents submitted by her had been issued by the appropriate government agencies. He contended that he should not be blamed for the erroneous entries in her certificate of marriage because the same had been merely copied from her marriage license and from the other documents submitted therewith, and also because he had not been the person who had prepared the certificate; and that he had only performed the ministerial duty of solemnizing the marriage based on the proper documents submitted to him, with the real parties involved having personally signed the certificate of marriage before him.

The respondent also denied receiving any amount for solemnizing the marriage of the complainant and her husband; and pointed out that he had not been aware as the solemnizing officer if any of the documents submitted by her was spurious. He recalled that she had freely and voluntarily signed the certificate of marriage; and that it was the same document that

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

had been filed in the Local Civil Registrar's Office of Davao City. He declared that the marriage certificate itself stated the place of the solemnization of the marriage; and that he did not alter, modify or amend the entries therein.

**Report & Recommendation of the Investigating Justice**

Upon the recommendation of the OCA,[5] the Court referred the complaint to the Court of Appeals in Cagayan de Oro City for investigation, report and recommendation. The complaint, originally assigned to Associate Justice Pamela Ann Abella Maxino for such purposes, was re-assigned to Associate Justice Maria Elisa Sempio Diy in view of the transfer of Associate Justice Maxino to the Cebu Station of the Court of Appeals.

On August 10, 2012, Investigating Justice Sempio Diy submitted her report and recommendation as the Investigating Justice,[6] whereby she concluded and recommended as follows:

> The undersigned Investigating Officer, in the course of the investigation, has been hurled with overwhelming evidence that the marriage between complainant and Peter Keuppers was held *only* in the premises of DLS Travel and Tours Corporation, Sandawa Road, Matina, Davao City, and was solemnized by respondent. Several witnesses for complainant affirmed the same. More importantly, this Office has conducted an ocular inspection of the premises of DLS Travel and Tours. During said inspection, it was confirmed that the premises shown in Exhibits "G", "G-1", "G-2", "G-3", "G-4", and "G-5" where respondent is seen solemnizing a wedding, is the same place subject of the ocular inspection. Hence, the DLS Travel and Tours building is, in fact, the actual venue of complainant's wedding.
>
> It is also of equal importance to note that respondent admitted that he indeed solemnized the subject marriage outside of his jurisdiction. In fact, in his testimony, respondent stated:
>
> A: Rosilanda Maningo was really begging that the marriage be performed since that was the very day of the marriage as the

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

[6] *Id*. at 38-58.

> German fiancé will be leaving soon. Because of pity, I accommodated the parties. I risked your honor because I didn't want that the marriage be postponed as it was for the best interest of the couple because according to Rosilanda Maningo that was the only day, the German fiancé was leaving for Germany. **So, I decided to solemnize the marriage in the office of DLS Travel and Tours.**
>
> (Emphasis supplied)

The fact that respondent solemnized a marriage outside of his jurisdiction is further bolstered by his own admission that he solemnized the marriage of complainant and Peter Keuppers at DLS Travels and Tours and not in his territorial jurisdiction in the Island Garden City of Samal.

Indeed, respondent knows the possible consequence of the aforementioned act when he said:

> A: I was thinking your honor that there was a sanction but because of my honest intention to help the parties because they were already begging that the solemnization be performed *[sic]*. I was honest with my intention and my conscience was clear.

However, this Office is also duty bound to specify that respondent had no hand in the preparation and processing of the documents pertaining to the subject wedding. The witness for complainant, Lorna Siega, stated:

> Q: Madam, you mentioned a while ago that your establishment was the one who processed the documents for Rosilanda Maningo Kuppers and Peter Keuppers to get married, you confirm that?
>
> A: Yes, ma'am.
>
> Q: Who prepared the certificate of marriage?
>
> A: Orlan.
>
> Q: How about the marriage contract?
>
> A: My employee.
>
> x x x x x x x x x
>
> Q: Who supplied the entries in the marriage contract?
>
> A: Based on the marriage license.

x x x x x x x x x

Q: So, in relation to this case the once *[sic]* involving Peter Keuppers, I have here the copy of the marriage contract, have you seen this document, if any?

A: Yes, ma'am.

Q: You would confirm that the place of marriage typed there is the office of the MTCC Judge, Branch 2, Island Garden City of Samal?

A: Yes, ma'am.

Q: And your office supplied the information in the upper portion in the certificate of marriage which is Davao del Norte, Island Garden City of Samal?

A: Yes, ma'am.

Be that as it may, this Office is of the opinion that notwithstanding that respondent had no hand in the preparation and processing of the subject marriage, he indeed solemnized a marriage outside of his territorial jurisdiction, subject to sanctions that the Office of the Court Administrator may impose.

The above-quoted Article 8 of the Family Code clearly states that a marriage can be held outside the judge's chambers or courtroom only in the following instances: 1.] at the point of death; 2.] in remote places in accordance with Article 29; or 3.] upon the request of both parties in writing in a sworn statement to this effect.

Inasmuch as respondent's jurisdiction covers only the Island Garden City of Samal, he was not clothed with authority to solemnize a marriage in Davao City.

In this case, there is no pretense that either complainant or her fiancé Peter Keuppers was at the point of death or in a remote place. Neither was there a sworn written request made by the contracting parties to respondent that the marriage be solemnized outside his chambers or a place other than his *sala.* What in fact appears on record that respondent took pity on the couple and risked sanctions to attend to the urgency of solemnizing the marriage of complainant and Peter Keuppers.

In *Beso vs. Daguman,* the Supreme Court held:

> A person presiding over a court of law must not only apply the law but must also live and abide by it and render justice at

all times without resorting to shortcuts clearly uncalled for. A judge is not only bound by oath to apply the law; he must also be conscientious and thorough in doing so. Certainly, judges, by the very delicate nature of their office[,] should be more circumspect in the performance of their duties.

The undersigned Investigating Officer believes that taking pity on the Keuppers couple is not enough reason for respondent to risk possible sanctions that may be imposed upon him for not observing the applicable laws under the circumstances. It is his sworn duty to conscientiously uphold the law at all times despite the inconvenience that it may cause to others.

Significantly, Canon 6, Section 7 of the New Code of Judicial Conduct for the Philippine Judiciary mandates:

-x x x- Judges shall not engage in conduct incompatible with the diligent discharge of judicial duties.

It is likewise worth mentioning that respondent cannot be charged with ignorance of the law considering that he knew the consequences of his actions and he also cannot be seen as a judge that demonstrates a lack of understanding of the basic principles of civil law. Lastly, it also does not appear from the records that he has been previously charged with any offense or that there is/are any pending administrative case/s against him.

**RECOMMENDATION:**

The undersigned Investigating Justice finds that indeed respondent is guilty of solemnizing a marriage outside of his territorial jurisdiction under circumstances not falling under any of the exceptions as provided for in Article 8 of the Family Code. Considering, however, the factual milieu of the instant case and the peculiar circumstances attendant thereto, it is respectfully recommended that respondent be meted a fine of **₱5,000.00** with a **STERN WARNING** that a repetition of the same or a similar offense in the future will be dealt with severely.

## Issue

Was respondent Judge liable for grave misconduct and conduct prejudicial to the best interest of the service?

## Ruling of the Court

We hold and find respondent Judge guilty of grave misconduct and conduct prejudicial to the best interest of the service for

solemnizing the marriage of the complainant and her husband outside his territorial jurisdiction, and in the office premises of the DLS Tour and Travel in Davao City.

Such place of solemnization was a blatant violation of Article 7 of the *Family Code,* which pertinently provides:

> Art. 7. Marriage may be solemnized by:
>
> (1) **Any incumbent member of the judiciary within the court's jurisdiction;**
>
> x x x x x x x x x

Furthermore, in solemnizing the marriage of the complainant and her husband in the office premises of the DLS Tour and Travel in Davao City despite the foregoing provision of the *Family Code,* respondent Judge flagrantly violated the spirit of the law. Article 8 of the *Family Code* disallows solemnizing the marriage in a venue other than the judge's courtroom or chambers, *viz.*:

> Article. 8. The marriage shall be solemnized publicly in the chambers of the judge or in open court, in the church, chapel or temple, or in the office the consul-general, consul or vice-consul, as the case may be, and not elsewhere, except in cases of marriages contracted on the point of death or in remote places in accordance with Article 29 of this Code, or where both of the parties request the solemnizing officer in writing in which case the marriage may be solemnized at a house or place designated by them in a sworn statement to that effect. (57a)

Respondent Judge's explanation of having done so only out of pity for the complainant after she had supposedly claimed that her German fiancé was soon returning to Germany and wanted to bring with him the certified copy of the marriage certificate did not diminish his liability, but instead highlighted his dismissive and cavalier attitude towards express statutory requirements instituted to secure the solemnization of marriages from abuse. By agreeing to solemnize the marriage outside of his territorial jurisdiction and at a place that had nothing to do with the performance of his duties as a Municipal Trial Judge, he demeaned and cheapened the inviolable social institution

of marriage. Article 8 of the *Family Code* contains the limiting phrase *and not elsewhere,* which emphasizes that the place of the solemnization of the marriage by a judge like him should only be in his office or courtroom. Indeed, the limiting phrase highlighted the nature and status of the marriage of the complainant and her husband as "a special contract of permanent union between a man and a woman," and as "the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation."[7] The only exceptions to the limitation are when the marriage was to be contracted on the point of death of one or both of the complainant and her husband, or in a remote place in accordance with Article 29 of the *Family Code,*[8] or where both of the complainant and her husband had requested him as the solemnizing officer in writing to solemnize the marriage at a house or place designated by them in their sworn statement to that effect.

Respondent Judge's offense was not his first act of gross misconduct concerning the discharge of the office of solemnizing marriages. He had been charged on February 28, 2008 in A.M. No. RTJ-10-2223 entitled *Palma v. Judge George E. Omelio, Regional Trial Court, Br. 14, Davao City (then of Municipal Trial Court in Cities, Br. 4, Davao City), Judge Virgilio G. Murcia, Municipal Trial Court in Cities, Br. 2, et al.* with having affixed his signature as the solemnizing officer on the marriage contract *without having actually solemnized the marriage*. The charge was in violation of Administrative Order No. 125-2007

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[7] Article 1, *Family Code.*

[8] Article 29. In the cases provided for in the two preceding articles, the solemnizing officer shall state in an affidavit executed before the local civil registrar or any other person legally authorized to administer oaths that the marriage was performed *in articulo mortis* or that the residence of either party, specifying the barrio or *barangay,* is so located that there is no means of transportation to enable such party to appear personally before the local civil registrar and that the officer took the necessary steps to ascertain the ages and relationship of the contracting parties and the absence of legal impediment to the marriage. (72a)

dated August 8, 2007 *(Guidelines on the Solemnization of Marriage by the Members of the Judiciary).* The Court declared him guilty of gross misconduct, and fined him in the amount of ₱40,000.00.[9] The present offense was committed on May 19, 2008.

Misconduct consists in the transgression of some established and definite rule of action, or, more particularly, in an unlawful behavior or gross negligence by the public officer. It implies wrongful intention, and must not be a mere error of judgment. Respondent Judge was guilty of grave, not simple, misconduct because he had at the very least the wilful intent to violate the *Family Code* on the venue of a marriage solemnized by a judge, and to flagrantly disregard the relevant rules for such solemnization set forth in the law. The office of solemnizing marriages should not be treated as a casual or trivial matter, or as a business activity. For sure, his act, although not criminal, constituted grave misconduct considering that crimes involving moral turpitude are treated as separate grounds for dismissal under the *Administrative Code.*[10] It is relevant to observe, moreover, that his acts of grave misconduct and conduct prejudicial to the best interest of the service seriously undermined the faith and confidence of the people in the Judiciary.

The Investigating Justice recommended the imposition on respondent Judge of the measly fine of ₱5,000.00 with a stern warning that a repetition of the same or a similar offense in the future would be dealt with severely. The recommendation did not take into account that the present charge was the second offense respondent Judge committed in relation to his office of solemnizing marriages. Given that the charge was committed with a wilful intent to violate the letter and the spirit of Article 7 and Article 8 of the *Family Code,* and to flagrantly disregard the relevant rules for the solemnization of marriages set by the *Family Code,* the proper penalty was dismissal from the service.

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[9] See A.M. No. RTJ-10-2223, August 30, 2017.

[10] *Office of the Court Administrator v. Lopez,* A.M. No. P-10-2788, January 18, 2011, 639 SCRA 633, 639.

Yet, dismissal from the service can no longer be imposed in view of the intervening retirement from the service of respondent Judge. Instead, the Court forfeits all his retirement benefits except his accrued leaves.

**WHEREFORE,** the Court **FINDS** and **HOLDS** respondent **JUDGE VIRGILIO G. MURCIA,** the former Presiding Judge of the Municipal Trial Court in Cities, Branch 2, in the Island Garden City of Samal, Davao del Norte **GUILTY** of **GRAVE MISCONDUCT** and **CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE;** and, **ACCORDINGLY, DECLARES** as forfeited all his retirement benefits, except his accrued leaves, with prejudice to his appointment in the government service.

**SO ORDERED.**

*Carpio,*[*] *Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Leonen, Jardeleza, Caguioa, Martires, Tijam,* and *Gesmundo, JJ.,* concur.

*Sereno, C.J.,* on leave.

*Perlas-Bernabe* and *Reyes, Jr., JJ.,* on official leave.

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**EN BANC**

[G.R. No. 215305. April 3, 2018]

**MARCELO G. SALUDAY,** *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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

**SYLLABUS**

1. **REMEDIAL LAW; APPEALS; RULE 45 PETITION; LIMITED TO QUESTIONS OF LAW; WHETHER OR NOT THE ACCUSED HAS A LICENSE TO POSSESS FIREARMS IS A QUESTION OF FACT; FACTUAL FINDINGS OF THE LOWER COURTS, ACCORDED RESPECT.—** Only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court. As a result, the Court, on appeal, is not duty-bound to weigh and sift through the evidence presented during trial. Further, factual findings of the trial court, when affirmed by the Court of Appeals, are accorded great respect, even finality. x x x [T]he presence of the second and third elements of illegal possession of firearm, ammunition, and explosive raises questions of fact. Considering further that the Court of Appeals merely echoed the factual findings of the trial court, the Court finds no reason to disturb them.

2. **CRIMINAL LAW; PRESIDENTIAL DECREE NO. 1866; ILLEGAL POSSESSION OF FIREARM, AMMUNITION OR EXPLOSIVE; ELEMENTS.—** [P]etitioner assails his conviction for illegal possession of high-powered firearm and ammunition under PD 1866, and illegal possession of explosive under the same law. The elements of both offenses are as follows: (1) existence of the firearm, ammunition or explosive; (2) ownership or possession of the firearm, ammunition or explosive; and (3) lack of license to own or possess.

3. **POLITICAL LAW; CONSTITUTIONAL LAW; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; THE PROHIBITION OF UNREASONABLE SEARCH AND SEIZURE STEMS FROM A PERSON'S RIGHT TO PRIVACY; RATIONALE, ILLUSTRATED BY PREVAILING JURISPRUDENCE.—** [T]he constitutional guarantee is not a blanket prohibition. Rather, it operates against "unreasonable" searches and seizures only. Conversely, **when a search is "reasonable," Section 2, Article III of the Constitution does *not* apply.** x x x The prohibition of unreasonable search and seizure ultimately stems from a person's right to privacy. x x x To illustrate, in *People v. Johnson*, the Court declared airport searches as outside the protection of the search and seizure clause due to the lack of an expectation of privacy that society

will regard as reasonable[.] x x x [I]n *Dela Cruz v. People*, the Court described seaport searches as reasonable searches on the ground that the safety of the traveling public overrides a person's right to privacy[.] x x x In *People v. Breis*, the Court also justified a bus search owing to the reduced expectation of privacy of the riding public[.] x x x Indeed, the reasonableness of a person's expectation of privacy must be determined on a case-to-case basis since it depends on the factual circumstances surrounding the case. Other factors such as customs, physical surroundings and practices of a particular activity may diminish this expectation. x x x Concededly, a bus, a hotel and beach resort, and a shopping mall are all private property whose owners have every right to exclude anyone from entering. At the same time, however, because these private premises are accessible to the public, the State, much like the owner, can impose non-intrusive security measures and filter those going in. The only difference in the imposition of security measures by an owner and the State is, the former emanates from the attributes of ownership under Article 429 of the Civil Code, while the latter stems from the exercise of police power for the promotion of public safety. Necessarily, a person's expectation of privacy is diminished whenever he or she enters private premises that are accessible to the public.

**4. ID.; ID.; ID.; ID.; THE BUS INSPECTION CONDUCTED AT A MILITARY CHECKPOINT CONSTITUTES A REASONABLE SEARCH IN CASE AT BAR.—** [T]he bus inspection conducted by Task Force Davao at a military checkpoint constitutes a reasonable search. Bus No. 66 of Davao Metro Shuttle was a vehicle of public transportation where passengers have a reduced expectation of privacy. Further, SCAA Buco merely lifted petitioner's bag. This visual and minimally intrusive inspection was even less than the standard x-ray and physical inspections done at the airport and seaport terminals where passengers may further be required to open their bags and luggages. Considering the reasonableness of the bus search, Section 2, Article III of the Constitution finds no application, thereby precluding the necessity for a warrant.

**5. ID.; ID.; ID.; THE CONSTITUTIONAL IMMUNITY AGAINST UNREASONABLE SEARCHES AND SEIZURES IS A PERSONAL RIGHT, WHICH MAY BE WAIVED; CONSENT FREELY GIVEN IS REQUIRED FOR A VALID**

**WAIVER; CIRCUMSTANCES TO BE CONSIDERED IN DETERMINING VOLUNTARINESS OF THE CONSENT.** — [T]he constitutional immunity against unreasonable searches and seizures is a personal right, which may be waived. However, to be valid, the consent must be voluntary such that it is unequivocal, specific, and intelligently given, uncontaminated by any duress or coercion. Relevant to this determination of voluntariness are the following characteristics of the person giving consent and the environment in which consent is given: (a) the age of the consenting party; (b) whether he or she was in a public or secluded location; (c) whether he or she objected to the search or passively looked on; (d) his or her education and intelligence; (e) the presence of coercive police procedures; (f) the belief that no incriminating evidence will be found; (g) the nature of the police questioning; (h) the environment in which the questioning took place; and (i) the possibly vulnerable subjective state of the person consenting.

6. **ID.; ID.; ID.; REASONABLE SEARCH AND WARRANTLESS SEARCH, DISTINGUISHED.—** [A] reasonable search, on the one hand, and a warrantless search, on the other, are mutually exclusive. While both State intrusions are valid even without a warrant, the underlying reasons for the absence of a warrant are different. A reasonable search arises from a reduced expectation of privacy, for which reason Section 2, Article III of the Constitution finds no application. Examples include searches done at airports, seaports, bus terminals, malls, and similar public places. In contrast, a warrantless search is presumably an "unreasonable search," but for reasons of practicality, a search warrant can be dispensed with. Examples include search incidental to a lawful arrest, search of evidence in plain view, consented search, and extensive search of a private moving vehicle.

7. **ID.; ID.; ID.; GUIDELINES IN THE CONDUCT OF BUS SEARCHES PRIOR TO ENTRY OF PASSENGERS AND WHILE IN TRANSIT.—** [I]n the conduct of bus searches, the Court lays down the following guidelines. **Prior to entry**, passengers and their bags and luggages can be subjected to a routine inspection akin to airport and seaport security protocol. In this regard, metal detectors and x-ray scanning machines can be installed at bus terminals. Passengers can also be frisked. In lieu of electronic scanners, passengers can be required instead

to open their bags and luggages for inspection, which inspection must be made in the passenger's presence. Should the passenger object, he or she can validly be refused entry into the terminal. **While in transit**, a bus can still be searched by government agents or the security personnel of the bus owner in the following three instances. *First*, upon receipt of information that a passenger carries contraband or illegal articles, the bus where the passenger is aboard can be stopped *en route* to allow for an inspection of the person and his or her effects. This is no different from an airplane that is forced to land upon receipt of information about the contraband or illegal articles carried by a passenger onboard. *Second*, whenever a bus picks passengers *en route*, the prospective passenger can be frisked and his or her bag or luggage be subjected to the same routine inspection by government agents or private security personnel as though the person boarded the bus at the terminal. This is because unlike an airplane, a bus is able to stop and pick passengers along the way, making it possible for these passengers to evade the routine search at the bus terminal. *Third*, a bus can be flagged down at designated military or police checkpoints where State agents can board the vehicle for a routine inspection of the passengers and their bags or luggages.

**8. ID.; ID.; ID.; ID.; CONDITIONS THAT MUST BE SATISFIED TO QUALIFY AS A VALID REASONABLE SEARCH.—** In both situations, the inspection of passengers and their effects prior to entry at the bus terminal and the search of the bus while in transit must also satisfy the following conditions to qualify as a valid reasonable search. *First*, as to the manner of the search, it must be the least intrusive and must uphold the dignity of the person or persons being searched, minimizing, if not altogether eradicating, any cause for public embarrassment, humiliation or ridicule. *Second*, neither can the search result from any discriminatory motive such as insidious profiling, stereotyping and other similar motives. In all instances, the fundamental rights of vulnerable identities, persons with disabilities, children and other similar groups should be protected. *Third*, as to the purpose of the search, it must be confined to ensuring public safety. *Fourth*, as to the evidence seized from the reasonable search, courts must be convinced that precautionary measures were in place to ensure that no evidence was planted against the accused.

**9. ID.; ID.; ID.; ID.; THESE GUIDELINES DO NOT APPLY TO PRIVATELY-OWNED CARS OR TO MOVING VEHICLES DEDICATED FOR PRIVATE OR PERSONAL USE.—** [T]he guidelines do ***not*** apply to privately-owned cars. Neither are they applicable to moving vehicles dedicated for private or personal use, as in the case of taxis, which are hired by only one or a group of passengers such that the vehicle can no longer be flagged down by any other person until the passengers on board alight from the vehicle.

**APPEARANCES OF COUNSEL**

*Public Attorney's Office* for petitioner.
*The Solicitor General* for respondent.

**D E C I S I O N**

**CARPIO, *Acting C.J.*:**

**The Case**

Before the Court is a Petition for Review on Certiorari assailing the Decision dated 26 June 2014[1] and the Resolution dated 15 October 2014[2] of the Court of Appeals in CA-G.R. CR No. 01099. The Court of Appeals affirmed with modification the Sentence dated 15 September 2011[3] rendered by the Regional Trial Court, Branch 11, Davao City in Criminal Case No. 65,734-09, finding petitioner Marcelo G. Saluday (petitioner) guilty beyond reasonable doubt of illegal possession of high-powered firearm, ammunition, and explosive under Presidential Decree No. 1866,[4] as amended (PD 1866).

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[1] *Rollo*, pp. 25-34. Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Edward B. Contreras and Rafael Antonio M. Santos concurring.

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

[3] CA *rollo*, pp. 22-25. Penned by Judge Virginia Hofileña Europa.

[4] Entitled "Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition, of Firearms, Ammunition or Explosives

**The Antecedent Facts**

On 5 May 2009, Bus No. 66 of Davao Metro Shuttle was flagged down by Task Force Davao of the Philippine Army at a checkpoint near the Tefasco Wharf in Ilang, Davao City. SCAA Junbert M. Buco (Buco), a member of the Task Force, requested all male passengers to disembark from the vehicle while allowing the female passengers to remain inside. He then boarded the bus to check the presence and intercept the entry of any contraband, illegal firearms or explosives, and suspicious individuals.

SCAA Buco checked all the baggage and personal effects of the passengers, but a small, gray-black pack bag on the seat at the rear of the bus caught his attention. He lifted the bag and found it too heavy for its small size. SCAA Buco then looked at the male passengers lined outside and noticed that a man in a white shirt (later identified as petitioner) kept peeping through the window towards the direction of the bag. Afterwards, SCAA Buco asked who the owner of the bag was, to which the bus conductor answered that petitioner and his brother were the ones seated at the back. SCAA Buco then requested petitioner to board the bus and open the bag. Petitioner obliged and the bag revealed the following contents: (1) an improvised .30 caliber carbine bearing serial number 64702; (2) one magazine with three live ammunitions; (3) one cacao-type hand grenade; and (4) a ten-inch hunting knife. SCAA Buco then asked petitioner to produce proof of his authority to carry firearms and explosives. Unable to show any, petitioner was immediately arrested and informed of his rights by SCAA Buco.

Petitioner was then brought for inquest before the Office of the City Prosecutor for Davao City. In its Resolution dated 7 May 2009,[5] the latter found probable cause to charge him with illegal possession of high-powered firearm, ammunition, and

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or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes." Effective 29 June 1983.

[5] Records, pp. 2-3.

explosive under PD 1866. The Information dated 8 May 2009 thus reads:

> That on or about May 5, 2009, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, willfully, unlawfully and knowingly, with intent to possess, had in his possession and under his custody an improvised high powered firearm caliber .30 carbine bearing Serial No. 64702 (made in Spain) with one (1) magazine loaded with three (3) live ammunitions and one (1) "cacao" type hand grenade explosive; without first securing the necessary license to possess the same.
>
> CONTRARY TO LAW.[6]

When arraigned, petitioner pleaded not guilty.

During the trial, the prosecution presented two witnesses namely, NUP Daniel Tabura (Tabura), a representative of the Firearms and Explosives Division of the Philippine National Police, and SCAA Buco. NUP Tabura identified the Certification dated 5 November 2009[7] attesting that petitioner was "not a licensed/registered holder of any kind and caliber per verification from records." Meanwhile, SCAA Buco identified petitioner and the items seized from the bag, and testified on the details of the routine inspection leading to the immediate arrest of petitioner. On cross-examination, SCAA Buco further elaborated on the search conducted:

> Atty. Mamburam
>
> Q And that check point, which was conducted along Ilang [R]oad, Davao City, was by virtue of a memorandum?
> A Yes, Your Honor.
>
> x x x x x x x x x
>
> Q Now, you said that at around 5:00 of said date, you were able to intercept a Metro Shuttle passenger bus and you requested all passengers to alight?
> A Yes.

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[6] *Id*. at 1.

[7] Exhibit "F", Folder of Exhibits, p. 2.

Q All female passengers were left inside?
A Yes.Your Honor.

Q And, after all passengers were able to alight, you checked all cargoes of the passengers in the bus?
A Yes.

x x x x x x x x x

Q And, you testified that one of those things inside the bus was a black gray colored pack bag which was placed at the back portion of the bus?
A Yes.

Q You said that the bag was heavy?
A Yes.

Q And you picked up or carried also the other belongings or cargo[e]s inside the bus and that was the only thing or item inside the bus which was heavy. Is that correct?
A There were many bags and they were heavy. When I asked who is the owner of the bag because **it was heavy but the bag was small**, when I asked, he said the content of the bag was a cellphone. But I noticed that it was heavy.

x x x x x x x x x

Q And you said that somebody admitted ownership of the bag. Is that correct?
A Yes.

Q Who admitted ownership of the bag?
A (WITNESS POINTS TO THE ACCUSED)

Q Now, you said that while you are looking at the bag, you noticed that one male passenger you pointed as the **accused kept looking at you**?
A **Yes.**

Q And, aside from the accused, all the other male passengers were not looking at you?
A The other passengers were on the ground but he was in front of [the] window looking towards his bag.

x x x x x x x x x

Q **And the accused admitted that he owned the bag, you requested him to open the bag?**

A **Not yet. I let him board the bus and asked him if he can open it.**

Q And, when he opened it?
A I saw the handle of the firearm.[8] (Emphasis supplied)

On the other hand, the defense presented petitioner as sole witness. On direct examination, petitioner denied ownership of the bag. However, he also admitted to answering SCAA Buco when asked about its contents and allowing SCAA Buco to open it after the latter sought for his permission:

ATTY. MAMBURAM

Q x x x [A]fter the conductor of the bus told the member of the task force that you and your brother were seated at the back of the bus, can you please tell us what happened next?

A The member of the task force asked who is the owner of the bag and what were the contents of the bag.

Q To whom did the member of the task force address that question?
A To me because I was pointed to by the conductor.

Q And what was your reply to the question of the member of the task force?
A I told him it was only a cellphone.

Q By the way, Mr. Witness, who owned that bag?
A My elder brother.

Q And why did you make a reply to the question of the member of the task force when, in fact, you were not the owner of the bag?
A Because I was pointed to by the conductor that it was me and my brother who were seated at the back.

x x x x x x x x x

Q **Now, after you told the member of the task force that probably the content of the bag was cellphone, what happened next?**
A **He asked if he can open it.**

[8] TSN, 11 November 2009, pp. 14-16.

Q **And what was your reply?**
A **I told him yes, just open it.**

x x x x x x x x x

Q Now, you said that the owner of the bag and the one who carried that bag was your brother, what is the name of your brother?
A Roger Saluday.

Q Where is your brother Roger now?
A Roger is already dead. He died in September 2009.[9] (Emphasis supplied)

On cross-examination, petitioner clarified that only he was pointed at by the conductor when the latter was asked who owned the bag. Petitioner also admitted that he never disclosed he was with his brother when he boarded the bus:

PROS. VELASCO

Q You said that you panicked because they pulled you but as a way of saving yourself considering you don't own the bag, did you not volunteer to inform them that [the] bag was owned by your brother?
A I told them I have a companion but I did not tell them that it was my brother because I was also afraid of my brother.

Q So, in short, **Mr. Witness, you did not actually inform them that you had a brother at that time when you were boarding that bus, correct?**
A No, sir, **I did not.**

x x x x x x x x x

Q So, you were answering all questions by saying it is not your bag but you confirm now that it was the conductor of that bus who pointed you as the owner of the bag, correct?
A Yes, sir, the **conductor pointed at me** as the one who [sic] seated at the back.[10] (Emphasis supplied)

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[9] TSN, 22 March 2010, pp. 5-6, 8.

[10] TSN, 22 March 2010, p. 10.

The defense subsequently rested its case and the prosecution waived the right to present rebuttal evidence. Upon order from the trial court, the parties submitted their respective memoranda.

**The Decision of the Trial Court**

Finding the denials of petitioner as self-serving and weak, the trial court declared him to be in actual or constructive possession of firearm and explosive without authority or license. Consequently, in the dispositive portion of the Sentence dated 15 September 2011, petitioner was adjudged guilty beyond reasonable doubt of illegal possession of firearm, ammunition, and explosive under PD 1866:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered finding Marcelo Gigbalen Saluday GUILTY of illegal possession of high powered firearm, ammunition and explosive. For the offense of illegal possession of high powered firearm and ammunition, he is hereby sentenced to suffer an imprisonment of *prision mayor* in its minimum period. He is likewise ordered to pay a fine of ₱30,000.00. For the offense of illegal possession of explosive, he is hereby sentenced to suffer an imprisonment of *prision mayor* in its maximum period to *reclusion temporal*. He is likewise ordered to pay a fine of ₱50,000.00.
>
> x x x x x x x x x
>
> SO ORDERED.[11]

On 12 October 2011, petitioner timely filed his Notice of Appeal.[12]

**The Decision of the Court of Appeals**

On appeal, petitioner challenged his conviction raising as grounds the alleged misappreciation of evidence by the trial court and the supposed illegality of the search.[13] On the other hand, the Office of the Solicitor General (OSG) argued that

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[11] CA *rollo*, pp. 24-25.

[12] *Id.* at 8.

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

the warrantless search was valid being a consented search, and that the factual findings of the trial court can no longer be disturbed.[14]

In its Decision dated 26 June 2014, the Court of Appeals sustained the conviction of petitioner and affirmed the ruling of the trial court with modification:

> WHEREFORE, the instant appeal is DISMISSED. The Sentence dated September 15, 2011 of the Regional Trial Court, 11th Judicial Region, Branch 11, Davao City, in Criminal Case No. 65,734-09, finding Marcelo Gigbalen Saluday guilty beyond reasonable doubt of illegal possession of high powered firearm, ammunition and explosive is AFFIRMED with the MODIFICATION that:
>
> (1) for the offense of illegal possession of high-powered firearm and ammunition, he is imposed an indeterminate sentence of four (4) years, eight (8) months and twenty-one (21) days of *prision correccional* maximum, as the minimum term, to seven (7) years and one (1) day of *prision mayor* minimum, as the maximum term, in addition to the fine of Thirty thousand pesos (₱30,000.00); and
>
> (2) for the offense of illegal possession of explosive, he is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole.
>
> SO ORDERED.[15]

Petitioner then filed a Motion for Reconsideration,[16] to which the OSG filed its Comment.[17] In its Resolution dated 15 October 2014,[18] the Court of Appeals denied petitioner's Motion for Reconsideration for being *pro forma*. Hence, petitioner filed this Petition for Review on Certiorari under Rule 45 of the Rules of Court.

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[14] *Id*. at 46-60.

[15] *Rollo*, pp. 33-34.

[16] *Id*. at 35-39.

[17] CA *rollo*, pp. 87-90.

[18] *Rollo*, pp. 41-42.

**The Issue**

Petitioner assails the appreciation of evidence by the trial court and the Court of Appeals as to warrant his conviction for the offenses charged.

**The Ruling of this Court**

We affirm.

Only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court.[19] As a result, the Court, on appeal, is not duty-bound to weigh and sift through the evidence presented during trial.[20] Further, factual findings of the trial court, when affirmed by the Court of Appeals, are accorded great respect, even finality.[21]

Here, petitioner assails his conviction for illegal possession of high-powered firearm and ammunition under PD 1866, and illegal possession of explosive under the same law. The elements of both offenses are as follows: (1) existence of the firearm, ammunition or explosive; (2) ownership or possession of the firearm, ammunition or explosive; and (3) lack of license to own or possess.[22] As regards the second and third elements, the Court of Appeals concurred with the trial court that petitioner was in actual or constructive possession of a high-powered firearm, ammunition, and explosive without the requisite authority. The Decision dated 26 June 2014 reads in pertinent part:

In the present case, the prosecution proved the negative fact that appellant has no license or permit to own or possess the firearm, ammunition and explosive by presenting NUP Daniel Tab[u]ra

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[19] Section I, Rule 45, Rules of Court.

[20] *Jose v. People*, 479 Phil. 969, 978 (2004).

[21] *De la Cruz v. Court of Appeals*, 333 Phil. 126, 135 (1996). See also *Castillo v. Court of Appeals*, 329 Phil. 150, 158-159 (1996); *Navallo v. Sandiganbayan*, 304 Phil. 343, 354 (1994); *People v. Cabalhin*, 301 Phil. 494, 504 (1994).

[22] *People v. Dela Cruz*, 400 Phil. 872, 879-880 (2000), citing *People v. Bergante*, 350 Phil. 275, 291 (1998).

(Tab[u]ra), a representative of the Firearms and Explosives Division (FED) of the PNP. He identified the Certification issued by the Chief, Records Section, FED of the PNP, stating that appellant "is not a licensed/registered holder of any kind and caliber per verification from records of this office."

Appellant, however, questions the competence of Tab[u]ra to testify on the veracity or truthfulness of the Certification. He claims that the officer who issued it should have been the one presented so he would not be denied the right to confront and cross-examine the witnesses against him.

There is no merit to petitioner's claim. The following is pertinent:

x x x x x x x x x

> The Court on several occasions ruled that either the testimony of a representative of, or a certification from, the Philippine National Police (PNP) Firearms and Explosive Office attesting that a person is not a licensee of any firearm would suffice to prove beyond reasonable doubt the second element of possession of illegal firearms. The prosecution more than complied when it presented both.

x x x x x x x x x

Also, appellant denies having physical or constructive possession of the firearms, ammunition and explosive. However, his denial flies in the face of the following testimonies which he himself made:

x x x x x x x x x

Appellant gave information, albeit misleading, on the contents of the bag. He even allowed the police officer to open it. Based on his actuations, there could be no doubt that he owned the bag containing the firearm, ammunition and explosive.

Shifting the blame to his dead brother is very easy for appellant to fabricate. Besides, the allegation that his brother owned the bag is uncorroborated and self-serving.[23]

As above-quoted, the presence of the second and third elements of illegal possession of firearm, ammunition, and explosive raises

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[23] *Rollo*, pp. 28-31.

questions of fact. Considering further that the Court of Appeals merely echoed the factual findings of the trial court, the Court finds no reason to disturb them.

As regards the first element, petitioner corroborates the testimony of SCAA Buco on four important points: *one*, that petitioner was a passenger of the bus flagged down on 5 May 2009 at a militaty checkpoint in Ilang, Davao City; *two*, that SCAA Buco boarded and searched the bus; *three*, that the bus conductor pointed at petitioner as the owner of a small, gray-black pack bag on the back seat of the bus; and *four*, that the same bag contained a .30-caliber firearm with one magazine loaded with three live ammunitions, and a hand grenade. Notably, petitioner does not challenge the chain of custody over the seized items. Rather, he merely raises a pure question of law and argues that they are inadmissible on the ground that the search conducted by Task Force Davao was illegal.

The Court disagrees.

Section 2, Article III of the Constitution, which was patterned after the Fourth Amendment to the United States (U.S.) Constitution,[24] reads:

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

Indeed, the constitutional guarantee is not a blanket prohibition. Rather, it operates against "unreasonable" searches

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[24] The Fourth Amendment of the U.S. Constitution reads:

> The right of the people to be secure in their persons, houses, papers, and effects, against **unreasonable searches and seizures**, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (Emphasis supplied)

and seizures only.[25] Conversely, **when a search is "reasonable," Section 2, Article III of the Constitution does *not* apply**. As to what qualifies as a reasonable search, the pronouncements of the U.S. Supreme Court, which are doctrinal in this jurisdiction,[26] may shed light on the matter.

In the seminal case of *Katz v. United States*,[27] the U.S. Supreme Court held that the electronic surveillance of a phone conversation without a warrant violated the Fourth Amendment. According to the U.S. Supreme Court, what the Fourth Amendment protects are people, not places such that what a person knowingly exposes to the public, even in his or her own home or office, is not a subject of Fourth Amendment protection in much the same way that what he or she seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected, thus:

> Because of the misleading way the issues have been formulated, the parties have attached great significance to the characterization of the telephone booth from which the petitioner placed his calls. The petitioner has strenuously argued that the booth was a "constitutionally protected area." The Government has maintained with equal vigor that it was not. But this effort to decide whether or not a given "area," viewed in the abstract, is constitutionally protected" deflects attention from the problem presented by this case. For the Fourth Amendment protects people, not places. **What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.** *See Lewis v. United States*, 385 U.S. 206, 210; *United States v. Lee*, 274 U.S. 559, 563. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected. *See Rios v. United States*, 364 U.S. 253; *Ex parte Jackson*, 96 U.S. 727, 733.[28] (Emphasis supplied)

Further, Justice John Harlan laid down in his concurring opinion the two-part test that would trigger the application of

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[25] *People v. Aruta*, 351 Phil. 868, 878 (1998).

[26] *People v. Marti*, 271 Phil. 51, 57 (1991).

[27] 389 U.S. 347 (1967).

[28] *Id*. at 351.

the Fourth Amendment. *First*, a person exhibited an actual (subjective) expectation of privacy.[29] *Second*, the expectation is one that society is prepared to recognize as reasonable (objective).[30]

The prohibition of unreasonable search and seizure ultimately stems from a person's right to privacy. Hence, only when the State intrudes into a person's expectation of privacy, which society regards as reasonable, is the Fourth Amendment triggered. Conversely, where a person does not have an expectation of privacy or one's expectation of privacy is not reasonable to society, the alleged State intrusion is not a "search" within the protection of the Fourth Amendment.

A survey of Philippine case law would reveal the same jurisprudential reasoning. To illustrate, in *People v. Johnson*,[31] the Court declared airport searches as outside the protection of the search and seizure clause due to the lack of an expectation of privacy that society will regard as reasonable:

> Persons may lose the protection of the search and seizure clause by exposure of their persons or property to the public in a manner reflecting a lack of subjective expectation of privacy, which expectation society is prepared to recognize as reasonable. Such recognition is implicit in airport security procedures. With increased concern over airplane hijacking and terrorism has come increased security at the nation's airports. Passengers attempting to board an aircraft routinely pass through metal detectors; their carry-on baggage as well as checked luggage are routinely subjected to x-ray scans. Should these procedures suggest the presence of suspicious objects, physical searches are conducted to determine what the objects are. There is little question that such searches are reasonable, given their minimal intrusiveness, the gravity of the safety interests involved, and the reduced privacy expectations associated with airline travel. Indeed, travelers are often notified through airport public address systems, signs, and notices in their airline tickets that they are subject to search and, if any

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[29] *Id*. at 361.

[30] *Id*.

[31] 401 Phil. 734 (2000).

prohibited materials or substances are found, such would be subject to seizure. These announcements place passengers on notice that ordinary constitutional protections against warrantless searches and seizures do not apply to routine airport procedures.[32] (Citations omitted)

Similarly, in *Dela Cruz v. People*,[33] the Court described seaport searches as reasonable searches on the ground that the safety of the traveling public overrides a person's right to privacy:

Routine baggage inspections conducted by port authorities, although done without search warrants, are not unreasonable searches per se. Constitutional provisions protecting privacy should not be so literally understood so as to deny reasonable safeguards to ensure the safety of the traveling public.

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Thus, with port security personnel's functions having the color of state-related functions and deemed agents of govemment, *Marti* is inapplicable in the present case. Nevertheless, searches pursuant to port security measures are not unreasonable per se. The security measures of x-ray scanning and inspection in domestic ports are akin to routine security procedures in airports.

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Port authorities were acting within their duties and functions when [they] used x-ray scanning machines for inspection of passengers' bags. When the results of the x-ray scan revealed the existence of firearms in the bag, the port authorities had probable cause to conduct a search of petitioner's bag. Notably, petitioner did not contest the results of the x-ray scan.[34]

In *People v. Breis*,[35] the Court also justitied a bus search owing to the reduced expectation of privacy of the riding public:

Unlike the officer in *Chan Fook*, IOl Mangili did not exceed his authority in the performance of his duty. Prior to Breis' resistance,

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[32] *Id*. at 743.

[33] 776 Phil. 653 (2016).

[34] *Id*. at 66l, 681, 683-684.

[35] 766 Phil. 785 (2015).

IOl Mangili laid nary a finger on Breis or Yumol. Neither did his presence in the bus constitute an excess of authority. The bus is public transportation, and is open to the public. The expectation of privacy in relation to the constitutional right against unreasonable searches in a public bus is not the same as that in a person's dwelling. In fact, at that point in time, only the bus was being searched, not Yumol, Breis, or their belongings, and the search of moving vehicles has been upheld.[36]

Indeed, the reasonableness of a person's expectation of privacy must be determined on a case-to-case basis since it depends on the factual circumstances surrounding the case.[37] Other factors such as customs, physical surroundings and practices of a particular activity may diminish this expectation.[38] In *Fortune Express, Inc. v. Court of Appeals*,[39] a common carrier was held civilly liable for the death of a passenger due to the hostile acts of armed men who boarded and subsequently seized the bus. The Court held that "**simple precautionary measures to protect the safety of passengers, such as frisking passengers and inspecting their baggages, preferably with non-intrusive gadgets such as metal detectors, before allowing them on board could have been employed without violating the passenger's constitutional rights**."[40] In *Costabella Corp. v. Court of Appeals*,[41] a compulsory right of way was found improper for the failure of the owners of the dominant estate to allege that the passageway they sought to be re-opened was at a point least prejudicial to the owner of the servient estate. The Court thus explained, "[c]onsidering that the petitioner operates a hotel and beach resort in its property, it must undeniably maintain a strict standard of security within its

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[36] *Id*. at 812.

[37] *Sps. Hing v. Choachuy, Sr.*, 712 Phil. 337, 350 (2013).

[38] *Ople v. Torres*. 354 Phil. 948, 981 (1998).

[39] 364 Phil. 480 (1999).

[40] *Id*. at 490.

[41] 271 Phil. 350 (1991).

premises. Otherwise, the convenience, privacy, and safety of its clients and patrons would be compromised."[42] Similarly, shopping malls install metal detectors and body scanners, and require bag inspection as a requisite for entry. Needless to say, any security lapse on the part of the mall owner can compromise public safety.

Concededly, a bus, a hotel and beach resort, and a shopping mall are all private property whose owners have every right to exclude anyone from entering. At the same time, however, because these private premises are accessible to the public, the State, much like the owner, can impose non-intrusive security measures and filter those going in. The only difference in the imposition of security measures by an owner and the State is, the former emanates from the attributes of ownership under Article 429 of the Civil Code, while the latter stems from the exercise of police power for the promotion of public safety. Necessarily, a person's expectation of privacy is diminished whenever he or she enters private premises that are accessible to the public.

In view of the foregoing, the bus inspection conducted by Task Force Davao at a military checkpoint constitutes a reasonable search. Bus No. 66 of Davao Metro Shuttle was a vehicle of public transportation where passengers have a reduced expectation of privacy. Further, SCAA Buco merely lifted petitioner's bag. This visual and minimally intrusive inspection was even less than the standard x-ray and physical inspections done at the airport and seaport terminals where passengers may further be required to open their bags and luggages. Considering the reasonableness of the bus search, Section 2, Article III of the Constitution finds no application, thereby precluding the necessity for a warrant.

As regards the warrantless inspection of petitioner's bag, the OSG argues that petitioner consented to the search, thereby making the seized items admissible in evidence.[43] Petitioner

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[42] *Id*. at 359.

[43] *Rollo*, pp. 108-110.

contends otherwise and insists that his failure to object cannot be construed as an implied waiver.

Petitioner is wrong.

Doubtless, the constitutional immunity against unreasonable searches and seizures is a personal right, which may be waived.[44] However, to be valid, the consent must be voluntary such that it is unequivocal, specific, and intelligently given, uncontaminated by any duress or coercion.[45] Relevant to this determination of voluntariness are the following characterestics of the person giving consent and the environment in which consent is given: (a) the age of the consenting party; (b) whether he or she was in a public or secluded location; (c) whether he or she objected to the search or passively looked on;[46] (d) his or her education and intelligence; (e) the presence of coercive police procedures; (f) the belief that no incriminating evidence will be found;[47] (g) the nature of the police questioning; (h) the environment in which the questioning took place; and (i) the possibly vulnerable subjective state of the person consenting.[48]

In *Asuncion v. Court of Appeals,*[49] the apprehending officers sought the permission of petitioner to search the car, to which the latter agreed. According to the Court, petitioner himself freely gave his consent to the search. In *People v. Montilla*,[50] the Court found the accused to have spontaneously performed affirmative acts of volition by opening the bag without being forced or intimidated to do so, which acts amounted to a clear waiver of his right. In *People v. Omaweng*,[51] the police officers asked the accused if they could see the contents of his bag, to

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[44] *Caballes v. Court of Appeals*, 424 Phil. 263, 286 (2002).

[45] *Id*., citing 68 Am Jur 2d Searches and Seizures, § 135.

[46] *Id*., citing *United States v. Barahona*, 990 F. 2d 412.

[47] *Id*., citing *United States v. Lopez*, 911 F. 2d 1006.

[48] *Id*., citing *United States v. Nafzger*, 965 F. 2d 213.

[49] 362 Phil. 118, 127 (1999).

[50] 349 Phil. 640, 661 (1998).

[51] 288 Phil. 350, 358-359 (1992).

which the accused said "you can see the contents but those are only clothings." The policemen then asked if they could open and see it, and the accused answered "you can see it." The Court held there was a valid consented search.

Similarly in this case, petitioner consented to the baggage inspection done by SCAA Buco. When SCAA Buco asked if he could open petitioner's bag, petitioner answered "**yes, just open it**" based on petitioner's own testimony. This is clear consent by petitioner to the search of the contents of his bag. In its Decision dated 26 June 2014, the Court of Appeals aptly held:

> A waiver was found in *People v. Omaweng*. There, the police officers asked the accused if they could see the contents of his bag and he answered "you can see the contents but those are only clothings." When asked if they could open and see it, he said "you can see it." In the present case, accused-appellant told the member of the task force that "it was only a cellphone" when asked who owns the bag and what are its contents. When asked by the member of the task force if he could open it, accused-appellant told him "yes, just open it." Hence, as in *Omaweng*, there was a waiver of accused-appellants right against warrantless search.[52]

To emphasize, a reasonable search, on the one hand, and a warrantless search, on the other, are mutually exclusive. While both State intrusions are valid even without a warrant, the underlying reasons for the absence of a warrant are different. A reasonable search arises from a reduced expectation of privacy, for which reason Section 2, Article III of the Constitution finds no application. Examples include searches done at airports, seaports, bus terminals, malls, and similar public places. In contrast, a warrantless search is presumably an "unreasonable search," but for reasons of practicality, a search warrant can be dispensed with. Examples include search incidental to a lawful arrest, search of evidence in plain view, consented search, and extensive search of a private moving vehicle.

Further, in the conduct of bus searches, the Court lays down the following guidelines. **Prior to entry**, passengers and their

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[52] *Rollo*, p. 32.

bags and luggages can be subjected to a routine inspection akin to airport and seaport security protocol. In this regard, metal detectors and x-ray scanning machines can be installed at bus terminals. Passengers can also be frisked. In lieu of electronic scanners, passengers can be required instead to open their bags and luggages for inspection, which inspection must be made in the passenger's presence. Should the passenger object, he or she can validly be refused entry into the terminal.

**While in transit**, a bus can still be searched by government agents or the security personnel of the bus owner in the following three instances. *First*, upon receipt of information that a passenger carries contraband or illegal articles, the bus where the passenger is aboard can be stopped *en route* to allow for an inspection of the person and his or her effects. This is no different from an airplane that is forced to land upon receipt of information about the contraband or illegal articles carried by a passenger on board. *Second*, whenever a bus picks passengers *en route*, the prospective passenger can be frisked and his or her bag or luggage be subjected to the same routine inspection by government agents or private security personnel as though the person boarded the bus at the terminal. This is because unlike an airplane, a bus is able to stop and pick passengers along the way, making it possible for these passengers to evade the routine search at the bus terminal. *Third*, a bus can be flagged down at designated military or police checkpoints where State agents can board the vehicle for a routine inspection of the passengers and their bags or luggages.

In both situations, the inspection of passengers and their effects prior to entry at the bus terminal and the search of the bus while in transit must also satisfy the following conditions to qualify as a valid reasonable search. *First*, as to the manner of the search, it must be the least intrusive and must uphold the dignity of the person or persons being searched, minimizing, if not altogether eradicating, any cause for public embarrassment, humiliation or ridicule. *Second*, neither can the search result from any discriminatory motive such as insidious profiling, stereotyping and other similar motives. In all instances, the fundamental rights of vulnerable identities, persons with

disabilities, children and other similar groups should be protected. *Third*, as to the purpose of the search, it must be confined to ensuring public safety. *Fourth*, as to the evidence seized from the reasonable search, courts must be convinced that precautionary measures were in place to ensure that no evidence was planted against the accused.

The search of persons in a public place is valid because the safety of others may be put at risk. Given the present circumstances, the Court takes judicial notice that public transport buses and their tenninals, just like passenger ships and seaports, are in that category.

Aside from public transport buses, any moving vehicle that similarly accepts passengers at the terminal and along its route is likewise covered by these guidelines. Hence, whenever compliant with these guidelines, a routine inspection at the terminal or of the vehicle itself while in transit constitutes a reasonable search. Otherwise, the intrusion becomes unreasonable, thereby triggering the constitutional guarantee under Section 2, Article III of the Constitution.

To emphasize, the guidelines do ***not*** apply to privately-owned cars. Neither are they applicable to moving vehicles dedicated for private or personal use, as in the case of taxis, which are hired by only one or a group of passengers such that the vehicle can no longer be flagged down by any other person until the passengers on board alight from the vehicle.

**WHEREFORE,** the petition is **DENIED**. The Decision dated 26 June 2014 and the Resolution dated 15 October 2014 of the Court of Appeals in CA-G.R. CR No. 01099 are **AFFIRMED**.

**SO ORDERED.**

*Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Leonen, Caguioa, Martires, Tijam*, and *Gesmundo, JJ.*, concur.

*Jardeleza, J.*, no part.

*Sereno, C.J.*, on leave.

*Perlas-Bernabe* and *Reyes, Jr., JJ.*, on wellness leave.

**FIRST DIVISION**

[G.R. No. 193572. April 4, 2018]

**TSUNEISHI HEAVY INDUSTRIES (CEBU), INC.,** *petitioner, vs.* **MIS MARITIME CORPORATION,** *respondent.*

**SYLLABUS**

**1. CIVIL LAW; PRESIDENTIAL DECREE NO. 1521 (SHIP MORTGAGE DECREE OF 1978); LIEN, CONCEPT OF.—** A lien is a "legal claim or charge on property, either real or personal, as a collateral or security for the payment of some debt or obligation." It attaches to a property by operation of law and once attached, it follows the property until it is discharged. What it does is to give the party in whose favor the lien exists the right to have a debt satisfied out of a particular thing. It is a legal claim or charge on the property which functions as a collateral or security for the payment of the obligation.

**2. ID.; ID.; MARITIME LIEN; RIGHTS AND REMEDY OF THE LIENHOLDER, EXPLAINED.—** [T]he holder of the lien has the right to bring an action to seek the sale of the vessel and the application of the proceeds of this sale to the outstanding obligation. Through this lien, a person who furnishes repair, supplies, towage, use of dry dock or marine railway, or other necessaries to any vessel, in accordance with the requirements under Section 21, is able to obtain security for the payment of the obligation to him. A party who has a lien in his or her favor has a remedy in law to hold the property liable for the payment of the obligation. A lienholder has the remedy of filing an action in court for the enforcement of the lien. In such action, a lienholder must establish that the obligation and the corresponding lien exist before he or she can demand that the property subject to the lien be sold for the payment of the obligation. Thus, a lien functions as a form of security for an obligation. Liens, as in the case of a maritime lien, arise in accordance with the provision of particular laws providing for their creation, such as the Ship Mortgage Decree which clearly states that certain persons who provide services or materials can possess a lien over a vessel.

**3. ID.; ID.; ID.; ID.; MARITIME LIEN AND WRIT OF PRELIMINARY ATTACHMENT, DISTINGUISHED; A MARITIME LIEN MAY BE ENFORCED BY A SIMPLE PROCEDURE OF FILING AN ACTION *IN REM* BEFORE THE COURT; THE ISSUANCE OF A WRIT OF PRELIMINARY ATTACHMENT ON THE PRETEXT THAT IT IS THE ONLY MEANS TO ENFORCE A MARITIME LIEN IS SUPERFLUOUS.—** [A] maritime lien exists in accordance with the provision of the Ship Mortgage Decree. It is enforced by filing a proceeding in court. When a maritime lien exists, this means that the party in whose favor the lien was established may ask the court **to enforce it** by ordering the sale of the subject property and using the proceeds to settle the obligation. On the other hand, a writ of preliminary attachment is issued precisely **to create a** lien. When a party moves for its issuance, the party is effectively asking the court to attach a property and hold it liable for any judgment that the court may render in his or her favor. This is similar to what a lien does. It functions as a security for the payment of an obligation. x x x To be clear, we repeat that when a lien already exists, this is already equivalent to an attachment. This is where Tsuneishi's argument fails. Clearly, because it claims a maritime lien in accordance with the Ship Mortgage Decree, all Tsuneishi had to do is to file a proper action in court for its enforcement. The issuance of a writ of preliminary attachment on the pretext that it is the only means to enforce a maritime lien is superfluous. The reason that the Ship Mortgage Decree does not provide for a detailed procedure for the enforcement of a maritime lien is because it is not necessary. Section 21 already provides for the simple procedure—file an action *in rem* before the court.

**4. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY ATTACHMENT; WHEN FRAUD IS INVOKED AS A GROUND FOR THE ISSUANCE OF A WRIT OF PRELIMINARY ATTACHMENT, THE CIRCUMSTANCES CONSTITUTING FRAUD MUST BE ALLEGED WITH SUFFICIENT SPECIFICITY.—** We emphasize that when fraud is invoked as a ground for the issuance of a writ of preliminary attachment under Rule 57 of the Rules of Court, there must be evidence clearly showing the factual circumstances of the alleged fraud. Fraud cannot be presumed from a party's mere failure to comply with his or her obligation. Moreover, the Rules of Court require that in all averments of

fraud, the circumstances constituting it must be stated with particularity. x x x An examination of the Bitera Affidavit reveals that it failed to allege the existence of fraud with sufficient specificity. The affidavit merely states that MIS refused to pay its obligation because it demanded a set off between its obligation to Tsuneishi and Tsuneishi's liability for MIS' losses caused by the delay in the turn-over of the vessel. The affidavit insists that this demand for set off was not legally possible. Clearly, there is nothing in the affidavit that even approximates any act of fraud which MIS committed in the performance of its obligation. MIS' position was clear: Tsuneishi caused the damage in the vessel's engine which delayed its trip and should thus be liable for its losses. There is no showing that MIS performed any act to deceive or defraud Tsuneishi.

**5. ID.; ID.; ID.; ISSUING A WRIT OF PRELIMINARY ATTACHMENT DESPITE ABSENCE OF THE REQUISITES CONSTITUTES GRAVE ABUSE OF DISCRETION.—** [W]e highlight that this petition for review on *certiorari* arose out of a Decision of the CA in a Rule 65 petition. In cases like this, this Court's duty is only to ascertain whether the CA was correct in ruling that the RTC acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Jurisprudence has consistently held that a court that issues a writ of preliminary attachment when the requisites are not present acts in excess of its jurisdiction. x x x In accordance with consistent jurisprudence, we must thus affirm the ruling of the CA that the RTC, in issuing a writ of preliminary attachment when the requisites under the Rules of Court were clearly not present, acted with grave abuse of discretion.

**APPEARANCES OF COUNSEL**

*Arthur D. Lim Law Office* for petitioner.
*Alfonso M. Cruz Law Offices* 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 filed by petitioner Tsuneishi Heavy Industries (Cebu), Inc. (Tsuneishi) challenging the Decision[2] of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 03956 dated October 7, 2009 and its Resolution[3] dated August 26, 2010. The CA Decision reversed three Orders of Branch 7 of the Regional Trial Court (RTC), Cebu City dated April 15, 2008, July 7, 2008, and December 11, 2008, respectively.[4] The Resolution denied Tsuneishi's motion for reconsideration.

Respondent MIS Maritime Corporation (MIS) contracted Tsuneishi to dry dock and repair its vessel M/T MIS-1 through an Agreement dated March 22, 2006.[5] On March 23, 2006, the vessel dry docked in Tsuneishi's shipyard. Tsuneishi rendered the required services. However, about a month later and while the vessel was still dry docked, Tsuneishi conducted an engine test on M/T MIS-1. The vessel's engine emitted smoke. The parties eventually discovered that this was caused by a burnt crank journal. The crankpin also showed hairline cracks due to defective lubrication or deterioration. Tsuneishi insists that the damage was not its fault while MIS insists on the contrary. Nevertheless, as an act of good will, Tsuneishi paid for the vessel's new engine crankshaft, crankpin, and main bearings.[6]

Tsuneishi billed MIS the amount of US$318,571.50 for payment of its repair and dry docking services. MIS refused to

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[1] *Rollo,* pp. 11-39.

[2] *Id.* at 54-68. Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Rodil V. Zalameda and Samuel M. Gaerlan, concurring.

[3] *Id.* at 71-72. Penned by Associate Justice Pampio A. Abarintos with Associate Justices Ramon A. Cruz and Myra V. Garcia-Fernandez, concurring.

[4] *Id.* at 67-68.

[5] *Id.* at 55.

[6] *Id.* at 56.

pay this amount. Instead, it demanded that Tsuneishi pay US$471,462.60 as payment for the income that the vessel lost in the six months that it was not operational and dry docked at Tsuneishi's shipyard. It also asked that its claim be set off against the amount billed by Tsuneishi. MIS further insisted that after the set off, Tsuneishi still had the obligation to pay it the amount of US$152,891.10.[7] Tsuneishi rejected MIS' demands. It delivered the vessel to MIS in September 2006.[8] On November 6, 2006, MIS signed an Agreement for Final Price.[9] However, despite repeated demands, MIS refused to pay Tsuneishi the amount billed under their contract.

Tsuneishi claims that MIS also caused M/T White Cattleya, a vessel owned by Cattleya Shipping Panama S.A. (Cattleya Shipping), to stop its payment for the services Tsuneishi rendered for the repair and dry docking of the vessel.[10]

MIS argued that it lost revenues because of the engine damage in its vessel. This damage occurred while the vessel was dry docked and being serviced at Tsuneishi's yard. MIS insisted that since this arose out of Tsuneishi's negligence, it should pay for MIS' lost income. Tsuneishi offered to pay 50% of the amount demanded but MIS refused any partial payment.[11]

On April 10, 2008, Tsuneishi filed a complaint[12] against MIS before the RTC. This complaint stated that it is invoking the admiralty jurisdiction of the RTC to enforce a maritime lien under Section 21 of the Ship Mortgage Decree of 1978[13] (Ship Mortgage Decree). It also alleged as a cause of action MIS' unjustified refusal to pay the amount it owes Tsuneishi under

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[7] *Id.*

[8] *Rollo,* pp. 56-57.

[9] *Id.* at 16.

[10] *Id.*

[11] *Rollo,* pp. 135-136.

[12] *Id.* at 83-96.

[13] PRESIDENTIAL DECREE No. 1521.

their contract. The complaint included a prayer for the issuance of arrest order/writ of preliminary attachment. To support this prayer, the complaint alleged that Section 21 of the Ship Mortgage Decree as well as Rule 57 of the Rules of Court on attachment authorize the issuance of an order of arrest of vessel and/or writ of preliminary attachment.[14]

In particular, Tsuneishi argued that Section 21 of the Ship Mortgage Decree provides for a maritime lien in favor of any person who furnishes repair or provides use of a dry dock for a vessel. Section 21 states that this may be enforced through an action *in rem.* Further, Tsuneishi and MIS' contract granted Tsuneishi the right to take possession, control and custody of the vessel in case of default of payment. Paragraph 9 of this contract further states that Tsuneishi may dispose of the vessel and apply the proceeds to the unpaid repair bill.[15]

Finally, Tsuneishi's complaint alleges that there are sufficient grounds for the issuance of a writ of preliminary attachment. In particular, it claims that MIS is guilty of fraud in the performance of its obligation. The complaint states:

> 40. x x x Under the factual milieu, it is wrongful for defendant MIS Maritime to take undue advantage of an unfortunate occurrence by withholding payment of what is justly due to plaintiff under law and contract. Defendant MIS Maritime knew or ought to have known that its claim for lost revenues was unliquidated and could not be set-off or legally compensated against the dry-docking and repair bill which was liquidated and already fixed and acknowledged by the parties.
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> 41. Defendant CATTLEYA SHIPPING'S actions and actuations in performing its obligation were clearly fraudulent because, firstly, it had no business getting involved as far as the M/T MIS-1 incident was concerned; secondly, no incident of any sort occurred when its vessel M/T WHITE CATTLEYA was dry docked and repaired. It had no claim against the plaintiff. Yet, it (defendant Cattleya Shipping) allowed itself to be used by defendant MIS Maritime when it willfully

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[14] *Rollo,* pp. 91-92.

[15] *Id.* at 92.

and unlawfully stopped paying plaintiff, and conspired to make good defendant MIS Maritime's threat to "withhold payment of any and all billings that you (plaintiff) may have against our fleet of vessels which include those registered under Cattleya Shipping Panama S.A. (MT White Cattleya) x x x.[16]

Tsuneishi also filed the Affidavit[17] of its employee Lionel T. Bitera (Bitera Affidavit), in accordance with the requirement for the issuance of a writ of preliminary attachment under Rule 57 of the Rules of Court. The Bitera Affidavit stated that Tsuneishi performed dry docking and repair services for M/T MIS-1 and M/T White Cattleya. It also alleged that after Tsuneishi performed all the services required, MIS and Cattleya refused to pay their obligation. According to the Bitera Affidavit, this refusal to pay constitutes fraud because:

d. The breach of the obligation was willful. In the case of M/T MIS-1 no single installment payment was made despite the fact that the vessel was accepted fully dry docked and with a brand new engine crankshaft installed by the yard free of charge to the Owner. MIS Maritime Corporation was blaming the yard for the damage sustained by the engine crank shaft on 25 April 2006 when the engine was started in preparation for sea trial. When the incident happened the drydocking had already been completed and the vessel was already in anchorage position for sea trial under the management and supervisory control of the Master and engineers of the vessel. Besides, the incident was not due to the fault of the yard. It was eventually traced to dirty lube oil or defective main engine lubricating oil which was the lookout and responsibility of the vessel's engineers.

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e. The action taken by MIS Maritime Corporation in setting off its drydocking obligation against their claim for alleged lost revenues was unilaterally done, and without legal and factual basis for while, on one hand, the drydocking bill was for a fixed and agreed amount, the claim of MIS Maritime for lost revenues, on the other hand, was not liquidated as it was for a gross amount. x x x

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[16] *Id.* at 93.

[17] *Id.* at 111-113.

f. Cattleya Shipping for its part had nothing to do with the dry docking of M/T MIS-1. There was no incident whatsoever during the dry docking of its vessel M/T WHITE CATTLEYA. In fact, after this vessel was satisfactorily dry docked and delivered to its Owner (Cattleya Shipping) the latter started paying the monthly installments without any complaint whatsoever. x x x[18]

The RTC issued a writ of preliminary attachment in an Order[19] dated April 15, 2008 (First Order) without hearing. Consequently, MIS' condominium units located in the financial district of Makati, cash deposits with various banks, charter hire receivables from Shell amounting to ₱26.6 Million and MT MIS-1 were attached.[20]

MIS filed a motion to discharge the attachment.[21] The RTC denied this motion in an Order[22] dated July 7, 2008 (Second Order). MIS filed a motion for reconsideration which the RTC also denied in an Order[23] dated December 11, 2008 (Third Order).

MIS then filed a special civil action for *certiorari*[24] before the CA assailing the three Orders. MIS argued that the RTC acted with grave abuse of discretion when it ordered the issuance of a preliminary writ of attachment and denied MIS' motion to discharge and motion for reconsideration.

The CA ruled in favor of MIS. It reversed the three assailed Orders after finding that the RTC acted with grave abuse of discretion in issuing the writ of preliminary attachment.[25]

According to the CA, the Bitera Affidavit lacked the required allegation that MIS has no sufficient security for Tsuneishi's

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[18] *Id.* at 112-113.

[19] *Id.* at 44.

[20] *Id.* at 566.

[21] *Id.* at 244-255.

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

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

[24] *Id.* at 318-358.

[25] *Id.* at 67-68.

claim. In fact, the CA held that the evidence on record shows that MIS has sufficient properties to cover the claim. It also relied on jurisprudence stating that when an affidavit does not contain the allegations required under the rules for the issuance of a writ of attachment and the court nevertheless issues the writ, the RTC is deemed to have acted with grave abuse of discretion. Consequently, the writ of preliminary attachment is fatally defective.[26] The CA further highlighted that a writ of preliminary attachment is a harsh and rigorous remedy. Thus, the rules must be strictly construed. Courts have the duty to ensure that all the requisites are complied with.[27]

The CA also found that the RTC ordered the issuance of the writ of preliminary attachment despite Tsuneishi's failure to prove the presence of fraud. It held that the bare and unsubstantiated allegation in the Bitera Affidavit that MIS willfully refused to pay its obligation is not sufficient to establish *prima facie* fraud. The CA emphasized that a debtor's mere inability to pay is not fraud. Moreover, Tsuneishi's allegations of fraud were general. Thus, they failed to comply with the requirement in the Rules of Court that in averments of fraud, the circumstances constituting it must be alleged with particularity. The CA added that while notice and hearing are not required for the issuance of a writ of preliminary attachment, it may become necessary in instances where the applicant makes grave accusations based on grounds alleged in general terms. The CA also found that Tsuneishi failed to comply with the requirement that the affidavit must state that MIS has no other sufficient security to cover the amount of its obligation.[28]

The CA disposed of the case, thus:

**WHEREFORE,** the petition is **GRANTED.** The three (3) Orders dated April 15, 2008, July 7, 2008 and December 11, 2008, respectively, of the Regional Trial Court, Branch 7, Cebu City, in

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[26] *Id.* at 65.

[27] *Id.* at 63-65.

[28] *Id.* at 65-67.

Civil Case No. CEB-34250, are **ANNULLED** and **SET ASIDE.**[29] (Emphasis in the original, citations omitted.)

Tsuneishi filed this petition for review on *certiorari* under Rule 45 of the Rules of Court challenging the CA's ruling. Tsuneishi pleads that this case involves a novel question of law. It argues that while Section 21 of the Ship Mortgage Decree grants it a maritime lien, the law itself, unfortunately, does not provide for the procedure for its enforcement. It posits that to give meaning to this maritime lien, this Court must rule that the procedure for its enforcement is Rule 57 of the Rules of Court on the issuance of the writ of preliminary attachment. Thus, it proposes that aside from the identified grounds for the issuance of a writ of preliminary attachment in the Rules of Court, the maritime character of this action should be considered as another basis to issue the writ.[30]

To support its application for the issuance of a writ of preliminary attachment, Tsuneishi also invokes a provision in its contract with MIS which states that:

> In case of default, either in payment or in violation of the warranties stated in Section 11, by the Owner, the Owner hereby appoints the Contractor as its duly authorized attorney in fact with full power and authority to take possession, control, and custody of the said Subject Vessel and / or any of the Subject Vessel's accessories and equipment, or other assets of the Owner, without resorting to court action; and that the Owner hereby empowers the Contractor to take custody of the same until the obligation of the Owner to the Contractor is fully paid and settled to the satisfaction of the Contractor. x x x[31] (Underscoring omitted.)

It insists that the writ of preliminary attachment must be issued so as to give effect to this provision in the contract.

Tsuneishi also disputes the CA's finding that it Failed to show fraud in MIS' performance of its obligation. It opines

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[29] *Id.* at 67-68.

[30] *Id.* at 21-28.

[31] *Id.* at 26.

that MIS' failure to comply with its obligation does not arise from a mere inability to pay. If that were the case, then the CA would be correct in saying that MIS committed no fraud. However, MIS' breach of its obligation in this case amounts to a gross unwillingness to pay amounting to fraud.[32]

Tsuneishi adds that the CA erred in holding that the RTC acted with grave abuse of discretion when it failed to conduct a hearing prior to the issuance of the writ of preliminary attachment. It insisted that the Rules of Court, as well as jurisprudence, does not require a hearing prior to issuance.[33]

Finally, Tsuneishi disagrees with the ruling of the CA that it did not comply with the requirements under the rules because the Bitera Affidavit did not state that MIS has no other sufficient security. This was already stated in Tsuneishi's complaint filed before the RTC. Thus, the rules should be applied liberally in favor of rendering justice.[34]

In its comment,[35] MIS challenges Tsuneishi's argument that its petition raises a novel question of law. According to MIS, the issue in this case is simple. A reading of Tsuneishi's complaint shows that it prayed for the issuance of a writ of preliminary attachment under Rule 57 of the Rules of Court or arrest of vessel to enforce its maritime lien under the Ship Mortgage Decree.[36] Thus, Tsuneishi knew from the start that a remedy exists for the enforcement of its maritime lien—through an arrest of vessel under the Ship Mortgage Decree. However, the RTC itself characterized the complaint as a collection of sum of money with prayer for the issuance of a writ of preliminary attachment. Thus, what it issued was a writ of preliminary attachment. Unfortunately for Tsuneishi, the CA reversed the RTC because

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[32] *Id.* at at 31-36.

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

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

[35] *Id.* at 563-595.

[36] *Id.* at 569.

it found that the element of fraud was not duly established. Thus, there was no ground for the issuance of a writ of preliminary attachment.[37]

MIS insists that Tsuneishi is raising this alleged novel question of law for the first time before this Court in an attempt to skirt the issue that it failed to sufficiently establish that MIS acted with fraud in the performance of its obligation. MIS contends that fraud cannot be inferred from a debtor's mere inability to pay. There is no distinction between inability and a refusal to pay where the refusal is based on its claim that Tsuneishi damaged its vessel. According to MIS, its vessel arrived at Tsuneishi's shipyard on its own power. Its engine incurred damage while it was under Tsuneishi's custody. Thus, Tsuneishi is presumed negligent.[38]

MIS further highlights that Tsuneishi completed the dry docking in April 2006. It was during this time that the damage in the vessel's engine was discovered. The vessel was turned over to MIS only in September 2006. Thus, it had lost a significant amount of revenue during the period that it was off-hire. Because of this, it demanded payment from Tsuneishi which the latter rejected.[39]

Hence, MIS argues that this is not a situation where, after Tsuneishi rendered services, MIS simply absconded. MIS has the right to demand for the indemnification of its lost revenue due to Tsuneishi's negligence.[40]

MIS further adds that the CA correctly held that there was no statement in the Bitera Affidavit that MIS had no adequate security to cover the amount being demanded by Tsuneishi. Tsuneishi cannot validly argue that this allegation is found in its complaint and that this should be deemed compliance with the requirement under Rule 57.[41]

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[37] *Id.* at 577-583.

[38] *Id.* at 583-586.

[39] *Id.* at 584-585.

[40] *Id.* at 585-586.

[41] *Id.* at 586-588.

Further, in its motion to discharge the preliminary attachment, MIS presented proof that it has the financial capacity to pay any liability arising from Tsuneishi's claims. In fact, there was an excessive levy of MIS' properties. This is proof in itself that MIS has adequate security to cover Tsuneishi's claims. Finally MIS agrees with the CA that the RTC should have conducted a hearing. While it is true that a hearing is not required by the Rules of Court, jurisprudence provides that a hearing is necessary where the allegations in the complaint and the affidavit are mere general averments. Further, where a motion to discharge directly contests the allegation in the complaint and affidavit, the applicant has the burden of proving its claims of fraud.[42]

There are two central questions presented for the Court to resolve, namely: (1) whether a maritime lien under Section 21 of the Ship Mortgage Decree may be enforced through a writ of preliminary attachment under Rule 57 of the Rules of Court; and (2) whether the CA correctly ruled that Tsuneishi failed to comply with the requirements for the issuance of a writ of preliminary injunction.

We deny the petition.

I

We begin by classifying the legal concepts of lien, maritime lien and the provisional remedy of preliminary attachment.

A lien is a "legal claim or charge on property, either real or personal, as a collateral or security for the payment of some debt or obligation."[43] It attaches to a property by operation of law and once attached, it follows the property until it is discharged. What it does is to give the party in whose favor the lien exists the right to have a debt satisfied out of a particular thing. It is a legal claim or charge on the property which functions as a collateral or security for the payment of the obligation.[44]

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[42] *Id.* at 588-593.

[43] *People v. Regional Trial Court of Manila,* G.R. No. 81541, October 4, 1989, 178 SCRA 299, 307.

[44] *Id.*

Section 21 of the Ship Mortgage Decree establishes a lien. It states:

> Sec. 21. *Maritime Lien for Necessaries; Persons entitled to such Lien.* — Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessaries to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit *in rem* and it shall be necessary to allege or prove that credit was given to the vessel.

In practical terms, this means that the holder of the lien has the right to bring an action to seek the sale of the vessel and the application of the proceeds of this sale to the outstanding obligation. Through this lien, a person who furnishes repair, supplies, towage, use of dry dock or marine railway, or other necessaries to any vessel, in accordance with the requirements under Section 21, is able to obtain security for the payment of the obligation to him.

A party who has a lien in his or her favor has a remedy in law to hold the property liable for the payment of the obligation. A lienholder has the remedy of filing an action in court for the enforcement of the lien. In such action, a lienholder must establish that the obligation and the corresponding lien exist before he or she can demand that the property subject to the lien be sold for the payment of the obligation. Thus, a lien functions as a form of security for an obligation.

Liens, as in the case of a maritime lien, arise in accordance with the provision of particular laws providing for their creation, such as the Ship Mortgage Decree which clearly states that certain persons who provide services or materials can possess a lien over a vessel. The Rules of Court also provide for a provisional remedy which effectively operates as a lien. This is found in Rule 57 which governs the procedure for the issuance of a writ of preliminary attachment.

A writ of preliminary attachment is a provisional remedy issued by a court where an action is pending. In simple terms, a writ of preliminary attachment allows the levy of a property

which shall then be held by the sheriff. This property will stand as security for the satisfaction of the judgment that the court may render in favor of the attaching party. In *Republic v. Mega Pacific eSolutions (Republic),*[45] we explained that the purpose of a writ of preliminary attachment is twofold:

> *First,* it seizes upon property of an alleged debtor in advance of final judgment and holds it subject to appropriation, thereby preventing the loss or dissipation of the property through fraud or other means. *Second,* it subjects the property of the debtor to the payment of a creditor's claim, in those cases in which personal service upon the debtor cannot be obtained. **This remedy is meant to secure a contingent lien on the defendant's property until the plaintiff can, by appropriate proceedings, obtain a judgment and have the property applied to its satisfaction, or to make some provision for unsecured debts in cases in which the means of satisfaction thereof are liable to be removed beyond the jurisdiction, or improperly disposed of or concealed, or otherwise placed beyond the reach of creditors.**[46] (Citations omitted, emphasis supplied. Italics in the original.)

As we said, a writ of preliminary attachment effectively functions as a lien. This is crucial to resolving Tsuneishi's alleged novel question of law in this case. Tsuneishi is correct that the Ship Mortgage Decree does not provide for the specific procedure through which a maritime lien can be enforced. Its error is in insisting that a maritime lien can only be operationalized by granting a writ of preliminary attachment under Rule 57 of the Rules of Court. Tsuneishi argues that the existence of a maritime lien should be considered as another ground for the issuance of a writ of preliminary attachment under the Rules of Court.

Tsuneishi's argument is rooted on a faulty understanding of a lien and a writ of preliminary attachment. As we said, a maritime lien exists in accordance with the provision of the Ship Mortgage Decree. It is enforced by filing a proceeding in court. When a maritime lien exists, this means that the party in whose favor

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[45] G.R. No. 184666, June 27, 2016, 794 SCRA 414.

[46] *Id.* at 441.

the lien was established may ask the court **to enforce it** by ordering the sale of the subject property and using the proceeds to settle the obligation.

On the other hand, a writ of preliminary attachment is issued precisely **to create a** lien. When a party moves for its issuance, the party is effectively asking the court to attach a property and hold it liable for any judgment that the court may render in his or her favor. This is similar to what a lien does. It functions as a security for the payment of an obligation. In *Quasha Asperilla Ancheta Valmonte Peña & Marcos v. Juan,*[47] we held:

> An attachment proceeding is for the purpose of creating a lien on the property to serve as security for the payment of the creditors' claim. Hence, where a lien already exists, as in this case a maritime lien, the same is already equivalent to an attachment. x x x[48]

To be clear, we repeat that when a lien already exists, this is already equivalent to an attachment. This is where Tsuneishi's argument fails. Clearly, because it claims a maritime lien in accordance with the Ship Mortgage Decree, all Tsuneishi had to do is to file a proper action in court for its enforcement. The issuance of a writ of preliminary attachment on the pretext that it is the only means to enforce a maritime lien is superfluous. The reason that the Ship Mortgage Decree does not provide for a detailed procedure for the enforcement of a maritime lien is because it is not necessary. Section 21 already provides for the simple procedure—file an action *in rem* before the court.

To our mind, this alleged novel question of law is a mere device to remedy the error committed by Tsuneishi in the proceedings before the trial court regarding the issuance of a writ of preliminary attachment. We note that the attachment before the trial court extended to other properties other than the lien itself, such as bank accounts and real property. Clearly, what was prayed for in the proceedings below was not an attachment for the enforcement of a maritime lien but an attachment, plain and simple.

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[47] G.R. No. L-49140, November 19, 1982, 118 SCRA 505.

[48] *Id.* at 520.

II

Tsuneishi's underlying difficulty is whether it succeeded in proving that it complied with the requirements lor the issuance of a writ of preliminary attachment. This is the only true question before us. In particular, we must determine whether the Bitera Affidavit stated that MIS lacked sufficient properties to cover the obligation and whether MIS acted with fraud in refusing to pay.

At the onset, we note that these questions dwell on whether there was sufficient evidence to prove that Tsuneishi complied with the requirements for the issuance of a writ of preliminary attachment. Sufficiency of evidence is a question of fact which this Court cannot review in a Rule 45 petition. We are not a trier of fact.

Nevertheless, we have examined the record before us and we agree with the factual findings of the CA.

The record clearly shows that the Bitera Affidavit does not state that MIS has no other sufficient security for the claim sought to be enforced. This is a requirement under Section 3, Rule 57 of the Rules of Court. We cannot agree with Tsuneishi's insistence that this allegation need not be stated in the affidavit since it was already found in the complaint. The rules are clear and unequivocal. There is no basis for Tsuneishi's position. Nor is it entitled to the liberal application of the rules. Not only has Tsuneishi failed to justify its omission to include this allegation, the facts also do not warrant the setting aside of technical rules. Further, rules governing the issuance of a writ of preliminary attachment are strictly construed.

We also agree with the CA's factual finding that MIS did not act with fraud in refusing to pay the obligation. We emphasize that when fraud is invoked as a ground for the issuance of a writ of preliminary attachment under Rule 57 of the Rules of Court, there must be evidence clearly showing the factual circumstances of the alleged fraud.[49] Fraud cannot be presumed from a party's mere failure to comply with his or her obligation.

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[49] *Republic v. Mega Pacific eSolutions, supra* note 45 at 442.

Moreover, the Rules of Court require that in all averments of fraud, the circumstances constituting it must be stated with particularity.[50]

In *Republic,* we defined fraud as:

> [A]s the voluntary execution of a wrongful act or a wilful omission, while knowing and intending the effects that naturally and necessarily arise from that act or omission. In its general sense, fraud is deemed to comprise anything calculated to deceive — including all acts and omission and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed — resulting in damage to or in undue advantage over another. Fraud is also described as embracing all multifarious means that human ingenuity can device, and is resorted to for the purpose of securing an advantage over another by false suggestions or by suppression of truth; and it includes all surprise, trick, cunning, dissembling, and any other unfair way by which another is cheated.[51] (Citations omitted.)

By way of example, in *Metro, Inc. v. Lara's Gifts and Decors, Inc.,*[52] we ruled that the factual circumstances surrounding the parties' transaction clearly showed fraud. In this case, the petitioners entered into an agreement with respondents where the respondents agreed that they will endorse their purchase orders from their foreign buyers to the petitioners in order to help the latter's export business. The petitioners initially promised that they will transact only with the respondents and never directly contact respondents' foreign buyers. To convince respondents that they should trust the petitioners, petitioners even initially remitted shares to the respondents in accordance with their agreement. However, as soon as there was a noticeable increase in the volume of purchase orders from respondents' foreign buyers, petitioners abandoned their contractual obligation to respondents and directly transacted with respondents' foreign buyers. We found in this case that the respondents' allegation (that the petitioners undertook to sell exclusively through

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[50] RULES OF COURT, Rule 8, Sec. 5.

[51] *Republic v. Mega Pacific eSolutions, supra* note 45 at 443-444.

[52] G.R. No. 171741, November 27, 2009, 606 SCRA 175.

respondents but then transacted directly with respondents' foreign buyer) is sufficient allegation of fraud to support the issuance of a writ of preliminary attachment.[53]

In contrast, in *PCL Industries Manufacturing Corporation v. Court of Appeals,*[54] we found no fraud that would warrant the issuance of a writ of preliminary attachment. In that case, petitioner purchased printing ink materials from the private respondent. However, petitioner found that the materials delivered were defective and thus refused to pay its obligation under the sales contract. Private respondent insisted that petitioner's refusal to pay after the materials were delivered to it amounted to fraud. We disagreed. We emphasized our repeated and consistent ruling that the mere fact of failure to pay after the obligation to do so has become due and despite several demands is not enough to warrant the issuance of a writ of preliminary attachment.[55]

An examination of the Bitera Affidavit reveals that it failed to allege the existence of fraud with sufficient specificity. The affidavit merely states that MIS refused to pay its obligation because it demanded a set off between its obligation to Tsuneishi and Tsuneishi's liability for MIS' losses caused by the delay in the turn-over of the vessel. The affidavit insists that this demand for set off was not legally possible. Clearly, there is nothing in the affidavit that even approximates any act of fraud which MIS committed in the performance of its obligation. MIS' position was clear: Tsuneishi caused the damage in the vessel's engine which delayed its trip and should thus be liable for its losses. There is no showing that MIS performed any act to deceive or defraud Tsuneishi.

In *Watercraft Venture Corporation v. Wolfe,*[56] we ruled that an affidavit which does not contain concrete and specific grounds

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[53] *Id.* at 186.

[54] G.R. No. 147970, March 31, 2006, 486 SCRA 214.

[55] *Id.* at 225-226.

[56] G.R. No. 181721, September 9, 2015, 770 SCRA 179.

showing fraud is inadequate to sustain the issuance of the writ of preliminary attachment.[57]

Moreover, the record tells a different story.

The record shows that Tsuneishi released the vessel in September 2006. MIS signed the Agreement of the Final Price only in November 2006. Thus, Tsuneishi's claim that MIS' act of signing the document and making it believe that MIS will pay the amount stated is the fraudulent act which induced it to release the vessel cannot stand. Tsuneishi agreed to release the vessel even before MIS signed the document. It was thus not the act which induced Tsuneishi to turn over the vessel.

Further, Tsuneishi is well aware of MIS' claims. It appears from the record, and as admitted by MIS in its pleadings, that the reason for its refusal to pay is its claim that its obligation should be set off against Tsuneishi's liability for the losses that MIS incurred for the unwarranted delay in the turn-over of the vessel. MIS insists that Tsuneishi is liable for the damage on the vessel. This is not an act of fraud. It is not an intentional act or a willful omission calculated to deceive and injure Tsuneishi. MIS is asserting a claim which it believes it has the right to do so under the law. Whether MIS' position is legally tenable is a different matter. It is an issue fit for the court to decide. Notably, MIS filed this as a counterclaim in the case pending before the RTC.[58] Whether MIS is legally correct should be threshed out there.

Even assuming that MIS is wrong in refusing to pay Tsuneishi, this is nevertheless not the fraud contemplated in Section 1(d), Rule 57 of the Rules of Court. Civil law grants Tsuneishi various remedies in the event that the trial court rules in its favor such as the payment of the obligation, damages and legal interest. The issuance of a writ of preliminary attachment is not one of those remedies.

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[57] *Id.* at 197-198.

[58] *Rollo,* p. 141.

There is a reason why a writ of preliminary attachment is available only in specific cases enumerated under Section 1 of Rule 57. As it entails interfering with property prior to a determination of actual liability, it is issued with great caution and only when warranted by the circumstances. As we said in *Ng Wee v. Tankiansee,*[59] the rules on the issuance of the writ of preliminary attachment as a provisional remedy are strictly construed against the applicant because it exposes the debtor to humiliation and annoyance.[60]

Moreover, we highlight that this petition for review on *certiorari* arose out of a Decision of the CA in a Rule 65 petition. In cases like this, this Court's duty is only to ascertain whether the CA was correct in ruling that the RTC acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Jurisprudence has consistently held that a court that issues a writ of preliminary attachment when the requisites are not present acts in excess of its jurisdiction.[61] In *Philippine Bank of Communications v. Court of Appeals,*[62] we highlighted:

> Time and again, we have held that the rules on the issuance of a writ of attachment must be construed strictly against the applicants. This stringency is required because the remedy of attachment is harsh, extraordinary and summary in nature. If all the requisites for the granting of the writ are not present, then the court which issues it acts in excess of its jurisdiction.[63] (Citation omitted.)

In accordance with consistent jurisprudence, we must thus affirm the ruling of the CA that the RTC, in issuing a writ of

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[59] G.R. No. 171124, February 13, 2008, 545 SCRA 263.

[60] *Id.* at 274-275.

[61] *Marphil Export Corporation v. Allied Banking Corporation,* G.R. No. 187922, September 21, 2016, 803 SCRA 627, 656; *Ng Wee v. Tankiansee, supra* at 274-275;*Philippine Bank of Communications v. Court of Appeals,* G.R. No. 115678, February 23, 2001, 352 SCRA 616, 624-625.

[62] *Supra.*

[63] *Id.* at 624-625.

preliminary attachment when the requisites under the Rules of Court were clearly not present, acted with grave abuse of discretion.

**WHEREFORE,** in view of the foregoing, the petition is **DENIED.** The Decision of the Court of Appeals dated October 7, 2009 and its Resolution dated August 26, 2010 are **AFFIRMED.**

**SO ORDERED.**

*Leonardo-de Castro*[*] *(Acting Chairperson), del Castillo,* and *Tijam, JJ.,* concur.

*Sereno, C.J. (Chairperson),* on leave.

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**THIRD DIVISION**

[G.R. No. 195814. April 4, 2018]

**EVERSLEY CHILDS SANITARIUM, represented by DR. GERARDO M. AQUINO, JR. (*now* DR. PRIMO JOEL S. ALVEZ) CHIEF OF SANITARIUM,** *petitioner, vs.* **SPOUSES ANASTACIO and PERLA BARBARONA,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING, CONCEPT OF; REQUIREMENTS OF CERTIFICATION AGAINST FORUM SHOPPING.—** There is forum shopping when a party files different pleadings in different tribunals, despite having the same "identit[ies] of parties, rights or causes of action, and reliefs sought." Consistent

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[*] Designated as Acting Chairperson of the First Division per Special Order No. 2540 dated February 28, 2018.

with the principle of fair play, parties are prohibited from seeking the same relief in multiple forums in the hope of obtaining a favorable judgment. The rule against forum shopping likewise fulfills an administrative purpose as it prevents conflicting decisions by different tribunals on the same issue. In filing complaints and other initiatory pleadings, the plaintiff or petitioner is required to attach a certification against forum shopping, certifying that (a) no other action or claim involving the same issues has been filed or is pending in any court, tribunal, or quasi-judicial agency, (b) if there is a pending action or claim, the party shall make a complete statement of its present status, and (c) if the party should learn that the same or similar action has been filed or is pending, that he or she will report it within five (5) days to the tribunal where the complaint or initiatory pleading is pending.

**2. ID.; 2002 INTERNAL RULES OF THE COURT OF APPEALS; A MOTION FOR RECONSIDERATION SHALL BE DEEMED ABANDONED IF THE MOVANT FILED A PETITION FOR REVIEW OR A MOTION FOR EXTENSION OF TIME TO FILE A PETITION FOR REVIEW BEFORE THE SUPREME COURT.—** The Internal Rules of the Court of Appeals clearly provide that a subsequent motion for reconsideration shall be deemed abandoned if the movant filed a petition for review or motion for extension of time to file a petition for review before this Court. While the Office of the Solicitor General can be faulted for filing a motion instead of a mere manifestation, it cannot be faulted for presuming that the Court of Appeals would follow its Internal Rules as a matter of course. Rule VI, Section 15 of the Internal Rules of the Court of Appeals is provided for precisely to prevent forum shopping. It mandates that once a party seeks relief with this Court, any action for relief with the Court of Appeals will be deemed abandoned to prevent conflicting decisions on the same issues. Had the Court of Appeals applied its own Internal Rules, petitioner's Motion for Reconsideration would have been deemed abandoned. Moreover, unlike this Court, which can suspend the effectivity of its own rules when the ends of justice require it, the Court of Appeals cannot exercise a similar power. Only this Court may suspend the effectivity of any provision in its Internal Rules. Thus, it would be reasonable for litigants to expect that the Court of Appeals would comply with its own Internal Rules. Petitioner's Motion for Reconsideration having

been deemed abandoned with its filing of a Motion for Extension of Time before this Court, the Court of Appeals' August 31, 2011 Resolution denying the Motion for Reconsideration, thus, has no legal effect.

3. **ID.; SPECIAL CIVIL ACTIONS; EJECTMENT; NATURE.—** By its very nature, an ejectment case only resolves the issue of who has the better right of possession over the property. The right of possession in this instance refers to *actual* possession, not legal possession. While a party may later be proven to have the legal right of possession by virtue of ownership, he or she must still institute an ejectment case to be able to dispossess an actual occupant of the property who refuses to vacate. x x x In ejectment cases, courts will only resolve the issue of ownership provisionally if the issue of possession cannot be resolved without passing upon it.

4. **ID.; ID.; ID.; AN EJECTMENT CASE CANNOT BE AUTOMATICALLY DECIDED IN FAVOR OF THE PARTY WHO PRESENTS PROOF OF OWNERSHIP; PETITIONER'S OCCUPATION HAVING BEEN BY VIRTUE OF LAW, IT CANNOT BE AFFECTED BY THE ISSUANCE OF A TORRENS TITLE IN RESPONDENTS' NAME.—** In this instance, respondents anchor their right of possession over the disputed property on TCT No. 53698 issued in their names. It is true that a registered owner has a right of possession over the property as this is one of the attributes of ownership. Ejectment cases, however, are not automatically decided in favor of the party who presents proof of ownership[.] x x x Here, respondents alleged that their right of ownership was derived from their predecessors-in-interest, the Spouses Gonzales, whose Decree No. 699021 was issued on March 29, 1939. The Register of Deeds certified that there was no original certificate of title or owner's duplicate issued over the property, or if there was, it may have been lost or destroyed during the Second World War. The heirs of the Spouses Gonzales subsequently executed a Deed of Full Renunciation of Rights, Conveyance of Full Ownership and Full Waiver of Title and Interest on March 24, 2004 in respondents' favor. Thus, respondent Anastacio Barbarona succeeded in having Decree No. 699021 reconstituted on July 27, 2004 and having TCT No. 53698 issued in respondents' names on February 7, 2005. x x x During the interim, the Republic of the Philippines,

represented by the Office of the Solicitor General, filed a Petition for Annulment of Judgment before the Court of Appeals to assail the reconstitution of Decree No. 699021, docketed as CA-G.R. SP No. 01503. On February 19, 2007, the Court of Appeals in that case found that the trial court reconstituted the title without having issued the required notice and initial hearing to the actual occupants, rendering all proceedings void. x x x Blinded by respondents' allegedly valid title on the property, the three (3) tribunals completely ignored how petitioner came to occupy the property in the first place. Petitioner, a public hospital operating as a leprosarium dedicated to treating persons suffering from Hansen's disease, has been occupying the property since May 30, 1930. x x x Proclamation No. 507 was issued on October 21, 1932, "which reserved certain parcels of land in Jagobiao, Mandaue City, Cebu as additional leprosarium site for the Eversley Childs Treatment Station." Petitioner's possession of the property, therefore, pre-dates that of respondents' predecessors-in-interest, whose Decree No. 699021 was issued in 1939. It is true that defects in TCT No. 53698 or even Decree No. 699021 will not affect the fact of ownership, considering that a certificate of title does not vest ownership. The Torrens system "simply recognizes and documents ownership and provides for the consequences of issuing paper titles." Without TCT No. 53698, however, respondents have no other proof on which to anchor their claim. The Deed of Full Renunciation of Rights, Conveyance of Full Ownership and Full Waiver of Title and Interest executed in their favor by the heirs of the Spouses Gonzales is insufficient to prove conveyance of property since no evidence was introduced to prove that ownership over the property was validly transferred to the Spouses Gonzales' heirs upon their death. Moreover, Proclamation No. 507, series of 1932, *reserved* portions of the property specifically for petitioner's use as a leprosarium. Even assuming that Decree No. 699021 is eventually held as a valid Torrens title, a title under the Torrens system is always issued subject to the annotated liens or encumbrances, or what the law warrants or reserves. x x x Portions occupied by petitioner, having been reserved by law, cannot be affected by the issuance of a Torrens title. Petitioner cannot be considered as one occupying under mere tolerance of the registered owner since its occupation was by virtue of law. Petitioner's right of possession, therefore, shall remain unencumbered subject to the final disposition on the issue of the property's ownership.

**5. ID.; ID.; ID.; THREE REMEDIES AVAILABLE TO A PERSON WHO HAS BEEN DISPOSSESSED OF PROPERTY; EJECTMENT AND *ACCION PUBLICIANA*, DISTINGUISHED.—** There are three (3) remedies available to one who has been dispossessed of property: (1) an action for ejectment to recover possession, whether for unlawful detainer or forcible entry; (2) *accion publiciana* or *accion plenaria de posesion*, or a plenary action to recover the right of possession; and (3) *accion reivindicatoria*, or an action to recover ownership. Although both ejectment and *accion publiciana* are actions specifically to recover the right of possession, they have two (2) distinguishing differences. The first is the filing period. Ejectment cases must be filed within one (1) year from the date of dispossession. If the dispossession lasts for more than a year, then an *accion publiciana* must be filed. The second distinction concerns jurisdiction. Ejectment cases, being summary in nature, are filed with the Municipal Trial Courts. *Accion publiciana*, however, can only be taken cognizance by the Regional Trial Court.

**6. ID.; ID.; ID.; WHERE THE ALLEGATIONS IN THE COMPLAINT ARE INSUFFICIENT TO DETERMINE IF THE ACTION WAS FILED WITHIN A YEAR FROM DISPOSSESSION BUT ON THE CONTRARY SHOWED THAT PETITIONER'S OCCUPATION WAS ILLEGAL FROM THE START, THE PROPER REMEDY SHOULD HAVE BEEN TO FILE AN *ACCION PUBLICIANA* OR *ACCION REIVINDICATORIA*.—** Respondents failed to state when petitioner's possession was initially lawful, and how and when their dispossession started. All that appears from the Complaint is that petitioner's occupation "is illegal and not anchored upon any contractual relations with [respondents.]" This, however, is insufficient to determine if the action was filed within a year from dispossession, as required in an ejectment case. On the contrary, respondents allege that petitioner's occupation was illegal from the start. The proper remedy, therefore, should have been to file an *accion publiciana* or *accion reivindicatoria* to assert their right of possession or their right of ownership.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for petitioner.
*Siu Riñen & Associates* for respondents.

**D E C I S I O N**

**LEONEN, *J.*:**

A case for unlawful detainer must state the period from when the occupation by tolerance started and the acts of tolerance exercised by the party with the right to possession. If it is argued that the possession was illegal from the start, the proper remedy is to file an *accion publiciana*, or a plenary action to recover the right of possession. Moreover, while an ejectment case merely settles the issue of the right of actual possession, the issue of ownership may be provisionally passed upon if the issue of possession cannot be resolved without it. Any final disposition on the issue of ownership, however, must be resolved in the proper forum.

This is a Petition for Review on Certiorari[1] assailing the Court of Appeals February 17, 2011 Decision,[2] which upheld the judgments of the Municipal Trial Court and Regional Trial Court ordering Eversley Childs Sanitarium (Eversley) to vacate the disputed property. Eversley assails the August 31, 2011 Resolution[3] of the Court of Appeals for resolving its Motion for Reconsideration despite its earlier submission of a Motion to Withdraw the Motion for Reconsideration.

Eversley is a public health facility operated by the Department of Health to administer care and treatment to patients suffering

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[1] *Rollo*, pp. 23-55.

[2] *Id*. at 57-66. The Decision, docketed as CA-G.R. SP No. 02762, was penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Pampio A. Abarintos and Edwin D. Sorongon of the Special Eighteenth Division, Court of Appeals, Cebu City.

[3] A copy of this Resolution was not submitted before this Court.

from Hansen's disease, commonly known as leprosy, and to provide basic health services to non-Hansen's cases.[4] Since 1930, it has occupied a portion of a parcel of land denominated as Lot No. 1936 in Jagobiao, Mandaue City, Cebu.[5]

Spouses Anastacio and Perla Barbarona (the Spouses Barbarona) allege that they are the owners of Lot No. 1936 by virtue of Transfer Certificate of Title (TCT) No. 53698. They claim that they have acquired the property from the Spouses Tarcelo B. Gonzales and Cirila Alba (the Spouses Gonzales),[6] whose ownership was covered by Original Certificate of Title (OCT) No. RO-824. Per the Spouses Barbarona's verification, OCT No. RO-824 was reconstituted based on Decree No. 699021, issued to the Spouses Gonzales by the Land Registration Office on March 29, 1939.[7]

On May 6, 2005, the Spouses Barbarona filed a Complaint for Ejectment (Complaint)[8] before the Municipal Trial Court in Cities of Mandaue City against the occupants of Lot No. 1936, namely, Eversley, Jagobiao National High School, the Bureau of Food and Drugs, and some residents (collectively, the occupants). The Spouses Barbarona alleged that they had sent demand letters and that the occupants were given until April 15, 2005 to vacate the premises. They further claimed that despite the lapse of the period, the occupants refused to vacate; hence, they were constrained to file the Complaint.[9]

In their Answer,[10] the occupants alleged that since they had been in possession of the property for more than 70 years, the

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[4] Department of Health, Eversley Childs Sanitarium, *About Us*, <http://ecs.doh.gov.ph/13-about-us?start=4> (last accessed March 23, 2018).

[5] *Rollo*, p. 26.

[6] *Id*. at 69. The CA Decision spelled the Spouses Gonzales' names as "Tarcilo" and "Cirilia." *See rollo*, p. 58.

[7] *Id*. at 58-59.

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

[9] *Id*. at 58 and pp. 101-102, MTCC Decision.

[10] *Id*. at 78-83.

case was effectively one for recovery of possession, which was beyond the jurisdiction of the Municipal Trial Court. They likewise claimed that the Spouses Barbarona were guilty of laches since it took more than 60 years for them to seek the issuance of a Torrens title over the property. They also averred that the Spouses Barbarona's certificate of title was void since they, the actual inhabitants of the property, were never notified of its issuance.[11]

In its September 29, 2005 Decision,[12] the Municipal Trial Court in Cities ordered the occupants to vacate the property, finding that the action was one for unlawful detainer, and thus, within its jurisdiction. It likewise found that the Spouses Barbarona were the lawful owners of Lot No. 1936 and that the occupants were occupying the property by mere tolerance.[13]

The Municipal Trial Court in Cities also held that a titled property could not be acquired through laches. It found that even the occupants' tax declarations in their names could not prevail over a valid certificate of title.[14] The dispositive portion of its Decision read:

> WHEREFORE, judgment is hereby rendered in favor of the [the Spouses Barbarona] and against all the [occupants] and ordering the latter to peacefully vacate the portion of the premises in question and remove their houses, structures or any building and improvements introduced or constructed on said portion on Lot 1936 covered by TCT No. 53698.
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> The [occupants] are further ordered to pay the following, to wit:
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> 1. The amount of ₱10.00 per square meter for the area occupied by each [of the occupants] as reasonable monthly compensation for the use of the portion of the property of

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[11] *Id.* at 58-59.

[12] *Id.* at 100-109. The Decision, docketed as Civil Case No. 5079, was penned by Judge Wilfredo A. Dagatan of Branch 3, Municipal Trial Court in Cities, Mandaue City.

[13] *Id.* at 106-108.

[14] *Id.* at 108.

[the Spouses Barbarona] from the date of the filing of the complaint until [the occupants] shall have actually vacated and turned over the portion of their possession to the [Spouses Barbarona];

2. The amount of ₱20,000 as litigation expenses and ₱20,000 as reasonable attorney[']s fees; and

3. The cost of suit.

Counterclaims of the [occupants] are hereby ordered DISMISSED for lack of merit.

SO ORDERED.[15]

The occupants appealed to the Regional Trial Court. In its November 24, 2006 Decision,[16] the Regional Trial Court affirmed in toto the Decision of the Municipal Trial Court in Cities. One of the occupants, Eversley, filed a motion for reconsideration.[17]

During the pendency of Eversley's motion, or on February 19, 2007, the Court of Appeals in CA-G.R. CEB-SP No. 01503 rendered a Decision, cancelling OCT No. RO-824 and its derivative titles, including TCT No. 53698, for lack of notice to the owners of the adjoining properties and its occupants.[18]

On April 23, 2007, the Regional Trial Court issued an Order denying Eversley's Motion for Reconsideration.[19]

Eversley filed a Petition for Review[20] with the Court of Appeals, arguing that the Municipal Trial Court had no jurisdiction over the action and that the Regional Trial Court erred in not recognizing that the subsequent invalidation of

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[15] *Id*. at 109.

[16] *Id*. at 110-118. The Decision, docketed as Civil Case No. Man-5305-A, was penned by Judge Ulric R. Cañete of Branch 55, Regional Trial Court, Mandaue City.

[17] *Id*. at 31.

[18] *Id*. at 31-32 and 63.

[19] *Id*. at 32 and 135.

[20] *Id*. at 137-149.

the Spouses Barbarona's certificate of title was prejudicial to their cause of action.[21]

On February 17, 2011, the Court of Appeals rendered its Decision,[22] denying the Petition. According to the Court of Appeals, the allegations in the Complaint were for the recovery of the physical possession of the property and not a determination of the property's ownership. The action, thus, was one for unlawful detainer and was properly filed with the Municipal Trial Court.[23]

The Court of Appeals held that the subsequent invalidation of the issuance of the certificate of title was immaterial, stating:

> Whether or not [the Spouses Barbarona are] holder[s] or not of a certificate of title is immaterial. The matter of the issuance of the decree by the Land Registration Office in favor of [the Spouses Barbarona's] predecessor[s-]in[-]interest has not been resolved on the merits by the RTC. [The Spouses Barbarona,] having acquired all the rights of their predecessors-in-interest[,] have[,] from the time of the issuance of the decree[,] also derived title over the property and nullification of the title based on procedural defects is not tantamount to the nullification of the decree. The decree stands and remains a prima facie source of the [Spouses Barbarona's] right of ownership over the subject property.[24]

Eversley, represented by the Office of the Solicitor General, filed a Petition for Review[25] with this Court assailing the February 17, 2011 Decision of the Court of Appeals. It likewise prayed for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[26] to restrain the immediate execution of the assailed judgment and to prevent impairing the operations

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[21] *Id.* at 60-61.

[22] *Id.* at 57-66.

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

[24] *Id.* at 64.

[25] *Id.* at 23-55.

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

of the government hospital, which had been serving the public for more than 80 years.

In its May 13, 2011 Resolution,[27] this Court issued a Temporary Restraining Order enjoining the implementation of the Court of Appeals February 17, 2011 Decision. Respondents were also directed to comment on the Petition.

In its Petition before this Court, petitioner argues that the nullification of TCT No. 53698 should have been prejudicial to respondents' right to recover possession over the property. Petitioner claims that since the Metropolitan Trial Court relied on respondents' title to determine their right of possession over the property, the subsequent nullification of their title should have invalidated their right of possession. Petitioner maintains that even if Decree No. 699021 was valid, the effect of its validity does not extend to respondents since there is no evidence to prove that they have acquired the property from Tarcelo B. Gonzales, the owner named in the decree.[28]

Petitioner points out that respondents' Complaint before the trial court was a case for *accion publiciana*, not one for unlawful detainer, since respondents have not proven petitioner's initial possession to be one of mere tolerance. It claims that respondents' bare allegation that they merely tolerated petitioner's possession is insufficient in a case for unlawful detainer, especially with petitioner's possession of the property since 1930, which predates the decree that was reconstituted in 1939.[29] It argues that its long occupancy should have been the subject of judicial notice since it is a government hospital serving the city for decades and is even considered as a landmark of the city.[30]

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[27] *Id*. at 180-182. The Office of the Solicitor General informed this Court in a Manifestation dated May 7, 2012 that the Regional Trial Court issued an Order dated March 15, 2012 granting respondents' Motion for Execution pending appeal, *rollo*, pp. 314-318. The trial court, however, recalled its March 15, 2012 Order on May 3, 2012, *rollo*, p. 323.

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

[29] *Id*. at 39-46.

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

On the other hand, respondents counter that the cancellation of TCT No. 53698 "does not . . . divest respondents of their rightful ownership of the subject property[,] more so their right of possession"[31] since their predecessors-in-interest's title was still valid and protected under the Torrens system. They insist that "petitioner has not shown . . . any sufficient evidence proving [its] ownership . . . much less, [its] right of possession."[32]

Respondents maintain that the Municipal Trial Court had jurisdiction over their complaint since prior physical possession is not an indispensable requirement and all that is required is "that the one-year period of limitation commences from the time of demand to vacate."[33]

While the Petition was pending before this Court, respondents raised a few procedural concerns before submitting their Comment. In their Motion for Leave to File Comment/ Manifestation,[34] respondents informed this Court that petitioner still had a pending and unresolved Motion for Reconsideration[35] before the Court of Appeals, in violation of the rule against forum shopping. Respondents, nonetheless, filed their Comment/ Manifestation,[36] to which this Court ordered petitioner to reply.[37]

Petitioner filed its Reply[38] and submitted a Manifestation,[39] explaining that the Court of Appeals had issued a Resolution[40] on August 31, 2011, denying its Motion for Reconsideration despite its earlier filing on April 14, 2011 of a Manifestation

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[31] *Id*. at 210.

[32] *Id*. at 211.

[33] *Id*. at 213.

[34] *Id*. at 183-185.

[35] *Id*. at 190-202.

[36] *Id*. at 186-189 and 208-216.

[37] *Id*. at 207.

[38] *Id*. at 275-295.

[39] *Id*. at 296-300.

[40] A copy of this Resolution was not submitted before this Court.

and Motion to Withdraw its Motion for Reconsideration. Thus, it manifested its intention to likewise question the Court of Appeals August 31, 2011 Resolution with this Court.

On November 28, 2011, this Court noted that petitioner's Reply and Manifestation and directed respondents to comment on the Manifestation.[41]

In their Comment on Petitioner's Manifestation,[42] respondents assert that while petitioner submitted a Manifestation and Motion to Withdraw its Motion for Reconsideration, the Court of Appeals did not issue any order considering petitioner's Motion for Reconsideration to have been abandoned. The Court of Appeals instead proceeded to resolve it in its August 31, 2011 Resolution; hence, respondents submit that petitioner violated the rule on non-forum shopping.[43]

Based on the arguments of the parties, this Court is asked to resolve the following issues:

First, whether or not the nullification of the Spouses Anastacio and Perla Barbarona's title had the effect of invalidating their right of possession over the disputed property; and

Second, whether or not the Spouses Anastacio and Perla Barbarona's complaint against Eversley Childs Sanitarium was for *accion publiciana* or for unlawful detainer.

Before these issues may be passed upon, however, this Court must first resolve the procedural question of whether or not Eversley Childs Sanitarium violated the rule on non-forum shopping.

**I**

In *City of Taguig v. City of Makati*,[44] this Court discussed the definition, origins, and purpose of the rule on forum shopping:

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[41] *Rollo*, p. 307.

[42] *Id.* at 308-312.

[43] *Id.* at 309-310.

[44] G.R. No. 208393, June 15, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/208393.pdf> [Per *J.* Leonen, Second Division].

*Top Rate Construction & General Services, Inc. v. Paxton Development Corporation* explained that:

> Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.

*First Philippine International Bank v. Court of Appeals* recounted that forum shopping originated as a concept in private international law:

> To begin with, forum-shopping originated as a concept in private international law, where non-resident litigants are given the option to choose the forum or place wherein to bring their suit for various reasons or excuses, including to secure procedural advantages, to annoy and harass the defendant, to avoid overcrowded dockets, or to select a more friendly venue. To combat these less than honorable excuses, the principle of forum non conveniens was developed whereby a court, in conflicts of law cases, may refuse impositions on its jurisdiction where it is not the most "convenient" or available forum and the parties are not precluded from seeking remedies elsewhere.
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> In this light, Black's Law Dictionary says that forum-shopping "occurs when a party attempts to have his action tried in a particular court or jurisdiction where he feels he will receive the most favorable judgment or verdict." Hence, according to Words and Phrases, "a litigant is open to the charge of 'forum shopping' whenever he chooses a forum with slight connection to factual circumstances surrounding his suit, and litigants should be encouraged to attempt to settle their differences without imposing undue expense and vexatious situations on the courts."

Further, *Prubankers Association v. Prudential Bank and Trust Co.* recounted that:

> The rule on forum-shopping was first included in Section 17 of the Interim Rules and Guidelines issued by this Court on January 11, 1983, which imposed a sanction in this wise: "A violation of the rule shall constitute contempt of court and shall be a cause for the summary dismissal of both petitions, without

> prejudice to the taking of appropriate action against the counsel or party concerned." Thereafter, the Court restated the rule in Revised Circular No. 28-91 and Administrative Circular No. 04-94. Ultimately, the rule was embodied in the 1997 amendments to the Rules of Court.[45]

There is forum shopping when a party files different pleadings in different tribunals, despite having the same "identit[ies] of parties, rights or causes of action, and reliefs sought."[46] Consistent with the principle of fair play, parties are prohibited from seeking the same relief in multiple forums in the hope of obtaining a favorable judgment. The rule against forum shopping likewise fulfills an administrative purpose as it prevents conflicting decisions by different tribunals on the same issue.

In filing complaints and other initiatory pleadings, the plaintiff or petitioner is required to attach a certification against forum shopping, certifying that (a) no other action or claim involving the same issues has been filed or is pending in any court, tribunal, or quasi-judicial agency, (b) if there is a pending action or claim, the party shall make a complete statement of its present status, and (c) if the party should learn that the same or similar action has been filed or is pending, that he or she will report it within five (5) days to the tribunal where the complaint or initiatory pleading is pending. Thus, Rule 7, Section 5 of the Rules of Court provides:

> Section 5. Certification against forum shopping. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has

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[45] *Id.* at 10-11, citing *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation*, 457 Phil. 740 (2003) [Per *J.* Bellosillo, Second Division]; *First Philippine International Bank v. Court of Appeals*, 322 Phil. 280 (1996) [Per *J.* Panganiban, Third Division]; and *Prubankers Association v. Prudential Bank and Trust Co.*, 361 Phil. 744 (1999) [Per *J.* Panganiban, Third Division].

[46] *Yap v. Chua*, 687 Phil. 392, 400 (2012) [Per *J.* Reyes, Second Division] citing *Young v. John Keng Seng*, 446 Phil. 823, 833 (2003) [Per *J.* Panganiban, Third Division].

not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

Petitioner, through the Office of the Solicitor General, is alleged to have committed forum shopping when it filed its Petition for Review on Certiorari with this Court, despite a pending Motion for Reconsideration with the Court of Appeals.

According to the Solicitor General, it filed a Motion for Extension of Time to File a Petition for Review on Certiorari with this Court on March 10, 2011 but that another set of solicitors erroneously filed a Motion for Reconsideration with the Court of Appeals on March 11, 2011.[47] Thus, it was constrained to file a Manifestation and Motion to Withdraw its Motion for Reconsideration on April 14, 2011,[48] the same date as its Petition for Review on Certiorari with this Court. Indeed, its Certification of Non-Forum Shopping, as certified by State Solicitor Joan V. Ramos-Fabella, provides:

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[47] *Rollo*, p. 297.

[48] *Id*. at 296.

. . . . . .

5. *I certify that there is a pending Motion for Reconsideration erroneously filed in the Court of Appeals, Special Eighteenth Division which we have asked to be withdrawn*. Aside from said pending motion, I have not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein; and should I thereafter learn that the same or similar action or claim is pending before any other court, tribunal or quasi-judicial agency, I shall report such fact within five (5) days therefrom from the court wherein this petition has been filed.[49] (Emphasis supplied)

The Office of the Solicitor General, however, mistakenly presumed that the mere filing of a motion to withdraw has the effect of withdrawing the motion for reconsideration without having to await the action of the Court of Appeals. The Office of the Solicitor General's basis is its reading of Rule VI, Section 15 of the 2002 Internal Rules of the Court of Appeals:

Section 15. Effect of Filing an Appeal in the Supreme Court. — No motion for reconsideration or rehearing shall be acted upon if the movant has previously filed in the Supreme Court a petition for review on certiorari or a motion for extension of time to file such petition. If such petition or motion is subsequently filed, the motion for reconsideration pending in this Court shall be deemed abandoned.

This would have been true had the Office of the Solicitor General merely manifested that it had already considered its Motion for Reconsideration before the Court of Appeals as abandoned, pursuant to its Internal Rules. However, it filed a Motion to Withdraw, effectively submitting the withdrawal of its Motion for Reconsideration to the Court of Appeals' sound discretion. A motion is not presumed to have already been acted upon by its mere filing. Prudence dictated that the Office of the Solicitor General await the Court of Appeals' action on its Motion to Withdraw before considering its Motion for Reconsideration as withdrawn.

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[49] *Id.* at 54.

Ordinarily, "a motion that is not acted upon in due time is deemed denied."[50] When the Court of Appeals denied the Office of the Solicitor General's Motion for Reconsideration without acting on its Motion to Withdraw, the latter was effectively denied. Petitioner, thus, committed forum shopping when it filed its Petition before this Court despite a pending Motion for Reconsideration before the Court of Appeals.

To rule in this manner, however, is to unnecessarily deprive petitioner of its day in court despite the Court of Appeals' failure to apply its own Internal Rules. The Internal Rules of the Court of Appeals clearly provide that a subsequent motion for reconsideration shall be deemed abandoned if the movant filed a petition for review or motion for extension of time to file a petition for review before this Court. While the Office of the Solicitor General can be faulted for filing a motion instead of a mere manifestation, it cannot be faulted for presuming that the Court of Appeals would follow its Internal Rules as a matter of course.

Rule VI, Section 15 of the Internal Rules of the Court of Appeals is provided for precisely to prevent forum shopping. It mandates that once a party seeks relief with this Court, any action for relief with the Court of Appeals will be deemed abandoned to prevent conflicting decisions on the same issues. Had the Court of Appeals applied its own Internal Rules, petitioner's Motion for Reconsideration would have been deemed abandoned.

Moreover, unlike this Court, which can suspend the effectivity of its own rules when the ends of justice require it,[51] the Court of Appeals cannot exercise a similar power. Only this Court may suspend the effectivity of any provision in its Internal

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[50] *Orosa v. Court of Appeals*, 330 Phil. 67, 72 (1996) [Per *J.* Bellosillo, First Division].

[51] *See* CONST, Art. VIII, Sec. 5(5) on the power of this Court to promulgate rules on pleading and practice and *Vda. De Ordoveza v. Raymundo*, 63 Phil. 275 (1936) [Per *J.* Abad Santos, *En Banc*].

Rules.[52] Thus, it would be reasonable for litigants to expect that the Court of Appeals would comply with its own Internal Rules.

Petitioner's Motion for Reconsideration having been deemed abandoned with its filing of a Motion for Extension of Time before this Court, the Court of Appeals' August 31, 2011 Resolution denying the Motion for Reconsideration, thus, has no legal effect. It is as if no motion for reconsideration was filed at all.[53] Considering that petitioner counted the running of the period to file its Petition with this Court from its receipt of the Court of Appeals February 17, 2011 Decision, and not of the Court of Appeals August 31, 2011 Resolution, it does not appear that petitioner "wanton[ly] disregard[ed] the rules or cause[d] needless delay in the administration of justice."[54] In this particular instance, petitioner did not commit a fatal procedural error.

**II**

By its very nature, an ejectment case only resolves the issue of who has the better right of possession over the property. The right of possession in this instance refers to *actual* possession, not legal possession. While a party may later be proven to have the legal right of possession by virtue of ownership, he or she must still institute an ejectment case to be able to dispossess an actual occupant of the property who refuses to vacate. In *Mediran v. Villanueva*:[55]

Juridically speaking, possession is distinct from ownership, and from this distinction are derived legal consequences of much

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[52] *See* 2002 Internal Rules of the Court of Appeals, Rule VIII, Sec. 11. Section 11. Separability Clause. — If the effectivity of any provision of these Rules is suspended or disapproved by the Supreme Court, the unaffected provisions shall remain in force.

[53] See *Rodriguez v. Aguilar*, 505 Phil. 468 (2005) [Per *J.* Panganiban, Third Division].

[54] *Philippine Public School Teachers Association v. Heirs of Iligan*, 528 Phil. 1197, 1212 (2006) [Per *J.* Callejo, Sr., First Division].

[55] 37 Phil. 752 (1918) [Per *J.* Street, *En Banc*].

importance. In giving recognition to the action of forcible entry and detainer the purpose of the law is to protect the person who in fact has actual possession; and in case of controverted right, it requires the parties to preserve the *status quo* until one or the other of them sees fit to invoke the decision of a court of competent jurisdiction upon the question of ownership. It is obviously just that the person who has first acquired possession should remain in possession pending this decision; and the parties cannot be permitted meanwhile to engage in a petty warfare over the possession of the property which is the subject of dispute. To permit this would be highly dangerous to individual security and disturbing to social order. Therefore, where a person supposes himself to be the owner of a piece of property and desires to vindicate his ownership against the party actually in possession, it is incumbent upon him to institute an action to this end in a court of competent jurisdiction; and he [cannot] be permitted, by invading the property and excluding the actual possessor, to place upon the latter the burden of instituting an action to try the property right.[56]

In ejectment cases, courts will only resolve the issue of ownership provisionally if the issue of possession cannot be resolved without passing upon it. In *Co v. Militar*:[57]

We have, time and again, held that the only issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants. Moreover, an ejectment suit is summary in nature and is not susceptible to circumvention by the simple expedient of asserting ownership over the property.

In forcible entry and unlawful detainer cases, even if the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the lower courts and the Court of Appeals, nonetheless, have the undoubted competence to provisionally resolve the issue of ownership for the sole purpose of determining the issue of possession.

Such decision, however, does not bind the title or affect the ownership of the land nor is conclusive of the facts therein found in

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[56] *Id*. at 757.

[57] 466 Phil. 217 (2004) [Per *J*. Ynares-Santiago, First Division].

a case between the same parties upon a different cause of action involving possession.[58]

In this instance, respondents anchor their right of possession over the disputed property on TCT No. 53698[59] issued in their names. It is true that a registered owner has a right of possession over the property as this is one of the attributes of ownership.[60] Ejectment cases, however, are not automatically decided in favor of the party who presents proof of ownership, thus:

> Without a doubt, the registered owner of real property is entitled to its possession. However, the owner cannot simply wrest possession thereof from whoever is in actual occupation of the property. To recover possession, he must resort to the proper judicial remedy and, once he chooses what action to file, he is required to satisfy the conditions necessary for such action to prosper.
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> In the present case, petitioner opted to file an ejectment case against respondents. Ejectment cases — forcible entry and unlawful detainer — are summary proceedings designed to provide expeditious means to protect actual possession or the right to possession of the property involved. The only question that the courts resolve in ejectment proceedings is: who is entitled to the physical possession of the premises, that is, to the possession *de facto* and not to the possession *de jure*. It does not even matter if a party's title to the property is questionable. For this reason, *an ejectment case will not necessarily be decided in favor of one who has presented proof of ownership of the subject property*. Key jurisdictional facts constitutive of the particular ejectment case filed must be averred in the complaint and sufficiently proven.[61] (Emphasis supplied)

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[58] *Id*. at 223-224, citing *Spouses Antonio and Genoveva Balanon-Anicete and Spouses Andres and Filomena Balanon-Mananquil v. Pedro Balanon*, 450 Phil. 615 (2003) [Per *J*. Ynares-Santiago, First Division]; *Embrado v. Court of Appeals*, 303 Phil. 344 (1994) [Per *J.* Bellosillo, First Division]; and *Republic v. Court of Appeals*, 305 Phil. 611 (1994) [Per *J*. Bidin, *En Banc*].

[59] *Rollo*, pp. 262-263.

[60] See *Co v. Militar*, 466 Phil. 217 (2004) [Per *J*. Ynares-Santiago, First Division].

[61] *Carbonilla v. Abiera*, 639 Phil. 473, 481 (2010) [Per *J*. Nachura, Second Division] citing *Go, Jr. v. Court of Appeals*, 415 Phil. 172, 183 (2001) [Per

Here, respondents alleged that their right of ownership was derived from their predecessors-in-interest, the Spouses Gonzales, whose Decree No. 699021 was issued on March 29, 1939.[62] The Register of Deeds certified that there was no original certificate of title or owner's duplicate issued over the property, or if there was, it may have been lost or destroyed during the Second World War. The heirs of the Spouses Gonzales subsequently executed a Deed of Full Renunciation of Rights, Conveyance of Full Ownership and Full Waiver of Title and Interest on March 24, 2004 in respondents' favor. Thus, respondent Anastacio Barbarona succeeded in having Decree No. 699021 reconstituted on July 27, 2004 and having TCT No. 53698 issued in respondents' names on February 7, 2005.[63]

The Municipal and Regional Trial Courts referred to respondents' Torrens title as basis to rule the ejectment case in their favor:

> The complaint in this case sufficiently . . . establish[es] beyond doubt that [the Spouses Barbarona] are the lawful owners of Lot 1936, situated at Jagobiao, Mandaue City, as evidenced by Transfer Certificate of Title No. 53698. . . .
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> A certificate of title is a conclusive evidence of ownership and as owners, the [the Spouses Barbarona] are entitled to possession of the property. . . .
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> This Court however cannot just simply closed (sic) its eyes into the fact presented before the trial court that the subject lot owned by [the Spouses Barbarona] is covered by a Torrens Certificate of Title. Until such time or period that such title is rendered worthless, the same is BINDING UPON THE WHOLE WORLD in terms of ownership[.][64] (Emphasis in the original)

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*J.* Gonzaga-Reyes, Third Division] and *David v. Cordova*, 502 Phil. 626 (2005) [Per *J.* Tinga, Second Division].

[62] *Rollo*, p. 258.

[63] *Id.* at 259-262.

[64] *Id.* at 107 and 117.

During the interim, the Republic of the Philippines, represented by the Office of the Solicitor General, filed a Petition for Annulment of Judgment before the Court of Appeals to assail the reconstitution of Decree No. 699021, docketed as CA-G.R. SP No. 01503. On February 19, 2007,[65] the Court of Appeals in that case found that the trial court reconstituted the title without having issued the required notice and initial hearing to the actual occupants, rendering all proceedings void. The dispositive portion of the Decision read:

> WHEREFORE, in the light of the foregoing, judgment is hereby rendered GRANTING the instant petition and SETTING ASIDE the Order of Branch 55 of the Regional Trial Court, Mandaue City in Case No. 3 G.L.R.O., Record No. 4030.
>
> SO ORDERED.[66]

As a consequence of this ruling, TCT No. 53698 was cancelled by the Register of Deeds on January 25, 2011.[67]

Despite these developments, the Court of Appeals in this case proceeded to affirm the Municipal Trial Court's and Regional Trial Court's judgments on the basis that Decree No. 699021 was still valid, stating:

> Whether or not [the Spouses Barbarona are] holder[s] or not of a certificate of title is immaterial. The matter of the issuance of the decree by the Land Registration Office in favor of [the Spouses Barbarona's] predecessor[s-]in[-]interest has not been resolved on the merits by the RTC. [The Spouses Barbarona,] having acquired all the rights of their predecessors-in-interest[,] have[,] from the time of the issuance of the decree[,] also derived title over the property and nullification of the title based on procedural defects is not tantamount to the nullification of the decree. The decree stands and remains a prima facie source of the [Spouses Barbarona's] right of ownership over the subject property.[68]

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[65] *Id*. at 125.

[66] *Id*. at 131.

[67] *Id*. at 263.

[68] *Id*. at 64.

Blinded by respondents' allegedly valid title on the property, the three (3) tribunals completely ignored how petitioner came to occupy the property in the first place.

Petitioner, a public hospital operating as a leprosarium dedicated to treating persons suffering from Hansen's disease, has been occupying the property since May 30, 1930. According to its history:

> The institution was built by the Leonard Wood Memorial with most of the funds donated by the late Mr. Eversley Childs of New York, USA, hence the name, Eversley Childs Sanitarium, in honor of the late donor. The total cost was about ₱400,000.00 which were spent for the construction of 52 concrete buildings (11 cottages for females and 22 for males, 5 bathhouses, 2 infirmaries, powerhouse, carpentry shop, general kitchen and storage, consultation and treatment clinics and offices), waterworks, sewerage, road and telephone system, equipment and the likes.
>
> The construction of the building [was] started sometime on May 1928 and was completed 2 years later. It was formally turned over the Philippine government and was opened [on] May 30, 1930 with 540 patients transferred in from Caretta Treatment Station, now Cebu Skin Clinic in Cebu City.[69]

Proclamation No. 507 was issued on October 21, 1932, "which reserved certain parcels of land in Jagobiao, Mandaue City, Cebu as additional leprosarium site for the Eversley Childs Treatment Station."[70] Petitioner's possession of the property, therefore, pre-dates that of respondents' predecessors-in-interest, whose Decree No. 699021 was issued in 1939.

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[69] Department of Health, Eversley Childs Sanitarium, *About Us*, <http://ecs.doh.gov.ph/13-about-us?start=4> (Accessed March 23, 2018).

[70] Proc. No. 1772 (2009), also known as Amending Proclamation No. 507 dated October 21, 1932 which Reserved Certain Parcels of Land in Jagobiao, Mandaue City, Cebu as Additional Leprosarium Site for the Eversley Childs Treatment Station, by Excluding Portions thereof and Development and Socialized Housing Site Purposes in Favor of Qualified Beneficiaries under the Provisions of Republic Act No. 7279 Otherwise Known as the Urban Development Housing Act.

It is true that defects in TCT No. 53698 or even Decree No. 699021 will not affect the fact of ownership, considering that a certificate of title does not vest ownership. The Torrens system "simply recognizes and documents ownership and provides for the consequences of issuing paper titles."[71]

Without TCT No. 53698, however, respondents have no other proof on which to anchor their claim. The Deed of Full Renunciation of Rights, Conveyance of Full Ownership and Full Waiver of Title and Interest executed in their favor by the heirs of the Spouses Gonzales is insufficient to prove conveyance of property since no evidence was introduced to prove that ownership over the property was validly transferred to the Spouses Gonzales' heirs upon their death.

Moreover, Proclamation No. 507, series of 1932, *reserved* portions of the property specifically for petitioner's use as a leprosarium. Even assuming that Decree No. 699021 is eventually held as a valid Torrens title, a title under the Torrens system is always issued subject to the annotated liens or encumbrances, or what the law warrants or reserves. Thus:

> Under the Torrens system of registration, the government is required to issue an official certificate of title to attest to the fact that the person named is the owner of the property described therein, subject to such liens and encumbrances as thereon noted *or what the law warrants or reserves*.[72] (Emphasis supplied)

Portions occupied by petitioner, having been reserved by law, cannot be affected by the issuance of a Torrens title. Petitioner cannot be considered as one occupying under mere tolerance of the registered owner since its occupation was by virtue of law. Petitioner's right of possession, therefore, shall remain unencumbered subject to the final disposition on the issue of the property's ownership.

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[71] Concurring and Dissenting Opinion of J. Leonen in *Heirs of Malabanan v. Republic*, 717 Phil. 141, 207 (2013) [Per J. Bersamin, *En Banc*].

[72] *Republic v. Guerrero*, 520 Phil. 296, 307 (2006) [Per J. Garcia, Second Division] *citing* Noblejas, *Land Titles and Deeds*, 32 (1986).

## III

There are three (3) remedies available to one who has been dispossessed of property: (1) an action for ejectment to recover possession, whether for unlawful detainer or forcible entry; (2) *accion publiciana* or *accion plenaria de posesion*, or a plenary action to recover the right of possession; and (3) *accion reivindicatoria*, or an action to recover ownership.[73]

Although both ejectment and *accion publiciana* are actions specifically to recover the right of possession, they have two (2) distinguishing differences. The first is the filing period. Ejectment cases must be filed within one (1) year from the date of dispossession. If the dispossession lasts for more than a year, then an *accion publiciana* must be filed. The second distinction concerns jurisdiction. Ejectment cases, being summary in nature, are filed with the Municipal Trial Courts. *Accion publiciana*, however, can only be taken cognizance by the Regional Trial Court.[74]

Petitioner argues that the Municipal Trial Court has no jurisdiction over the case since respondents' cause of action makes a case for *accion publiciana* and not ejectment through unlawful detainer. It asserts that respondents failed to prove that petitioner occupied the property by mere tolerance.

Jurisdiction over subject matter is conferred by the allegations stated in the complaint.[75] Respondents' Complaint before the Municipal Trial Court states:

> That [the occupants] are presently occupying the above-mentioned property of the [Spouses Barbarona] without color [of] right or title. Such occupancy is purely by mere tolerance. Indeed, [the occupants']

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[73] See *Bejar v. Caluag*, 544 Phil. 774, 779 (2007) [Per *J*. Sandoval-Gutierrez, First Division].

[74] See *Bejar v. Caluag*, 544 Phil. 774, 779-780 (2007) [Per *J*. Sandoval-Gutierrez, First Division].

[75] See *Encarnacion v. Amigo*, 533 Phil. 466 (2006) [Per *J*. Ynares-Santiago, First Division].

occupying the lot owned by [the Spouses Barbarona] is illegal and not anchored upon any contractual relations with the [Spouses Barbarona.][76]

Indeed, no mention has been made as to how petitioner came to possess the property and as to what acts constituted tolerance on the part of respondents or their predecessors-in-interest to allow petitioner's occupation. In *Carbonilla v. Abiera*:[77]

A requisite for a valid cause of action in an unlawful detainer case is that possession must be originally lawful, and such possession must have turned unlawful only upon the expiration of the right to possess. It must be shown that the possession was initially lawful; hence, the basis of such lawful possession must be established. If, as in this case, the claim is that such possession is by mere tolerance of the plaintiff, the acts of tolerance must be proved.

Petitioner failed to prove that respondents' possession was based on his alleged tolerance. He did not offer any evidence or even only an affidavit of the Garcianos attesting that they tolerated respondents' entry to and occupation of the subject properties. A bare allegation of tolerance will not suffice. Plaintiff must, at least, show overt acts indicative of his or his predecessor's permission to occupy the subject property. . . .

. . . . . .

In addition, plaintiff must also show that the supposed acts of tolerance have been present right from the very start of the possession —from entry to the property. Otherwise, if the possession was unlawful from the start, an action for unlawful detainer would be an improper remedy. Notably, no mention was made in the complaint of how entry by respondents was effected or how and when dispossession started. Neither was there any evidence showing such details.

In any event, petitioner has some other recourse. He may pursue recovering possession of his property by filing an *accion publiciana*, which is a plenary action intended to recover the better right to possess; or an *accion reivindicatoria*, a suit to recover ownership of real property. We stress, however, that the pronouncement in this case

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

[77] 639 Phil. 473 (2010) [Per *J.* Nachura, Second Division].

as to the ownership of the land should be regarded as merely provisional and, therefore, would not bar or prejudice an action between the same parties involving title to the land.[78]

The same situation is present in this case. Respondents failed to state when petitioner's possession was initially lawful, and how and when their dispossession started. All that appears from the Complaint is that petitioner's occupation "is illegal and not anchored upon any contractual relations with [respondents.]"[79]

This, however, is insufficient to determine if the action was filed within a year from dispossession, as required in an ejectment case. On the contrary, respondents allege that petitioner's occupation was illegal from the start. The proper remedy, therefore, should have been to file an *accion publiciana* or *accion reivindicatoria* to assert their right of possession or their right of ownership.

Considering that respondents filed the improper case before the Municipal Trial Court, it had no jurisdiction over the case. Any disposition made, therefore, was void. The subsequent judgments of the Regional Trial Court and the Court of Appeals, which proceeded from the void Municipal Trial Court judgment, are likewise void.

**WHEREFORE**, the Petition is **GRANTED**. The February 17, 2011 Decision and August 31, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 02762 are **REVERSED** and **SET ASIDE**. The Temporary Restraining Order dated May 13, 2011 is made **PERMANENT**.

**SO ORDERED.**

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

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[78] *Id*. at 482-483, citing *Spouses Macasaet v. Spouses Macasaet*, 482 Phil. 853 (2004) [*J*. Panganiban, Third Division]; *Valdez, Jr. v. Court of Appeals*, 523 Phil. 39 (2006) [Per *J*. Chico-Nazario, First Division]; and *Asis v. Asis Vda. de Guevarra*, 570 Phil. 173 (2008) [Per *C.J*. Puno, First Division].

[79] *Rollo*, p. 74.

**FIRST DIVISION**

[G.R. No. 198393. April 4, 2018]

**REPUBLIC OF THE PHILIPPINES,** *petitioner, vs.* **RODOLFO M. CUENCA, FERDINAND E. MARCOS, IMELDA R. MARCOS, ROBERTO S. CUENCA, MANUEL I. TINIO, VICTOR AFRICA, MARIO K. ALFELOR, DON M. FERRY and OSCAR BELTRAN,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; APPEALS; RULE 45 PETITION; LIMITED ONLY TO QUESTIONS OF LAW; HOW TO DETERMINE QUESTION OF LAW.—** Section 1, Rule 45 requires that only questions of law should be raised in an appeal by *certiorari*. Subject to certain exceptions, the factual findings of lower courts bind the Supreme Court. The limitation finds justification as this Court is not a trier of facts that undertakes the re-examination and re-assessment of the evidence presented by the contending parties during the trial. This Court thus receives with great respect the lower court's appreciation and resolution of factual issues. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented. There is a question of law in a given case when the doubt or difference arises as to what the law is on certain state of facts.

**2. ID.; ID.; ID.; RULE 45 DOES NOT ENVISION A RE-EVALUATION OF THE SUFFICIENCY OF THE EVIDENCE.—** In order to determine the veracity of the Republic's main contention that it has established a *prima facie* case against respondents through its documentary and testimonial evidence, a reassessment and reexamination of the evidence is necessary. Unfortunately, the limited and discretionary judicial review allowed under Rule 45 does not envision a re-evaluation of the sufficiency of the evidence upon which respondent court's action was predicated.

**3. ID.; EVIDENCE; BEST EVIDENCE RULE; MERE PHOTOCOPY, BEING SECONDARY EVIDENCE, IS NOT**

**ADMISSIBLE UNLESS IT IS SHOWN THAT THE ORIGINAL IS UNAVAILABLE; REQUIREMENTS BEFORE A PARTY MAY BE ALLOWED TO ADDUCE SECONDARY EVIDENCE.—** [A] photocopy, being merely secondary evidence, is not admissible unless it is shown that the original is unavailable. x x x Pursuant to [Section 5, Rule 130], before a party is allowed to adduce secondary evidence to prove the contents of the original, it is imperative that the offeror must prove: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. Hence, the correct order of proof is existence, execution, loss, and contents.

**4. ID.; ID.; ID.; FAILURE TO ADDUCE EITHER THE ORIGINAL OR THE CERTIFIED TRUE COPIES OF THE DOCUMENTS OR TO SHOW WHY THE ORIGINAL DOCUMENT IS UNAVAILABLE IN THE MANNER PROVIDED BY THE RULES OF COURT IS FATAL TO PETITIONER'S CAUSE.—** [T]he Sandiganbayan observed that the Republic failed to introduce either the original or the certified true copies of the documents during its examination-in-chief for purposes of identification, marking, authentication and comparison with the copies furnished the Sandiganbayan and the adverse parties. When the Sandiganbayan inquired as to whether the Republic will present the original or certified true copies of its documentary exhibits, the Republic answered that it will do so, if necessary, as the originals are kept in the Central Bank vault. Despite knowledge of the existence and whereabouts of the documents' originals, the Republic still failed to present the same and contented itself with the presentation of mere photocopies. Neither was there any showing that the Republic exerted diligent efforts to produce the original. Further, despite the Republic's claim that the excluded documentary exhibits are public documents, the Sandiganbayan is correct in observing that the Republic failed to show, in case of a public record in the custody of a public officer or is recorded in a public office, an official publication thereof or a copy attested by the officer having the legal custody of the record or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certification that such officer has the custody, or in the case of a public record of a private document, the

original record, or a copy thereof attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody.

**5. ID.; ID.; PREPONDERANCE OF EVIDENCE; THE WEIGHT OF THE EVIDENCE IN THIS CASE FAILS TO PREPONDERATE IN THE PETITIONER'S FAVOR.—** Juxtaposing the specific allegations in the complaint with the Republic's documentary and testimonial evidence and as against the respondents' documentary and testimonial evidence showing the due organization and existence of CDCP, the Court agrees with the Sandiganbayan that the weight of evidence fails to preponderate in the Republic's favor. Neither were the Presidential issuances nor the witnesses' testimonies sufficient to prove the allegations in the Republic's complaint.

**APPEARANCES OF COUNSEL**

*Ferry Toledo Gonzaga Tria & Associates* for respondent Don M. Feny.

*Gancayco Balasbas & Associates Law Offices* for respondents Cuencas and Tinio.

*V.V. Asuncion, Jr.* for respondent Alfelor.

*Robert A.C. Sison & Maria Frances M. Marfil* for respondent Imelda Marcos.

**D E C I S I O N**

**TIJAM, *J.*:**

Petitioner Republic of the Philippines (Republic), represented by the Presidential Commission on Good Government (PCGG), assails through this petition for review[1] under Rule 45, the Decision[2] dated August 5, 2010 of the Sandiganbayan in Civil Case No. 0016 which dismissed, for insufficiency of evidence, the Republic's complaint for reconveyance, reversion, accounting,

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[1] *Rollo*, pp. 16-349.

[2] Penned by Associate Justice Alex L. Quiroz and concurred in by Associate Justices Francisco H. Villaruz, Jr. and Efren N. De La Cruz. *Id*. at 68-104.

restitution and damages. Likewise assailed is the Sandiganbayan's Joint Resolution[3] dated August 31, 2011 dismissing the Republic's motion for reconsideration.

**The Antecedents**

On July 24, 1987, the Republic, through the PCGG and assisted by the Office of the Solicitor General (OSG), filed a complaint[4] for reconveyance, reversion, accounting, restitution and damages against respondents Rodolfo M. Cuenca, Ferdinand E. Marcos,[5] Imelda R. Marcos, Roberto S. Cuenca, Manuel I. Tinio, Jose L. Africa, Mario K. Alfelor,[6] Don M. Ferry and Oscar P. Beltran,[7] together with other individuals namely, Saul Y. Alfonso, Nora O. Vinluan, Panfilo O. Domingo, Roberto V. Ongpin, Ricardo P. de Leon, Arturo Lazo, Arthur C. Balch, Rodolfo M. Munsayac, and Antonio L. Carpio. The complaint was later amended to include corporate defendants[8] alleged to be beneficially owned or controlled by respondent Rodolfo M. Cuenca.[9]

Through its complaint and its amendments, the Republic sought to recover from respondents alleged ill-gotten wealth which they acquired in unlawful concert with one another, in breach of trust, and with grave abuse of right and power, which resulted to their unjust enrichment during Ferdinand E. Marcos' rule from December 30, 1965 to February 25, 1986.[10]

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[3] *Id*. at 105-116.

[4] *Id*. at 123-154.

[5] Designated in this case by his legal representative and co-respondent, Imelda R. Marcos.

[6] Deceased. *Id*. at 1187.

[7] Deceased. *Id*. at 373.

[8] Namely, Universal Holdings Corporation, Philippine National Construction Corporation (formerly CDCP), Sta. Ines Melale Corporation (formerly Sta. Ines Melale Forests Products), Sta. Ines Melale Veneer and Plywood, Inc. (formerly Sta. Ines Venner & Plywood, Inc.), Resort Hotels Corporation, CDCP Mining Inc., Galleon Shipping Corporation and Cuenca Investments Corporation. *Id*. at 159.

[9] *Id*. at 155-186.

[10] *Id*. at 124.

Specifically, the Republic enumerated the alleged illegal acts committed by respondents in this wise:

12. Defendant, Rodolfo M. Cuenca, by himself, and/or in unlawful concert with defendants Ferdinand E. Marcos and Imelda R. Marcos, taking undue advantage of his influence and association and with the active collaboration and willing participation of above defendant spouses, engaged in schemes, devices and strategems designed to unjustly enrich themselves and to prevent disclosure and discovery of ill-gotten assets, among others:

(a) created, organized and managed the Construction and Development Corporation of the Philippines (CDCP), originally from a company known as "Cuenca Construction" and, with the active collaboration, knowledge, assistance and willing participation of defendants Jose L. Africa, Nora O. Vinluan, Roberto S. Cuenca, and Panfilo O. Domingo, obtained favored public works contracts amounting to billions of pesos from the Department of Public Works which later became the Department of Public Highways, and from the National Irrigation Administration, such as the construction of sugar centrals, the Philippine Associated Smelting and Refining Corporation (PASAR), the Philippine Phosphate Fertilizer Corporation (PHILPHOS), and the Light Railway Transit Project (LRT), among others, under terms and conditions manifestly disadvantageous to Plaintiff and the Filipino people;

(b) secured loans and financial assistance fro[m] government financial institutions without sufficient collateral, in contravention of banking laws and sound banking practices, and other terms and conditions manifestly disadvantageous to said government institutions, the plaintiff and the Filipino people. Defendant Panfilo O. Domingo, as director and president of one of these government financial institutions — the Philippine National Bank, abetted, facilitated and collaborated in the illegal execution and release of such loans and financial assistance to CDCP, among other corporations of defendant Rodolfo M. Cuenca, in violation of law, sound banking practice and his duty of loyalty and due care to PNB, to its extreme damage and prejudice and that of plaintiff and the Filipino people;

(c) secured a favored rescue arrangement at the behest of defendants Ferdinand Marcos and Imelda R. Marcos in the form, among others, of conversion of multimillion peso debt in favor of NDC into equity, release of collaterals to CDCP of government funds in violation

of the outstanding policy that no such funds shall be paid to persons and/or corporations which have obligations with the government, through the illegal and unconstitutional use of the Letters of Instructions, to the grave damage and prejudice of plaintiff and the Filipino people;

(d) acquired, through Galleon Shipping Corporation, which was beneficially held and/or controlled by defendant Rodolfo M. Cuenca, vessels with dollar loans from abroad, on guarantee of the Development Bank of the Philippines (DBP), for clearly overpriced consideration including improper payments, such as bribes, kickbacks and commissions given to defendants, which loans remain unpaid to date, to the gross disadvantage of plaintiff and the Filipino people;

(e) secured, after Galleon Shipping Corporation defaulted in its obligations, additional financial assistance from government institutions, through the issuance of Letter of Instruction No. 1155, which required the National Development Company (NDC) to buy out the entire shareholdings in Galleon Shipping Corporation of defendant Rodolfo M. Cuenca, Arthur C. Balch, Manuel I. Tinio, Mario K. Alfelor, Rodolfo Munsayac and those of other stockholders for ₱46.7 Million and to provide the required additional equity;

(f) caused NDC to purchase worthless shares of defendant Rodolfo M. Cuenca in CDCP at par value to the detriment of government institutions and plaintiff;

(g) conspired and executed with the help, cooperation and participation of the other defendants, such other schemes and devices to defraud plaintiff and its agencies millions of pesos for their personal benefit;

(h) willingly participating in defendants Rodolfo M. Cuenca, Ferdinand Marcos and Imelda R. Marcos' scheme to enrich themselves at the expense of plaintiff and the Filipino people, defendants Antonio L. Carpio, Manuel I. Tinio, Arthur C. Balch, Mario K. Alfelor, Rodolfo Munsayac, Roberto V. Ongpin and Don M. Ferry unlawfully caused NDC to release ₱46.7 Million to Galleon Shipping Corporation; allowed defendant Rodolfo M. Cuenca to continue running the Galleon Shipping Corporation; released defendant Rodolfo M. Cuenca's counter-guarantees for the security of the loans guaranteed by the NDC and DBP and, released the first mortgage of DBP over vessels owned by Galleon Shipping Corporation, thereby resulting in substantial loss of

government funds, to the prejudice and damage of plaintiff and the Filipino people;

(i) organized the Universal Holding Corporation, a holding company for CDCP, Sta. Ines Melale, and Resort Hotels, all beneficially held and/or controlled by Ferdinand Marcos, Imelda R. Marcos and Rodolfo M. Cuenca, which corporations with the help, cooperation and participation of defendants Jose L. Africa, Roberto Cuenca, Manuel Tinio, Mario Alfelor, Rodolfo Munsayac, Arthur Balch, Nora O. Vinluan, Ricardo de Leon, among others as directors, officers and/or agents thereof, served as conduits for deposit abroad of illegally obtained funds and property;

(j) transferred, through the Security Bank and Trust Company, US$8 Million to CDCP International Bank account with Irving Trust, N.Y., which amount was utilized by defendant Ferdinand E. Marcos and Imelda R. Marcos in the purchase of New York properties.

13. Defendants Oscar P. Beltran and Saul Y. Alfonso of the Merchants Construction and Development Corporation, Ricardo P. De Leon and Arturo Lazo of Tierra Factors Corporation, participated and/or allowed themselves at one time or another to be used in achieving the schemes, devises and strategems of defendants Ferdinand E. Marcos and Imelda R. Marcos to enrich themselves at the expense of plaintiff and the Filipino people.

14. The acts of defendants, singly or collectively, and/or in unlawful concert with one another constitute brazen abuse of right and power, unjust enrichment, flagrant breach of public trust and fiduciary obligations, acquisition of position and authority, violation of the Constitution and laws of the Republic of the Philippines, to the grave and irreparable damage of plaintiff and the Filipino people.[11]

The Sandiganbayan dismissed the case as against Arturo Lazo and Ricardo P. de Leon for failure to state a cause of action. Imelda R. Marcos was designated as Ferdinand E. Marcos' legal representative upon the latter's death in 1989, while Arthur C. Balch's heirs[12] were substituted as defendants. Saul Y. Alfonso,

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[11] *Id.* at 165-172.

[12] Namely, Jacinta T. Balch, Tress A. Balch, Charles Arthur Balch, Jr., Sherryl Lyn Zeñarosa and Bryan Wesley Head.

Mario K. Alfelor, Rodolfo M. Munsayac, Don M. Ferry and Sta. Ines Melale Veneer and Plywood, Inc., filed their respective answers but did not participate in the proceedings.[13]

In support of its complaint, the Republic presented the testimonies of Ma. Lourdes O. Magno (PCGG Records Officer II), Evelita E. Celis (Financial Analyst V of the PCGG's Research and Intelligence Department), Evelyn R. Singson (Executive Vice-President of Security Bank and Trust Company), Atty. Orlando L. Salvador (Coordinator and Legal Consultant of the Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans) and Stephen P. Tanchuling (Records Officer V of PCGG's Research Department).[14]

The testimonies of the witnesses for the Republic are summarized by the Sandiganbayan in its assailed Decision as follows:

> Ma. Lourdes O. Magno was Records Officer II of the PCGG from May 1992 up to the time of her testimony in January 1999. Magno was custodian of the records for the PCGG, including the documents in this case, marked as Exhibits "A" to "Y" for the [petitioner]. She testified that while some of the records of the PCGG were turned over by the previous Chairman and Commissioners of the PCGG and others came from its Research Department, she could not determine how each particular document was obtained by the PCGG.
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> Evelita E. Celis was Financial Analyst V of the Research and Intelligence Department of the PCGG since February 17, 1992. She testified that the main function of their department was to conduct research, gather, evaluate and analyze the data, and then to prepare a comprehensive report to be submitted to the PCGG's Legal Department for verification reports. She prepared the report entitled, "Executive Summary of Rodolfo M. Cuenca, SB Case No. 0016" after she had analyzed the documents pertinent to this case. However, she stated that she had no personal knowledge of the transactions involved in said documents. The documents were gathered by the staff of the Intelligence Division from various sources such as the

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

[14] *Id.* at 29.

Presidential Library, the Asset Privatization Trust, the Office of the Securities and Exchange Commission, and from the files of the Behest Loans cases.

Evelyn R. Singson was Executive Vice President of Security Bank and Trust Company from 1980 to 1986. She testified that she executed an Affidavit on August 18, 1986 in connection with the efforts of the government to recover the Marcos wealth.

Atty. Orlando L. Salvador was coordinator and legal consultant of the Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans. He testified that the said committee was created on October 8, 1992 by then President Fidel Ramos by virtue of his issuance of Administrative Order No. 30 (A.O. No. 30). On November 9, 1992, President Ramos issued Memorandum Order No. 61 (M.O. No. 61), which broadened the scope of the *Ad Hoc* Committee to include investigation, inventory and study of all non-performing loans, both behest and non-behest. When the Committee had concluded its investigation, including its review and examination of the account of the PNCC, Salvador made an Executive Summary thereof and submitted it to then President Ramos. The same report was attached to his complaint affidavit which was subsequently filed before the Ombudsman on May 18, 1994 against the defendants.

On cross-examination, Salvador claimed that although he sat in the deliberations of the Committee as its consultant and was asked for his opinion on certain matters, he was not given the opportunity to vote. However, he had no personal knowledge of the different transactions making up the account and his participation was limited to summarizing the report which he digested into his Executive Summary. He reiterated that he did not interview parties involved in the transactions of the behest loans, but only reviewed the findings and reports submitted to him because his role was to ascertain whether the reports faithfully reflected the circumstances of each account as stated in the documents. Also, he alleged that he did not indict the Marcoses in his complaint affidavit despite their participation in the form of marginal notes on the documents subject of his report because the marginal notes were only favorable endorsements and did not qualify under the definition of behest loans. He further reasoned that it was up to the Ombudsman to determine who should be the defendants in a criminal case.

Stephen P. Tanchuling was Records Officer V of the Research Department of the PCGG for more than four years at the time he

gave his testimony. He testified that it was his job to secure documents from the concerned agencies, then to collate the same upon order of the Legal Department. He claimed that the Research Department prepared the official report entitled "Executive Summary on Rodolfo Cuenca (SB Case No. 0016)" and that most of its supporting documents came from the Presidential Library in Malacañang. While he attested that the supporting documents were certified true copies, he admitted that he did not ask the Records Custodian if said copies were based on actual originals existing in their departments.[15]

The Republic then proceeded to formally offer its documentary evidence. Acting on the Republic's formal offer of evidence, as well as the comments/oppositions filed by the respondents, the Sandiganbayan resolved to admit only the following exhibits:[16]

| Exhibit | Description | Purpose |
|---|---|---|
| A-4 | PD No. 1112 dated 31 March 1997, Authorizing the Establishment of Toll Facilities on Public Improvements, Creating a Board for the Regulation Thereof and for Other Purposes. | To show that deposed president Marcos used vast totalitarian powers to favor cronies and herein defendants for the purpose of perpetrating ill-gotten wealth through conduit corporations including CDCP, its subsidiaries, and other corporations herein involved. |
| A-5 | PD No. 1113 dated 31 March 1997, granting the CDCP a Franchise to Operate, Construct and Maintain Toll Facilities in the North and South Luzon Toll Expressways and for other purposes. | -do- |

[15] *Id*. at 74-77.

[16] *Id*. at 395-400.

| | | |
|---|---|---|
| A-6 | PD 1984 issued in 1983, extending the duration of the franchise of CDCP for another thirty (30) years. | -do- |
| A-14 | LOI No. 1136 issued on 27 May 1981 by Pres. Marcos, directing DBP and/or NDC to guarantee a financial restructuring of $150 million to $200 million for CDCP. | To show the indispensable cooperation of defendant Antonio L. Carpio in his capacity as Chairman of the NDC in siphoning and manipulating government funds, as part of the ill-gotten wealth amassed by the defendants. |
| A-18 | LOI No. 1107 dated 16 February 1981 directing the government to determine the need for an industrial rehabilitation program to assist financially distressed companies. | To show how the late President Marcos issued orders for his and his cronies' personal gain and benefit. |
| A-20 | LOI No. 1295 issued by President Marcos on 23 February 1983, directing the DBP, PNB, GSIS, LBP, NDC and PhilGuarantee to convert the loan obligations of CDCP into shares of common stock. | To show that defendant Rodolfo Cuenca obtained a favored rescue arrangement at the behest of President Marcos through the conversion of a multi-million peso debt in favor of NDC and other government financial institutions into equity, the release of collaterals to CDCP, its subsidiaries and affiliates, notwithstanding that it had unpaid obligations and the security of payments to CDCP of government funds in violation of the standing policy against such payments to persons as firms having obligations with the |

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| | | government and to show the involvement of the other defendants who were officers of the above government financial institutions including Antonio L. Carpio and the co-defendants mentioned under Exhibit A-9. |
| A-60 | LOI No. 1296 issued on 23 February 1981, which directed the PNB to release its security interests on certain assets of CDCP and those of its two wholly owned subsidiaries namely, the Marina Properties Corp. (MPC), and the Manila Land Corp. (MLC). | (a) To show that President Marcos committed grave, blatant, and open abuse of authority and excesses and plundered the government funds to favor private interest of CDCP;<br>(b) To show that the CDCP and its affiliates are dummies and conduit corporations of President Marcos in amassing ill-gotten wealth and plunder of the national wealth and treasury. |
| A-61 | LOI No. 1297 issued on 23 February 1981, directing all government ministries, bureaus, agencies and corporations with outstanding payables to CDCP to expedite payment of the same. | To show the magnitude and special favors given by Pres. Marcos to CDCP, to the point of issuing an LOI in the exercise of law-making power, thus showing that CDCP and its affiliates are dummies and conduit corporations of Pres. Marcos. |
| A-69 | LOI No. 1155 dated 21 July 1981, directing a rehabilitation plan for Galleon Shipping Corp. | a) To show the use of totalitarian power by Pres. Marcos for the private interests of Galleon Shipping Corp.<br>b) To justify sequestration and reversion of the properties herein involved to the state. |

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| D | *Administrative Order No.* 13 dated 8 October 1992 issued by the president of the Philippines, creating a Presidential Ad Hoc Fact Finding Committee on Behest Loans. | a) To lay the legal and factual basis for the recovery of behest loans extended by Pres. Marcos to his cronies, relatives and friends.<br>b) To criminally prosecute officials and persons involved. |
| E | *Memorandum Order No.* 61 dated 9 November 1992 issued by the President of the Philippines, broadening the scope of the Ad Hoc Fact-Finding Committee on Behest Loans. | -do- |
| G-1 | Copy of *Memorandum Order No. 91*. | -do- |
| M | *Decision* dated July 10, 2000 in SEC Case No. 05 96 5357, entitled, *Rodolfo M. Cuenca v. [PNCC], et al.* | To show that the SEC hearing panel dismissed Rodolfo M. Cuenca's complaint to annul the shares of capital stocks issued to therein defendants GFIs pursuant to LOI 1295. |
| N | *Order* dated August 8, 2000 in SEC Case No. 807 entitled,*Rodolfo M. Cuenca v. Hon. Alberto P. Atas, et al.*, issued by the SEC En Banc. | To show that the SEC En Banc affirmed the July 10, 2000 *Decision* of the SEC Hearing Panel, thus dismissing Rodolfo Cuenca's appeal of the July 10, 2000 Decision. |
| O | *Decision* dated 29 November 2000 of the Court of Appeals in CA-G.R. SP No. 60366, entitled, *Rodolfo M. Cuenca v. Hon. Alberto P. Atas, et al.* | To show that the Court of Appeals affirmed the 8 August 2000 Order of the SEC En Banc thus denying Rodolfo M. Cuenca's appeal of the said Order. |

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| P | *Entry of Judgment* in CA-G.R. SP No. 60366 entered in the Book of Entries of Judgments stating the Finality of the 29 November 2000 *Decision* of the Court of Appeals. | To show that the Nov. 29, 2000 Decision of the Court of Appeals denying Cuenca's appeal of the Decision dismissing his Complaint had become final and executory on December 29, 2000. |
| R | *Resolution* dated 14 February 2001 of the Honorable Supreme Court in G.R. No. 146214. | To show that the Supreme Court denied Rodolfo Cuenca's petition in its *Resolution* dated 14 February 2001. |
| T | *Resolution* of the Supreme Court dated 7 March 2001. | To show that the Supreme Court granted Cuenca's *Motion for Reconsideration* thus reinstating his petition. |
| U | *Complaint* dated 29 May 1996 filed before SEC SICD in SEC Case No. 05 96 5357 by Rodolfo M. Cuenca. | To show that Rodolfo Cuenca filed a complaint to annul the shares issued to defendant GFIs before the SEC. |
| U-1 | Par. No. 3 of the Complaint. | To show that Cuenca admitted that he was and still is a registered stockholder of PNCC/CDCP although some of his shares therein have been sequestered by the PCGG. |
| U-2 | Par. No. 4.1, page 3 of the *Complaint*. | To show that Cuenca admitted that in 1982 he controlled the management of PNCC/CDCP and that he was its President and Chief Executive Officer. |
| U-3 | Signature of Rodolfo M. Cuenca on page 14 of the *Complaint*. | To show the authenticity of the *Complaint*. |
| V | *Amended Complaint* dated 20 March 1998 | -do- |

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| V-1 | Pars. 3 and 4, page 3 of the *Amended Complaint*. | To show that Cuenca admitted that he was and still is a registered stockholder of PNCC although some of his shares have been sequestered by the PCGG and that he and the Cuenca Investment Corporation has 3,254,148 shares in PNCC or a percentage of 4.98%. |
| V-2 | Par. 4.1 of the *Amended Complaint* | To show that Cuenca admitted that he controlled the management of PNCC in 1982 and that he was its President and Chairman. |
| V-3 | Signature of Roberto S. Cuenca, Rodolfo M. Cuenca's son on page 30 of the *Amended Complaint.* | To show the authenticity of the amended complaint. |
| W | *Second Amended Complaint* dated 19 June 2000. | Same as in *Exhibit U*. |
| W-1 | Pars. 3 and 4, page 3 of the *Second Amended Complaint*. | To show that Cuenca admitted that he was and still is a registered stockholder of PNCC although some of his shares have been sequestered by the PCGG and that he and his Cuenca Investment Corp. owns 5% of the shares; and that he controlled management of PNCC in 1982 and that he was its President and Chief Executive Officer. |
| W-2 | Signature of Rodolfo M. Cuenca on page 19 of the *Second Amended Complaint*. | To show the authenticity of the *Second Amended Complaint.* |
| X | *Third Amended Complaint* dated 5 May 1998 filed in Civil | To show that Cuenca filed a complaint praying that |

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| | Case No. 985 1356 entitled, *Rodolfo M. Cuenca, for and in behalf of the Philippine National Construction Corp. v. Asset Privatization Trust, GSIS, PNB, DBP, NDC, LBP and PEFLGC, before Branch 142, RTC, Makati.* | defendant GFIs be ordered to strictly comply with LOI 1295 and to immediately convert all their loan credits against PNCC into shares of common stocks in PNCC. |
| X-1 | Par. 1 of the *Third Amended Complaint.* | To show that Cuenca admitted that at all relevant times, he was and still is a registered stockholder of PNCC. |
| X-2 | Signature of Rodolfo M. Cuenca on page 12 of the *Third Amended Complaint.* | To show the authenticity of the *Third Amended Complaint.* |

Petitioner's other documentary evidence which were mere photocopies were excluded by the Sandiganbayan pursuant to the best evidence rule under Section 3, Rule 130.[17] Subsequently, Nora O. Vinluan, Panfilo O. Domingo, Antonio L. Carpio and Roberto V. Ongpin filed their respective demurrers to evidence which were granted by the Sandiganbayan, and thus, the complaint as against them was dismissed for insufficiency of evidence.[18]

On the other hand, respondents Rodolfo M. Cuenca, Roberto S. Cuenca and Manuel I. Tinio presented the testimonies of Rodolfo M. Cuenca and Atty. Cinderella B. Benitez (Securities Counsel III of the Company Registration Monitoring Department of the Securities and Exchange Commission).

Rodolfo M. Cuenca's testimony was offered for the following purposes:

That the defendant Rodolfo M. Cuenca would testify that there is no truth to any of the allegations against him in the third amended

[17] *Id.* at 238-246.

[18] *Id.* at 73.

complaint which stated that he and/or in unlawful concert with then President and Mrs. Ferdinand E. Marcos, taking advantage of his influence and association with and active collaboration of defendants spouses engaged in schemes, devices and stratagems designed to unjustly enrich themselves and to prevent disclosure and discovery of ill-gotten assets; by among others, a) organized and managed the CDCP by obtaining favored public work contracts under conditions manifestly disadvantageous to the government; b) secured loans and favored assistance from government financial institutions without sufficient collateral manifestly disadvantageous to said institutions; c) secured favored financial assistance for CDCP from President and Mrs. Marcos; d) government acquired the Galleon Shipping then owned by him on disadvantageous terms; e) secured favored assistance from NDC, and the other charges therein; and to rebut whatever evidence plaintiff adduced; to show that he was in fact and is a legitimate businessman who pursued his profession with dedication and whatever assets he may have acquired are the fruits of his honest labor and industry, and not thru any illegal means.[19]

Rodolfo M. Cuenca's testimony is summarized in the assailed Decision as follows:

Co-defendant Rodolfo, a businessman, denied having created the Construction and Development Corporation of the Philippines (CDCP), now the Philippine National Construction Corporation (PNCC), to obtain favored work contracts amounting to billions of pesos. He testified that he created the CDCP along with other businessmen, contractors and bankers using their own finances, then undertook projects in the Philippines and abroad, all of which were secured through public bidding. He also claimed that they funded constructions by borrowing money from local and American banks, government financial institutions, and by using the funds of their own shareholders.

On cross-examination, Rodolfo averred that he did not file a case for collection of a sum of money against government agencies as he relied on good representation with the government to help him. He also asserted that in 1981, the CDCP had no loan that was due or unpaid and, based on a study previously conducted, the CDCP was in good financial condition before February 1983.[20]

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[19] *Id*. at 402.

[20] *Id*. at 84.

On the other hand, the testimony of Atty. Cinderella B. Benitez was offered for the purpose of presenting and identifying certified copies of Construction Development Corporation of the Philippines' (CDCP's) Articles of Incorporation, By Laws and Financial Statements from 1981.[21]

Respondents then formally offered the following documentary evidence:

| Exhibit | Description | Purpose |
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| 1 | Certified machine copy of CDCP's *Articles of Incorporation* from SEC, consisting of several pages x x x | a) To prove that CDCP is a duly organized company for legitimate purposes under Philippine Laws.<br>b) To prove that defendant Rodolfo M. Cuenca did not organize and manage CDCP to prevent disclosure and discovery of ill-gotten assets as *Exhibit* 1 is a public record, easily accessible with the SEC. |
| 2 | First three (3) paragraphs of P.D. 1113, the *Whereas* clauses x x x. | a) To prove that the Philippine Government's grant of franchise to CDCP to operate, construct and maintain toll facilities in the North and South Luzon Toll Expressways was for the realization of the Government's legitimate developmental goals. |
| 3 | First three (3) paragraphs of LOI 1136, the *Whereas* clauses x x x | a) To prove that the LOI was issued for a legitimate reason this was that the rehabilitation of CDCP was for the best interest of the Philippine Government. |

[21] *Id*. at 403.

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| 4 | Documents reflecting the stockholdings of CDCP before and after the implementation of LOI 1295, given by LC Diaz [&] Co., the transfer agent of CDCP, consisting of two (2) pages x x x | a) To prove that CDCP is a duly organized company under Philippine Laws.<br><br>b) To prove that defendant Rodolfo M. Cuuenca did not organize and manage CDCP to prevent disclosure and discovery of ill-gotten assets as *Exhibits 4, 4-A and 5* will show that it is a legitimate publicly held corporation. |
| 4-A | Page 2 of *Exhibit 4* | -do- |
| 5 | *Certification* by L.C. Diaz & [Co.] of the distribution of the total voting and non-voting shares/stockholdings of the Philippine National Construction Corporation [formerly CDCP] as of 30 May 1991 x x x | -do- |
| 6 | Comparative *Financial Statements* of CDCP/PNCC from 1981-2005, consisting of four (4) pages x x x | a) To show that at the time CDCP was being managed by defendant Rodolfo M. Cuenca until the government took over thereof in 1983 the business was earning a profit but thereafter, after the take over of CDCP in 1983, PNCC suffered losses. This goes to show that the take over did not serve to rehabilitate CDCP as contemplated by LOI 1295 nor did it favor defendant Rodolfo M. Cuenca. |
| 7 | Certified Machine Copy of the Articles of Incorporation of CDCP issued 22 November 1966, consisting of fourteen (14) pages, | a) To prove that CDCP is a duly organized company for legitimate purposes under Philippine Laws. |

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| | including the Certificate of Incorporation plus the attached Treasurer's Affidavit, consisting of sixteen (16) pages. | b) To prove that defendant Rodolfo M. Cuenca did not organize and manage CDCP to prevent disclosure and discovery of ill-gotten assets as *Exhibits 7, 7-A, 8 and 8-A* are of public record, easily accessible with the SEC. |
| 7-A | *Certificate of Filing* plus the *Amended Articles of Incorporation* which was approved 7 December 1983 | -do- |
| 8 | *By-Laws* of the CDCP, consisting of fourteen (14) pages together with the *Certificate of Filing* dated 29 November 1966 | -do- |
| 8-A | *Amended By-Laws* approved in July 1982 | -do- |
| 9 | *Financial Statements* of CDCP for the period ending 31 December 1982 and 1981 | a) To prove that CDCP is a legitimate corporation, in religious compliance with the reportorial requirements of the SEC.<br>b) To prove that defendant Rodolfo M. Cuenca did not organize and manage CDCP to prevent disclosure and discovery of ill-gotten assets. |
| 9-A | *Financial Statement* for the period ending 31 December 1996 and 1995 | -do- |
| 9-B | *Audit Report* for the years ending 1996 and 1995 | -do- |
| 9-C | *Balance Sheet* as of 31 December 1996 | -do- |

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| 9-D | *Audit Report* for the years 1997 and 1996 | -do- |
| 9-E | *Audit Report* for the period 31 December 1998 and 1997 | -do- |
| 9-F | *Audit Report* for the years ending 31 December 2001 and 2000 | -do- |
| 9-G | *Audit Report* for the years ending 31 December 2000 and 1999 | -do- |
| 9-H | *Audit Report* for the year ending 31 December 2002 | -do- |
| 9-I | *Audit Report* for the year ending 31 December 2005 | -do- |
| 10 | LOI 1296 [*Exhibit A-60*] the first three (3) paragraphs, the *Whereas* clauses x x x | a) To prove that LOI 129[5] was issued for a legitimate purpose, *i e.*, to expedite the rehabilitation of CDCP for the best interest of the Philippine Government.[22] |

These documentary evidence were all admitted by the Sandiganbayan. Thereafter, the parties were directed to submit their respective memoranda.[23]

**The Ruling of the Sandiganbayan**

On August 5, 2010, the Sandiganbayan rendered its presently assailed Decision dismissing the Republic's complaint for insufficiency of evidence. In analyzing the documentary evidence presented by the Republic and which were admitted by the Sandiganbayan, the latter observed that the same merely consisted of the executive issuances of then President Marcos and of court

[22] *Id.* at 403-406.

[23] *Id.* at 39.

decisions and resolutions. According to the Sandiganbayan, said executive issuances are not *per se* illegal considering that every public official is entitled to presumption of good faith in the discharge of official duties. The Sandiganbayan further declared that in the absence of bad faith and malice, the presumption of regularity in the performance of official duties stands.[24]

The Sandiganbayan also regarded the testimonial evidence presented by the Republic as insufficient to establish that respondents engaged in "schemes, devices or stratagems" to acquire ill-gotten assets. It observed that while witness Ma. Lourdes O. Magno attested that the excluded documentary evidence came from the records of the PCGG, she herself admitted lack of personal knowledge as to how these documents were obtained. Further, the Sandiganbayan emphasized that witnesses Evelita E. Celis and Atty. Orlando L. Salvador, who prepared the summaries of the PCGG documents and of the reports pertaining to PNCC's account, had no personal knowledge of the transactions or of the contents of the reports submitted to them. Finally, the Sandiganbayan assessed that witness Stephen P. Tanchuling simply testified that the supporting documents for the summary prepared by witness Evelita E. Celis were sourced from the Presidential Library in Malacañang.[25]

In disposal, the Sandiganbayan held:

**WHEREFORE**, in view of the foregoing, this Complaint for Reconveyance, Reversion, Accounting, Restitution and Damages is **DISMISSED** for insufficiency of evidence. The writs of sequestration and freeze orders issued in this case are hereby **LIFTED**.

**SO ORDERED.**[26]

Consequently, the Republic moved for reconsideration while respondents moved to expunge the Republic's motion for reconsideration for lack of notice of hearing. Both motions were

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[24] *Id.* at 90-91.

[25] *Id.* at 91.

[26] *Id.* at 93.

denied by the Sandiganbayan in its Joint Resolution and disposed, thus:

**WHEREFORE**, the Motion for Reconsideration of the plaintiff, Republic of the Philippines, is hereby **DENIED** for lack of merit.

**SO ORDERED.**[27]

Hence, recourse to the instant petition.

**The Issue**

The Republic relies on this sole ground for review:

THE SANDIGANBAYAN ERRED IN DISMISSING PETITIONER'S COMPLAINT AGAINST RESPONDENTS DESPITE HAVING ESTABLISHED A *PRIMA FACIE CASE* IN ITS FAVOR.[28]

The Republic argues that Rodolfo M. Cuenca, in his answer dated July 3, 1989 and in his testimony, admitted that CDCP obtained loans from local and American Banks and government financial institutions. Thus, the Sandiganbayan should have only resolved whether or not said loans were grossly disadvantageous to the government and to the Filipino people.[29]

The Republic also assails the Sandiganbayan's exclusion of its documentary evidence on the ground of the best evidence rule. It argues that by its exhibits, it has proven that the documents showing the loans, financial assistance, guarantees and other favors bestowed upon Rodolfo M. Cuenca really existed and were actually executed and that the contents thereof were established by Rodolfo M. Cuenca's judicial admissions.[30] In any case, the Republic argues that the content, extent and quantity of the Presidential issuances demonstrate obvious partiality to CDCP which are enough to arouse suspicion that said issuances were made to advance a furtive design.[31]

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[27] *Id*. at 115.

[28] *Id*. at 40.

[29] *Id*. at 42.

[30] *Id.* at 49.

[31] *Id*. at 51.

Respondents Rodolfo M. Cuenca, Roberto S. Cuenca and Manuel I. Tinio filed their comment[32] to the petition reasoning that the Sandiganbayan did not err in excluding the documentary exhibits of the Republic for being mere photocopies as the contents thereof and not merely their existence, were at issue. This comment was adopted by respondent Imelda R. Marcos.[33] Respondent Don M. Ferry,[34] on the other hand, insisted that the complaint as against him is dismissible as the acts imputed to him were made in his official capacity as one of the Vice Chairmen of the Development Bank of the Philippines (DBP) which bears the collective approval of DBP's Board of Governors and as such, his actions were presumed to be regular, in the absence of evidence to the contrary.[35] Respondent Mario K. Alfelor, through counsel, prayed that the complaint be dismissed as to him in view of his death during the pendency of the petition.[36]

The Republic's consolidated reply[37] to the comments were reiterative of the arguments contained in its petition.

**The Ruling of the Court**

**We deny the petition.**

No error could be attributed to the Sandiganbayan when it dismissed the Republic's complaint for insufficiency of evidence.

**I**
**Appeal by *certiorari* is limited only to questions of law**

Section 1, Rule 45 provides:

SECTION 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or

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[32] *Id.* at 369-445.

[33] *Id.* at 1224-1228.

[34] *Id.* at 1214-1218.

[35] *Id.* at 1215.

[36] *Id.* at 1187-1199.

[37] *Id.* at 1250-1269.

resolution of the Court of Appeals, **the Sandiganbayan**, the Court of Tax Appeals, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law which must be distinctly set forth**. x x x (Emphasis ours)

As stated, Section 1, Rule 45 requires that only questions of law should be raised in an appeal by *certiorari*. Subject to certain exceptions,[38] the factual findings of lower courts bind the Supreme Court.[39] The limitation finds justification as this Court is not a trier of facts that undertakes the re-examination and re-assessment of the evidence presented by the contending parties during the trial. This Court thus receives with great respect the lower court's appreciation and resolution of factual issues.

For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented. There is a question of law in a given case when the doubt or difference arises as to what the law is on certain state of facts.[40] Contrariwise, the following questions relating to issues of fact are not reviewable by this Court:

x x x [W]hether certain items of evidence should be accorded probative value or weight, or should be rejected as feeble or spurious;

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[38] (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. *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225 (1990). (Citations omitted)

[39] See *FNCB Finance v. Estavillo*, 270 Phil. 630, 633 (1990).

[40] See *Rep. of the Phils. v. Malabanan*, 646 Phil. 631 (2010).

or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue; whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight — all these are questions of fact.[41]

In order to determine the veracity of the Republic's main contention that it has established a *prima facie* case against respondents through its documentary and testimonial evidence, a reassessment and reexamination of the evidence is necessary. Unfortunately, the limited and discretionary judicial review allowed under Rule 45 does not envision a re-evaluation of the sufficiency of the evidence upon which respondent court's action was predicated.

**II.**

**Exclusion of documentary evidence under the best evidence rule**

Except for the Presidential issuances and court decisions of which the Sandiganbayan took judicial notice of, the remainder of the Republic's documentary evidence consisting of reports, sworn statements, memoranda, board resolutions, letters of guarantee, deeds of undertaking, promissory notes, letters and loan agreements[42] were excluded by the Sandiganbayan for being mere photocopies. That these documentary exhibits were indeed mere photocopies were never disputed by the Republic. What the Republic disputes is the exclusion thereof on the basis of Section 3, Rule 130, known in legalese parlance as the best evidence rule, which provides:

SEC. 3. *Original document must be produced; exceptions.*— When the subject of inquiry is the contents of a documents, no evidence

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[41] *Paterno v. Paterno*, 262 Phil. 688, 694-695 (1990).

[42] *Rollo*, pp. 337-343.

shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

Thus, a photocopy, being merely secondary evidence, is not admissible unless it is shown that the original is unavailable.[43] Section 5, Rule 130 provides:

SEC.5 *When original document is unavailable.* — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

Pursuant to the aforequoted section, before a party is allowed to adduce secondary evidence to prove the contents of the original, it is imperative that the offeror must prove: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. Hence, the correct order of proof is existence, execution, loss, and contents.[44]

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[43] *Lee v. Atty. Tambago*, 568 Phil. 363, 374 (2008).

[44] *Citibank, N.A. Mastercard v. Teodoro*, 458 Phil. 480, 489 (2003) citing *De Vera v. Sps. Aguilar*, 291-A Phil. 649, 653 (1993).

In this case, the Sandiganbayan observed that the Republic failed to introduce either the original or the certified true copies of the documents during its examination-in-chief for purposes of identification, marking, authentication and comparison with the copies furnished the Sandiganbayan and the adverse parties.[45] When the Sandiganbayan inquired as to whether the Republic will present the original or certified true copies of its documentary exhibits, the Republic answered that it will do so, if necessary, as the originals are kept in the Central Bank vault.[46] Despite knowledge of the existence and whereabouts of the documents' originals, the Republic still failed to present the same and contented itself with the presentation of mere photocopies. Neither was there any showing that the Republic exerted diligent efforts to produce the original.

Further, despite the Republic's claim that the excluded documentary exhibits are public documents, the Sandiganbayan is correct in observing that the Republic failed to show, in case of a public record in the custody of a public officer or is recorded in a public office, an official publication thereof or a copy attested by the officer having the legal custody of the record or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certification that such officer has the custody, or in the case of a public record of a private document, the original record, or a copy thereof attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody.[47]

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[45] *Rollo*, p. 244.

[46] *Id*. at 245.

[47] *Id*., citing Sections 24 and 27 of Rule 132 of the Rules of Court.

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

While witness Ma. Lourdes O. Magno testified that she is the custodian of PCGG's records, together with the excluded documents, and that the PCGG's records were turned over by the previous Chairman and Commissioners of the PCGG and from the PCGG's Research Department, such does not make the documents public in character *per se*.

On this score, *Republic of the Philippines v. Marcos-Manotoc, et al.*,[48] which similarly upheld the denial of the Republic's documentary exhibits for violating the best evidence rule, provides elucidation:

> The fact that these documents were collected by the PCGG in the course of its investigations does not make them *per se* public records referred to in the quoted rule.
>
> Petitioner presented as witness its records officer, Maria Lourdes Magno, who testified that these public and private documents had been gathered by and taken into the custody of the PCGG in the course of the Commission's investigation of the alleged ill-gotten wealth of the Marcoses. However, given the purposes for which these documents were submitted, Magno was not a credible witness who could testify as to their contents. To reiterate, "[i]f the writings have subscribing witnesses to them, they must be proved by those witnesses." Witnesses can testify only to those facts which are of their personal knowledge; that is, those derived from their own perception. Thus, Magno could only testify as to how she obtained custody of these documents, but not as to the contents of the documents themselves.
>
> Neither did petitioner present as witnesses the affiants of these Affidavits or Memoranda submitted to the court. Basic is the rule that, while affidavits may be considered as public documents if they are acknowledged before a notary public, these Affidavits are still classified as hearsay evidence. The reason for this rule is that they

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or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

**Section 27.** *Public record of a private document.* — An authorized public record of a private document may be proved by the original record, or by a copy thereof, attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody.

[48] 681 Phil. 380 (2012).

are not generally prepared by the affiant, but by another one who uses his or her own language in writing the affiant's statements, parts of which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiants. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon.

As to the copy of the TSN of the proceedings before the PCGG, while it may be considered as a public document since it was taken in the course of the PCGG's exercise of its mandate, it was not attested to by the legal custodian to be a correct copy of the original. This omission falls short of the requirement of Rule 132, Secs. 24 and 25 of the Rules of Court.[49] (Citations omitted)

The Republic seeks exception to the application of the best evidence rule by arguing that said documents were presented to prove their existence and execution, and not their contents. The Court is hard-pressed to give credence to such argument in the light of the purposes for which these excluded documents were sought to be admitted, *i.e.,* to show that Rodolfo M. Cuenca secured loans from government financial institutions without sufficient collateral; to show that Rodolfo M. Cuenca obtained favorable rescue arrangement at the behest of Ferdinand E. Marcos; to show that the sequestered properties are part of the ill-gotten wealth; to show that respondents are dummies of Ferdinand E. Marcos; and to show the complicity between respondents in amassing ill-gotten wealth.[50] Clearly, no amount of legal hermeneutics could betray that what should be proven are the contents, and not the mere existence, of the documents themselves.

In the same vein, neither can Rodolfo M. Cuenca's supposed judicial admissions excuse the Republic's unexplained failure to produce the originals of its documentary evidence. There is no contention that Rodolfo M. Cuenca, through the then CDCP, admits having incurred credit obligations in the course of its

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[49] *Id.* at 404-405.

[50] See Formal Offer of Evidence attached as Annex "G" to the petition; *rollo*, pp. 203-235.

operations. This, as much, was reiterated by Rodolfo M. Cuenca in his comment[51] to the petition and which was an established fact in the case of *Cuenca v. Hon. Atas*.[52]

However, the admission that CDCP obtained loans from government financial institutions is not the same as admitting that these were behest loans disadvantageous to the Filipino people or were used to amass ill-gotten wealth in concert with the spouses Ferdinand E. Marcos and Imelda R. Marcos. Even then, the judicial admissions referred to by the Republic found in Rodolfo M. Cuenca's answer was a general statement to the effect that it, indeed, secured loans without, however, specifying which loans these were and for what amounts. It will thus be unfounded, if not unduly hasty, to conclude that Rodolfo M. Cuenca admits having obtained behest loans specifically averred to in the complaint.

**III.**
**The Republic failed to prove by preponderance of evidence the allegations in the complaint**

To recover the unexplained or ill-gotten wealth reputedly amassed by then President Ferdinand E. Marcos and Imelda R.

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[51] *Id*. at 412.

[52] 561 Phil. 186, 189-190 (2007). In *Cuenca v. Hon. Atas*, the Court stated in its recitation of facts that:

"[Rodolfo M. Cuenca] was an incorporator, President, and Chief Executive Officer of the then Construction Development Corporation of the Philippines (CDCP), now PNCC, from its incorporation in 1966 until 1983. Sometime in 1977, CDCP was granted a franchise under Presidential Decree No. 1113 to construct, operate, and maintain toll facilities of the North and South Luzon Expressway. In the course of its operations, it incurred substantial credit obligations from both private and government sources.

However, its unpaid obligations ballooned so much that by 1983, it became impossible for it to settle its maturing and overdue accounts with various GFIs, namely, the Philippine National Bank (PNB), Development Bank of the Philippines (DBP), National Development Company (NDC), Government Service Insurance System (GSIS), Land Bank of the Philippines (LBP), and Philippine Export and Foreign Loan Guarantee Corporation (PEFLGC), now known as the Trade and Investment Development Corporation of the Philippines."

Marcos, former President Corazon Aquino issued Executive Order No. 1[53] and thereby, gave birth to the PCGG with the task of recovering "*all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.*"[54] The recovery of the reputed ill-gotten wealth was both a matter of urgency and necessity[55] and the right of the State to recover unlawfully acquired properties eventually found flesh under Section 15, Article XI of the Constitution.[56]

Nevertheless, in as early as 1959, forfeiture in favor of the State of any property in an amount found to have been manifestly out of proportion to a public officer or employee's salary or to the latter's other lawful income and the income from legitimately acquired property, has been sanctioned under Republic Act No. 1379 (R.A. 1379). Forfeiture proceedings under R.A. 1379 are civil in nature[57] and actions for reconveyance, revision, accounting, restitution, and damages for ill-gotten wealth, as in this case, are also called civil forfeiture proceedings.[58] Similar to civil cases, the quantum of evidence required for forfeiture proceedings is preponderance of evidence.[59]

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[53] Creating the Presidential Commission on Good Government dated February 28, 1986.

[54] *Rep. of the Phils. v. Sandiganbayan*, 453 Phil. 1059, 1087 (2003).

[55] See *Rep. of the Phils. v. Sandiganbayan*, 310 Phil. 401, 414 (1995).

[56] Section 15. The right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches, or estoppel.

[57] *Garcia v. Sandiganbayan, et al.*, 618 Phil. 346, 363 (2009).

[58] *Rep. of the Phils. v. Sps. Gimenez*, 776 Phil. 233, 251 (2016).

[59] Section 1 of Executive Order No. 14-A (Amending Executive Order No 14, dated August 18, 1986) provides:

Section 1, Rule 133 spells how preponderance of evidence is determined:

SECTION 1. *Preponderance of evidence, how determined.* — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

Expounding on the concept of preponderance of evidence, this Court held:

x x x. "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term greater weight of the evidence or greater weight of the credible evidence. Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[60]

Juxtaposing the specific allegations in the complaint with the Republic's documentary and testimonial evidence and as

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Sec. 1. Section 3 of Executive Order No. 14 dated May 7, 1986 is hereby amended to read as follows:

"Sec. 3. The civil suits to recover unlawfully acquired property under Republic Act No. 1379 or for restitution, reparation of damages, or indemnification for consequential and other damages or any other civil actions under the Civil Code or other existing laws filed with the Sandiganbayan against Ferdinand E. Marcos, Imelda R. Marcos, members of their immediate family, close relatives, subordinates, close and/or business associates, dummies, agents and nominees, may proceed independently of any criminal proceedings and may be proved by a **preponderance of evidence**." (Emphasis ours)

[60] *Encinas v. National Bookstore, Inc.*, 485 Phil. 683, 695 (2004).

against the respondents' documentary and testimonial evidence showing the due organization and existence of CDCP, the Court agrees with the Sandiganbayan that the weight of evidence fails to preponderate in the Republic's favor. Neither were the Presidential issuances nor the witnesses' testimonies sufficient to prove the allegations in the Republic's complaint.

The Court finds the Sandiganbayan's ruling to be *apropos*:

> A careful examination of the afore-mentioned issuances yields that while it may be true that then President Marcos gave instructions to certain government institutions to extend financial support to the (CDCP before it was renamed Philippine National Construction Corporation (PNCC) to reflect the government stockholding], there is nothing in them which would substantiate the [Republic's] claims that Rodolfo [M. Cuenca], through the PNCC, enjoyed a magnitude of special favors to unjustly enrich himself. Even if the Court were to take into consideration the testimonies of the [Republic's] witnesses, it finds that these are not sufficient to establish that the [respondents] engaged in "schemes, devices or stratagems" to acquire ill-gotten assets. While Magno attested that Exhibits "A" to "A-70" of the [Republic's] evidence came from the records of the PCGG, she herself admitted that she did not know how they were obtained. Further, the documents in question were rendered inadmissible in evidence as they were only photocopies. Celis and Atty. Salvador, who prepared Executive Summaries of the PCGG documents relevant to this case, and of the reports pertaining to the account of the PNCC, respectively, both claimed that they had no personal knowledge of the transactions or of the contents of the reports submitted to them. Lastly, Tanchuling simply testified that the supporting documents for the Executive Summary prepared by Celis were gathered from the Presidential Library in Malacañang.
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> [The Republic] having failed to present tangible evidence to prove that Rodolfo [M. Cuenca] indeed amassed ill-gotten wealth to the detriment of the government, such claim is nothing but a mere inference on its part. x x x[61]

It bears stressing that it is upon the Republic to prove the allegations in its complaint. It is therefore imperative that the

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[61] *Rollo*, p. 91.

operative act on how and in what manner the respondents participated in amassing ill-gotten wealth be demonstrated through preponderance of evidence. In case of failure to do so, the Republic's complaint will merit nothing but denial.

Notably, in the consolidated cases of *Development Bank of the Philippines v. Sta. Ines Melale Forest Products Corporation, et al.*, and *National Development Corporation v. Sta. Ines Melale Forest Products Corporation, et al.*,[62] the Court had the opportunity to examine the contents of a Memorandum of Agreement (MOA) dated August 10, 1981 between NDC and Galleon Shipping Corporation where the parties undertook to prepare and sign a share purchase agreement covering 100% of Galleon's equity for ₱46,740,755.00. This arrangement appears to be one of the alleged illegal acts committed by herein respondents. To recall, paragraph 12 (e) of the Republic's complaint provides:

> (e) secured, after Galleon Shipping Corporation defaulted in its obligations, additional financial assistance from government institutions, through the issuance of Letter of Instruction No. 1155, which required the National Development Company (NDC) to buy out the entire shareholdings in Galleon Shipping Corporation of defendant Rodolfo M. Cuenca, Arthur C. Balch, Manuel I. Tinio, Mario K. Alfelor, Rodolfo Munsayac and those of other stockholders for ₱46.7 Million and to provide the required additional equity;

To emphasize, the original of the said MOA was not presented by the Republic before the Sandiganbayan in the forfeiture proceeding. But even as the Court takes judicial notice of the existence and contents of the said MOA, it was nonetheless established in the *Sta. Ines Melale* cases that the MOA was a mere preliminary agreement that is separate and distinct from the actual share purchase agreement but that due to NDC's delay, the execution of the share purchase agreement is considered fulfilled with NDC as the new owner of 100% of Galleon's shares of stocks. In making such pronouncement, the Court effectively recognized the validity and binding effect of the

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[62] G.R. Nos. 193068 and 193099, February 1, 2017.

MOA between the parties even when the MOA was admittedly the fruit of LOI No. 1155 issued by former President Marcos. Given that the Court duly recognized the rights and obligations of NDC and the stockholders of Galleon under the MOA, neither the said MOA nor the acts of the parties thereto can be interpreted as tending to prove that respondents amassed ill-gotten wealth for themselves, in concert with one another.

In closing, the Court finds it opportune to echo its concluding statement in the *Marcos-Manatoc* case if only to emphasize the importance of a well-executed effort on the part of the government to recover ill-gotten wealth and the dire consequences if done improperly, hastily and haphazardly:

> x x x the best evidence rule has been recognized as an evidentiary standard since the 18th century. For three centuries, it has been practiced as one of the most basic rules in law. It is difficult to conceive that one could have finished law school and passed the bar examinations without knowing such elementary rule. Thus, it is deeply disturbing that the PCGG and the Office of the Solicitor General (OSG) — the very agencies sworn to protect the interest of the state and its people — could conduct their prosecution in the manner that they did. To emphasize, the PCGG is a highly specialized office focused on the recovery of ill-gotten wealth, while the OSG is the principal legal defender of the government. The lawyers of these government agencies are expected to be the best in the legal profession.
>
> However, despite having the expansive resources of government, the members of the prosecution did not even bother to provide any reason whatsoever for their failure to present the original documents or the witnesses to support the government's claims. x x x
>
> The public prosecutors should employ and use all government resources and powers efficiently, effectively, honestly and economically, particularly to avoid wastage of public funds and revenues. They should perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill.
>
> The basic ideal of the legal profession is to render service and secure justice for those seeking its aid. In order to do this, lawyers are required to observe and adhere to the highest ethical and professional standards. The legal profession is so imbued with public interest that its practitioners are accountable not only to their clients, but to the public as well.

The public prosecutors, aside from being representatives of the government and the state, are, first and foremost, officers of the court. They took the oath to exert every effort and to consider it their duty to assist in the speedy and efficient administration of justice. Lawyers owe fidelity to the cause of the client and should be mindful of the trust and confidence reposed in them. Hence, should serve with competence and diligence.[63] (Citations omitted)

In sum, absent preponderant evidence to hold otherwise, the Republic failed to prove that the respondents by themselves or in unlawful concert with one another, accumulated or participated in the accumulation of ill-gotten wealth insofar as the specific allegations in the subject complaint are concerned.

**WHEREFORE,** the Decision dated August 5, 2010 and Joint Resolution dated August 31, 2011 of the Sandiganbayan in Civil Case No. 0016 dismissing the Republic's complaint for reconveyance, reversion, accounting, restitution and damages for insufficiency of evidence are **AFFIRMED**.

**SO ORDERED.**

*Leonardo-de Castro*[*] *(Acting Chairperson), del Castillo*, and *Leonen,*[**] *JJ.*, concur.

*Sereno, C.J. (Chairperson)*, on leave.

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[63] *Rep. of the Phils. v. Marcos-Manotoc, et al.*, *supra* note 48, at 412-414.

[*] Designated Acting Chairperson, First Division per Special Order No. 2540 dated February 28, 2018.

[**] Designated as additional Member as per Raffle dated March 26, 2018.

**FIRST DIVISION**

[G.R. No. 199353. April 4, 2018]

**LEVISTE MANAGEMENT SYSTEM, INC.,** *petitioner, vs.* **LEGASPI TOWERS 200, INC., and VIVIAN Y. LOCSIN and PITONG MARCORDE,** *respondents.* **ENGR. NELSON Q. IRASGA, in his capacity as Municipal Building Official of Makati, Metro Manila and HON. JOSE P. DE JESUS, in his capacity as Secretary of the Dept. of Public Works and Highways,** *third party respondents.*

[G.R. No. 199389. April 4, 2018]

**LEGASPI TOWERS 200, INC.,** *petitioner, vs.* **LEVISTE MANAGEMENT SYSTEM, INC., ENGR. NELSON Q. IRASGA, in his capacity as Municipal Bldg. Official of Makati, Metro Manila, and HON. JOSE P. DE JESUS, in his capacity as Secretary of the Department of Public Works and Highways,** *respondents.*

**SYLLABUS**

**1. CIVIL LAW; CONDOMINIUM ACT; GOVERNS THE RELATIONSHIP BETWEEN THE CONDOMINIUM CORPORATION AND THE BUILDER WHO IS A UNIT OWNER.—** In the case at bar, however, the land belongs to a condominium corporation, wherein the builder, as a unit owner, is considered a stockholder or member in accordance with Section 10 of the Condominium Act[.] x x x The builder is therefore already in a co-ownership with other unit owners as members or stockholders of the condominium corporation, whose legal relationship is governed by a special law, the Condominium Act. It is a basic tenet in statutory construction that between a general law and a special law, the special law prevails. *Generalia specialibus non derogant.* The provisions of the Civil Code, a general law, should therefore give way to the Condominium Act, a special law, with regard to properties recorded in accordance with Section 4 of said Act. Special laws cover distinct

situations, such as the necessary co-ownership between unit owners in condominiums and the need to preserve the structural integrity of condominium buildings; and these special situations deserve, for practicality, a separate set of rules.

**2. ID.; CIVIL CODE; CIVIL CODE PROVISIONS ON BUILDERS IN GOOD FAITH ARE INAPPLICABLE IN CASES COVERED BY CONDOMINIUM ACT.—** Articles 448 and 546 of the Civil Code on builders in good faith are therefore inapplicable in cases covered by the Condominium Act where the ***owner of the land*** and the ***builder*** are already bound by specific legislation on the subject property (the Condominium Act), and by contract (the Master Deed and the By-Laws of the condominium corporation). This Court has ruled that upon acquisition of a condominium unit, the purchaser not only affixes his conformity to the sale; he also binds himself to a contract with other unit owners. In accordance therefore with the Master Deed, the By-Laws of Legaspi Towers, and the Condominium Act, the relevant provisions of which were already set forth above, Legaspi Towers is correct that it has the right to demolish Concession 4 at the expense of LEMANS. Indeed, the application of Article 448 to the present situation is highly iniquitous, in that an owner, also found to be in good faith, will be forced to either appropriate the illegal structure (and impliedly be burdened with the cost of its demolition) or to allow the continuance of such an illegal structure that violates the law and the Master Deed, and threatens the structural integrity of the condominium building upon the payment of rent. The Court cannot countenance such an unjust result from an erroneous application of the law and jurisprudence.

## APPEARANCES OF COUNSEL

*Roque & Butuyan Law Offices* for Leviste Management System, Inc.

*The Solicitor General* for public respondents.

## D E C I S I O N

**LEONARDO-DE CASTRO,[*] *J.*:**

The Civil Code provisions on builders in good faith presuppose that the ***owner of the land*** and the ***builder*** are two distinct persons who are not bound either by specific legislation on the subject property or by contract. Properties recorded in accordance with Section 4[1] of Republic Act No. 4726[2] (otherwise known as the Condominium Act) are governed by said Act; while the Master Deed and the By Laws of the condominium corporation establish the contractual relations between said condominium corporation and the unit owners.

These are consolidated petitions under Rule 45 filed by Leviste Management System, Inc. (LEMANS) and Legaspi Towers 200, Inc. (Legaspi Towers), both assailing the Decision[3] dated May 26, 2011 of the Court of Appeals in CA-G.R. CV No. 88082. The assailed Decision[4] affirmed the October 25, 2005 Decision of the Regional Trial Court (RTC), Branch 135 of Makati City in Civil Case No. 91-634.

The facts, as culled by the Court of Appeals from the records, follow:

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[*] Per Special Order No. 2540 dated February 28, 2018.

[1] Section 4. The provisions of this Act shall apply to property divided or to be divided into condominiums only if there shall be recorded in the Register of Deeds of the province or city in which the property lies and duly annotated in the corresponding certificate of title of the land, if the latter had been patented or registered under either the Land Registration or Cadastral Acts, an enabling or master deed which shall contain, among others, the following x x x[.]

[2] AN ACT TO DEFINE CONDOMINIUM, ESTABLISH REQUIREMENTS FOR ITS CREATION, AND GOVERN ITS INCIDENTS.

[3] *Rollo* (G.R. No. 199353), pp. 41-50; penned by Associate Justice Florito S. Macalino with Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr. concurring.

[4] *Id*. at 118-122.

Legaspi Towers is a condominium building located at Paseo de Roxas, Makati City. It consists of seven (7) floors, with a **unit on the roof deck** and **two levels above said unit called Concession 2 and Concession 3.** The use and occupancy of the condominium building is governed by the Master Deed with Declaration of Restrictions of Legaspi Towers (hereafter "Master Deed") annotated on the transfer certificate of title of the developer, Legaspi Towers Development Corporation.

Concession 3 was originally owned by Leon Antonio Mercado. On 9 March 1989, Lemans, through Mr. Conrad Leviste, bought Concession 3 from Mercado.

Sometime in 1989, Lemans decided to build another unit (hereafter "Concession 4") on the roof deck of Concession 3. Lemans was able to secure the building permit for the construction of Concession 4 and commenced the construction thereof on October 1990.

Despite Legaspi Corporation's notice that the construction of Concession 4 was illegal, Lemans refused to stop its construction. Due to this, Legaspi Corporation forbade the entry of Lemans' construction materials to be used in Concession 4 in the condominium. Legaspi Corporation similarly wrote letters to the Building Official Nelson Irasga ("hereafter Irasga"), asking that the [building] permit of Lemans for Concession 4 be cancelled. Irasga, however, denied the requested cancellation, stating that the applicant complied with the requirements for a building permit and that the application was signed by the then president of Legaspi Corporation.

Lemans filed the Complaint dated February 20, 1991 with the RTC, praying among others that a writ of mandatory injunction be issued to allow the completion of the construction of Concession 4. On 3 April 1991, the RTC issued the writ prayed for by Lemans.

Later, Legaspi Corporation filed the Third Party Complaint dated October 7, 1991. This was against Irasga, as the Municipal Building Official of Makati, and Jose de Jesus (herafter "De Jesus"), as the Secretary of Public Works and Highways (collectively referred to as the "third-party defendants-appellees") so as to nullify the building permit issued in favor of Lemans for the construction of Concession 4.

After the parties had presented and formally offered their respective pieces of evidence, but before the rendition of a judgment on the main case, the RTC, in its Order dated May 24, 2002, found the application of Article 448 of the Civil Code and the ruling in the *Depra vs. Dumlao* [case] (hereafter *"Depra Case")* to be proper.

Lemans moved for the reconsideration o[f] the aforementioned order. The RTC denied this and further ruled:

> The main issue in this case is whether or not [LEMANS] owns the air space above its condominium unit. As owner of the said air space, [LEMANS] contends that its construction of another floor was in the exercise of its rights.
>
> It is the [finding] of the Court that [LEMANS] is not the owner of the air space above its unit. [LEMANS'] claim of ownership is without basis in fact and in law. The air space which [LEMANS] claims is not on top of its unit but also on top of the condominium itself, owned and operated by defendant Legaspi Towers.
>
> Since it appears that both plaintiff and defendant Legaspi Towers were in good faith, the Court finds the applicability of the ruling in Depra vs. Dumlao, 136 SCRA 475.

From the foregoing, Lemans filed the Petition for Certiorari dated November 13, 2002 with the [Court of Appeals], docketed as CA G.R. SP. No. 73621, which was denied in the Decision promulgated on March 4, 2004. The Court did not find grave abuse of discretion, amounting to lack or excess of jurisdiction, on the RTC's part in issuing the above orders. Lemans sought reconsideration of this decision but failed.

Meanwhile, Lemans adduced evidence before the RTC to establish that the actual cost for the construction of Concession 4 was Eight Hundred Thousand Eight Hundred Ninety-seven and 96/100 Pesos (PhP800,897.96) and that the fair market value of Concession 4 was Six Million Pesos (PhP6,000,000.00). Afterwards, the RTC rendered the Assailed Decision.[5]

Reiterating its previous ruling regarding the applicability of Article 448 of the Civil Code to the case, the RTC in its October 25, 2005 Decision disposed of the dispute in this wise:

> WHEREFORE, judgment is hereby rendered ordering defendant Legaspi Towers 200, Inc. to exercise its option to appropriate the additional structure constructed on top of the penthouse owned by plaintiff Leviste Management Systems, Inc. within sixty [60] days from the time the Decision becomes final and executory. Should

[5] *Id*. at 42-44.

defendant Legaspi Towers 200, Inc. choose not to appropriate the additional structure after proper indemnity, the parties shall agree upon the terms of the lease and in case of disagreement, the Court shall fix the terms thereof.

For lack of merit, the third party complaint and the counterclaims are hereby dismissed.

Costs against the plaintiff.[6]

When the parties' respective motions for reconsideration were denied by the trial court, both elevated the matter to the Court of Appeals.

On May 26, 2011, the Court of Appeals, acting on the consolidated appeals of LEMANS and Legaspi Towers, rendered its Decision affirming the decision of the RTC of Makati City.

The Court of Appeals held that the appeal of LEMANS should be dismissed for failure to comply with Section 13, Rule 44 in relation to Section 1(f), Rule 50 of the Rules of Court, as the subject index of LEMANS' brief did not contain a digest of its arguments and a list of textbooks and statutes it cited.[7] For this reason, the appellate court no longer passed upon the sole issue raised by LEMANS, *i.e.,* whether its construction of Concession 4 should be valued at its actual cost or its market value.

As regards the appeal of Legaspi Towers, the Court of Appeals held that while Concession 4 is indeed a nuisance, LEMANS has been declared a builder in good faith, and noted that Legaspi Towers failed to contest this declaration. Since Concession 4 was built in good faith, it cannot be demolished. The Court of Appeals likewise affirmed the validity of the building permit for Concession 4, holding that if the application and the plans appear to be in conformity with the requirements of governmental regulation, the issuance of the permit may be considered a ministerial duty of the building official.[8]

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[6] *Id*. at 122.

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

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

The Motion for Partial Reconsideration of Legaspi Towers and the Motion for Reconsideration of LEMANS were denied for lack of merit in the appellate court's Resolution[9] dated November 17, 2011.

Consequently, LEMANS and Legaspi Towers filed separate Petitions for Review on *Certiorari* with this Court based on the following grounds:

[LEMANS PETITION:]

I

THE COURT OF APPEALS ERRED WHEN IT FAILED TO APPLY THE *DEPRA VS. DUMLAO* DOCTRINE WHEN IT REFUSED TO RULE ON THE PROPER VALUATION OF THE SUBJECT PROPERTY FOR THE PURPOSE OF DETERMINING THE PURCHASE PRICE IN THE EVENT THAT RESPONDENT LEGASPI TOWERS EXERCISES ITS OPTION TO PURCHASE THE PROPERTY

II

THE COURT OF APPEALS ERRED WHEN, REFUSING TO RULE ON THE VALUATION OF THE SUBJECT PROPERTY, IT DISREGARDED THE EVIDENCE ALREADY SUBMITTED AND PART OF THE RECORDS.[10]

[LEGASPI TOWERS PETITION:]

I. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT [LEGASPI TOWERS] HAS THE RIGHT TO DEMOLISH CONCESSION 4 FOR BEING AN ILLEGAL CONSTRUCTION.

II. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE BUILDING PERMIT OF CONCESSION 4 IS NOT VALIDLY ISSUED.[11]

At the crux of the present controversy is the legal issue whether Article 448 of the Civil Code and our ruling in *Depra v. Dumlao*[12] are applicable to the parties' situation.

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

[10] *Id*. at 24.

[11] *Rollo* (G.R. No. 199389), p. 41.

[12] 221 Phil. 168 (1985).

Prior to answering this key question, we dispose of a procedural matter. LEMANS has taken the position that in light of the finality of the trial court's Order dated May 24, 2002 holding that Article 448 of the Civil Code and the *Depra* case should be applied in this case, Legaspi Towers is now bound by same and may no longer question the former's status as a builder in good faith. The Court of Appeals in its assailed Decision appears to subscribe to the same view when it ruled that, despite the fact that Concession 4 was a nuisance, the previous declaration that LEMANS is a builder in good faith limits Legaspi Towers' options to those provided in Article 448.

The Court does not agree with LEMANS and the Court of Appeals.

At the outset, it must be pointed out that the May 24, 2002 RTC Order is an interlocutory order that did not finally dispose of the case and, on the contrary, set the case for hearing for reception of evidence on the amount of expenses spent by LEMANS in the construction of Concession 4. For this reason, it is apropos to discuss here the remedies available to a party aggrieved by interlocutory orders of the trial court.

Section 1, Rule 41 of the Rules of Court pertinently states:

RULE 41
Appeal from the Regional Trial Courts

SECTION 1. *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

**No appeal may be taken from:**

(a) An order denying a motion for new trial or reconsideration;

(b) An order denying a petition for relief or any similar motion seeking relief from judgment;

(c) **An interlocutory order;**

(d) An order disallowing or dismissing an appeal;

(e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

(f) An order of execution;

(g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. (Emphases supplied.)

Hence, we explained in *Crispino v. Tansay*[13] that:

The remedy against an interlocutory order is not appeal but a special civil action for *certiorari* under Rule 65 of the Rules of Court. The reason for the prohibition is to prevent multiple appeals in a single action that would unnecessarily cause delay during trial. In *Rudecon v. Singson:*

> The rule is founded on considerations of orderly procedure, to forestall useless appeals and avoid undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when all such orders may be contested in a single appeal.

Faced with an interlocutory order, **parties may instantly avail of the special civil action of certiorari. This would entail compliance with the strict requirements under Rule 65 of the Rules of Court.** Aggrieved parties would have to prove that the order was issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction and that there is neither appeal nor any plain, speedy, and adequate remedy in the ordinary course of law.

**This notwithstanding, a special civil action for certiorari is not the only remedy that aggrieved parties may take against an interlocutory order, since an interlocutory order may be appealed**

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[13] G.R. No. 184466, December 5, 2016.

**in an appeal of the judgment itself.** In *Investments, Inc. v. Court of Appeals* it was held:

> Unlike a "final" judgment or order, which is appealable, as above pointed out, **an "interlocutory" order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.** (Emphases supplied; citations omitted.)

From the foregoing disquisition in *Crispino,* a party who wishes to assail an interlocutory order may (a) immediately file a petition for *certiorari* if appropriate and compliant with the stringent requirements of Rule 65 or (b) await judgment and question the interlocutory order in the appeal of the main decision. Notably, in the case at bar, LEMANS filed a petition for *certiorari* against the RTC's May 24, 2002[14] and August 19, 2002[15] Orders while Legaspi Towers chose to simply appeal the main decision.

This Court is not bound by the interlocutory orders of the trial court nor by the Court of Appeals' Decision dated March 4, 2004 in CA-G.R. SP No. 73621, *i.e.,* LEMANS' petition for *certiorari* of said interlocutory orders.

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[14] *Rollo* (G.R. No. 199389), pp. 148-149.

[15] *Id*. at 150-151. To recall, in the August 19, 2002 Order, the trial court denied LEMANS motion for reconsideration of the May 24, 2002 Order and held:

> The main issue in this case is whether or not plaintiff owns the air space above its condominium unit. As owner of the said air space, plaintiff contends that its construction of another floor was in the exercise of its rights.
>
> It is the findings [sic] of the Court that **plaintiff [LEMANS] is not the owner of the air space above its unit.** Plaintiff[']s claim of ownership is without basis in fact and in law. The air space which plaintiff claims is not only on top of its unit but also on top of the condominium itself, owned and operated by defendant Legaspi Towers.
>
> **Since it appears that both plaintiff and defendant Legaspi Towers were in good faith,** the Court finds the applicability of the ruling in *Depra v. Dumlao,* 136 SCRA 475.
>
> WHEREFORE, for lack of merit the motion is hereby DENIED. (Emphases supplied.)

To begin with, the Court of Appeals' decision in CA-G.R. SP No. 73621 was never evelated to this Court. Secondly, in resolving LEMANS' petition for *certiorari,* the Court of Appeals itself ruled, among others, that:

> It is noteworthy to state that the petitioner imputes grave abuse of discretion on the part of the respondent judge in ruling that Article 448 and the case of *Depra v. Dumlao (136 SCRA 475)* are applicable in the case at bar. At most, these are considered **mere errors of judgment,** which **are not proper for resolution in a petition for *certiorari*** under Rule 65.
>
> The error is not jurisdictional, and ***certiorari* is not available to correct errors in judgment or conclusions of law and fact not amounting to excess or lack of jurisdiction.** In the extraordinary writ of *certiorari,* neither questions of fact nor even of law are entertained, but only questions of lack or excess of jurisdiction or grave abuse of discretion.[16] (Emphases supplied.)

We are not so constrained in these consolidated petitions under Rule 45 for as we observed in *E.I. Dupont De Nemours and Co. v. Francisco*[17]:

> The special civil action of *certiorari* under Rule 65 is intended to correct errors of jurisdiction. Courts lose competence in relation to an order if it acts in grave abuse of discretion amounting to lack or excess of jurisdiction. **A petition for review under Rule 45, on the other hand, is a mode of appeal intended to correct errors of judgment.**Errors of judgment are errors committed by a court within its jurisdiction. **This includes a review of the conclusions of law of the lower court and, in appropriate cases, evaluation of the admissibility, weight, and inference from the evidence presented.** (Emphases supplied; citations omitted.)

In all, there is no procedural bar for this Court to pass upon the previous interlocutory orders of the court *a quo* and examine the legal conclusions therein in the present consolidated appeals of the trial court's decision. We are compelled to undertake

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[16] *Id*. at 162.

[17] G.R. No. 174379, August 31, 2016, 801 SCRA 629, 642-643.

such a review in light of the novelty of the main issue presented in these petitions. The Court, after all, is the final arbiter of all legal questions properly brought before it.[18]

We proceed to the merits of these consolidated cases.

First, we find no cogent reason to disturb the finding of the lower courts that it is Legaspi Towers which owns the air space above Concession 3 as the same is in keeping with the facts and the applicable law. We quote with approval the following discussion from the Court of Appeals Decision dated March 4, 2004 in CA-G.R. SP No. 73621:

> As correctly pointed out by the private respondent Legaspi, the air space wherein *Concession 4* was built is not only above *Concession 3,* but above the entire condominium building. The petitioner's [LEMANS'] ownership of Concession 3 does not necessarily extend to the area above the same, which is actually the "air space" of the entire condominium building. The *ownership of the air space above Concession 3* is not a necessary incident of the *ownership of Concession 3.*
>
> It may be well to state here the following provisions of Republic Act No. 4726, otherwise known as The Condominium Act:
>
> > Section 2. A condominium is an interest in real property consisting of a separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common directly or indirectly, in the land on which it is located and in other common areas of the building. A condominium may include, in addition, a separated interest on other portions of such real property. Title to the common areas, including the land, or the appurtenant interests in such areas, may be held by a corporation specially formed for the purpose (hereinafter known as the "condominium corporation") in which the holders of separate interests shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas. (RA 4726, The Condominium Act)

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[18] See *Presidential Decree No. 1271 Committee v. De Guzman,* G.R. Nos. 187291 & 187334, December 5, 2016.

> Section 3 (d). "Common areas" means the entire project excepting all units separately granted or held or reserved.
>
> Section 6. Unless otherwise expressly provided in the enabling or master deed or the declaration of restrictions, the incidents of the condominium grant are as follows:
>
> (a) The boundary of the unit granted are the interior surfaces of the perimeter walls, ceilings, windows and doors thereof. The following are not part of the unit — bearing walls, columns, walls, roofs, foundations and other common structural elements of the building x x x.

Evidently, what a unit includes is only the *four walls, ceilings, windows and doors thereof.* It certainly does not include the roof or the areas above it.

In a condominium, common areas and facilities are "portions of the condominium property not included in the units," whereas, a unit is "a part of the condominium property which is to be subject to private ownership." Inversely, that which is not considered a unit should fall under common areas and facilities.

Inasmuch as the air space or the area above Concession 3 is not considered as part of the unit, it logically forms part of the common areas.

The petitioner's efforts to establish that Concession 3 and the open area in the roof deck are reserved and separately granted from the condominium project are futile, inasmuch as even if the same is established, it would not prove that the area above it is not part of the common area. Admittedly, there is nothing in the Master Deed which prohibits the construction of an additional unit on top of Concession 3, however, there is also nothing which allows the same. The more logical inference is that the unit is limited to that stated in the Condominium Act, considering that the *Master Deed with Declaration of Restrictions* does not expressly declare otherwise.

To allow the petitioner's claim over the air space would not prevent the petitioner from further constructing another unit on top of *Concession 4* and so on. This would clearly open the door to further "impairment of the structural integrity of the condominium building" which is explicitly proscribed in the Master Deed.[19]

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[19] *Rollo* (G.R. No. 199389), pp. 160-161.

Significantly, the parties are no longer questioning before us the past rulings regarding Legaspi Towers' ownership of the air space above Concession 3 which is the air space above the condominium building itself. The principal bones of contention here are the legal consequences of such ownership and the applicability of Article 448 of the Civil Code and our ruling in *Depra v. Dumlao*[20] on the factual antecedents of these cases.

The ruling of this Court in *Depra v. Dumlao* extensively cited by both parties pertains to the application of Articles 448 and 546 of the Civil Code, which respectively provide:

> Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to **appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548,** or to **oblige the one who built or planted to pay the price of the land,** and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.
>
> Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.
>
> Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

To recap, the defendant in *Depra* constructed his house on his lot but, in good faith, encroached on an area of 34 square meters of the property of plaintiff on which defendant's kitchen was built. The Court ruled that pursuant to Article 448 of the

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[20] *Supra* note 12.

Civil Code, plaintiff, as the owner of the land, has the option either to pay for the encroaching part of the kitchen, or to sell the encroached 34 square meters of his lot to the defendant, the builder in good faith. The owner of the land cannot refuse to pay for the encroaching part of the building and to sell the encroached part of the land. Pursuant to Articles 448 and 546 of the Civil Code, the Court remanded the case to the RTC to determine the following:

(1) the present fair price of the 34-square meter encroached area of the land;

(2) the amount of expenses spent in building the kitchen;

(3) the increase in value the area may have acquired by reason of the building; and

(4) whether the value of the 34-square meter area is considerably more than that of the kitchen built thereon.

After the RTC has determined the four items above, the RTC shall grant the owner a period of 15 days to exercise his **option** whether **(a)** to appropriate the kitchen by paying the amount of expenses spent for building the same or the increase of such area's value by reason of the building **or (b)** to oblige the builder in good faith to pay the price of said area. The Court thereafter provided for further contingencies based on the RTC finding in the fourth item.

In the case at bar, LEMANS prays that, pursuant to *Depra,* the Court should determine the value of Concession 4, and find such value to be Six Million Eight Hundred Thousand Eight Hundred Ninety-Seven and 96/100 Pesos (₱6,800,897.96) plus legal interest. Legaspi Towers, on the other hand, prays for the extrajudicial abatement of Concession 4, on the ground that the applicable provision of the Civil Code is Article 699, which provides:

Article 699. The remedies against a public nuisance are:

(1) A prosecution under the Penal code or any local ordinance; or

(2) A civil action; or

(3) Abatement, without judicial proceedings.

Legaspi Towers also argues that Concession 4 is an illegal construction, for being in violation of the Condominium Act and the By Laws of Legaspi Towers. Legaspi Towers stresses that LEMANS failed to comply with the Condominium Act, which requires the consent of the registered owners of the condominium project for the amendment of the Master Deed.

Indeed, the last paragraph of Section 4 of the Condominium Act provides:

> The enabling or master deed may be amended or revoked upon registration of an instrument executed by the registered owner or owners of the property and consented to by all registered holders of any lien or encumbrance on the land or building or portion thereof. The term "registered owner" shall include the registered owners of condominiums in the project. Until registration of a revocation, the provisions of this Act shall continue to apply to such property.

The Master Deed of Legaspi Towers[21] states the number of stories and basements, and the number of units and accessories, and contains as an attachment a diagrammatic floor plan of the building as required by Section 4(b)[22] of the Condominium Act. Section 2 of the Master Deed states:

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[21] *Rollo* (G.R. No. 199389), pp. 78-88.

[22] SECTION 4. The provisions of this Act shall apply to property divided or to be divided into condominiums only if there shall be recorded in the Register of Deeds of the province or city in which the property lies and duly annotated in the corresponding certificate of title of the land, if the latter had been patented or registered under either the Land Registration or Cadastral Acts, an enabling or master deed which shall contain, among others, the following:

x x x x x x x x x

(b) Description of the building or buildings, stating the number of stories and basements, the number of units and their accessories, if any;

x x x x x x x x x

(g) The following plans shall be appended to the deed as integral parts thereof:

(1) A survey plan of the land included in the project, unless a survey plan of the same property had previously bee[n] filed in said office;

Section 2. The Building and the Units. The building included in the condominium project is a commercial building constructed of reinforced concrete and consisting of seven (7) storeys with a basement, a ground floor, a deck roof, and two levels above the deck roof. x x x.[23]

The construction by LEMANS of Concession 4 contravenes the Master Deed by adding a third level above the roof deck. As pointed out by Legaspi Towers and shown in the records, the Master Deed was never amended to reflect the building of Concession 4. Furthermore, LEMANS failed to procure the consent of the registered owners of the condominium project as required in the last paragraph of Section 4 of the Condominium Act.

The By-Laws of Legaspi Towers[24] specifically provides that extraordinary improvements or additions must be approved by the members in a regular or special meeting called for the purpose *prior* to the construction:

ARTICLE V
IMPROVEMENTS AND ADDITIONS

x x x x x x x x x

Section 2. Extraordinary Improvements. Improvements or additions to the common areas which shall cost more than ₱100,000.00 or which involve structural construction or modification must be approved by the members in a regular or special meeting called for the purpose before such improvements or additions are made. x x x.[25]

Said By-Laws also provides for the process by which violations of the Master Deed are redressed, and the same coincides with the prayer of Legaspi Towers:

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(2) A diagrammatic floor plan of the building or buildings in the project, in sufficient detail to identify each unit, its relative location and approximate dimensions;

[23] *Rollo* (G.R. No. 199389), p. 80.

[24] *Id.* at 301-311.

[25] *Id.* at 308.

ARTICLE VII
ABATEMENT OF VIOLATIONS

Section 1. Power to Abate Violations. In the event that any member or his tenant or lessee fails or refuses to comply with any limitation, restriction, covenant or condition of the Master Deed with Declaration of Restrictions, or with the rules and regulations on the use, enjoyment and occupancy of office/units or other property in the project, within the time fixed in the notice given him by the Board of Directors, the latter or its duly authorized representative shall have the right to enjoin, abate or remedy the continuance of such breach or violation by appropriate legal proceedings.

The Board shall assess all expenses incurred in abatement of the violation, including interest, costs and attorney's fees, against the defaulting member.[26]

Instead of procuring the required consent by the registered owners of the condominium project pursuant to the Condominium Act, or having Concession 4 approved by the members in a regular or special meeting called for the purpose pursuant to the By-Laws, LEMANS merely had an internal arrangement with the then president of Legaspi Towers. The same, however, cannot bind corporations, which includes condominium corporations such as Legaspi Towers, as they can act only through their Board of Directors.[27]

Unperturbed, LEMANS argues that the internal arrangement shows its good faith in the construction of Concession 4, and claims the application of the aforementioned Articles 448 and 546 of the Civil Code. For reference, Article 448 provides:

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[26] *Id*. at 308-309.

[27] Section 23 of the Corporation Code:

SECTION 23. *The Board of Directors or Trustees.* — Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified.

Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

Firstly, it is recognized in jurisprudence that, as a general rule, Article 448 on builders in good faith does not apply where there is a contractual relation between the parties.[28]

Morever, in several cases, this Court has explained that the *raison d'etre* for Article 448 of the Civil Code is to prevent the impracticability of creating a state of forced co-ownership:

The rule that the choice under Article 448 of the Civil Code belongs to the owner of the land is in accord with the principle of accession, *i.e.,* that the accessory follows the principal and not the other way around. Even as the option lies with the landowner, the grant to him, nevertheless, is preclusive. The landowner cannot refuse to exercise either option and compel instead the owner of the building to remove it from the land.

The *raison d'etre* for this provision has been enunciated thus: Where the builder, planter or sower has acted in good faith, a conflict of rights arises between the owners, and it becomes necessary to

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[28] *Communities Cagayan, Inc. v. Nanol,* 698 Phil. 648, 660 (2012), citing Arturo M. Tolentino, *CIVIL CODE OF THE PHILIPPINES*, Vol. II, 116 (1998). In his Commentaries, Tolentino had the occasion to expound that:

[Article 448] and the following articles are not applicable to cases where there is a contractual relation between the parties, such as lease of land, construction contract, usufruct, *etc*., in which cases **the stipulations of the parties and the pertinent legal provisions shall apply.** The owner of the land and that of the improvements may validly settle the conflict of their rights by contract, and **it is only in the absence of contrary stipulation that the alternative solutions provided by Article 448 are applicable.** (Emphases supplied.)

protect the owner of the improvements without causing injustice to the owner of the land. In view of the impracticability of creating a state of forced co-ownership, the law has provided a just solution by giving the owner of the land the option to acquire the improvements after payment of the proper indemnity, or to oblige the builder or planter to pay for the land and the sower the proper rent. He cannot refuse to exercise either option. It is the owner of the land who is authorized to exercise the option, because his right is older, and because, by the principle of accession, he is entitled to the ownership of the accessory thing.[29]

In the case at bar, however, the land belongs to a condominium corporation, wherein the builder, as a unit owner, is considered a stockholder or member in accordance with Section 10 of the Condominium Act, which provides:

SECTION 10. Whenever the common areas in a condominium project are held by a condominium corporation, such corporation shall constitute the management body of the project. The corporate purposes of such a corporation shall be limited to the holding of the common areas, either in ownership or any other interest in real property recognized by law, to the management of the project, and to such other purposes as may be necessary, incidental or convenient to the accomplishment of said purposes. The articles of incorporation or by-laws of the corporation shall not contain any provision contrary to or inconsistent with the provisions of this Act, the enabling or master deed, or the declaration of restrictions of the project. Membership in a condominium corporation, regardless of whether it is a stock or non-stock corporation, shall not be transferable separately from the condominium unit of which it is an appurtenance. When a member or stockholder ceases to own a unit in the project in which the condominium corporation owns or holds the common areas, he shall automatically cease to be a member or stockholder of the condominium corporation.

The builder is therefore already in a co-ownership with other unit owners as members or stockholders of the condominium corporation, whose legal relationship is governed by a special

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[29] *Tuatis v. Escol,* 619 Phil. 465, 488-489 (2009); *Espinoza v. Mayandoc,* G.R. No. 211170, July 3, 2017.

law, the Condominium Act. It is a basic tenet in statutory construction that between a general law and a special law, the special law prevails. *Generalia specialibus non derogant.*[30] The provisions of the Civil Code, a general law, should therefore give way to the Condominium Act, a special law, with regard to properties recorded in accordance with Section 4[31] of said Act. Special laws cover distinct situations, such as the necessary co-ownership between unit owners in condominiums and the need to preserve the structural integrity of condominium buildings; and these special situations deserve, for practicality, a separate set of rules.

Articles 448 and 546 of the Civil Code on builders in good faith are therefore inapplicable in cases covered by the Condominium Act where the ***owner of the land*** and the ***builder*** are already bound by specific legislation on the subject property (the Condominium Act), and by contract (the Master Deed and the By-Laws of the condominium corporation). This Court has ruled that upon acquisition of a condominium unit, the purchaser not only affixes his conformity to the sale; he also binds himself to a contract with other unit owners.[32]

In accordance therefore with the Master Deed, the By-Laws of Legaspi Towers, and the Condominium Act, the relevant provisions of which were already set forth above, Legaspi Towers is correct that it has the right to demolish Concession 4 at the expense of LEMANS. Indeed, the application of Article 448 to the present situation is highly iniquitous, in that an owner, also found to be in good faith, will be forced to either appropriate

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[30] *National Power Corp. v. Presiding Judge, RTC, 10th Judicial Region, Br. XXV, Cagayan De Oro City,* 268 Phil. 507, 513 (1990).

[31] Section 4. The provisions of this Act shall apply to property divided or to be divided into condominiums only if there shall be recorded in the Register of Deeds of the province or city in which the property lies and duly annotated in the corresponding certificate of title of the land, if the latter had been patented or registered under either the Land Registration or Cadastral Acts, an enabling or master deed which shall contain, among others, the following[.]

[32] *Limson v. Wack Wack Condominium Corp.,* 658 Phil. 124, 133 (2011).

the illegal structure (and impliedly be burdened with the cost of its demolition) or to allow the continuance of such an illegal structure that violates the law and the Master Deed, and threatens the structural integrity of the condominium building upon the payment of rent. The Court cannot countenance such an unjust result from an erroneous application of the law and jurisprudence.

We will no longer pass upon the issue of the validity of building permit for Concession 4 as the same has no bearing on the right of Legaspi Towers to an abatement of Concession 4.

Finally, we are constrained to deny the Petition of LEMANS in view of our ruling that the doctrine in *Depra* and Articles 448 and 546 of the Civil Code were improperly applied in these cases.

**WHEREFORE,** the Petition in G.R. No. 199353 is hereby **DENIED** for lack of merit. The Petition in G.R. No. 199389 is **GRANTED.** The Decision dated May 26, 2011 and Resolution dated November 17, 2011 of the Court of Appeals in CA-G.R. CV No. 88082 are **REVERSED** and **SET ASIDE.** Leviste Management System, Inc. is **ORDERED** to remove Concession 4 at its own expense.

No pronouncement as to costs.

**SO ORDERED.**

*Del Castillo, Jardeleza,* and *Tijam, JJ.,* concur.

*Sereno, C.J.,* on leave.

**THIRD DIVISION**

[G.R. No. 200075. April 4, 2018]

**SALIC MAPANDI *y* DIMAAMPAO,** *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; APPEALS; FILING A PETITION FOR REVIEW ON *CERTIORARI* FROM THE COURT OF APPEALS' DECISION, WHICH AFFIRMED THE CONVICTION OF THE ACCUSED AND IMPOSED THE PENALTY OF LIFE IMPRISONMENT, IS A WRONG MODE OF APPEAL; PROCEDURAL MISTAKE BRUSHED ASIDE SINCE THE COURT REFRAINS FROM DISPOSING CRIMINAL CASES OUT OF SHEER TECHNICALITY.—** [W]e note that the mode of appeal taken to challenge the assailed CA decision is wrong. Rule 56 of the Rules of Court is explicit: **SEC. 3.** *Mode of appeal*. An appeal to the Supreme Court may be taken only by a petition for review on *certiorari*, **except** in criminal cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment. Mapandi clearly availed of the wrong mode of appeal by filing a petition for review on certiorari, despite having been sentenced by the lower court to life imprisonment. The reason for this exception is obvious: an appeal in criminal cases 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 this case, however, we take exception to the rule. We can brush aside this procedural mistake because, as much as possible, we refrain from disposing criminal cases out of sheer technicality. This notion becomes more relevant when the circumstances suggest we should not do so.

**2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); NONCOMPLIANCE WITH**

**SECTION 21 OF R.A. 9165 IS FATAL; FAILURE TO SHOW THAT THE INVENTORY AND THE MARKING WERE DONE BEFORE THE ACCUSED OR HIS REPRESENTATIVE AND OTHER WITNESSES REQUIRED BY LAW, SERIOUS UNCERTAINTY HANGS OVER THE IDENTIFICATION OF THE SEIZED ITEMS.—** Based on the evidence presented by the prosecution, the requirement for the insulating witnesses to be present was not complied with at all. The members of the apprehending team never mentioned the presence of any media representative, DOJ representative, or elected official during the physical inventory. Worse, they also failed to show that the inventory was done before Mapandi or his representative. For all we know, the apprehending team could have done all this behind closed doors. Although we cannot assume this was what happened, due to the lack of any testimony or proof suggesting otherwise, serious or reasonable doubt sets in. x x x Without having to consider the other three (3) links, we can already conclude that the chain of custody was not preserved in this case because the prosecution failed to prove the most important and crucial link — marking the seized drug. x x x Given the procedural lapses pointed out above, serious uncertainty hangs over the identification of the shabu that the prosecution introduced in evidence.

3. **ID.; ID.; ID.; ID.; AS THE PROSECUTION'S EVIDENCE FAILED TO PROVE PETITIONER'S GUILT BEYOND REASONABLE DOUBT, THE COURT RESOLVES TO ACQUIT HIM.—** [T]he prosecution failed to fully prove the elements of the crime charged, creating a reasonable doubt on the criminal liability of the accused. All said, after due consideration, we resolve to acquit Mapandi, as the prosecution's evidence failed to prove his guilt beyond reasonable doubt. Specifically, the prosecution failed to show that the police complied with Section 21 of R.A. No. 9165 and with the chain of custody requirement, in order to prove the identity and integrity of the subject drugs in this case.

**APPEARANCES OF COUNSEL**

*Lozano & Lozano-Endriano Law Office* for petitioner.
*Office of the Solicitor General* for respondent.

## D E C I S I O N

**MARTIRES, *J.*:**

Before us is an appeal by way of petition for review on certiorari from the 20 December 2011 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR H.C. No. 04535. The instant petition was reinstated after we granted Salic Mapandi *y* Dimaampao's (*Mapandi*) motion for reconsideration and set aside our earlier Resolution dated 25 April 2012.[2] After the Office of the Solicitor General filed its comment to the petition, we now resolve the petition at hand.

## THE FACTS

Mapandi was charged before the Regional Trial Court, Branch 75, Olongapo City (*RTC*), in Criminal Case No. 512-07 for violating Article II, Section 5 of Republic Act (*R.A.*) No. 9165. The information against him reads:

> That on or about the Tenth (10th) day of November 2007, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized, did then and there willfully, unlawfully, and knowingly sell, deliver, and give away to another person ₱500.00 (SN CV441949) worth of Methamphetamine Hydrochloride, otherwise known as "shabu" which is a dangerous drug, in one (1) heat sealed transparent plastic sachet weighing sixteen grams and one-tenth of a gram (16.1).
>
> CONTRARY TO LAW.[3]

On 21 February 2008, Mapandi, with the assistance of counsel, was arraigned and entered a plea of not guilty. Pre-trial and trial on the merits followed.

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[1] *Rollo*, pp. 26-36. Penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Apolinario D. Bruselas, Jr.

[2] *Id*. at 127.

[3] *Id*. at 45.

***The Prosecution's Evidence***

On 9 November 2007, a civilian asset reported to P/Insp. Julius Javier (*PI Javier*) that Mapandi was a Pasig City-based drug dealer whose deals extended to Olongapo City. After the civilian asset arranged a meeting with Mapandi, PI Javier formed a buy-bust team wherein PO2 Hortencio Javier (*PO2 Javier*) would act as poseur-buyer, and PO1 David Sergius Domingo (*PO1 Domingo*) and PO2 Rene Pundavela (*PO2 Pundavela*) were his immediate backup. PI Javier gave PO2 Javier the ₱500.00 pre-marked money which was photocopied repeatedly then bundled to make it appear it was worth ₱50,000.00.

The following day, or on 10 November 2007, the buy-bust team proceeded to the second floor of a KFC restaurant and waited for Mapandi. Two hours later, at about 5:20 P.M., Mapandi arrived and was introduced by the civilian asset to PO2 Javier. Mapandi then took out a white envelope, suspected to contain shabu, and handed it to PO2 Javier who, in turn, handed him the boodle money and placed the envelope in his pocket. PO2 Javier then gave the pre-arranged signal to alert his backup who would aid in the arrest.

Thereafter, Mapandi and the suspected envelope containing drugs, which was in PO2 Javier's possession, were brought to the police station. It was in the police station where PO2 Javier allegedly marked the suspected drugs with his initials "HJ." After the request for laboratory examination and other documents were prepared by PO2 Pundavela, the drugs were then brought to the laboratory. The chemistry report showed that the specimen tested positive for 16.1 grams of methamphetamine hydrochloride.

***The Version of the Defense***

On his part, Mapandi raised the defense of denial and instigation. He said that he was in Olongapo City, on 10 November 2007, because he was trading cellphone merchandise with Arnel Pangkatan (*Pangkatan*). After he dropped off his supplies at Pangkatan's store, Mapandi decided to eat at the local Jollibee. However, since there were no seats available, he proceeded to the nearby KFC.

While having his meal, Mapandi claimed that several men approached and arrested him. These men told him that he had shabu in his possession, then boarded him in a vehicle and brought him to the police station. Mapandi insists that the drugs were planted.

Pangkatan corroborated Mapandi's testimony saying that the latter was indeed engaged in the business of trading cellphone merchandise.

***The Ruling of the Trial Court***

In its 4 May 2010 Judgment,[4] finding all the essential elements of illegal sale of shabu to be proven, the RTC found Mapandi guilty as charged. Hence, the RTC ruled:

> **WHEREFORE**, the Court finds the accused **SALIC MAPANDI y DIMAAMPAO GUILTY** beyond reasonable doubt of Violation of Section 5, R.A. No. 9165 and hereby sentences him to suffer the penalty of **life imprisonment** and to **pay a fine of ₱500,000.00 plus costs**, and to suffer the accessory penalties under Section 35 thereof.
>
> Accused Salic Mapandi being under detention shall be credited in the service of his sentence with the full time during which he had undergone preventive imprisonment subject to the conditions imposed under Art. 29 of the Revised Penal Code, as amended.
>
> The one (1) heat-sealed transparent plastic sachet of "shabu" weighing 16.1 grams is forfeited in favor of the government and to be disposed of in accordance with law.
>
> **SO DECIDED.**[5]

***The Assailed CA Decision***

In its assailed decision, the CA affirmed *in toto* the RTC's decision that Mapandi's arrest was the result of a valid buy-bust operation.

In addressing the issue on the chain of custody of the seized drugs, the CA said:

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[4] Records, pp. 292-298.

[5] *Id*. at 298.

Finally, it has been shown that the chain of custody of the seized shabu was continuous and unbroken. The evidence has shown that the "shabu" sold by accused-appellant remained in the possession of PO2 Javier from the moment of delivery and when markings were made at the crime scene and at the police station where it was turned over to PO2 Pundavela. PO2 Pundavela then prepared the evidence custodian report and receipt of property seized affirming that he received the same from both PO2 Javier and PO1 Domingo, and which was promptly delivered to the PNP Crime Laboratory for examination. PO2 Javier identified before the court the drug sachet submitted at the PNP crime laboratory as the same drug he received from the accused-appellant during the buy-bust operation. Here, the key persons who came in direct contact with the shabu were presented in court and corroborated each other's testimony on how the seized drugs changed hands establishing an unbroken chain of custody.

Be that as it may, from the language of Section 21, the failure to observe strict compliance under justifiable grounds does not *ipso facto* render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers. Here, while the police officers may not have strictly followed to the letter the prescribed procedure, it was sufficiently shown that the substances seized were the same substances which were taken from the accused-appellant and subjected to forensic examination. The integrity and evidentiary value of the seized items have been properly preserved.

**WHEREFORE**, the appeal is **DENIED**. The Decision dated 04 May 2010 of the Regional Trial Court, Branch 75, Olongapo City is hereby **AFFIRMED**.

**SO ORDERED.**[6]

From this CA decision, the case is now before us for final review.

## OUR RULING

We find merit in the appeal.

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[6] *Rollo*, pp. 34-35.

***Procedural Matters***

At the outset, we note that the mode of appeal taken to challenge the assailed CA decision is wrong. Rule 56 of the Rules of Court is explicit:

> **SEC. 3.** *Mode of appeal.* An appeal to the Supreme Court may be taken only by a petition for review on *certiorari*, **except** in criminal cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment.

Mapandi clearly availed of the wrong mode of appeal by filing a petition for review on certiorari, despite having been sentenced by the lower court to life imprisonment. The reason for this exception is obvious: an appeal in criminal cases 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.[7] 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.[8]

In this case, however, we take exception to the rule. We can brush aside this procedural mistake because, as much as possible, we refrain from disposing criminal cases out of sheer technicality. This notion becomes more relevant when the circumstances suggest we should not do so.

***Substantive Matters: The Identity and Integrity of the Seized Drugs***

The importance of compliance with the procedure laid out in Section 21 of R.A. No. 9165 and properly proving the chain of custody over seized drugs is echoed and imbedded in our

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[7] *Ramos v. People*, G.R. No. 218466, 23 January 2017.

[8] *People v. Bagamano*, G.R. No. 222658, 17 August 2016, 801 SCRA 209, 214, citing *People v. Comboy*, G.R. No. 218399, 2 March 2016, 785 SCRA 512, 521.

jurisprudence. Although both law and jurisprudence have already set a precedent on how seized drugs should be handled, lower courts are still confused on when to excuse strict compliance from Section 21 of R.A. No. 9165. Finding this case to be one where the lower courts have overlooked the prosecution's evidence, we find it proper to correct them and order Mapandi's acquittal.

To prove the existence of the *corpus delicti* in drug cases, the prosecution must establish that the identity and the integrity of the dangerous drug itself were preserved.[9] Thus, to remove any doubt and uncertainty, Section 21 of R.A. No. 9165 proscribes:

> *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 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

[9] The identity of the confiscated drugs is preserved when we can say that drugs presented offered as evidence in court is the exact same item that was seized or confiscated from the accused at the time of his arrest. The preservation of the drugs' integrity, on the other hand, means that its evidentiary value is intact as it was not subject to planting, switching, tampering or any other circumstance that cast doubt as to its existence.

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 items: *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 the testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the qualities 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; [x x x]

The provision dictates that the apprehending team shall, **immediately after confiscation**, conduct a physical inventory and photograph the seized items ***in the presence of*** the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice, and any elected public official.

To reinforce these guidelines set by law, Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165 (*IRR*) filled-in the details as to where the inventory and photographing of seized items had to be done, and even *added a saving clause* in case the procedure is not followed, to wit:

*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*. — 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 the nearest office of the apprehending officer/

team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that noncompliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.[10] [underscoring ours]

While in certain cases the last *proviso* in the IRR was used to justify the procedural lapses of the apprehending team, we have to be mindful that the *proviso* operates only when there was noncompliance with the procedure found in Section 21 of R.A. No. 9165. Before going into the links of the chain of custody, we have to first check if the statutory safeguards have been complied with.

Based on the evidence presented by the prosecution, the requirement for the insulating witnesses to be present was not complied with at all. The members of the apprehending team never mentioned the presence of any media representative, DOJ representative, or elected official during the physical inventory. Worse, they also failed to show that the inventory was done before Mapandi or his representative. For all we know, the apprehending team could have done all this behind closed doors. Although we cannot assume this was what happened, due to the lack of any testimony or proof suggesting otherwise, serious or reasonable doubt sets in.

Since there had been non-compliance with Section 21 of R.A. No. 9165, the saving clause in the IRR (now incorporated as an amendment into R.A. No. 9165) operates. However, we have to be careful in using this as its language requires closer inspection. As a general rule, strict compliance with Section 21 of R.A. No. 9165 is mandatory.[11] The Court only excuses non-compliance when: (1) there exist justifiable grounds to allow

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[10] In R.A. No. 10640, the amendment, to Section 21 of R.A. No. 9165 was introduced where the last *proviso* in the IRR was incorporated in the law itself.

[11] *People v. Cayas*, 789 Phil. 70, 79 (2016); *People v. Havana*, 776 Phil. 462, 475-476 (2016).

departure from the rule, **and** (2) the integrity and evidentiary value of the seized items are properly preserved by the apprehending team.[12] If these two (2) elements are present, the seizures and custody over the confiscated items shall not be doubted.

In *People v. Kamad*,[13] the Court held that the following links must be established in the chain of custody:

> *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.[14]

Without having to consider the other three (3) links, we can already conclude that the chain of custody was not preserved in this case because the prosecution failed to prove the most important and crucial link — marking the seized drug.

Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused.[15] In *People v. Gonzales*,[16] we explained that:

> 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

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[12] *People v. Viterbo*, 739 Phil. 593, 603 (2014); *People v. Umpiang*, 686 Phil. 1024, 1038 (2012); *People v. Alagarme*, 754 Phil. 449, 458 (2012).

[13] 624 Phil. 289 (2010).

[14] *Id.* at 304.

[15] *Valencia v. People*, 725 Phil. 268, 280 (2014), citing *People v. Coreche*, 612 Phil. 1238, 1245 (2009).

[16] *People v. Gonzales*, 708 Phil. 121 (2013).

the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest. The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence. In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.[17]

With this in mind, we note that PO2 Javier testified that he marked the drugs when he returned to the police station after the buy-bust operation:

Q: And you said Salic Mapandi was arrested, where was he brought?
A: At our office, sir, at Camp Cabal.

Q: And what about the shabu that you bought, who brought that to your office?
A: I [did], sir.

Q: And at the office, what happened?
A: I put my marking on the confiscated suspected shabu, sir.

Q: What marking [did] you place?
A: The initials of my name, sir. "HJ," sir.

Q: After you placed the markings, what happened next?
A: I turned it over to our Desk Officer, sir. PO2 Puntavera, sir.

Q: What was turned over to [PO2] Puntavera?
A: The confiscated shabu, sir.[18]

From his testimony, we gather that he had marked the seized item with his initials "HJ." However, upon closer examination of the documents prepared after the buy-bust operation, i.e.,

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[17] *Id.* at 130-131.

[18] TSN, July 1, 2008, pp. 20-21.

the affidavit of apprehension, the receipt of property/evidence seized, and the request for laboratory examination, show that the markings on the supposed confiscated drug was "DEG-SDM-01-11-10-07."[19] Even the chemistry report indicates that the specimen that was examined was "one (1) heat-sealed transparent plastic sachet with markings "DEG-SDM-01-11-10-07 containing 16.1 grams of alleged Methamphetamine Hydrochloride" and not an item that was marked with "HJ."[20] On this discrepancy alone, the prosecution's evidence establishing the chain of custody shatters because we are uncertain if what was examined in the laboratory was the same item that was confiscated from Mapandi. If the point of marking is to set it apart from other pieces of evidence of similar nature or to ensure that there was no planting or switching evidence, we cannot say those objectives were met under these circumstances.

Given the procedural lapses pointed out above, serious uncertainty hangs over the identification of the shabu that the prosecution introduced in evidence. In effect, the prosecution failed to fully prove the elements of the crime charged, creating a reasonable doubt on the criminal liability of the accused.

All said, after due consideration, we resolve to acquit Mapandi, as the prosecution's evidence failed to prove his guilt beyond reasonable doubt. Specifically, the prosecution failed to show that the police complied with Section 21 of R.A. No. 9165 and with the chain of custody requirement, in order to prove the identity and integrity of the subject drugs in this case.

**WHEREFORE,** premises considered, the 20 December 2011 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 04535 is **REVERSED** and **SET ASIDE**. Salic Mapandi *y* Dimaampao 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 detained for any other lawful cause.

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[19] Records, pp. 5-10.

[20] *Id*. at 12.

Let a copy of this Decision be furnished 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 the action he has taken within five (5) days from receipt of this Decision.

**SO ORDERED.**

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

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**FIRST DIVISION**

[G.R. No. 212785. April 4, 2018]

**REPUBLIC OF THE PHILIPPINES,** *petitioner, vs.* **GO PEI HUNG,** *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; REVISED NATURALIZATION LAW (COMMONWEALTH ACT NO. 473); A CERTIFICATE OF ARRIVAL ATTACHED TO THE PETITION FOR NATURALIZATION IS A MANDATORY REQUIREMENT; REASON.—** Section 7 of the Revised Naturalization Law or CA 473 requires, among others, that an applicant for naturalization must attach a Certificate of Arrival to the Petition for Naturalization[.] x x x Respondent came to the country sometime in 1973; thus, he should have attached a Certificate of Arrival to his Petition for Naturalization. This is mandatory as respondent must prove that he entered the country legally and not by unlawful means or any other manner that is not sanctioned by law. Because if he entered the country illegally, this would render his stay in the country unwarranted from the start, and no number of years' stay here will validate his unlawful entry. The spring cannot rise higher than its source, so to speak.

In *Republic v. Judge De la Rosa,* this Court held that the failure to attach a copy of the applicant's certificate of arrival to the petition as required by Section 7 of CA 473 is fatal to an applicant's petition for naturalization. x x x The Certificate of Arrival should prove that respondent's entry to the country is lawful. Without it, his Petition for Naturalization is incomplete and must be denied outright.

2. **ID.; ID.; ID.; THAT RESPONDENT ACQUIRED PERMANENT RESIDENT STATUS AND THAT THE REQUIRED CERTIFICATE OF ARRIVAL IS A MERE COMPONENT PART IN THE FILING OF THE DECLARATION OF INTENTION, CANNOT JUSTIFY NON-COMPLIANCE; DECLARATION OF INTENTION IS ENTIRELY DIFFERENT FROM THE CERTIFICATE OF ARRIVAL.—** Even if respondent acquired permanent resident status, this does not do away with the requirement of said certificate of arrival. An application to become a naturalized Philippine citizen involves requirements different and separate from that for permanent residency here. Respondent likewise argues that the required certificate of arrival is a "mere component part in the filing of the Declaration of Intention" and thus unnecessary since he is exempt from submitting the latter document. This is not correct. The Declaration of Intention is entirely different from the Certificate of Arrival; the latter is just as important because it proves that the applicant's entry to the country was not illegal — that he was a documented alien whose arrival and presence in the country is in good faith and with evident intention to submit to and abide by the laws of the Republic. Certainly, an illegal and surreptitious entry into the country by aliens whose undocumented arrival constitutes a threat to national security and the safety of its citizens may not be rewarded later on with citizenship by naturalization or otherwise; to repeat, a spring will not rise higher than its source.

3. **ID.; ID.; ID.; REQUIREMENT TO ATTACH A CERTIFICATE OF ARRIVAL IS A MATTER OF NATIONAL INTEREST AS IT INVOLVES THE SECURITY AND SAFETY OF THE COUNTRY AND ITS CITIZENS.—** On the issue of petitioner's alleged failure to attach the required annexes to the copy of the instant Petition that was sent to respondent, this is rendered insignificant and moot by the fact that respondent's application for naturalization — which is patently

defective for failure to attach the required certificate of arrival — involves the national interest, as well as the security and safety of the country and its citizens. Any procedural infirmities in this case are superseded by the national interest. "[T]echnicalities take a backseat against substantive rights, and not the other way around."

**APPEARANCES OF COUNSEL**

*The Solicitor General* for petitioner.
*Eufemio Law Offices* for respondent.

**D E C I S I O N**

**DEL CASTILLO, *J.*:**

A Petition for Naturalization must be denied when full and complete compliance with the requirements of Commonwealth Act. No. 473 (CA 473), or the Revised Naturalization Law, is not shown.

This Petition for Review on *Certiorari*[1] seeks to set aside (1) the February 28, 2014 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 97542 affirming the July 21, 2010 Decision[3] of the Regional Trial Court (RTC) of Manila City, Branch 16 in Naturalization Case No. 07-118391, as well as (2) the CA's June 5, 2014 Resolution[4] denying petitioner's Motion for Reconsideration.

***Factual Antecedents***

On December 3, 2007, respondent Go Pei Hung — a British subject and Hong Kong resident — filed a Petition for

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[1] *Rollo,* pp. 11-31.

[2] *Id*. at 32-41; penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Rodil V. Zalameda and Manuel M. Barrios.

[3] *Id*. at 44-56; penned by Presiding Judge Carmelita S. Manahan.

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

Naturalization[5] seeking Philippine citizenship. The case was lodged before the RTC of Manila, Branch 16 and docketed as Naturalization Case No. 07-118391.

After trial, the RTC issued its July 21, 2010 Decision granting the respondent's petition for naturalization. The RTC declared, thus:

> The issue to be resolve [sic] here is whether or not the petitioner deserves to become a Filipino citizen.
>
> In Commonwealth Act No. 473, approved June 17, 1939, provided [sic] that persons having certain specified qualifications may become a citizen [sic] of the Philippines by naturalization.
>
> **Section 2.** *Qualifications.* — Subject to Section 4 of this Act, any person having the following qualifications may become a citizen of the Philippines by naturalization:
>
> *First.* He must be not less than twenty-one years of age on the day of the hearing of the petition;
>
> *Second.* He must have resided in the Philippines for a continuous period of not less than ten years;
>
> *Third.* He must be of good moral character and believes in the principles underlying the Philippine Constitution, and must have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relation wife the constituted government as well as with the community in which he is living.
>
> *Fourth.* He must own real estate in the Philippines worth not less than five thousand pesos, Philippine currency, or must have some known lucrative trade, profession, or lawful occupation:
>
> *Fifth.* He must be able to speak and write English or Spanish and any one of the principal Philippine languages; and
>
> *Sixth.* He must have enrolled his minor children of school age, in any of the public schools or private schools recognized by the Office of Private Education of the Philippines, where the Philippine history, government and civics are taught or prescribed as part of the school curriculum, during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen.

[5] *Id*. at 57-61.

The Court, upon reviewing the records of this case, the pieces of documentary evidence and the testimonies of the petitioner and his two (2) character witnesses, x x x finds that petitioner Go Pei Hung, has complied with all the qualifications stated in Section 2 of Commonwealth Act 473.

It appeared that there is no impediment to the Court's nod of approval to petitioner's supplication[, H]e had presented at least two (2) credible persons, stating that they are citizens of the Philippines and personally know the petitioner to be a resident of the Philippines for the period of time required (Section 7 of CA 473).

*As held in Lim versus Republic 17 SCRA 424, 427, (1996[)] citing Vy Tain vs. Republic, L-19918, July 30, 1965.*

*'As construed by case law, they must have personal knowledge of the petitioner's conduct during the entire period of his residence in the Philippines.'*

*Also in [the] case of Edison So vs. Republic,* G.R. No. 170603, January 29, 2007 and *Republic vs. Hong,* G.R. No. 168877, March 24, 2006[:]

"In naturalization proceedings, the applicant has the *onus* to prove not only his own good moral character but also the good moral character of his/her witnesses, who must, be credible persons."

Both witnesses presented by petitioner made common declarations that they came to know him [in] 1995 and became good friends with petitioner. Verily, given the birth of petitioner in 1961, the testimony of his two (2) witnesses, Mr. La To Sy Lai and So An Ui Henry Co Sy, that they came to know the petitioner sometime in 1995, [revealed] x x x that they had personal cognition of petitioner's demeanor during the petitioner's residence in the Philippines. Certainly, they see and observe the applicant continuously, every day and every week in order to be competent to testify on his reputation and conduct.

WHEREFORE, premises considered, the Petition, for Naturalization filed by petitioner Go Pei Hung is hereby GRANTED.

Let [a] copy of this Decision be sent to the following concerned government agencies:

1. Bureau of Immigration
2. Department of Foreign Affairs
3. Office of the Solicitor General
4. National Bureau of Investigation

Under Republic Act 530, this decision granting the application for naturalization shall not become final and executory until after two (2) years from the promulgation of the decision and after **another hearing** is conducted to determine whether or not the applicant has complied with the requirements of Section 1 of said law with the attendance of the Solicitor General or his authorized representative x x x, and so finds [that] during the intervening time the applicant:

**(1) [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 rate; and**
**(4) or committed any act prejudicial to the interest of the nation or contrary to any Government announced policies.**

**Set hearing on August 30, 2012 at 8:30 o'clock in the morning.**

SO ORDERED.[6] (Emphasis in the original; citations omitted)

### *Ruling of the Court of Appeals*

Petitioner interposed an appeal with the CA, which was docketed as CA-G.R. CV No. 97542. On February 28, 2014, the CA issued the assailed Decision, pronouncing thus:

x x x [T]he Republic of the Philippines, through the OSG, filed the present appeal, alleging that:

'I.
THE TRIAL COURT ERRED IN GRANTING THE PETITION DESPITE PETITIONER-APPELLEE'S FAILURE TO FILE A DECLARATION OF INTENTION, AS REQUIRED BY SECTION 5 OF COMMONWEALTH ACT (C.A.) NO. 473;

II.
THE TRIAL COURT ERRED IN GRANTING THE PETITION DESPITE PETITIONER-APPELLEE'S FAILURE TO ATTACH A CERTIFICATE OF HIS ARRIVAL IN THE PHILIPPINES, AS MANDATED BY SECTION 7 OF COMMONWEALTH ACT X X X NO. 473:

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[6] *Id*. at 53-56.

III.

THE TRIAL COURT ERRED IN GRANTING THE PETITION DESPITE PETITIONER-APPELLEE'S FAILURE TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT HE HAS A LUCRATIVE TRADE, PROFESSION OR OCCUPATION, AS REQUIRED BY PARAGRAPH 4, SECTION 2 OF CA. NO. 473; and

IV.

THE TRIAL COURT ERRED IN GRANTING THE PETITION DESPITE PETITIONER-APPELLEE'S FAILURE TO PRESENT DURING THE HEARING OF THE PRESENT CASE AT LEAST TWO CREDIBLE PERSONS AS PROVIDED BY SECTION 7 OF CA. NO. 473.'

Petitioner-appellee opposes the appeal and claims that he has all the qualifications and none of the disqualifications to be a naturalized Philippine citizen.

The sole issue in this appeal is whether x x x the court a quo committed a reversible error in granting the petition for naturalization.

After [a] careful consideration of the arguments and the evidence on record, this Court rules to dismiss the appeal.

Anent the first assigned error, the Republic claims that the petitioner failed to file with the OSG a Declaration of Intention as required under Section 5 of Commonwealth Act (CA) No. 473, as amended, which provides that:

'Sec. 5. *Declaration of Mention.* — **One year prior to the filing of his petition for admission to Philippine citizenship, the applicant for Philippine citizenship shall file with the Bureau of Justice, a declaration under oath that it is *bona fide* his intention to become a citizen of the Philippines.** x x x'

As the foregoing Section 5 of CA No. 473, as amended, provides, the declaration shall be filed with the Bureau of Justice, now the OSG, at least one year before the filing of the petition, and shall set forth the following:

(a) name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel or aircraft in which he came to the Philippines, and the place of residence in the Philippines at the time of making the declaration;

(b) a certificate showing the date, place and manner of his arrival;

(c) a statement that he has enrolled his minor children, if any, in any of the public schools or private schools recognized by the Office of Private Education of the Philippines, now the Department of Education, where Philippine history, government, and civics are taught or prescribed as part of the school curriculum, during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen; and

(d) two photographs of himself.

Petitioner-appellee does not deny that he failed to file with the OSG the required declaration of intention, but he claims that he is exempted from filing the same pursuant to Section 6 of CA 473, as amended, which provides that:

'Sec. 6. *Persons exempt from requirement to make a declaration of intention.* — Persons born in the Philippines and have received their primary and secondary education in public schools or those recognized by the Government and not limited to any race or nationality, and **those who have resided continuously in the Philippines for a period of thirty years or more before filing their application, may be naturalized without having to make a declaration of intention upon complying with the other requirements of this Act.** To such requirements shall be added that which establishes that the applicant has given primary and secondary education to all his children in the public schools or in private schools recognized by the Government and not limited to any race or nationality. The same shall be understood to be applicable with respect to the widow and minor children of an alien who has declared his intention to become a citizen of the Philippines, and dies before he is actually naturalized.'

According to petitioner-appellee, he has been continuously residing in the Philippines since 1973, during which he resided at 2277-B Luna Street, Pasay City. Also, he studied [at the] Philippine Pasay Chinese School in 1974 and later graduated [from] Grade VI in 1976. Thus, petitioner-appellee claims that, counted from 1973 to 2007 when he filed the petition for naturalization, he [had] been continuously residing in the Philippines for a period of thirty-four (34) years.

As to why petitioner-appellee stated in his petition that he continuously resided in the Philippines starting in 1989 only, he explained that it was [in] that year that he was officially issued a Certificate of Permanent Residence by the Bureau of Immigration. But, to be entitled to that status, he had to [have] resided in the Philippines for a longer period of time.

This Court is convinced that petitioner-appellee has been residing in the Philippines earlier than 1989. As narrated in the petition, he commenced his residence in the Philippines in 1973 at 2277-B Luna Street Pasay City. A year later, he enrolled at the Philippine Pasay Chinese School, where he later graduated [from] Grade VI in 1976. That he had been living in the Philippines in 1973 was also established by petioner-appellee during his direct examination, thus:

x x x x x x x x x

It bears stressing that this testimony was not contradicted or refuted by the Republic which was represented by the City Prosecutor of Manila.

Thus, counted from 1973 to 2007 when he filed the petition for naturalization, petitioner-appellee had been continuously residing in the Philippines for more than thirty (30) years, or a period of thirty-four (34) years to be exact. Pursuant to Section 6 of CA 473, as amended, petitioner-appellee is exempted from filing the aforesaid declaration of intention.

Relatedly, considering that petitioner-appellee is exempted from filing the declaration of intention, petitioner-appellee is also exempted from filing the certificate of arrival which is, after all, just a component of the declaration of intention as provided under Section 5 of CA No. 473, as amended.

It is also not amiss to mention that all the information needed to be stated in the declaration of intention were stated also in the petition for naturalization and were proven during the presentation of evidence. So, while petitioner-appellee is exempted from filing the said declaration, he, nevertheless, provided and proved the facts needed to support his petition for naturalization.

As for the third assigned error, the Republic claims that the petitioner-appellee does not have a lucrative trade, profession or occupation within the meaning of the Naturalization Law, and that while petitioner-appellee alleged in his petition that he derived an

annual income of ₱165,000.00 as a businessman, he failed to present any evidence to support his supposed business.

The Court is not persuaded.

According to Section 1 of CA No. 473, as amended, one of the qualifications of a person applying to be a naturalized Philippine citizen is that he must either own real estate in the Philippines worth not less than five thousand pesos, Philippine currency, or have some known lucrative trade, profession, or lawful occupation. Petitioner-appellee sought to establish that he is a businessman, [from] which he derives an average annual income of ₱165,000.00 During the trial, he marked and offered in evidence his Annual Income Tax Returns for the years 2007, 2008 and 2009. He also testified that he was helping in the business, which was put up by his wife, called the Excel Parts Sales Center, located at 1161 R. Hidalgo Street, Quiapo, Manila. This was affirmed by petitioner-appellee's witness, Lato Sy Lai, who told the court that petitioner-appellee's business is the sale of automobile parts.

Thus, contrary to the claim of the Republic, petitioner-appellee was able to prove that he has a lucrative trade, profession or occupation, which is the sale of automobile parts, one which has not been rebutted by the Republic nor has been shown to be illegal, immoral or against public policy.

As for the fourth and last assigned error, the Republic claims that the petitioner-appellee failed to present credible persons as character witnesses, and that the two persons who testified for the petitioner-appellee resorted to mere generalizations.

Again, the Court is not persuaded.

Petitioner-appellee presented two character witnesses: Lato Sy Lai and So An Ui Henry Sy. Both witnesses testified in court and were cross-examined by the City Prosecutor of Manila on such matters as how they met petitioner-appellee, how the petitioner-appellee related to Filipinos and how petitioner-appellee has adapted to Filipino culture, customs and traditions. We have reviewed the testimonies of these witnesses and we find no error on the part of the trial court when it found these witnesses credible. As held in *People vs. dela Cruz,* the matter of evaluating the credibility of witnesses depends largely on the assessment of the trial court, and appellate courts rely heavily on the weight given by the trial court on the credibility of a witness as it had a first-hand opportunity to hear and see the witness testify.

It must be stressed again, that despite its opportunity to do so, the Republic failed to present any evidence or witness to oppose the testimonial evidence presented by the petitioner-appellee.

In fine, the Republic has failed to show that the court a quo committed reversible error in granting petitioner-appellee's petition for naturalization.

***WHEREFORE,*** the instant appeal is ***DISMISSED*** and the Decision dated July 21, 2010 of the Regional Trial Court of Manila, Branch 16, in Naturalization Case No. 07-118391 is ***AFFIRMED.***

***SO ORDERED.***[7] (Emphasis in the original: citations omitted)

Petitioner moved for reconsideration, but in its June 5, 2014 Resolution, the appellate court held its ground.

## Issues

In the present Petition, it is argued that —

**The petition for naturalization should not [have been] granted because: i) respondent did not file his declaration of intention with the OSG; ii) respondent did not state the details of his arrival in the Philippines in his petition and the certificate of arrival was not attached to the petition.; iii) respondent is not engaged in a lucrative profession, trade or occupation; and iv) respondent failed to present during hearing qualified character witnesses as required under CA No. 473.**[8] (Emphasis in the original)

### *Petitioner's Arguments*

In its Petition and Reply[9] seeking reversal of the CA dispositions and denial of respondent's Petition for Naturalization in Naturalization Case No. 07-118391, petitioner contends that naturalization should be denied due to the failure of respondent to attach a Declaration of Intention and Certificate of Arrival to his Petition for Naturalization, as required under CA No. 473; that contrary to the CA's pronouncement, respondent is

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[7] *Id*. at 36-41.

[8] *Id*. at 18.

[9] *Id*. at 99-113.

not exempt from filing the required Declaration of Intention as he was neither born in the Philippines, nor had he resided therein for a period of 30 years or more, as the record showed that he was born in Hong Kong and became a permanent Philippine resident only in 1989 — or for a period less than the required 30-year residency counted from the filing of his Petition for Naturalization in 2007; that the Certificate of Arrival — which is lacking — is equally important as it prevents aliens who have surreptitiously entered the country without the proper document or certificate of entry from acquiring citizenship by naturalization, and the absence of such document renders the Petition for Naturalization null and void; that the Petition for Naturalization was not validly published in its entirety; that respondent was not engaged in a lucrative trade, profession or occupation as he only had an average annual income of ₱165,000.00 in 2007 — when he filed the Petition for Naturalization — or a monthly income of only ₱13,750.00, which was insufficient for the support of his wife and three minor children, much less for his sole sustenance: that the two witnesses presented in respondent's favor were not credible character witnesses as they resorted to mere generalizations in their testimonies and did not delve into specific details — and they did not actually know respondent well since they both came to know him only in 1995.

Regarding procedural matters, petitioner argues that, while it did not attach the annexes to the instant Petition to the copy sent to respondent, these documents were nonetheless known to the latter and he had them in his possession all throughout these proceedings.

***Respondent's Arguments***

In his Comment,[10] respondent argues that the instant Petition should be denied as it violated Section 4 of Rule 45 of the Rules of Court[11] as petitioner did not attach the annexes to the

[10] *Id.* at 70-92.

[11] Sec. 4. *Contents of petition.* — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated

copy of its Petition sent to respondent; besides the Petition is without merit. In particular, respondent argues that he is exempt from filing a Declaration of Intention and submitting a Certificate of Arrival, as he has been a resident of the Philippines for more than 30 years, having arrived in the country in 1973 and residing therein since; that the petitioner's computation of respondent's residency from 1989 reckoned from the issuance of his certificate of permanent residence, was incorrect; that the Certificate of Arrival is a mere "component part in the filing of the Declaration of Intention"[12] — which is thus no longer required since respondent is exempt from filing the said Declaration of Intention; that the Petition for Naturalization was validly published in accordance with the requirements of law; that respondent was engaged in a lucrative trade, as in fact since January 2010, he was already earning a monthly income of ₱50,000.00 as a commission sales executive; and that the witnesses for respondent gave credible testimonies on the latter's character and behavior.

**Our Ruling**

The Court grants the Petition.

In *Republic v. Huang Te Fu,*[13] a case decided by this *ponente,* the following pronouncement was made:

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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 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.

[12] *Rollo,* p. 78.

[13] 756 Phil. 309, 321 (2015).

In *Republic v. Hong,* it was held in essence that an applicant for naturalization must show full and complete compliance with the requirements of the naturalization law; otherwise, his petition for naturalization will be denied. This *ponente* has likewise held that "[t]he courts must always be mindful that naturalization proceedings are imbued with the highest public interest. Naturalization laws should he rigidly enforced and strictly construed in favor of the government and against the applicant. The burden of proof rests upon the applicant to show full and complete compliance with the requirements of law."[14] (Citations omitted)

Section 7 of the Revised Naturalization Law or CA 473 requires, among others, that an applicant for naturalization must attach a Certificate of Arrival to the Petition for Naturalization:

Section 7. Petition for citizenship. — Any person desiring to acquire Philippine citizenship shall file with the competent court, a petition in triplicate, accompanied by two photographs of the petitioner, setting forth his name and surname; his present and former places of residence; his occupation; the place and date of his birth; whether single or married and the father of children, the name, age, birthplace and residence of the wife and of the children; **the approximate date of his or her arrival in the Philippines, the name of the port of debarkation, and, if he remembers it, the name of the ship on which he came;** a declaration that he has the qualifications required by this Act, specifying the same, and that he is not disqualified for naturalization under the provisions of this Act; that he has compiled with the requirements of section five of this Act; and that he will reside continuously in the Philippines from the date of the filing of the petition up to the time of his admission to Philippine citizenship. The petition must be signed by the applicant in his own handwriting and be supported by the affidavit of at least two credible persons, stating that they are citizens of the Philippines and personally know the petitioner to be a resident of the Philippines for the period of time required by this Act and a person of good repute and morally irreproachable, and that said petitioner has in their opinion all the qualifications necessary to become a citizen of the Philippines and is not in any way disqualified under the provisions of this Act. The petition shall also set forth the names and post-office addresses of such witnesses as the petitioner may desire to introduce at the hearing

[14] *Id*. at 321.

of the case. **The certificate of arrival, and the declaration of intention must be made part of the petition.** (Emphasis supplied)

Respondent came to the country sometime in 1973; thus, he should have attached a Certificate of Arrival to his Petition for Naturalization. This is mandatory as respondent must prove that he entered the country legally and not by unlawful means or any other manner that is not sanctioned by law. Because if he entered the country illegally, this would render his stay in the country unwarranted from the start, and no number of years' stay here will validate his unlawful entry. The spring cannot rise higher than its source, so to speak.

In *Republic v. Judge De la Rosa,*[15] this Court held that the failure to attach a copy of the applicant's certificate of arrival to the petition as required by Section 7 of CA 473 is fatal to an applicant's petition for naturalization. The ruling in said case proceeds from pronouncements in the past, to wit:

> Finally, petitioner-appellant failed to attach in his petition a certificate of arrival as required by Sec. 7 of Com. Act No. 473, as amended, which omission likewise nullifies his petition. The reason for the requirement that the certificate of arrival should form part of the petition is to prevent aliens, who illegally entered the Philippines, from acquiring citizenship by naturalization. If, as he pretends, his certificate was taken back by the Bureau of Immigration and in lieu thereof he was issued an immigrant's certificate of residence, he could have submitted the same or a certified true copy thereof.[16]
>
> Naturalization granted without the filing of a certificate of arrival as required by the statute, the same being a matter of substance, is illegally procured. (U.S. vs. Ness, 62 L. Ed. 321).[17] (Citations omitted)
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> x x x Again in the above quoted Section 7 of the law, the certificate of arrival must be made a part of the petition. This provision is mandatory and it has been enacted for the purpose of preventing aliens, who have surreptitiously come into the islands without the

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[15] 302 Phil. 829 (1994).

[16] *Chiu Tek Ye v. Republic,* 147 Phil. 165, 170-171 (1971).

[17] *Republic v. Cokeng,* 132 Phil. 26, 32 (1968).

proper document or certificate of entry, from acquiring citizenship by naturalization, unless the said provision is complied with. This Court cannot grant the petition as the said grant would be a clear violation of the express mandate of the law.[18]

The Certificate of Arrival should prove that respondent's entry to the country is lawful. Without it, his Petition for Naturalization is incomplete and must be denied outright.

Even if respondent acquired permanent resident status, this does not do away with the requirement of said certificate of arrival. An application to become a naturalized Philippine citizen involves requirements different and separate from that for permanent residency here.

Respondent likewise argues that the required certificate of arrival is a "mere component part in the filing of the Declaration of Intention"[19] and thus unnecessary since he is exempt from submitting the latter document. This is not correct. The Declaration of Intention is entirely different from the Certificate of Arrival; the latter is just as important because it proves that the applicant's entry to the country was not illegal — that he was a documented alien whose arrival and presence in the country is in good faith and with evident intention to submit to and abide by the laws of the Republic. Certainly, an illegal and surreptitious entry into the country by aliens whose undocumented arrival constitutes a threat to national security and the safety of its citizens may not be rewarded later on with citizenship by naturalization or otherwise; to repeat, a spring will not rise higher than its source.

On the issue of petitioner's alleged failure to attach the required annexes to the copy of the instant Petition that was sent to respondent, this is rendered insignificant and moot by the fact that respondent's application for naturalization — which is patently defective for failure to attach the required certificate of arrival — involves the national interest, as well as the security

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[18] *Charm Chan v. Republic,* 108 Phil. 882, 887 (1960).

[19] *Rollo,* p. 78.

and safety of the country and its citizens. Any procedural infirmities in this case are superseded by the national interest. "[T]echnicalities take a backseat against substantive rights, and not the other way around."[20]

To repeat, strict compliance with all statutory requirements is necessary before an applicant may acquire Philippine citizenship by naturalization. The absence of even a single requirement is fatal to an application for naturalization.

In naturalization proceedings, the burden of proof is upon the applicant to show full and complete compliance with the requirements of the law. The opportunity of a foreigner to become a citizen by naturalization is a mere matter of grace, favor or privilege extended to him by the State; the applicant does not possess any natural, inherent, existing or vested right to be admitted to Philippine citizenship. The only right that a foreigner has, to be given the chance to become a Filipino citizen, is that which the statute confers upon him; and to acquire such right, he must strictly comply with all the statutory conditions and requirements. The absence of one jurisdictional requirement is fatal to the petition as this necessarily results in the dismissal or severance of the naturalization process.

Hence, all other issues need not be discussed further as respondent failed to strictly follow the requirement mandated by the statute.

It should be emphasized that 'a naturalization proceeding is so infused with public interest that it has been differently categorized and given special treatment. x x x Unlike in ordinary judicial contest, the granting of a petition for naturalization does not preclude the reopening of that case and giving the government another opportunity to present new evidence. A decision or order granting citizenship will not even constitute res judicata to any matter or reason supporting a subsequent judgment cancelling the certification of naturalization already granted, on the ground that it had been illegally or fraudulently procured. For the same reason, issues even if not raised in the lower court may be entertained on appeal. As the matters brought to the attention of this Court x x x involve facts contained in the disputed decision of the lower court and admitted by the parties in their pleadings, the present proceeding may be considered adequate for

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[20] *Coronel v. Hon. Desierto,* 448 Phil. 894, 903 (2003).

the purpose of determining the correctness or incorrectness of said decision, in the light of the law and extant jurisprudence.'

Ultimately, respondent failed to prove full and complete compliance with the requirements of the Naturalization Law. As such, his petition for naturalization must be denied without prejudice to his right to re-file his application.[21]

Having disposed of the case in the foregoing manner, this Court finds no need to resolve the other issues raised by the parties. With the finding that respondent's Petition for Naturalization did not include the Certificate of Arrival as required by CA 473, as amended, the said Petition should have been dismissed outright on that sole ground.

**WHEREFORE,** the Petition is **GRANTED.** The February 28, 2014 Decision and June 5, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 97542 are **REVERSED AND SET ASIDE.** The respondent's Petition for Naturalization in Naturalization Case No. 07-118391 before the Regional Trial Court of Manila City, Branch 16 is **DISMISSED.**

**SO ORDERED.**

*Leonardo-de Castro,*[*] *Bersamin,*[**] and *Tijam, JJ.,* concur.

*Sereno, C.J.,* on leave.

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[21] *Republic v. Li Ching Chung,* 707 Phil. 231, 243-244 (2013).

[*] Acting Chairperson per Special Order No. 2540 dated February 28, 2018.

[**] Additional member per October 18, 2017 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

**THIRD DIVISION**

[G.R. No. 213225. April 4, 2018]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **RENANTE COMPRADO *y* BRONOLA,** *accused-appellant.*

**SYLLABUS**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; PROSCRIPTION AGAINST UNREASONABLE SEARCH AND SEIZURE; NATURE, EXPLAINED; EXCEPTIONS.—** The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. The Bill of Rights requires that a search and seizure must be carried out with a judicial warrant; otherwise, any evidence obtained from such warrantless search is inadmissible for any purpose in any proceeding. This proscription, however, admits of exceptions, namely: 1) Warrantless search incidental to a lawful arrest; 2) Search of evidence in plain view; 3) Search of a moving vehicle; 4) Consented warrantless search; 5) Customs search; 6) Stop and Frisk; and 7) Exigent and emergency circumstances.

**2. ID.; ID.; ID.; ID.; STOP-AND-FRISK SEARCH; TOTALITY OF THE CIRCUMSTANCES IN THIS CASE IS NOT SUFFICIENT TO JUSTIFY A STOP-AND-FRISK SEARCH ON THE ACCUSED-APPELLANT.—** The Court finds that the totality of the circumstances in this case is not sufficient to incite a genuine reason that would justify a stop-and-frisk search on accused-appellant. An examination of the records reveals that no overt physical act could be properly attributed to accused-appellant as to rouse suspicion in the minds of the arresting officers that he had just committed, was committing, or was about to commit a crime. x x x [A]ccused-appellant was just

a passenger carrying his bag. There is nothing suspicious much less criminal in said act. Moreover, such circumstance, by itself, could not have led the arresting officers to believe that accused-appellant was in possession of marijuana.

3. **ID.; ID.; ID.; ID.; SEARCH OF A MOVING VEHICLE, NOT A CASE OF; WHERE THE TARGET WAS A SPECIFIC PERSON AND NOT THE VEHICLE, IT COULD NOT BE CLASSIFIED AS A SEARCH OF A MOVING VEHICLE.—** The search in this case, however, could not be classified as a search of a moving vehicle. In this particular type of search, the vehicle is the target and not a specific person. Further, in search of a moving vehicle, the vehicle was intentionally used as a means to transport illegal items. It is worthy to note that the information relayed to the police officers was that a passenger of that particular bus was carrying marijuana such that when the police officers boarded the bus, they searched the bag of the person matching the description given by their informant and not the cargo or contents of the said bus. Moreover, in this case, it just so happened that the alleged drug courier was a bus passenger. To extend to such breadth the scope of searches on moving vehicles would open the floodgates to unbridled warrantless searches which can be conducted by the mere expedient of waiting for the target person to ride a motor vehicle, setting up a checkpoint along the route of that vehicle, and then stopping such vehicle when it arrives at the checkpoint in order to search the target person.

4. **REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS ARREST *IN FLAGRANTE DELICTO* OR IN HOT PURSUIT; REQUISITES THAT MUST CONCUR TO BE VALID; ABSENT IN CASE AT BAR.—** Paragraph (a) of Section 5 is commonly known as an *in flagrante delicto* arrest. For a warrantless arrest of an accused caught *in flagrante delicto* to be valid, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer. On the other hand, the elements of an arrest effected in hot pursuit under paragraph (b) of Section 5 (arrest effected in hot pursuit) are: first, an offense has just been committed; and second, the arresting officer has probable cause to believe based on personal knowledge of facts or

circumstances that the person to be arrested has committed it. Here, without the tip provided by the confidential informant, accused-appellant could not be said to have executed any overt act in the presence or within the view of the arresting officers which would indicate that he was committing the crime of illegal possession of marijuana. Neither did the arresting officers have personal knowledge of facts indicating that accused-appellant had just committed an offense. Again, without the tipped information, accused-appellant would just have been any other bus passenger who was minding his own business and eager to reach his destination. It must be remembered that warrantless arrests are mere exceptions to the constitutional right of a person against unreasonable searches and seizures, thus, they must be strictly construed against the government and its agents. While the campaign against proliferation of illegal drugs is indeed a noble objective, the same must be conducted in a manner which does not trample upon well-established constitutional rights. Truly, the end does not justify the means.

**5. ID.; EVIDENCE; EVIDENCE OBTAINED FROM UNREASONABLE SEARCHES AND SEIZURES SHALL BE INADMISSIBLE FOR ANY PURPOSE IN ANY PROCEEDING.—** Any evidence obtained in violation of the right against unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding. This exclusionary rule instructs that evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. In other words, evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.

**APPEARANCES OF COUNSEL**

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

## D E C I S I O N

**MARTIRES, *J.*:**

This is an appeal from the Decision[1] dated 19 May 2014, of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 01156 which affirmed the Decision[2] dated 18 April 2013, of the Regional Trial Court, Branch 25, Misamis Oriental (*RTC*), in Criminal Case No. 2011-671 finding Renante Comprado *y* Bronola (*accused-appellant*) guilty of illegal possession of marijuana.

## THE FACTS

On 19 July 2011, accused-appellant was charged with violation of Section 11, Article 2 of Republic Act (*R.A.*) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The Information reads:

> That on July 15, 2011, at more or less eleven o'clock in the evening, along the national highway, Puerto, Cagayan de Oro City, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, without being authorized by law to possess or use any dangerous drugs, did then and there, wilfully, unlawfully and criminally have in his possession, control and custody 3,200 grams of dried fruiting tops of suspected marijuana, which substance, after qualitative examination conducted by the Regional Crime Laboratory, Office No. 10, Cagayan de Oro City, tested positive for marijuana, a dangerous drug, with the said accused, knowing the substance to be a dangerous drug.[3]

Upon his arraignment on 8 August 2011, accused-appellant pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued.

### *Version of the Prosecution*

On 15 July 2011, at 6:30 in the evening, a confidential informant (*CI*) sent a text message to Police Inspector Dominador

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

[2] Records, pp. 117-123; penned by Presiding Judge Arthur L. Abundiente.

[3] *Id*. at 3.

Orate, Jr. (*P/Insp. Orate*), then Deputy Station Commander of Police Station 6, Puerto, Cagayan de Oro City, that an alleged courier of marijuana together with a female companion, was sighted at Cabanglasan, Bukidnon. The alleged courier had in his possession a backpack containing marijuana and would be traveling from Bukidnon to Cagayan de Oro City. At 9:30 in the evening, the CI called P/Insp. Orate to inform him that the alleged drug courier had boarded a bus with body number .2646 and plate number KVP 988 bound for Cagayan de Oro City. The CI added that the man would be carrying a backpack in black and violet colors with the marking "Lowe Alpine." Thus, at about 9:45 in the evening, the police officers stationed at Police Station 6 put up a checkpoint in front of the station.[4]

At 11:00 o'clock in the evening, the policemen stopped the bus bearing the said body and plate numbers. P/Insp. Orate, Police Officer 3 Teodoro de Oro (*PO3 De Oro*), Senior Police Officer 1 Benjamin Jay Reycitez (*SPO1 Reycitez*), and PO1 Rexie Tenio (*PO1 Tenio*) boarded the bus and saw a man matching the description given to them by the CI. The man was seated at the back of the bus with a backpack placed on his lap. After P/Insp. Orate asked the man to open the bag, the police officers saw a transparent cellophane containing dried marijuana leaves.[5]

SPO1 Reycitez took photos of accused-appellant and the cellophane bag containing the dried marijuana leaves.[6] PO3 De Oro, in the presence of accused-appellant, marked the bag "RCB-2" and the contents of the bag "RCB-1."[7] Thereafter, PO1 Tenio and PO3 De Oro brought accused-appellant and the seized bag to the PNP Crime Laboratory for examination.[8] On 16 July 2011, at around 1:40 in the morning, Police Senior

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[4] TSN, 2 April 2012, pp. 5-9.

[5] *Id*. at 9-11.

[6] TSN, 23 February 2012, p. 7.

[7] TSN, 16 January 2012, p. 13.

[8] TSN, 23 February 2012, p. 13.

Inspector Charity Caceres (*PSI Caceres*) of the PNP Crime Laboratory Office 10, Cagayan de Oro City, received the requests for examination and the specimen. PSI Caceres, after conducting qualitative examination of the specimen, issued Chemistry Report No. D-253-2011[9] stating that the dried leaves seized from accused-appellant were marijuana and which weighed 3,200 grams.

***Version of the Defense***

Accused-appellant denied ownership of the bag and the marijuana. He maintains that on 15 July 2011, at around 6:30 in the evening, he and his girlfriend went to the house of a certain Freddie Nacorda in Aglayan, Bukidnon, to collect the latter's debt. When they were about to leave, Nacorda requested him to carry a bag to Cagayan de Oro City

When they reached Malaybalay City, Bukidnon, their vehicle was stopped by three (3) police officers. All of the passengers were ordered to alight from the vehicle for baggage inspection. The bag was opened and they saw a transparent cellophane bag containing marijuana leaves. At around 9:00 o'clock in the evening, accused-appellant, his girlfriend, and the police officers who arrested them boarded a bus bound for Cagayan de Oro City.

When the bus approached Puerto, Cagayan de Oro City, the police officers told the bus driver to stop at the checkpoint. The arresting officers took photos of accused-appellant and his girlfriend inside the bus. They were then brought to the police station where they were subjected to custodial investigation without the assistance of counsel.[10]

***The RTC Ruling***

In its decision, the RTC found accused-appellant guilty of illegal possession of marijuana. It held that accused-appellant's uncorroborated claim that he was merely requested to bring

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[9] Records, pp. 14-15.

[10] *Id.* (no proper pagination); Judicial Affidavit of Accused-Appellant.

the bag to Cagayan de Oro City, did not prove his innocence; mere possession of the illegal substance already consummated the crime and good faith was not even a defense. The RTC did not lend credence to accused-appellant's claim that he was arrested in Malaybalay City, Bukidnon, because it was unbelievable that the police officers would go out of their jurisdiction in Puerto, Cagayan de Oro City, just to apprehend accused-appellant in Bukidnon. The *fallo* reads:

> **WHEREFORE**, premises considered, this Court finds the accused **RENANTE COMPRADO y BRONOLA GUILTY BEYOND REASONABLE DOUBT of the crime defined and penalized under Section 11, [7], Article II of R.A. No. 9165, as charged in the Information, and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT, and to pay the Fine of Five Hundred Thousand Pesos [₱500,000.00], without subsidiary penalty in case of non-payment of fine**.
>
> Let the penalty imposed on the accused be a lesson and an example to all who have criminal propensity, inclination and proclivity to commit the same forbidden acts, that crime does not pay, and that the pecuniary gain and benefit which one can derive from possessing drugs, or other illegal substance, or from committing any other acts penalized under Republic Act 9165, cannot compensate for the penalty which one will suffer if ever he is prosecuted and penalized to the full extent of the law.[11]

Aggrieved, accused-appellant appealed before the CA.

***The CA Ruling***

In its decision, the CA affirmed the conviction of accused-appellant. It opined that accused-appellant submitted to the jurisdiction of the court because he raised no objection as to the irregularity of his arrest before his arraignment. The CA reasoned that the seized items are admissible in evidence because the search and seizure of the illegal narcotics were made pursuant to a search of a moving vehicle. It added that while it was admitted by the arresting police officers that no representatives from the media and other personalities required by law were present

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[11] *Id*. at 122.

during the operation and during the taking of the inventory, noncompliance with Section 21, Article II of R.A. No. 9165 was not fatal and would not render inadmissible accused-appellant's arrest or the items seized from him because the prosecution was able to show that the integrity and evidentiary value of the seized items had been preserved. The CA disposed the case in this wise:

> WHEREFORE, the appeal is DISMISSED. The Judgment dated 18 April 2013 of the Regional Trial Court of Misamis Oriental, 10th Judicial Region, Branch 25 in Criminal Case No. 2011-671 is hereby affirmed in toto.[12]

Hence, this appeal.

## ISSUES

I. Whether accused-appellant's arrest was valid;
II. Whether the seized items are admissible in evidence; and
III. Whether accused-appellant is guilty of the crime charged.

## OUR RULING

The Court finds for accused-appellant.

I.

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.[13]

The Bill of Rights requires that a search and seizure must be carried out with a judicial warrant; otherwise, any evidence obtained from such warrantless search is inadmissible for any

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[12] *Rollo*, p. 14.

[13] 1987 Constitution, Article III, Section 2.

purpose in any proceeding.[14] This proscription, however, admits of exceptions, namely: 1) Warrantless search incidental to a lawful arrest; 2) Search of evidence in plain view; 3) Search of a moving vehicle; 4) Consented warrantless search; 5) Customs search; 6) Stop and Frisk; and 7) Exigent and emergency circumstances.[15]

II.

A stop-and-frisk search is often confused with a warrantless search incidental to a lawful arrest. However, the distinctions between the two have already been settled by the Court in *Malacat v. CA*:[16]

> In a search incidental to a lawful arrest, as the precedent arrest determines the validity of the incidental search, the legality of the arrest is questioned in a large majority of these cases, e.g., whether an arrest was merely used as a pretext for conducting a search. In this instance, **the law requires that there first be a lawful arrest before a search can be made** — the process cannot be reversed. At bottom, assuming a valid arrest, the arresting officer may search the person of the arrestee and the area within which the latter may reach for a weapon or for evidence to destroy, and seize any money or property found which was used in the commission of the crime, or the fruit of the crime, or that which may be used as evidence, or which might furnish the arrestee with the means of escaping or committing violence.
>
> x x x x x x x x x
>
> We now proceed to the justification for and allowable scope of a "stop-and-frisk" as a "limited protective search of outer clothing for weapons," as laid down in *Terry*, thus:
>
> > We merely hold today that where **a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed**

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[14] *People v. Nuevas*, 545 Phil. 356, 369 (2007).

[15] *Id*. at 370.

[16] 347 Phil. 462 (1997).

> **and presently dangerous**, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled [to] the protection of himself and others in the area to conduct a carefully **limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him**. Such a search is a reasonable search under the Fourth Amendment.

Other notable points of *Terry* are that while probable cause is not required to conduct a "stop and frisk" it nevertheless holds that mere suspicion or a hunch will not validate a "stop and frisk," **A genuine reason must exist, in light of the police officer's experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him.** Finally, a "stop-and-frisk" serves a two-fold interest: (1) the general interest of effective crime prevention and detection, which underlies the recognition that a police officer may, under appropriate circumstances and in an appropriate manner, approach a person for purposes of investigating possible criminal behavior even without probable cause; and (2) the more pressing interest of safety and self-preservation which permit the police officer to take steps to assure himself that the person with whom he deals is not armed with a deadly weapon that could unexpectedly and fatally be used against the police officer.[17] (emphases supplied and citations omitted)

III.

A valid stop-and-frisk was illustrated in the cases of *Posadas v. CA* (*Posadas*),[18] *Manalili v. CA* (*Manalili*),[19] and *People v. Solayao* (*Solayao)*.[20]

In *Posadas*, two policemen were conducting a surveillance within the premises of the Rizal Memorial Colleges when they spotted the accused carrying a *buri* bag and acting suspiciously.

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[17] *Id.* at 480-482.

[18] 266 Phil. 306 (1990).

[19] 345 Phil. 632 (1997).

[20] 330 Phil. 811 (1996).

They approached the accused and identified themselves as police officers. The accused attempted to flee but his attempt to get away was thwarted by the policemen who then checked the *buri* bag wherein they found guns, ammunition, and a grenade.[21]

In *Manalili*, police officers were patrolling the Caloocan City cemetery when they chanced upon a man who had reddish eyes and was walking in a swaying manner. When this person tried to avoid the policemen, the latter approached him and introduced themselves as police officers. The policemen then asked what he was holding in his hands, but he tried to resist.[22]

In *Solayao*, police operatives were carrying out an intelligence patrol to verify reports on the presence of armed persons roaming around the barangays of Caibiran, Biliran. Later on, they met the group of accused-appellant. The police officers became suspicious when they observed that the men were drunk and that accused-appellant himself was wearing a camouflage uniform or a jungle suit. Upon seeing the government agents, accused-appellant's companions fled. Thus, the police officers found justifiable reason to stop and frisk the accused.[23]

IV.

On the other hand, the Court found no sufficient justification in the stop and frisk committed by the police in *People v. Cogaed* (*Cogaed*).[24] In that case, the police officers received a message from an informant that one Marvin Buya would be transporting marijuana from Barangay Lun-Oy, San Gabriel, La Union, to the Poblacion of San Gabriel, La Union. A checkpoint was set up and when a passenger jeepney from Barangay Lun-Oy arrived at the checkpoint, the jeepney driver disembarked and signaled to the police officers that the two male passengers were carrying marijuana.

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[21] *Posadas v. CA*, *supra* note 18 at 307-308.

[22] *Manalili v. CA*, *supra* note 19 at 638.

[23] *People v. Solayao*, *supra* note 20 at 814-815.

[24] 740 Phil. 212, 220-222 (2014).

SPO1 Taracatac approached the two male passengers who were later identified as Victor Cogaed and Santiago Dayao. SPO1 Taracatac asked Cogaed and Dayao what their bags contained. Cogaed and Dayao told SPO1 Taracatac that they did not know since they were transporting the bags as a favor for their barrio mate named Marvin. After this exchange, Cogaed opened the blue bag, revealing three bricks of what looked like marijuana. The Court, in that case, invalidated the search and seizure ruling that there were no suspicious circumstances that preceded the arrest. Also, in *Cogaed*, there was a discussion of various jurisprudence wherein the Court adjudged that there was no valid stop-and-frisk:

> The circumstances of this case are analogous to *People v. Aruta*. In that case, an informant told the police that a certain "Aling Rosa" would be bringing in drugs from Baguio City by bus. At the bus terminal, the police officers prepared themselves. The informant pointed at a woman crossing the street and identified her as "Aling Rosa." The police apprehended "Aling Rosa," and they alleged that she allowed them to look inside her bag. The bag contained marijuana leaves.
>
> In *Aruta*, this court found that the search and seizure conducted was illegal. There were no suspicious circumstances that preceded Aruta's arrest and the subsequent search and seizure. It was only the informant that prompted the police to apprehend her. The evidence obtained was not admissible because of the illegal search. Consequently, Aruta was acquitted.
>
> *Aruta* is almost identical to this case, except that it was the jeepney driver, not the police's informant, who informed the police that Cogaed was "suspicious."
>
> The facts in *Aruta* are also similar to the facts in *People v. Aminnudin*. Here, the National Bureau of Investigation (NBI) acted upon a tip, naming Aminnudin as somebody possessing drugs. The NBI waited for the vessel to arrive and accosted Aminnudin while he was disembarking from a boat. Like in the case at bar, the NBI inspected Aminnudin's bag and found bundles of what turned out to be marijuana leaves. The court declared that the search and seizure was illegal. Aminnudin was acquitted.
>
> x x x x x x x x x

*People v. Chua* also presents almost the same circumstances. In this case, the police had been receiving information that the accused was distributing drugs in "different karaoke bars in Angeles City." One night, the police received information that this drug dealer would be dealing drugs at the Thunder Inn Hotel so they conducted a stakeout. A car "arrived and parked" at the hotel. The informant told the police that the man parked at the hotel was dealing drugs. The man alighted from his car. He was carrying a juice box. The police immediately apprehended him and discovered live ammunition and drugs in his person and in the juice box he was holding.

Like in *Aruta*, this court did not find anything unusual or suspicious about Chua's situation when the police apprehended him and ruled that "[t]here was no valid 'stop-and-frisk'."[25] (citations omitted)

The Court finds that the totality of the circumstances in this case is not sufficient to incite a genuine reason that would justify a stop-and-frisk search on accused-appellant. An examination of the records reveals that no overt physical act could be properly attributed to accused-appellant as to rouse suspicion in the minds of the arresting officers that he had just committed, was committing, or was about to commit a crime. P/Insp. Orate testified as follows:

[Prosecutor Vicente]:

Q: On that date Mr. Witness, at about 6:30 in the evening, what happened, if any?
A: At about 6:30 in the evening, I received an information from our Confidential Informant reporting that an alleged courier of marijuana were sighted in their place, Sir.

x x x x x x x x x

[Court]:

Q: Aside from the sighting of this alleged courier of marijuana, what else was relayed to you if there were anything else?
A: Our Confidential Informant told me that two persons, a male and a female were having in their possession a black pack containing marijuana, Sir.

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[25] *Id.* at 235-237.

x x x x x x x x x

[Prosecutor Vicente:]

Q: And then, after you received the information through your cellphone, what happened next, Mr. Witness?
A: So, I prepared a team to conduct an entrapment operation in order to intercept these two persons, Sir.

Q: You said that the Informant informed you that the subject was still in Cabanglasan?
A: Yes, Sir.

Q: How did you entrap the subject when he was still in Cabanglasan?
A: I am planning to conduct a check point because according to my Confidential Informant the subject person is from Gingoog City, Sir.

Q: According to the information, how will he go here?
A: He will be travelling by bus, Sir.

Q: What bus?
A: Bachelor, Sir.

Q: And then, what happened next Mr. Witness?
A: At about 9:30 in the evening my Confidential Informant again called and informed me that the subject person is now boarding a bus going to Cagayan de Oro City, Sir.

Q: What did he say about the bus, if he said anything, Mr. Witness?
A: My agent was able to identify the body number of the bus, Bus No. 2646.

Q: Bearing Plate No.?
A: Bearing Plate No. KVP 988, Sir.

Q: What was he bringing at that time, according to the information?
A: According to my agent, these two persons were bringing along with them a back pack color black violet with markings LOWE ALPINE.

Q: Then, what happened next, Mr. Witness?
A: We set up a check point in front of our police station and we waited for the bus to come over, Sir.

x x x x x x x x x

Q: About 11 o'clock in the evening, what happened, Mr. Witness?
A: When we sighted the bus we flagged down the bus.

Q: After you flagged down the bus, what happened next?
A: We went on board the said bus, Sir.

x x x x x x x x x

Q: What happened next?
A: We went to the back of the bus and I saw a man carrying a back pack, a black violet which was described by the Confidential Informant, the back pack which was placed on his lap.

x x x x x x x x x

Q: After you saw them, what happened next?
A: We were able to identify the back pack and the description of the courier, so, we asked him to please open the back pack.

x x x x x x x x x

Q: What happened next?
A: When he opened the back pack, we found marijuana leaves, the back pack containing cellophane which the cellophane containing marijuana leaves.[26]

In his dissent from *Esquillo v. People*,[27] Justice Lucas P. Bersamin emphasizes that there should be "presence of more than one seemingly innocent activity from which, taken together, warranted a reasonable inference of criminal activity." This principle was subsequently recognized in the recent cases of *Cogaed*[28] and *Sanchez v. People*.[29] In the case at bar, accused-appellant was just a passenger carrying his bag. There is nothing suspicious much less criminal in said act. Moreover, such circumstance, by itself, could not have led the arresting officers to believe that accused-appellant was in possession of marijuana.

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[26] TSN, 2 April 2012, pp. 5-10; testimony of P/Insp. Orate.

[27] 643 Phil. 577, 606 (2010).

[28] *People v. Cogaed*, *supra* note 24 at 233.

[29] 747 Phil. 552, 573 (2014).

V.

As regards search incidental to a lawful arrest, it is worth emphasizing that a lawful arrest must precede the search of a person and his belongings; the process cannot be reversed.[30] Thus, it becomes imperative to determine whether accused-appellant's warrantless arrest was valid.

Section 5, Rule 113 of the Rules of Criminal Procedure enumerates the instances wherein a peace officer or a private person may lawfully arrest a person even without a warrant:

> Sec. 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

Paragraph (a) of Section 5 is commonly known as an *in flagrante delicto* arrest. For a warrantless arrest of an accused caught *in flagrante delicto* to be valid, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.[31] On the other hand, the elements of an arrest effected in hot pursuit under paragraph (b) of Section 5 (arrest effected in hot pursuit) are: first, an offense has just been committed; and second, the arresting officer has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it.[32]

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[30] *People v. Nuevas*, *supra* note 14 at 371.

[31] *People v. Pavia*, 750 Phil. 871 (2015).

[32] *Pestilos v. Generoso*, 746 Phil. 301, 321 (2014).

Here, without the tip provided by the confidential informant, accused-appellant could not be said to have executed any overt act in the presence or within the view of the arresting officers which would indicate that he was committing the crime of illegal possession of marijuana. Neither did the arresting officers have personal knowledge of facts indicating that accused-appellant had just committed an offense. Again, without the tipped information, accused-appellant would just have been any other bus passenger who was minding his own business and eager to reach his destination. It must be remembered that warrantless arrests are mere exceptions to the constitutional right of a person against unreasonable searches and seizures, thus, they must be strictly construed against the government and its agents. While the campaign against proliferation of illegal drugs is indeed a noble objective, the same must be conducted in a manner which does not trample upon well-established constitutional rights. Truly, the end does not justify the means.

VI.

The appellate court, in convicting accused-appellant, reasoned that the search and seizure is valid because it could be considered as search of a moving vehicle:

> Warrantless search and seizure of moving vehicles are allowed in recognition of the impracticability of securing a warrant under said circumstances as the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant may be sought. Peace officers in such cases, however, are limited to routine checks where the examination of the vehicle is limited to visual inspection. When a vehicle is stopped and subjected to an extensive search, such would be constitutionally permissible only if the officers made it upon probable cause, i.e., upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains [an] item, article or object which by law is subject to seizure and destruction.[33]

The search in this case, however, could not be classified as a search of a moving vehicle. In this particular type of search, the vehicle is the target and not a specific person. Further, in

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[33] *People v. Libnao*, 443 Phil. 506, 515-516 (2003).

search of a moving vehicle, the vehicle was intentionally used as a means to transport illegal items. It is worthy to note that the information relayed to the police officers was that a passenger of that particular bus was carrying marijuana such that when the police officers boarded the bus, they searched the bag of the person matching the description given by their informant and not the cargo or contents of the said bus. Moreover, in this case, it just so happened that the alleged drug courier was a bus passenger. To extend to such breadth the scope of searches on moving vehicles would open the floodgates to unbridled warrantless searches which can be conducted by the mere expedient of waiting for the target person to ride a motor vehicle, setting up a checkpoint along the route of that vehicle, and then stopping such vehicle when it arrives at the checkpoint in order to search the target person.

VII.

Any evidence obtained in violation of the right against unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding.[34] This exclusionary rule instructs that evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. In other words, evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.[35]

Without the confiscated marijuana, no evidence is left to convict accused-appellant. Thus, an acquittal is warranted, despite accused-appellant's failure to object to the regularity of his arrest before arraignment. The legality of an arrest affects only the jurisdiction of the court over the person of the accused. A waiver of an illegal, warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest.[36]

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[34] 1987 Constitution, Article III, Section 3(2).

[35] *Comerciante v. People*, 764 Phil. 627, 633-634 (2015).

[36] *People v. Racho*, 640 Phil. 669, 681 (2010).

**WHEREFORE,** the appeal is **GRANTED**. The 19 May 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01156 is **REVERSED and SET ASIDE**. Accused-appellant Renante Comprado *y* Bronola is **ACQUITTED** and ordered **RELEASED** from detention unless he is detained for any other lawful cause. The Director of the Bureau of Corrections is **DIRECTED to IMPLEMENT** this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

**SO ORDERED.**

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

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**THIRD DIVISION**

[G.R. No. 214367. April 4, 2018]

**REPUBLIC OF THE PHILIPPINES,** *petitioner, vs.* **LAUREANA MALIJAN-JAVIER and IDEN MALIJAN-JAVIER,** *respondents.*

**SYLLABUS**

**1. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (PD 1529); MATTERS THAT NEED TO BE ESTABLISHED BY APPLICANTS WHO HAVE BEEN IN POSSESSION OF PUBLIC LAND UNDER THE CIRCUMSTANCES MENTIONED IN SECTION 14(1).** — Applicants whose circumstances fall under Section 14(1) need to establish only the following: *[F]irst*, that the subject land forms part of the disposable and alienable lands of the public domain; *second*, that the applicant and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the [land]; and *third*, that it is under a *bona fide* claim ownership since June 12, 1945, or earlier.

**2. ID.; ID.; ID.; ID.; CERTIFICATION FROM AN OFFICE OF DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) IS NOT ENOUGH TO ESTABLISH THAT A LAND IS ALIENABLE AND DISPOSABLE; DENR SECRETARY'S ISSUANCE IS REQUIRED.—** It is well-settled that a CENRO or PENRO certification is not enough to establish that a land is alienable and disposable. It should be "accompanied by an official publication of the DENR Secretary's issuance declaring the land alienable and disposable." In *Republic v. T.A.N. Properties*: [I]t is not enough for the PENRO or CENRO to certify that a land is alienable and disposable. x x x The certification issued by the DENR Secretary is necessary since he or she is the official authorized to approve land classification, including the release of land from public domain. x x x In this case, although respondents were able to present a CENRO certification, a DENR-CENRO report with the testimony of the DENR officer who made the report, and the survey plan showing that the property is already considered alienable and disposable, these pieces of evidence are still not sufficient to prove that the land sought to be registered is alienable and disposable. Absent the DENR Secretary's issuance declaring the land alienable and disposable, the land remains part of the public domain. Thus, even if respondents have shown, through their testimonial evidence, that they and their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the property since June 12, 1945, they still cannot register the land for failing to establish that the land is alienable and disposable.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for petitioner.
*Dequina De Silva Law Office* for respondents.

**D E C I S I O N**

**LEONEN, *J.*:**

To establish that the land sought to be registered is alienable and disposable, applicants must "present a copy of the original classification approved by the [Department of Environment and

Natural Resources] Secretary and certified as a true copy by the legal custodian of the official records."[1]

This is a Petition for Review on Certiorari[2] under Rule 45 of the 1997 Rules of Civil Procedure, praying that the September 15, 2014 Decision[3] of the Court of Appeals in CA-GR. CV No. 98466 be reversed and set aside.[4] The Court of Appeals affirmed the May 5, 2011 Decision[5] and December 9, 2011 Order[6] of the Municipal Circuit Trial Court of Talisay-Laurel, Batangas in Land Reg. Case No. 09-001 (LRA Record No. N-79691), which adjudicated Lot No. 1591, Cad. 729, Talisay Cadastre in favor of Laureana Malijan-Javier (Laureana) and Iden Malijan-Javier (Iden).[7]

This case involves Laureana and Iden's application for registration of land title over a parcel situated in Barangay Tranca, Talisay, Batangas filed in June 2009 before the Municipal Circuit Trial Court of Talisay-Laurel, Batangas. The land, regarded as Lot No. 1591, Cad. 729, Talisay Cadastre, had an area of 9,629 square meters. The application of Laureana and Iden was docketed as Land Registration Case No. 09-001 (LRA Record No. N-79691).[8]

On September 10, 2009, Republic of the Philippines (Republic) filed an Opposition to the application based on the following grounds:

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[1] *Republic v. T.A.N. Properties*, 578 Phil. 441, 452-453 (2008) [Per *J.* Carpio, First Division].

[2] *Rollo*, pp. 8-22.

[3] *Id*. at 24-37. The Decision was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Japar B. Dimaampao and Carmelita S. Manahan of the Twelfth Division, Court of Appeals, Manila.

[4] *Id*. at 18. Petition for Review.

[5] *Id*. at 52-56. The Decision was penned by Presiding Judge Librado P. Chavez of the Municipal Circuit Trial Court of Talisay-Laurel, Batangas.

[6] *Id*. at 57-59. The Order was penned by Presiding Judge Librado P. Chavez of the Municipal Circuit Trial Court of Talisay-Laurel, Batangas.

[7] *Id*. at 56, Municipal Circuit Trial Court Decision.

[8] *Id*. at 24-25, Court of Appeals Decision.

(1) Ne[i]ther the applicants nor their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the land in question in the concept of an owner since June 12, 1945 or earlier; (2) The tax declarations relied upon by appellees do not constitute competent and sufficient evidence of a *bona fide* acquisition of the land by the appellees; and (3) The parcel of land applied for is a land of public domain and, as such, not subject to private appropriation.[9]

An initial hearing was scheduled on January 19, 2010. During the hearing, several documents were marked to show compliance with the necessary jurisdictional requirements. Since nobody appeared to oppose Laureana and Iden's application, the trial court issued an Order of General Default against the whole world except the Republic.[10]

In the subsequent hearings, Laureana and Iden presented testimonial and documentary evidence to establish their ownership claim.[11] Laureana testified along with Juana Mendoza Banawa (Banawa), Ben Hur Hernandez (Hernandez), Loida Maglinao (Maglinao), and Glicerio R. Canarias (Canarias).[12]

In her testimony, Laureana alleged that she was married to Cecilio Javier (Cecilio) and that Iden was their son. She claimed that she and Cecilio (the Spouses Javier) purchased the property from Spouses Antonio Lumbres and Leonisa Manaig (the Spouses Lumbres) on October 10, 1985. A Deed of Absolute Sale was executed to facilitate the transaction. They had the property fenced and planted with coconut, antipolo, and duhat. She also claimed that they had paid its property taxes since 1986.[13]

Banawa, a resident of Barangay Tranca, Talisay, Batangas since her birth on March 8, 1929,[14] testified that Cito Paison

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[9] *Id*. at 25.

[10] *Id*.

[11] *Id*. at 25, Court of Appeals Decision, and 53, Municipal Circuit Trial Court Decision.

[12] *Id*. at 25-26 and 53.

[13] *Id*. at 26 and 53.

[14] *Id*. at 54.

(Cito) and Juan Paison (Juan) owned the property as early as 1937. The half portion owned by Cito was later transferred to his daughter, Luisa Paison (Luisa). Both portions owned by Luisa and Juan were then transferred to the Spouses Lumbres, until half was finally sold to the Spouses Javier and the other half to their son, Iden.[15] Banawa added that since every person in their barangay knew that Laureana and Iden owned and possessed the property, nobody interrupted or disturbed their possession or made an adverse claim against them.[16] Thus, their possession was "open, continuous, exclusive, and in the concept of an owner[.]"[17]

Hernandez, who was a Special Land Investigator I of the Department of Environment and Natural Resources-Community Environment and Natural Resources Office (DENR-CENRO), testified that he was the one who conducted an ocular inspection on the land.[18] He found that the land "ha[d] not been forfeited in favor of the government for non-payment of taxes [or] . . . confiscated as bond in connection with any civil or criminal case."[19] Moreover, the land was outside a reservation or forest zone. Hernandez also found that no prior application was filed or any patent, decree, or title was ever issued for it.[20] Finally, he stated that the land "[did] not encroach upon an established watershed, river bed, river bank protection, creek or right of way."[21]

Maglinao, Forester I of DENR-CENRO,[22] also testified that she inspected the property before issuing a certification, which

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[15] *Id*. at 26 and 54.

[16] *Id*. at 54.

[17] *Id*.

[18] *Id*. at 26.

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

[20] *Id*. at 27.

[21] *Id*.

[22] *Id*. at 54.

stated that the land "[was] within the alienable and disposable zone under Project No. 39, Land Classification Map No. 3553 certified on September 10, 1997."[23]

Meanwhile, Canarias, the Municipal Assessor of Talisay, Batangas, attested that the property was covered by Tax Declaration Nos. 014-01335 and 014-00397 under the names of Laureana and Cecilio, and of Iden. Upon tracing back the tax declarations on the property, Canarias also found that the previous owners who declared the land for taxation purposes were the same as the previous owners according to Laureana's and Iden's testimonies. The previous tax declarations of the property now covered by Tax Declaration No. 014-01335 were under the names of Luisa and the Spouses Lumbres while Tax Declaration No. 014-00397 were previously under the names of Juan and the Spouses Lumbres.[24]

On May 5, 2011, the trial court rendered a Decision granting Laureana and Iden's application for registration of title. It held that they were able to establish that the property was alienable and disposable since September 10, 1997 and that "[they] and their predecessors-in-interest ha[d] been in open, continuous, exclusive, and notorious possession of the subject property, in the concept of an owner, even prior to 12 June 1945."[25] The dispositive portion of the Decision read:

> WHEREFORE, upon confirmation of the Order of General Default, the Court hereby adjudicates and decrees Lot No. 1591, Cad-729 Talisay Cadastre as shown on plan As-04-003630 situated in Barangay Tranca, Municipality of Talisay, Province of Batangas, with an area of NINE THOUSAND SIX HUNDRED TWENTY[-]NINE (9,629) SQUARE METERS in favor of and in the name of LAUREANA MALIJAN JAVIER (1/2 SHARE), widow, Filipino, with address at Barangay Tranca, Talisay, Batangas, and IDEN MALIJAN JAVIER (1/2 SHARE), married to Jaena Buno, Filipino, with address at 39-31 56th St Apt 3, Woodside, New York, USA in accordance with

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[23] *Id*.

[24] *Id*. at 27 and 53.

[25] *Id*. at 56.

Presidential Decree No. 1529, otherwise known as the Property Registration Decree.

Once this decision has become final, let an Order be issued directing the Administrator of the Land Registration Authority to issue the corresponding decree of registration.

SO ORDERED.[26]

The Republic moved for reconsideration, which was denied by the trial court in its December 9, 2011 Order.[27]

The Republic elevated the case to the Court of Appeals, assailing the May 5, 2011 Decision and December 9, 2011 Order of the Municipal Circuit Trial Court.[28] It averred that there should be "(1) [a] CENRO or [Provincial Environment and Natural Resources Office] Certification; and (2) a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records" attached to the application for title registration. It added that Laureana and Iden failed to attach the second requirement.[29] It also argued that they failed to prove that "they and their predecessors-in-interest ha[d] been in open, continuous, exclusive, and notorious possession and occupation [of the property] under a *bona fide* claim of ownership since June 12, 1945 or earlier."[30]

On September 15, 2014, the Court of Appeals promulgated a Decision[31] dismissing the Republic's appeal and affirming the Decision and Order of the Municipal Circuit Trial Court. It ruled that although Laureana and Iden failed to present a copy of the DENR Secretary-approved original classification

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[26] *Id*.

[27] *Id*. at 57-59.

[28] *Id*. at 24.

[29] *Id*. at 45, Brief for the Oppositor-Appellant.

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

[31] *Id*. at 24-37.

stating that the property was alienable and disposable, "there [was] substantial compliance to the requirement[s]."[32] It gave credence to the testimony of Hernandez, Special Land Investigator I of DENR-CENRO, who stated that the property was not patented, decreed, or titled.[33] Hernandez also identified his written report on the property, which stated that:

> (1) [T]he entire area is within the alienable and disposable zone as classified under Project No. 39, L.C. Map No. 3553 released and certified as such on September 10, 1997; (2) the land has never been forfeited in favor of the government for non-payment of taxes; (3) it is not inside the forest zone or forest reserve or unclassified public forest; (4) the land does not form part of a bed or navigable river, streams, or creek.[34]

The Court of Appeals also gave weight to the testimony of Maglinao, Forester I of DENR-CENRO, who said that she inspected the property before issuing a certificate classifying the property as alienable and disposable "under Project No. 39, Land Classification Map No. 3553 certified on 10 September 1997."[35]

Furthermore, the property's Survey Plan contained an annotation by DENR Regional Technical Director Romeo P. Verzosa, stating that the property was within an alienable and disposable area. The Court of Appeals held that the annotation could be regarded as substantial compliance with the requirement that the property should be alienable and disposable, especially since it coincided with Hernandez's report and Maglinao's testimony.[36]

Finally, the Court of Appeals found that Laureana and Iden were able to prove their predecessors-in-interest's possession

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[32] *Id.* at 33.

[33] *Id.* at 34.

[34] *Id.*

[35] *Id.*

[36] *Id.*

of property since 1937 and their possession since 1985 as evidenced by the tax declarations.[37]

The dispositive portion of the Court of Appeals Decision read:

> **WHEREFORE**, in view of the foregoing premises, the instant appeal is hereby ordered **DISMISSED**, and the appealed Decision rendered on 5 May 2011 and Order dated 9 December 2011 by the Fourth Judicial Region of the Municipal Circuit Trial Court in Talisay-Laurel, Batangas in Land Reg. Case No. 09-001 (LRA Record No. N-79691) are **AFFIRMED**. Without costs.
>
> **SO ORDERED.**[38] (Emphasis in the original)

On November 25, 2014, the Republic filed a Petition for Review[39] before this Court against Laureana and Iden. Petitioner argues that the application for land registration should have been dismissed by the trial court considering that it was not accompanied by "a copy of the original classification approved by the Department of Environment and Natural Resources (DENR) Secretary and certified as true copy by its legal custodian."[40] It avers that a CENRO Certification is not sufficient to prove the land's classification as alienable and disposable.[41] Moreover, the rule on substantial compliance is applied *pro hac vice* in the cases of *Republic v. Vega* and *Republic v. Serrano*, upon which the Court of Appeals heavily relied.[42]

Petitioner contends that respondents' acts of fencing and planting transpired only after they purchased the property in 1985. Banawa also failed to mention in her testimony that respondents' predecessors-in-interest occupied, developed, maintained, or cultivated the property, which could have shown that the former owners possessed the property by virtue of a *bona fide* ownership

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

[38] *Id.*

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

[40] *Id.* at 13.

[41] *Id.* at 13-16.

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

claim. Lastly, the tax declarations presented by respondents only date back to 1948 as the earliest year of possession.[43]

On April 21, 2015, respondents filed their Comment.[44] They counter that they were able to prove substantial compliance when they presented Maglinao's Certification and Hernandez's report. The Survey Plan also stated that the land was in an alienable and disposable zone. They also point out that the Land Registration Authority did not question the classification of the property, despite notice of the application.[45]

Respondents maintain that their and their predecessors-in-interest's possession had been "open, continuous, exclusive and notorious ... under a bona fide claim of ownership since June 12, 1945 or earlier,"[46] as supported by Banawa's testimony. Although they admit that the earliest tax declaration was dated 1948, they seek the application of this Court's ruling in *Sps. Llanes v. Republic*, where this Court held that "tax declarations and receipts . . . coupled with actual possession . . . constitute evidence of great weight and can be the basis of a claim of ownership through prescription."[47]

On April 18, 2016, petitioner filed its Reply.[48] It asserts that land registration applicants should strictly comply with the requirements in proving that the land is alienable and disposable. It maintains that for failing to submit the required document, respondents' application should have been denied.[49] Petitioner also insists that Banawa's testimony and the tax declarations are not sufficient to prove that respondents' and their predecessors-in-interest's possession and occupation of the property were

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[43] *Id*. at 16-17.

[44] *Id*. at 63-72, Comment to the Petition for Review on *Certiorari*.

[45] *Id*. at 67.

[46] *Id*. at 68.

[47] *Id*. at 70.

[48] *Id*. at 81-86.

[49] *Id*. at 82-84.

"open, continuous, exclusive, and notorious . . . under a *bona fide* claim of ownership, since June 12, 1945 or earlier."[50]

This Court resolves the sole issue of whether or not the trial court and the Court of Appeals erred in granting Laureana Malijan-Javier and Iden Malijan-Javier's application for registration of property.

Land registration is governed by Section 14 of Presidential Decree No. 1529 or the Property Registration Decree, which states:

> Section 14. Who may apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> *(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.*
>
> (2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws.
>
> (3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.
>
> (4) Those who have acquired ownership of land in any other manner provided for by law.
>
> Where the land is owned in common, all the co-owners shall file the application jointly.
>
> Where the land has been sold under *pacto de retro*, the vendor *a retro* may file an application for the original registration of the land, provided, however, that should the period for redemption expire during the pendency of the registration proceedings and ownership to the property consolidated in the vendee *a retro*, the latter shall be substituted for the applicant and may continue the proceedings.
>
> A trustee on behalf of his principal may apply for original registration of any land held in trust by him, unless prohibited by the instrument creating the trust.[51] (Emphasis supplied)

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[50] *Id.* at 83-84.

[51] Pres. Decree No. 1529 (1978), Sec. 14.

Applicants whose circumstances fall under Section 14(1) need to establish only the following:

> *[F]irst*, that the subject land forms part of the disposable and alienable lands of the public domain; *second*, that the applicant and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the [land]; and *third*, that it is under a *bona fide* claim ownership since June 12, 1945, or earlier.[52]

To satisfy the first requirement of Section 14(1), petitioner argues that both a CENRO or Provincial Environment and Natural Resources Office (PENRO) certification and a certified true copy of a DENR Secretary-approved certificate should be obtained to prove that the land is alienable and disposable.[53]

Petitioner's contention has merit.

It is well-settled that a CENRO or PENRO certification is not enough to establish that a land is alienable and disposable.[54] It should be "accompanied by an official publication of the DENR Secretary's issuance declaring the land alienable and disposable."[55] In *Republic v. TA.N Properties*:[56]

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[52] See *Republic v. Rizalvo, Jr.*, 659 Phil. 578, 586 (2011) [Per *J.* Villarama, Jr., Third Division] and *Republic v. Remman Enterprises, Inc.*, 727 Phil. 608, 621 (2014) [Per *J.* Reyes, First Division].

[53] *Rollo*, pp. 12-16.

[54] *Republic v. T.A.N. Properties*, 578 Phil. 441, 452-453 (2008) [Per *J.* Carpio, First Division]; *Republic v. Hanover Worldwide Trading Corporation*, 636 Phil. 739, 752 (2010) [Per *J.* Peralta, Second Division]; *Republic v. Vda. De Joson*, 728 Phil. 550, 562 (2014) (Per *J.* Bersamin, First Division]; *Republic v. Lualhati*, 757 Phil. 119, 132 (2015) [Per *J.* Peralta, Third Division]; *Republic v. Local Superior of the Institute of the Sisters of the Sacred Heart of Jesus of Ragusa*, 780 Phil. 633, 643-644 (2016) [Per *J.* Reyes, Third Division]; *Republic v. Spouses Go*, G.R. No. 197297, August 2, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/197297.pdf> 11-14 [Per *J.* Leonen, Second Division].

[55] *Republic v. Hanover Worldwide Trading Corporation*, 636 Phil. 739, 752 (2010) [Per *J.* Peralta, Second Division].

[56] 578 Phil. 441 (2008) [Per *J.* Carpio, First Division].

[I]t is not enough for the PENRO or CENRO to certify that a land is alienable and disposable. The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, *the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.* These facts must be established to prove that the land is alienable and disposable.[57] (Emphasis supplied)

In *Republic v. Lualhati*:[58]

[I]t has been repeatedly ruled that certifications issued by the CENRO, or specialists of the DENR, as well as Survey Plans prepared by the DENR containing annotations that the subject lots are alienable, *do not constitute incontrovertible evidence to overcome the presumption that the property sought to be registered belongs to the inalienable public domain*. Rather, this Court stressed the importance of proving alienability by presenting a copy of the original classification of the land approved by the DENR Secretary and certified as true copy by the legal custodian of the official records.[59] (Emphasis supplied, citation omitted)

The certification issued by the DENR Secretary is necessary since he or she is the official authorized to approve land classification, including the release of land from public domain.[60] As thoroughly explained in *Republic v. Spouses Go*:[61]

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[57] *Id.* at 452-453.

[58] 757 Phil. 119 (2015) [Per *J.* Peralta, Third Division].

[59] *Id.* at 131.

[60] *Republic v. Spouses Go*, G.R. No. 197297, August 2, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/197297.pdf>11-12 [Per *J.* Leonen, Second Division].

[61] G.R. No. 197297, August 2, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/197297.pdf> [Per *J.* Leonen, Second Division].

[A]n applicant has the burden of proving that the public land has been classified as alienable and disposable. To do this, the applicant must show a positive act from the government declassifying the land from the public domain and converting it into an alienable and disposable land. "[T]he exclusive prerogative to classify public lands under existing laws is vested in the Executive Department." In *Victoria v. Republic:*

> To prove that the land subject of the application for registration is alienable, an applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or statute. The applicant may secure a certification from the government that the lands applied for are alienable and disposable, but *the certification must show that the DENR Secretary had approved the land classification and released the* land of the pub[l]ic domain as alienable and disposable[.]

Section X(1) of the DENR Administrative Order No. 1998-24 and Section IX(1) of DENR Administrative Order No. 2000-11 affirm that the DENR Secretary is the approving authority for "[l]and classification and release of lands of the public domain as alienable and disposable." Section 4.6 of DENR Administrative Order No. 2007-20 defines land classification as follows:

> Land classification is the process of demarcating, segregating, delimiting and establishing the best category, kind, and uses of public lands. Article XII, Section 3 of the 1987 Constitution of the Philippines provides that lands of the public domain are to be classified into agricultural, forest or timber, mineral lands, and national parks.

These provisions, read with *Victoria v. Republic*, establish the rule that before an inalienable land of the public domain becomes private land, the DENR Secretary must first approve the land classification into an agricultural land and release it as alienable and disposable. The DENR Secretary's official acts "may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy."

The CENRO or the Provincial Environment and Natural Resources Officer will then conduct a survey to verify that the land for original registration falls within the DENR Secretary-approved alienable and disposable zone.

The CENRO certification is issued only to verify the DENR Secretary issuance through a survey[.][62] (Emphasis in the original, citations omitted)

In this case, although respondents were able to present a CENRO certification, a DENR-CENRO report with the testimony of the DENR officer who made the report, and the survey plan showing that the property is already considered alienable and disposable, these pieces of evidence are still not sufficient to prove that the land sought to be registered is alienable and disposable. Absent the DENR Secretary's issuance declaring the land alienable and disposable, the land remains part of the public domain.

Thus, even if respondents have shown, through their testimonial evidence, that they and their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the property since June 12, 1945, they still cannot register the land for failing to establish that the land is alienable and disposable.

All things considered, this Court finds that the Court of Appeals committed a reversible error in affirming the May 5, 2011 Decision and December 9, 2011 Order of the Municipal Circuit Trial Court of Talisay-Laurel, Batangas, which granted the land registration application of respondents.

**WHEREFORE,** the Petition is **GRANTED**. The Court of Appeals September 15, 2014 Decision in CA-G.R. CV No. 98466, which affirmed the May 5, 2011 Decision and December 9, 2011 Order of the Municipal Circuit Trial Court, is **REVERSED** and **SET ASIDE**. Laureana Malijan-Javier and Iden Malijan-Javier's application for registration of Lot No. 1591, Cad. 729, Talisay Cadastre is **DENIED** for lack of merit.

**SO ORDERED.**

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

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[62] *Id.* at 11-12.

**THIRD DIVISION**

[G.R. No. 214759. April 4, 2018]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **DINA CALATES *y* DELA CRUZ,** *accused-appellant.*

**SYLLABUS**

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; THE STATE'S DUTY TO PROVE THE *CORPUS DELICTI* IS AS IMPORTANT AS PROVING THE ELEMENTS OF THE CRIME ITSELF; *CORPUS DELICTI*, DEFINED AND EXPLAINED.—** In prosecutions for violation of Section 5 of R.A. No. 9165, the State bears the burden not only of proving the elements of the offenses of sale of dangerous drug and of the offense of illegal possession of dangerous drug, but also of proving the *corpus delicti,* the body of the crime. *Corpus delicti* has been defined as the body or substance of the crime and, in its primary sense, refers to the fact that a crime was actually committed. As applied to a particular offense, it means *the actual commission by someone of the particular crime charged.* The *corpus delicti* is a compound fact made up of two things, namely: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of this act or result. The dangerous drug itself is the very *corpus delicti* of the violation of the law prohibiting the illegal sale or possession of dangerous drug. Consequently, the State does not comply with the indispensable requirement of proving the *corpus delicti* when the drug is missing, or when substantial gaps occur in the chain of custody of the seized drugs as to raise doubts about the authenticity of the evidence presented in court. As such, the duty to prove the *corpus delicti* of the illegal sale or possession of dangerous drug is as important as proving the elements of the crime itself.

2. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; RATIONALE.—** The proper handling of the confiscated drug is paramount in order to ensure the *chain of custody,* a process essential to preserving the integrity of the evidence of the *corpus delicti.*

In this connection, *chain of custody* refers to the duly recorded authorized movement and custody of seized drugs, controlled chemicals or plant sources of dangerous drugs or laboratory equipment, from the time of seizure or confiscation to the time of receipt in the forensic laboratory, to the safekeeping until presentation in court as evidence and for the purpose of destruction. The documentation of the movement and custody of the seized items should include the identity and signature of the person or persons who held temporary custody thereof, the date and time when such transfer or custody was made in the course of safekeeping until presented in court as evidence, and the eventual disposition. There is no denying that the safeguards of marking, inventory and picture-taking are all vital to establish that the substance confiscated from the accused was the very same one delivered to and presented as evidence in court.

**3. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE RULE WITHOUT JUSTIFICATION LEFT SERIOUS GAPS IN THE CHAIN OF CUSTODY OF THE CONFISCATED DRUGS; AS THE PROSECUTION FAILED TO DISCHARGE ITS BURDEN TO PROVE ACCUSED'S GUILT BEYOND REASONABLE DOUBT, HER ACQUITTAL SHOULD FOLLOW.—** A review of the records reveals that the non-compliance with the procedural safeguards prescribed by law left serious gaps in the chain of custody of the confiscated dangerous drug. x x x The Court has consistently reminded about the necessity for the arresting lawmen to comply with the safeguards prescribed by the law for the taking of the inventory and photographs. The safeguards, albeit not absolutely indispensable, could be dispensed with only upon justifiable grounds. x x x The records have been vainly searched for the credible justification for the entrapment team's non-compliance with the safeguards set by law. The absence of the justification accented the gaps in the chain of custody, and should result in the negation of the evidence of the *corpus delicti* right from the outset. Clearly, the Prosecution did not discharge its burden to prove the guilt of Dina beyond reasonable doubt. x x x With the failure of the Prosecution to establish her guilt beyond reasonable doubt, the acquittal of Dina should follow. That she might have actually committed the imputed crime is of no consequence, for she had no burden to prove her innocence, which was presumed from the outset.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for petitioner.
*Public Attorney's Office* for accused-appellant.

**D E C I S I O N**

**BERSAMIN, *J.*:**

The lack of any justification tendered by the arresting officers for any lapses in the documentation of the chain of custody of confiscated dangerous drugs warrants the acquittal of the accused in a prosecution for the illegal sale of dangerous drugs on the ground of reasonable doubt. The accused has no burden to prove her innocence.

**The Case**

We review the decision promulgated on May 29, 2014,[1] whereby the Court of Appeals (CA) affirmed the conviction for a violation of Section 5, Article II of Republic Act No. 9165 *(Comprehensive Dangerous Drugs Act of 2002)* of accused Dina Calates *y* dela Cruz (Dina) handed down by the Regional Trial Court (RTC) in Bacolod City through its judgment rendered in Criminal Case No. 03-24786 on April 21, 2009.[2]

**Antecedents**

On April 24, 2003, the accused was charged in the RTC with violation of Section 5 of R.A. No. 9165 under the following information docketed as Criminal Case No. 03-24786, to wit:

That on or about the 22nd of April, 2003, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another; distribute, dispatch in transit or transport

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[1] *Rollo,* pp. 4-18; penned by Associate Justice Marilyn B. Lagura-Yap, concurred in by Associate Justice Edgardo L. De Los Santos and Associate Justice Jhosep Y. Lopez.

[2] CA *rollo,* pp. 14-23; penned by Presiding Judge Edgar G. Garvilles.

any dangerous drug, did, then and there willfully, unlawfully and feloniously sell, deliver, give away to a police poseur-buyer in a buy-bust operation, one heat-sealed transparent plastic sachet containing methylamphetamine hydrochloride or shabu, a dangerous drug weighing 0.03 gram, in exchange for a price of ₱100.00 in marked money of ₱100.00 bill with Serial No. P915278, in violation of the aforementioned law.

CONTRARY TO LAW.[3]

The CA summarized the antecedent facts as follows:

The evidence for the prosecution is summarized as follows:

In the morning of April 20, 2003 Insp. Jonathan Lorilla received an information from a reliable informant that alias "Dangdang" Calates is engaged in sale of illegal drug activities. Insp. Lorilla verified if the information is true through a police asset. During the briefing, PO1 Sonido acted as the poseur-buyer with the asset, Insp. Lorilla as team leader and with PO2 Malate, PO2 Villeran, PO2 Perez and PO2 Belandrez as back-up security. About 10:50 or 10:55 am of April 22, 2003, the group all in civilian clothes, proceeded to 27th Calamba Street, Purok Sigay, Barangay 2. PO1 Sonido and the asset went ahead of the group. They entered the place, a woman with "semi-calbo" and sporting blond hair, met the duo and asked if they would buy shabu. PO1 Sonido and the asset, alias "Toto", wiped their nostrils with their right finger, meaning their answer to the question is "yes". The accused extended her left hand to receive the marked money which PO1 Sonido gave her (accused), while the latter took a small sachet of suspected shabu from her right pocket and gave it to PO1 Sonido. Thereafter, PO1 Sonido immediately arrested the accused, identified himself as police officer, PO1 Sonido informed her of the reason of her apprehension and her rights to remain silent and counsel. When the other member of the team saw that the accused was arrested, they rushed towards PO1 Sonido and rendered assistance by putting the accused to a manacle.

The marked money was recovered and the sachet of shabu was marked "ASS" which stands for Alain S. Sonido. Thereafter, the incident was recorded in the police blotter and the plastic sachet of shabu was brought to the PNP Crime Laboratory.

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[3] *Rollo,* pp. 12-13.

The evidence for the defense is also summarized as follows:

Accused Dina Calates claimed that at 11:00 o'clock in the morning of April 22, 2003, she was cooking food for lunch at her residence in 27th Calamba Extension, Bacolod City. During that time a commotion took place outside her house. Together with her husband Joemar and a certain Luz, the accused went outside to see what was happening. They saw a person lying face down and handcuffed, 15 meters away from their location. The man was "Limuel Canlas". He was surrounded by about eight persons and among them, were Police Officers Dennis Belandrez and Jonathan Lorilla. The accused went back to her house and when she went outside again to pick up her son's slippers, Insp. Lorilla suddenly handcuffed her from behind. The latter asked Insp. Lorilla why she was arrested. The latter replied "you are also selling shabu." The policemen went inside and searched her house without search warrant, but they recovered nothing. The accused was brought to BAC-Up 2 (police station).[4]

## Judgment of the RTC

As stated, the RTC convicted the accused through the decision dated April 21, 2009, disposing thusly:

WHEREFORE, finding accused DINA CALATIS y De La Cruz alias "Dangdang" guilty beyond reasonable doubt of Violation of Section 5, Article II of R.A. No. 9165 (Sale, Delivery, etc. of [D]angerous Drugs) as herein charged, judgment is hereby rendered sentencing her to suffer LIFE IMPRISONMENT and to pay a fine of ₱500,000.00. She is also to bear the accessory penalty prescribed by law. Cost against accused.

The one (1) sachet of shabu (Exh. "B-3"–0.03 gram) brought/recovered from accused, being a dangerous drug, is hereby ordered confiscated and/or forfeited in favor of the government and to be forthwith delivered or turned over to the Philippine Drug Enforcement Agency (PDEA) provincial office for immediate destruction or disposition in accordance with law.

The immediate commitment of accused to the national penitentiary is likewise hereby ordered.

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[4] *Id*. at 5-7.

SO ORDERED.[5]

The RTC observed that the testimonies of the Prosecution's witnesses were credible; that the Prosecution thereby established all the elements of the crime of illegal sale of dangerous drugs defined and punished under Section 5 of R.A. No. 9165; and that Dina's denial did not overcome her positive identification as the drug pusher by the Prosecution's witnesses.

**Decision of the CA**

On appeal, the CA affirmed the conviction upon noting that the Prosecution had successfully proved all the elements of the crime charged; that the Prosecution had showed that the police authorities had preserved the integrity and evidentiary value of the dangerous drug confiscated from the accused until its presentation as evidence in court; that the alleged inconsistency in the testimonies of the Prosecution's witnesses became immaterial considering that Dina had personally sold the dangerous drug to PO1 Sonido; that there had been no gap or missing link in the chain of custody of the confiscated drug despite the fact that no inventory and pictures had been taken; and that the lack of inventory and photographing was not fatal.[6] The *fallo* reads:

**WHEREFORE,** the April 21, 2009 Decision of the Regional Trial Court, Branch 47, Bacolod City in Criminal Case No. 03-24786 convicting the accused appellant Dina Calates y De La Cruz of Violation of Section 5, Article II of R.A. 9165 or the Comprehensive Dangerous Drugs Act is **AFFIRMED.** With costs against the accused-appellant.

**SO ORDERED.**[7]

Hence, this appeal.

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[5] CA *rollo,* pp. 22-23.

[6] *Supra*, note 1.

[7] *Id*. at 17.

**Issues**

For purposes of this appeal, the Office of the Solicitor General[8] and the Public Attorney's Office[9] manifested that they were no longer filing their respective supplemental briefs, and prayed that the briefs submitted to the CA be considered in resolving the appeal.

In her appellant's brief, Dina argues that the Prosecution did not prove her guilt beyond reasonable doubt; that the testimonies of the Prosecution's witnesses had doubtful credibility; that there had been another drug operation at the same place, date and time that led to the arrest of one Cromwell Canlas; that it was improbable for the police operatives to have conducted the operation against Canlas and to still conduct another operation against her just five minutes later on; that the identity of the *corpus delicti* had been compromised by the lack of the inventory and the non-taking of photographs in her presence, and in the presence of any representative from the media and the Department of Justice, as required by Section 21 of R.A. No. 9165; that the Prosecution did not even bother explaining why the procedures prescribed by the law had not been complied with; and that because of the irregularities, substantial gaps attended the chain of custody of the seized drug and rendered the identity of the drug highly suspicious.

In response, the OSG maintains that the entrapment of Dina was with due regard for her rights under the law; that the police operatives properly performed their duties in the conduct of the operation against her; that there was no reason to doubt the credibility of the testimonies of the Prosecution's witnesses; and that the non-compliance with the procedure laid down in Section 21 of R.A. No. 9165 did not necessarily render the seizure of the drug illegal or cast doubt on the identity of the drug because the Prosecution was able to show that there had been no gaps in the chain of custody starting from the initial marking until the eventual presentation of the drug in court.

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[8] *Rollo,* pp. 27-28.

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

**Ruling of the Court**

The appeal is meritorious.

In prosecutions for violation of Section 5 of R.A. No. 9165, the State bears the burden not only of proving the elements of the offenses of sale of dangerous drug and of the offense of illegal possession of dangerous drug, but also of proving the *corpus delicti,* the body of the crime. *Corpus delicti* has been defined as the body or substance of the crime and, in its primary sense, refers to the fact that a crime was actually committed. As applied to a particular offense, it means *the actual commission by someone of the particular crime charged.* The *corpus delicti* is a compound fact made up of two things, namely: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of this act or result. The dangerous drug itself is the very *corpus delicti* of the violation of the law prohibiting the illegal sale or possession of dangerous drug. Consequently, the State does not comply with the indispensable requirement of proving the *corpus delicti* when the drug is missing, or when substantial gaps occur in the chain of custody of the seized drugs as to raise doubts about the authenticity of the evidence presented in court.[10] As such, the duty to prove the *corpus delicti* of the illegal sale or possession of dangerous drug is as important as proving the elements of the crime itself.

The arrest of Dina following the seizure of the illegal substance resulted from the buy-bust operation. Although buy-bust operations have become necessary in dealing with the drug menace, it has also been acknowledged that buy-bust operations were susceptible to abuse by turning them into occasions for extortion.[11] Addressing the possibility of abuse, Congress prescribed procedural safeguards to ensure that such abuse would

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[10] *People v. Bautista*, G.R. No. 177320, February 22, 2012, 666 SCRA 518, 531-532.

[11] *People v. Garcia*, G.R. No. 173480, February 25, 580 SCRA 259, 266-267.

be circumvented. The State and its agents are thereby mandated to faithfully observe the safeguards in every drug-related operation and prosecution.[12]

The procedural safeguards cover the seizure, custody and disposition of the confiscated drug. Section 21 of R.A. No. 9165, as amended, relevantly provides:

> Sec. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant 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;
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> x x x x x x x x x

[12] *Reyes v. Court of Appeals,* G.R. No. 180177, April 18, 2012, 670 SCRA 148, 158.

The Implementing Rules and Regulations of Section 21 (a) of R.A. No. 9165 have reiterated the statutory safeguards, thus:

x x x x x x x x x

(a) The apprehending office/team having initial custody and control of the drugs **shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures;** *Provided, further* that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items; (Emphasis supplied)

x x x x x x x x x

The proper handling of the confiscated drug is paramount in order to ensure the *chain of custody,* a process essential to preserving the integrity of the evidence of the *corpus delicti.* In this connection, *chain of custody* refers to the duly recorded authorized movement and custody of seized drugs, controlled chemicals or plant sources of dangerous drugs or laboratory equipment, from the time of seizure or confiscation to the time of receipt in the forensic laboratory, to the safekeeping until presentation in court as evidence and for the purpose of destruction. The documentation of the movement and custody of the seized items should include the identity and signature of the person or persons who held temporary custody thereof, the date and time when such transfer or custody was made in the course of safekeeping until presented in court as evidence, and the eventual disposition.[13] There is no denying that the safeguards

[13] Section 1(b), Dangerous Drugs Board Regulation No. 1, Series of 2002.

of marking, inventory and picture-taking are all vital to establish that the substance confiscated from the accused was the very same one delivered to and presented as evidence in court.

A review of the records reveals that the non-compliance with the procedural safeguards prescribed by law left serious gaps in the chain of custody of the confiscated dangerous drug.

To start with, PO1 Sonido, who testified having marked the confiscated drug at the place of arrest, did not claim that he did the marking in the presence of Dina. The unilateral marking engendered doubt about the integrity of the evidence presented during the trial, for determining if the drug he thereby marked was the same drug confiscated from Dina became literally impossible.[14]

Secondly, although P/Insp. Jonathan Lorilla attested on cross-examination that an inventory of the confiscated drug had been conducted, his testimony had no corroboration in the records. That he was also unsure if photographs of the confiscated drug had been taken in the presence of Dina accented the non-observance of the safeguards. At the very least, his declared uncertainty reflected the inexcusability of the oversight on the part of the apprehending lawmen regarding the safeguards considering that the arrest of Dina had been effected during the pre-planned buy-bust operation.[15] Worse, the lack of the inventory and his professed uncertainty about the taking of photographs in the presence of Dina could only mean that no inventory and photograph had been taken, in violation of Section 21 of R. A. No. 9165.

The Court has consistently reminded about the necessity for the arresting lawmen to comply with the safeguards prescribed by the law for the taking of the inventory and photographs. The safeguards, albeit not absolutely indispensable, could be dispensed with only upon justifiable grounds. Indeed, as

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[14] See *People v. Zakaria,* G.R. No. 181042, November 26, 2012, 686 SCRA 390, 401.

[15] TSN, August 2, 2004, p. 18.

pronounced in *People v. Pagaduan,*[16] and other rulings of the Court, the deviations from the standard procedure dismally compromise the integrity of the evidence, and the only reason for the courts to overlook the deviations is for the Prosecution to recognize the deviations and to explain them in terms of their justifiable grounds, and to show that the integrity and evidentiary value of the evidence seized were nonetheless substantially preserved. Any shortcoming on the part of the Prosecution in this regard is fatal to its cause despite the saving clause stated in Section 21 of R.A. No. 9165, *supra,* precisely because:

> In the present case, the prosecution did not bother to offer any explanation to justify the failure of the police to conduct the required physical inventory and photograph of the seized drugs. The apprehending team failed to show why an inventory and photograph of the seized evidence had not been made either in the place of seizure and arrest or at the nearest police station (as required by the Implementing Rules in case of warrantless arrests). **We emphasize that for the saving clause to apply, it is important that the prosecution explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had been preserved. In other words, the justifiable ground for noncompliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist.**[17] [Bold emphasis supplied]

The records have been vainly searched for the credible justification for the entrapment team's non-compliance with the safeguards set by law. The absence of the justification accented the gaps in the chain of custody, and should result in the negation of the evidence of the *corpus delicti* right from the outset. Clearly, the Prosecution did not discharge its burden to prove the guilt of Dina beyond reasonable doubt.

*Proof beyond reasonable doubt* does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty; moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.[18]

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[16] G.R. No. 179029, August 9, 2010, 627 SCRA 308.

[17] *Id*. at 322.

[18] Section 2, Rule 133 of the *Rules of Court.*

On the other hand, a *reasonable doubt of guilt,* according to *United States v. Youthsey:*[19]

> x x x is a doubt growing reasonably out of evidence or the lack of it. It is not a captious doubt; not a doubt engendered merely by sympathy for the unfortunate position of the defendant, or a dislike to accept the responsibility of convicting a fellow man. If, having weighed the evidence on both sides, you reach the conclusion that the defendant is guilty, to that degree of certainty as would lead you to act on the faith of it in the most important and crucial affairs of your life, you may properly convict him. Proof beyond reasonable doubt is not proof to a mathematical demonstration. It is not proof beyond the possibility of mistake.

With the failure of the Prosecution to establish her guilt beyond reasonable doubt, the acquittal of Dina should follow. That she might have actually committed the imputed crime is of no consequence, for she had no burden to prove her innocence, which was presumed from the outset.

**WHEREFORE,** the Court **REVERSES** and **SETS ASIDE** the decision promulgated on May 29, 2014 by the Court of Appeals in CA-G.R. CR-HC No. 01035; **ACQUITS** accused **DINA CALATES *y* DELA CRUZ** for failure of the Prosecution to prove her guilt beyond reasonable doubt; and **DIRECTS** her **IMMEDIATE RELEASE** from the Correctional Institution for Women in Mandaluyong City unless she is confined thereat for another lawful cause.

Let a copy of this decision be transmitted to the Superintendent of the Correctional Institution for Women Bureau of Corrections, Mandaluyong City, for immediate implementation, with the directive to report the action taken to this Court within five days from receipt of this decision.

**SO ORDERED.**

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

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[19] 91 Fed. Rep. 864, 868.

**THIRD DIVISION**

[G.R. No. 214886. April 4, 2018]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **BERNIE CONCEPCION,** *accused-appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; REVISED PENAL CODE (RPC) AS AMENDED BY REPUBLIC ACT NO. 8353; RAPE; ACCUSED-APPELLANT COMMITTED TWO (2) COUNTS OF RAPE; PENALTY AND CIVIL LIABILITY.—** As appreciated by the Court of Appeals, AAA testified and narrated in detail how accused-appellant had carnal knowledge of her. Upon examining the records, it became clear that AAA testified and narrated two (2) separate incidents of rape. x x x As properly pointed out by the Court of Appeals, in rape cases, primordial consideration is given to the credibility of a victim's testimony. Here, AAA's testimonies on both incidents of rape are equally credible. Considering that the judge who examined AAA found her a believable witness and considering further that there was nothing wanting in AAA's testimony on the second rape incident, for the same reasons outlined by the Court of Appeals in its decision, this Court finds that the evidence was sufficient to establish accused-appellant's guilt of the second rape charge. x x x Accused-appellant Bernie Concepcion is found guilty beyond reasonable doubt of two (2) counts of the crime of rape under Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, and is sentenced to suffer the penalty of imprisonment of *reclusion perpetua* for each count. x x x The victim is entitled to the following amounts, for each count of rape: ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. The award of damages shall earn interest at the rate of six percent (6%) per annum from the date of the finality of this judgment until fully paid.

**2. ID.; REVISED PENAL CODE; SLIGHT ILLEGAL DETENTION; WHILE THE INITIAL ABDUCTION OF THE VICTIM MAY HAVE BEEN ABSORBED BY THE CRIME OF RAPE, HER CONTINUED DETENTION**

**AFTER THE RAPE HAD BEEN COMPLETED CONSTITUTES SLIGHT ILLEGAL DETENTION; ELEMENTS OF SLIGHT ILLEGAL DETENTION ARE ALL PRESENT IN THIS CASE; PENALTY.—** The facts as found by the Regional Trial Court and the Court of Appeals show that after raping AAA, accused-appellant continued to detain her and refused to release her even after raping her. Thus, although the initial abduction of AAA may have been absorbed by the crime of rape, the continued detention of AAA after the rape cannot be deemed absorbed in it. Likewise, since the detention continued after the rape had been completed, it cannot be deemed a necessary means for the crime of rape. x x x Thus, the felony of slight illegal detention has four (4) elements: 1. That the offender is a *private individual*. 2. That he *kidnaps* or *detains* another, or in any other manner *deprives* him of his *liberty*. 3. That the act of kidnapping or detention is *illegal*. 4. That the crime is committed without the attendance of any of the circumstances enumerated in Art. 267. The elements of slight illegal detention are all present here. Accused-appellant is a private individual. The Court of Appeals found that after raping AAA, accused-appellant continued to detain her and to deprive her of her liberty. It also appreciated AAA's testimony that accused-appellant placed electrical wires around the room to electrocute anyone who might attempt to enter it. He refused to release AAA even after his supposed demands were met. The detention was illegal and not attended by the circumstances that would render it serious illegal detention. Thus, this Court finds accused-appellant guilty of the crime of slight illegal detention. x x x Accused-appellant Bernie Concepcion is found guilty beyond reasonable doubt of the crime of slight illegal detention under Article 268 of the Revised Penal Code, and is sentenced to suffer an indeterminate penalty of imprisonment from nine (9) years and four (4) months of *prision mayor* in its medium period as minimum to sixteen (16) years and five (5) months of *reclusion temporal* in its medium period as maximum.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for petitioner.
*Public Attorney's Office* for accused-appellant.

## D E C I S I O N

**LEONEN, *J.*:**

This resolves the appeal[1] from the Court of Appeals March 28, 2014 Decision,[2] affirming with modification the November 29, 2011 Decision[3] of Branch 34, Regional Trial Court, [redacted], La Union. The Regional Trial Court found the accused, Bernie Concepcion (Concepcion), guilty beyond reasonable doubt of the complex crime of forcible abduction with rape. The Regional Trial Court imposed the penalty of *reclusion perpetua* and ordered Concepcion to pay the victim ₱50,000.00 as moral damages.[4] On appeal, the Court of Appeals ruled that the crime of rape absorbed the crime of forcible abduction; thus, it found Concepcion guilty only of the crime of rape and imposed the same penalty of *reclusion perpetua*. It ordered Concepcion to pay the victim the amounts of ₱50,000.00 as moral damages, ₱50,000.00 as civil indemnity, and ₱30,000.00 as exemplary damages.[5]

Informations were filed with the Regional Trial Court, [redacted], La Union against accused-appellant Concepcion, charging him with serious illegal detention and two (2) counts of rape. The information for serious illegal detention was docketed as Criminal Case No. 2899. The relevant portion stated:

That on or about the 17th day of February 2001, in the Municipality of [redacted], Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being a private individual did then and there willfully, unlawfully and feloniously kidnap, detain and deprive the liberty of complainant

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[1] The appeal was filed under Rule 124, Section 13(c) of the Rules of Court.

[2] *Rollo*, pp. 2-22. The Decision, docketed as CA-G.R. CR-HC No. 05721, was penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Franchito N. Diamante and Zenaida T. Galapate-Laguilles of the Fourteenth Division, Court of Appeals, Manila.

[3] CA *rollo*, pp. 52-57. The Decision, docketed as Crim. Case Nos. 2899, and 2900 and 2901, was penned by Judge Manuel R. Aquino.

[4] *Id.* at 57.

[5] *Rollo*, pp. 18-19.

AAA and while detaining the latter inside a house, said accused forcibly and with intimidation and lewd design, have sexual intercourse with complainant twice against her will and consent, all to the damage and prejudice of said complainant and her personal liberty and security.[6]

The informations for rape were docketed as Criminal Case Nos. 2900 and 2901, and read, in part:

Crim. Case No. 2900

That on or about the 17th day of February 2001, at 8:00 o'clock in the evening at Brgy. [redacted] Municipality of [redacted], Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation and with lewd design did then and there wil[l]fully, unlawfully and feloniously have sexual intercourse with AAA without her consent, to the damage and prejudice of said victim.

CONTRARY TO LAW.

Crim. Case No. 2901

That on or about the 17th day of February 2001, at 5:00 o'clock in the afternoon at Brgy. [redacted] Municipality of [redacted], Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation and with lewd design did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA without her consent, to the damage and prejudice of said victim.

CONTRARY TO LAW.[7]

On June 4, 2002, upon arraignment in the consolidated criminal cases, accused-appellant pleaded not guilty,[8] and trial ensued.

The prosecution's version of the events was as follows:

AAA and her common-law husband lived rent-free in a house owned by Concepcion. In return, they helped maintain the house and contributed to utility bills.[9]

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[6] *Id*. at 3.

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

[8] *Id*. at 4.

[9] CA *rollo*, p. 74.

On February 17, 2001, at around 5:00 p.m., AAA arrived home in a tricycle, bringing with her a sack of rice. Concepcion was at the gate of the house, drunk, when AAA arrived. She went inside the house to place her lunchbox and to find someone to help her carry the sack of rice. Concepcion intercepted her at the garage area. He held a knife to her back and dragged her to his room. Then he locked his room and blocked its door using his bed. Concepcion then pulled AAA to the bed and told her to undress. She begged Concepcion not to rape her. He undressed her, pulled down his pants, cut her underwear using his knife, and then inserted his hand in her vagina. AAA felt pain and struggled. Then, Concepcion inserted his penis into her vagina.[10]

Shortly after, a vehicle arrived and a person who introduced himself as Chief of Police Pedro Obaldo, Jr.[11] called on Concepcion to release AAA. In response, Concepcion demanded that the police first produce the men who raped his girlfriend, Malou Peralta (Peralta). The police then brought the three (3) men demanded by Concepcion. Then, Concepcion told the police to bring Peralta and her father, which they did. When Peralta arrived, Concepcion refused to release AAA unless Peralta admitted that she had been raped. At first, Peralta refused to admit this, but later did just so Concepcion would release AAA. Then, Concepcion asked that Board Member Alfred Concepcion be produced. When he arrived, however, Concepcion asked him to leave.[12]

Concepcion then inserted his penis in AAA's vagina again, holding a knife to her neck. Mayor Joaquin Ostrea's arrival interrupted the rape. He tried, but failed, to convince Concepcion to release AAA. Concepcion instructed AAA to dress up. She could not find her shirt, however, and wore Concepcion's shirt instead.[13]

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[10] *Id.* at 74-75.

[11] *Id.* at 111.

[12] *Id.* at 75.

[13] *Id.*

Then, to electrocute those who might enter the room, Concepcion installed electric wires on the door. The police officers used their vehicle to create noise outside, starting its engine and honking its horn. They forcibly entered Concepcion's room, breaking the window and the door. PO3 Bartolome Oriña, Jr. (PO3 Oriña)[14] pulled AAA and exited through the window. AAA then passed out.[15]

Thereafter, Concepcion was arrested and brought to the police station. AAA was brought to the hospital where Dr. Maribeth Baladad (Dr. Baladad) examined her. Dr. Baladad testified that there were abrasions and lacerations in her genital area, caused by the forceful entry of an object or organ.[16]

Concepcion did not present evidence before the Regional Trial Court.[17]

In its November 29, 2011 Decision,[18] the Regional Trial Court found Concepcion guilty of the complex crime of forcible abduction with rape, considering that she was forcibly abducted and then sexually assaulted. It dismissed one (1) charge of rape for failure of the prosecution to establish the same with moral certainty. The dispositive portion of this Decision read:

> WHEREFORE, in view of the foregoing, a judgment is hereby rendered finding accused Bernie Concepcion GUILTY beyond reasonable doubt of the complex crime of Forcible Abduction with Rape and is hereby sentenced to serve the penalty of imprisonment of Reclusion Perpetua.
>
> Further, accused is hereby ordered to pay FIFTY THOUSAND (PHP50,000.00) PESOS as moral damages.
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> SO ORDERED.[19]

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[14] *Id*. at 99.

[15] *Id*. at 75-76.

[16] *Id*. at 76.

[17] *Id*. at 53.

[18] *Id*. at 52-57.

[19] *Id*. at 57.

Concepcion appealed the Regional Trial Court Decision to the Court of Appeals. In his appellant's brief, he admitted detaining AAA and holding her against her will. However, he claimed that "his intention was not to detain" but "to extract an admission from his girlfriend of the fact of her being raped and . . . to bring the alleged perpetrators out in the open."[20] He stressed that even AAA testified that he assured her release provided that those who raped his girlfriend were presented. This was also corroborated by PO3 Oriña.[21] He insisted that no evidence was presented to show any other intention than to attract attention to the alleged rape of his girlfriend.[22] Absent proof that Concepcion's intent was to deprive AAA of her liberty, he should not be convicted under Article 267 of the Revised Penal Code. Similarly, absent proof that he abducted AAA with lewd designs, Concepcion could not be convicted of forcible abduction under Article 342 of the Revised Penal Code.[23] Further, Concepcion insisted that the testimonies presented by the prosecution did not establish beyond reasonable doubt that he raped AAA. It was established that at the time of the alleged rape, AAA was on her fourth day of menstruation, yet no evidence was presented showing traces of menstrual discharge on the bed sheets or on Concepcion's clothing. Moreover, while it may have been established that the coitus had occurred, Dr. Baladad could not determine the date of such occurrence[24] or recall whether the lacerations she found on AAA were fresh or old.[25] Finally, it was not shown that the spermatozoa found inside AAA belonged to Concepcion.[26]

The Court of Appeals denied Concepcion's appeal in its March 28, 2014 Decision.[27] It found that the elements of rape had been

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[20] *Id.* at 42.

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

[22] *Id.* at 44.

[23] *Id.* at 43.

[24] *Id.* at 46.

[25] *Id.* at 47.

[26] *Id.* at 48.

[27] *Rollo*, pp. 2-22.

proven beyond reasonable doubt. It ruled that carnal knowledge was established by AAA's testimony, which was corroborated by the Physical and Medical Examination and testimony of Dr. Baladad, who examined AAA on February 18, 2001. Dr. Baladad found abrasions on her flank area, left posterior shoulder, and right knee, as well as a laceration on her fourchette. The Exfoliative Cytology Report established the presence of spermatozoa and of a moderate inflammation. That the carnal knowledge was accomplished through force or intimidation was established by AAA, who testified that Concepcion held a knife to her neck and that her pushes were ineffective against Concepcion, who was stronger than her.[28]

The Court of Appeals also found that the prosecution established the elements of abduction. However, the Court of Appeals ruled that the crime of rape absorbed the forcible abduction, considering that it was established that the forcible abduction of AAA was for the purpose of raping her.[29] The Court of Appeals also increased the amount of damages awarded by the trial court. The dispositive portion of its Decision read:

> WHEREFORE, premises considered, the appeal is DENIED. The Decision dated 29 November 2011 of the Regional Trial Court, First Judicial Region, Branch 34, [redacted] La Union in Crim. Case Nos. 2899, 2900 & 2901 is AFFIRMED with MODIFICATION, in that accused-appellant is hereby found guilty beyond reasonable doubt of the crime of rape under Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, and sentenced to suffer the penalty of imprisonment of *reclusion perpetua*; and he is ORDERED to pay the victim AAA not only the amount of Php 50,000.00 as a moral damages already awarded by the trial court, but also the amounts of Php 50,000.00 as civil indemnity, and Php 30,000.00 as exemplary damages, plus interest on all damages at the rate of six percent (6%) per annum from finality of this Decision until fully paid.
>
> SO ORDERED.[30]

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[28] *Id.* at 16-17.

[29] *Id.* at 18.

[30] *Id.* at 19.

Thus, Concepcion filed a Notice of Appeal with the Court of Appeals.[31]

In compliance with its May 14, 2014 Resolution,[32] which gave due course to accused-appellant's notice of appeal, the Court of Appeals elevated the records of the case to this Court.[33] In its January 14, 2015 Resolution,[34] this Court required the parties to submit their respective supplemental briefs. The parties filed their respective manifestations in lieu of supplemental briefs on March 19, 2015[35] and March 31, 2015.[36]

After considering the parties' arguments and the records of this case, this Court resolves to **DISMISS** accused-appellant's appeal for failing to show reversible error in the assailed decision, warranting this Court's appellate jurisdiction, and to **MODIFY** the assailed decision.

Accused-appellant has failed to present any cogent reason to reverse the factual findings of the Court of Appeals and of the Regional Trial Court, with regard to his conviction. The trial court's factual findings, its assessment of the credibility of witnesses and the probative weight of their testimonies, and its conclusions based on these factual findings are to be given the highest respect, and when these are affirmed by the Court of Appeals, this Court will generally not re-examine them.[37] However, this Court modifies the assailed decision.

To recall, three (3) informations were filed against accused-appellant for two (2) counts of rape and one (1) count of serious

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[31] CA *rollo*, pp. 147-149.

[32] *Id*. at 152.

[33] *Rollo*, p. 1.

[34] *Id*. at 28.

[35] *Id*. at 30-32. People of the Philippines filed a Manifestation and Motion in Lieu of Supplemental Brief.

[36] *Id*. at 33-36. Acused-appellant filed a Manifestation (in Lieu of Supplemental Brief).

[37] See *People v. Castel*, 593 Phil. 288 (2008) (Per *J*. Reyes, *En Banc*].

illegal detention. Accused-appellant was uniformly acquitted of the second count of rape due to the failure of the prosecution to establish beyond reasonable doubt that it actually happened. As for the remaining two (2) charges, the Regional Trial Court and the Court of Appeals both considered the first count of rape and the charge of serious illegal detention as necessarily linked.

Upon studying the records of this case, this Court finds AAA's testimony as sufficient to establish beyond reasonable doubt that there was a second incident of rape.

The Court of Appeals and the Regional Trial Court found AAA's testimony to be credible. Thus, in affirming accused-appellant's conviction for the first count of rape, the Court of Appeals March 28, 2014 Decision properly explained:

> (Indeed) (i)n resolving rape cases, primordial consideration is given to the credibility of the victim's testimony. Further, it bears stressing that (i)n a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things, as in (the present) case. No law or rule requires the corroboration of the testimony of a single witness in a rape case. Due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself.
>
> In this case, accused-appellant had carnal knowledge of AAA by inserting his penis into AAA's genitalia, and the same was accomplished through force, threat or intimidation. AAA testified that she was not able to fight back because accused-appellant's knife was pointed at her neck and that while she tried to push him, he was stronger than her. AAA described the weapon used by accused-appellant as a stainless bread knife which is about 9 inches long. AAA also testified and narrated in detail the manner on how accused-appellant had carnal knowledge of her, despite her efforts of fighting back.
>
> We also find that AAA's claim for rape was corroborated by Dr. Baladad, a Medical Officer III in the OB-Gyne Department of the Ilocos Training and Regional Medical Center, the doctor who examined her, upon the request for Physical and Medical Examination dated

18 February 2001 of Police Chief Inspector Pedro Obaldo, Jr. of the [redacted] Police Station . . .

. . . . . .

It has been repeatedly held that no woman would want to go through the process, the trouble and the humiliation of trial for such a debasing offense unless she actually has been a victim of abuse and her motive is but a response to the compelling need to seek and obtain justice. It is settled jurisprudence that when a woman says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.[38] (Citations omitted)

As appreciated by the Court of Appeals, AAA testified and narrated in detail how accused-appellant had carnal knowledge of her. Upon examining the records, it became clear that AAA testified and narrated two (2) separate incidents of rape. As to the first incident, AAA testified:

Q And when the accused took off your underwears, what happened next?
A After he removed the panty and bra he inserted his hand (Witness demonstrating her fingers).

Q Where did the accused inserted (sic) his finger?
A In my vagina, sir.

Q What particular part of the room [were you in] when the accused inserted his finger [into] your vagina?
A On the bed, sir.

. . . . . .

Q When you struggled so that the finger was removed, what happened next?
A That is the time he inserted his penis in ... my vagina, sir.

Q Can you recall how many minutes or second[s] when he inserted his penis to ... your vagina?
A It is a short time bee[ause] he notice[d] that there [was] a vehicle ... stop[ped] outside their house, sir.[39]

As for the second incident of rape, AAA narrated:

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

[39] CA *rollo*, p. 106.

Q And what happened after the accused ask[ed Board Member Alfred Concepcion] to leave the place?
A That [was] the time that he want[ed] again to rape me, sir.[40]

. . . . . .

Q And what happened after that?
A He went on top of me, sir.

Q And what happened [when he was] on top of you?
A He inserted his penis to my vagina, sir.

Q Was he able to penetrate your vagina?
A Yes, sir.

Q What did you feel when he did that?
A None because I am still afraid at that time because the knife was still pointed at my neck, sir.

. . . . . .

Q On the 2nd time that the accused ... inserted his penis to your vagina, what then [were] you doing?
A Still I was lying down, sir.

Q You did not push him?
A I did it but of course he [was] a male, he [was] stronger than me, Your Honor.

Q You did not cry while he was raping you?
A I cried, Your Honor.[41]

As properly pointed out by the Court of Appeals, in rape cases, primordial consideration is given to the credibility of a victim's testimony. Here, AAA's testimonies on both incidents of rape are equally credible. Considering that the judge who examined AAA found her a believable witness[42] and considering further that there was nothing wanting in AAA's testimony on the second rape incident, for the same reasons outlined by the Court of Appeals in its decision, this Court finds that the evidence

[40] *Id*. at 108.

[41] TSN, September 30, 2003, pp. 8-9.

[42] RTC Records, p. 220.

was sufficient to establish accused-appellant's guilt of the second rape charge.

As for the charge of serious illegal detention, the Court of Appeals held that the forcible abduction was absorbed in the crime of rape because it was established that the forcible abduction of AAA was for the purpose of raping her:[43]

> In this case, it is clear that accused-appellant forcibly abducted AAA for the purpose of raping her. It bears to stress that accused-appellant already raped AAA, and it was only after his commission of the said crime that he made demands from the police authorities for AAA's release. In fact, AAA testified that accused-appellant even placed electrical wires for the purpose of electrocuting anybody who would enter the door or the window. Hence, if it were true that accused-appellant only detained the victim to extract an admission from his girlfriend Malou [Peralta] and to bring the alleged perpetrators of the latter out in the open, he should have released AAA the moment his demands were acceded to by the police officers. It bears emphasis that accused-appellant failed to present any evidence, and the defense he is belatedly putting up now is but a last-ditched effort on his part to evade criminal liability.[44] (Citation omitted)

This Court disagrees.

The facts as found by the Regional Trial Court and the Court of Appeals show that after raping AAA, accused-appellant continued to detain her and refused to release her even after raping her. Thus, although the initial abduction of AAA may have been absorbed by the crime of rape, the continued detention of AAA after the rape cannot be deemed absorbed in it. Likewise, since the detention continued after the rape had been completed, it cannot be deemed a necessary means for the crime of rape.

Articles 267 and 268 of the Revised Penal Code provide:

> Article 267. *Kidnapping and serious illegal detention.* — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

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[43] *Rollo*, p. 18.

[44] *Id*.

1. If the kidnapping or detention shall have lasted more than three days.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death penalty where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

Article 268. *Slight illegal detention. — The penalty of reclusion temporal* shall be imposed upon any private individual who shall commit the crimes described in the next preceding article without the attendance of any of the circumstances enumerated therein.

The same penalty shall be incurred by anyone who shall furnish the place for the perpetration of the crime.

If the offender shall voluntarily release the person so kidnapped or detained within three days from the commencement of the detention, without having attained the purpose intended, and before the institution of criminal proceedings against him, the penalty shall be *prision mayor* in its minimum and medium periods and a fine not exceeding seven hundred pesos.

Thus, the felony of slight illegal detention has four (4) elements:

1. That the offender is a *private individual*.
2. That he *kidnaps* or *detains* another, or in any other manner *deprives* him of his *liberty*.
3. That the act of kidnapping or detention is *illegal*.

4. That the crime is committed without the attendance of any of the circumstances enumerated in Art. 267.[45] (Emphasis in the original)

The elements of slight illegal detention are all present here. Accused-appellant is a private individual. The Court of Appeals found that after raping AAA, accused-appellant continued to detain her and to deprive her of her liberty. It also appreciated AAA's testimony that accused-appellant placed electrical wires around the room to electrocute anyone who might attempt to enter it. He refused to release AAA even after his supposed demands were met. The detention was illegal and not attended by the circumstances that would render it serious illegal detention. Thus, this Court finds accused-appellant guilty of the crime of slight illegal detention.

Further, in line with current jurisprudence,[46] ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages shall be awarded to the victim for each count of rape.

**WHEREFORE,** in view of the foregoing premises, the Regional Trial Court November 29, 2011 Decision in Criminal Case Nos. 2899, 2900, and 2901, and the Court of Appeals March 28, 2014 Decision in CA-G.R. CR-HC No. 05721 are hereby **AFFIRMED with the following MODIFICATIONS**:

Accused-appellant Bernie Concepcion is found guilty beyond reasonable doubt of two (2) counts of the crime of rape under Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, and is sentenced to suffer the penalty of imprisonment of *reclusion perpetua* for each count. Accused-appellant Bernie Concepcion is found guilty beyond reasonable doubt of the crime of slight illegal detention under Article 268 of the Revised Penal Code, and is sentenced to suffer an indeterminate

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[45] See *People v. Pagalasan*, 452 Phil. 341 (2003) [Per *J.* Callejo, Sr., *En Banc*].

[46] See *People v. Jugueta*, G.R. No. 202124, April 5, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/202124.pdf> [Per *J.* Peralta, *En Banc*].

penalty of imprisonment from nine (9) years and four (4) months of *prision mayor* in its medium period as minimum to sixteen (16) years and five (5) months of *reclusion temporal* in its medium period as maximum.

The victim is entitled to the following amounts, for each count of rape: ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. The award of damages shall earn interest at the rate of six percent (6%) per annum from the date of the finality of this judgment until fully paid.

The accused shall pay the costs of suit.

**SO ORDERED.**

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

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**FIRST DIVISION**

[G.R. No. 216714. April 4, 2018]

**SPOUSES GODFREY and MA. TERESA TEVES,** *petitioners, vs.* **INTEGRATED CREDIT & CORPORATE SERVICES, CO. (now CAROL AQUI),** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; RENTS, EARNINGS AND INCOME OF PROPERTY PENDING REDEMPTION; SHALL BELONG TO THE JUDGMENT OBLIGOR, BUT ONLY UNTIL THE EXPIRATION OF HIS PERIOD OF REDEMPTION.—** When the redemption period expired on May 23, 2007, ICCS became the owner of the subject property and was, from then

on, entitled to the fruits thereof. Petitioners ceased to be the owners of the subject property, and had no right to the same as well as to its fruits. Under Section 32, Rule 39 of the Rules, on Execution, Satisfaction and Effect of Judgments, all rents, earnings and income derived from the property pending redemption shall belong to the judgment obligor, but only until the expiration of his period of redemption. Thus, if petitioners leased out the property to third parties after their period for redemption expired, as was in fact the case here, the rentals collected properly belonged to ICCS or Aqui, as the case may be. Petitioners had no right to collect them. Aqui acquired the subject property from ICCS only in 2010. Thus, Aqui cannot claim the subject rental collections from 2007, because she was not yet the owner of the subject property at the time; they belonged to ICCS. She is entitled to rentals collected only from the time she became the owner of the property. However, as the substituted party in these proceedings, this Court will allow her to collect the award of rentals collected by petitioners but which pertain to ICCS — with the obligation to remit the same to the latter. After all, she is merely ICCS's suceessor-in-interest.

**2. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); LAND REGISTRATION COURTS; CONFERRED THE AUTHORITY TO ACT NOT ONLY ON APPLICATIONS FOR ORIGINAL REGISTRATION BUT ALSO OVER ALL PETITIONS FILED AFTER ORIGINAL REGISTRATION OF TITLE, WITH POWER TO HEAR AND DETERMINE ALL QUESTIONS ARISING FROM SUCH APPLICATIONS OR PETITIONS.—** On the contention that the RTC — sitting as a land registration court — does not have jurisdiction to award back rentals or grant relief which should otherwise be sought in an ordinary civil action, this is no longer tenable. The distinction between the trial court acting as a land registration court with limited jurisdiction, on the one hand, and a trial court acting as an ordinary court exercising general jurisdiction, on the other, has already been removed with the effectivity of Presidential Decree No. 1529, or the Property Registration Decree. "The change has simplified registration proceedings by conferring upon the designated trial courts the authority to act not only on applications for 'original registration' but also 'over all petitions filed after original registration of title, with power to hear and determine all questions arising from such applications or petition.'"

**APPEARANCES OF COUNSEL**

*W.B. Calamba & Partners Law Offices* for petitioners.
*Go & Lim Law Offices* for respondent.

**D E C I S I O N**

**DEL CASTILLO, *J.*:**

This Petition for Review[1] on *Certiorari* assails the March 28, 2014 Decision[2] of the Court of Appeals (CA) dismissing the Petition for *Certiorari* in CA-G.R. SP. No. 05483, as well as its January 7, 2015 Resolution[3] denying herein petitioners' Motion for Reconsideration.[4]

***Factual Antecedents***

Sometime in 1996, Standard Chartered Bank (Standard) extended various loans to petitioners Godfrey and Ma. Teresa Teves. As security, petitioners mortgaged their property covered by Transfer Certificate of Title No. 107520[5] (the subject property).

Petitioners defaulted in their loan payments, Standard extrajudicially foreclosed on the mortgage, and the property was sold to Integrated Credit and Corporate Services Co. (ICCS). A new certificate of title — Transfer Certificate of Title No. T-188758 — was issued in favor of ICCS after petitioners failed to redeem the subject property upon the expiration of the redemption period on May 23, 2007.[6]

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[1] *Rollo*, pp. 11-25.

[2] *Id*. at 116-121; penned by Associate Justice Merilyn B. Lagura-Yap and concurred in by Associate Justices Gabriel T. Ingles and Ma. Luisa C. Quijano-Padilla.

[3] *Id*. at 134-136.

[4] *Id*. at 123-128.

[5] *Id*. at 63-68.

[6] *Id*. at 52.

ICCS filed a petition for the issuance of a writ of possession, docketed as L.R.C. Rec. No. 9468 Case No. 12 Lot No. 32 Blk. 3 and assigned to Branch 16 of the Regional Trial Court (RTC) of Cebu City. During the proceedings, or in May, 2010, ICCS was substituted by respondent Carol Aqui (Aqui),[7] who appears to have acquired the property from ICCS, and a new certificate of title — Transfer Certificate of Title No. 107-2010001206 — was issued in Aqui's favor.[8]

On September 7, 2009, the RTC issued a Decision[9] in LRC Rec. No. 9468 Case No. 12 Lot No. 32 Blk. 3 ordering the issuance of a writ of possession over the subject property in favor of ICCS.

On July 14, 2010, the RTC issued two Orders. The first (First Order[10]) declared in part, thus:

> To repeat, the duty of the court to grant a writ of possession is ministerial. Any question regarding the regularity and validity of the sale as well as the consequent cancellation of the writ is to be determined in a subsequent proceeding as outlined in Section 8 of Act No. 3135.
>
> In the case of Philippine National Bank vs. Court of Appeals, the Supreme Court said:
>
> **'An ex parte petition for issuance of a possessory writ under Section 7 of Act No. 3135 is not, strictly speaking, a 'judicial process' as contemplated above.'**
>
> x x x x x x x x x
>
> **'It should be emphasized that an ex parte petition for issuance of a writ of possession is a non-litigious proceeding authorized in an extrajudicial foreclosure proceeding pursuant to Act 3135 as amended. Unlike a judicial foreclosure of real estate mortgage under Rule 68 of the Rules of Court,**

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[7] *Id*. at 52-33; "Manifestation and *Ex-Parte* Motion" for substitution of parties.

[8] *Id*. at 75, 146.

[9] *Id*. at 110-112; penned by Presiding Judge Sylva G. Aguirre-Paderanga.

[10] *Id*. at 48-51.

**any property brought within the ambit of the act is foreclosed by the filing of a petition, not with any court of justice, but with the office of the sheriff of province where sale is to be made.'**

This Court having found that the procedural requirements of law anent the ex parte motion for issuance of writ of possession have been dutifully complied [with] and the documents in support thereof in order, the writ of possession was accordingly issued.

**WHEREFORE**, for lack of merit, the respondents' instant Motion for Reconsideration of this Court's Decision (should be ORDER) dated 07 September 2009 is hereby **DENIED**.

**SO ORDERED.**[11] (Emphasis in the original)

The second Order[12] (Second Order) contained the following pronouncement:

The petitioner through counsel filed a MOTION praying that respondents spouses Godfrey and Teresa Teves be ordered to deliver to petitioner and/or deposit with the Honorable Court the monthly rentals in the amount of ₱50,000.00 covering the period from May 24, 2007 up to the time respondents surrender the possession of the subject property to herein petitioner.

It is the stand of petitioner that the grant of possession in its favor does not only cover the physical surrender and/or turn over of the premises of the subject property but also includes the surrender of whatever fruits and/or rentals realized or accruing from the subject property reckoned from the time the redemption period to redeem the same has lapsed; that, based on the Sheriffs Initial Report dated October 22, 2008, the subject property is being leased to Ms. Sarah Park for monthly rental of ₱50,000.00 and it is respondent Mr. Godfrey Teves who collects the monthly rental; that Mr. Teves has no more right to collect the monthly rental as his right ceased from the time the right of redemption lapsed relative to the Petition for Extrajudicial Foreclosure filed before the proper court of justice consistent with the provision of Art. 544 of the Civil Code; and that accordingly, respondents should turn over to petitioner and/or deposit with the Court the monthly rentals in the amount of ₱50,000.00 they have

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

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

collected from May 24, 2007 up to the time of respondents' surrender of possession of the subject property.

By [express] provision of the law, particularly Article 544 of the Civil Code, petitioner is entitled to the monthly rentals of the subject property which were collected by the respondents who have no more right over the same after the lapse of the period for them to redeem the subject property.

Finding impressed with merit the instant motion of petitioner, the same should be granted.

**WHEREFORE**, the foregoing considered, Sps. Godfrey Teves and Teresa Teves are hereby ordered to deliver to petitioner and/or deposit with the Court the monthly rentals of the subject property in the amount of ₱50,000.00 covering the period from May 24, 2007 up to the time they surrender the possession thereof to the petitioner.

**SO ORDERED.**[13] (Emphasis in the original)

Petitioners filed a Partial Motion for Reconsideration[14] of the Second Order, but in a September 2, 2010 Order,[15] the RTC denied the same, ruling thus:

Respondents/Movants aver that the Notice of *Lis Pendens* of the case of Annulment of Contract in Makati, RTC Br. 149 annotated in the Title of the subject property binds the subsequent buyer, Ms. Carol Aqui, giving emphasis on the fact of termination of the Makati case by the execution of the parties, the Sps. Godfrey and Teresa Teves as plaintiffs and the Standard Chartered Bank as defendant, of a Compromise Agreement wherein the Standard Chartered Bank specifically waived its right to claim for deficiency and to settle the case or anything arising from it; that as a successor-in-interest, her right cannot rise above the rights of Standard Chartered Bank which specifically waived its right to claim for deficiency of anything arising from it.

The Petitioner through counsel filed its OPPOSITION to respondents' instant Partial Motion for Reconsideration, contending that the Notice of *Lis Pendens* annotated on the subject title only

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[13] *Id*.

[14] *Id*. at 56-59.

[15] *Id*. at 45-47; penned by Presiding Judge Sylvia G. Aguirre-Paderanga.

involves the civil case filed with the RTC Makati City, Br. 149, for annulment of contracts and damages, wherein the herein petitioner is not a party; that the Compromise Agreement entered into by and between Sps. Teves and the Standard Chartered Bank is limited only to the subject Makati case and has nothing to do with the petition for issuance of a writ of possession filed by herein petitioner who is not a party to the said Compromise Agreement; that the issue on possession cannot and can never be included in the Compromise Agreement inasmuch as the Standard Chartered Bank not being the highest and winning bidder in the auction sale has no authority, business or concern over the subject property; that as the highest and winning bidder, herein petitioner is entitled to the possession of the subject properly including the right to receive the monthly rentals from respondents.

Contending positions of the parties considered, this Court finds the respondents' instant Partial Motion for Reconsideration to be devoid of merit.

In its Order dated July 14, 2010 which herein respondents seek to be reconsidered, this Court finds petitioner as entitled to the monthly rentals of the subject property which were collected by the respondents who are shown to have no more right over the same after the period for them to redeem the subject property had already lapsed.

[S]uch finding was based on the respondents' having no more right to collect the rentals upon the lapse of the period for them to redeem the property without redeeming the same, which gave way to the auction sale in the foreclosure proceeding of the subject property wherein the highest and winning bidder was the herein petitioner Integrated Credit & Corporate Services (ICCS for brevity). As such highest and winning bidder, the petitioner is entitled to the possession of the subject property and to collect the subject monthly rentals from the respondents. The essence of a writ of possession is the right of petitioner to possess the subject property which has been duly established.

Moreover, it cannot be overemphasized that the Compromise Agreement executed by and between the parties in the Makati case cannot bind the herein petitioner, now by Ms. Carol Aqui as substituting petitioner, not being a party to the said case.

Finding no cogent reason to reconsider its Order dated July 14, 2010, this Court has to deny the respondents' instant Partial Motion for Reconsideration.

**WHEREFORE, THE FOREGOING CONSIDERED**, the respondents' PARTIAL MOTION FOR RECONSIDERATION of this Court's Order dated July 14, 2010 is hereby **DENIED** for lack of merit.

**SO ORDERED.**[16] (Emphasis in the original)

Previously, or in 2006, petitioners filed a case for annulment of contract against Standard before the Makati Regional Trial Court, docketed as Civil Case No. 06-227. The parties entered into a compromise agreement, after which the Makati trial court (Branch 149) issued a Judgment (Based on Compromise Agreement)[17] on July 23, 2010, declaring among others that petitioners shall drop Civil Case No. 06-227 and surrender possession of the subject properly to Standard, in consideration of the latter's waiver of a deficiency claim against the former. Thus, in September, 2010, petitioners surrendered possession over the subject property to Aqui.

***Ruling of the Court of Appeals***

Petitioners filed a Petition for *Certiorari*[18] before the CA, docketed as CA-G.R. SP. No. 05483, claiming that the RTC committed grave abuse of discretion in ordering them to turn over the back rentals to ICCS/Aqui in a petition for a writ of possession, and that the RTC erred in not considering the Judgment (Based on Compromise Agreement) in Civil Case No. 06-227 before the Makati trial court.

In the assailed March 28, 2014 Decision, the CA dismissed the Petition for *Certiorari.* It held:

> In the instant case, the Petition filed under Rule 65 of the Rules of Court is clearly an improper remedy. The Orders [sic] subject of the petition partakes the nature of a judgment or final order which is appealable under Rule 41 of the Rules of Court, which states that:
>
> Section 1. Subject of appeal. — **An appeal may be taken, from a judgment or final order that completely disposes of**

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[16] *Id*.

[17] *Id*. at 55; penned by Presiding Judge Cesar O. Untalan.

[18] *Id*. at 26-42.

**the case, or of a particular matter therein when declared by these Rules to be appealable.**

x x x x x x x x x.

To justify the filing of fee petition, Sps. Teves alleged that the assailed orders [were] interlocutory in nature[;] hence, reviewable by certiorari.

A judicious perusal of the challenged orders[,] however[,] [reveal] that they are final orders and not interlocutory. In *Jose v. Javellana*, the Supreme Court citing *Garrido v. Tortogo* distinguished between final and interlocutory orders, thus:

> 'The distinction between a final order and an interlocutory order is well known. The first disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing more to be done except to enforce by execution what the court has determined, but the latter does not completely dispose of the case but leaves something else to be decided upon. An interlocutory order deals with preliminary matters and the trial on the merits is yet to be held and the judgment rendered. The test to ascertain whether or not an order or a judgment is interlocutory or final is: *does the order or judgment leave something to be done in the trial court with respect to the merits of the case?* If it does, the order or judgment is interlocutory; otherwise, it is final.'

In this case, the assailed orders [did] not refer to preliminary matters but rather they dispose[d of] the subject matter in its entirely, leaving nothing more to be done except to enforce it by execution. Clearly, it [was a] final order subject to appeal under Rule 41. Where appeal is available to the aggrieved party, the action for certiorari will not be entertained. Remedies of appeal (including petitions for review) and certiorari are mutually exclusive, not alternative or successive. Hence, certiorari is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of certiorari is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion.

Apropos thereto, the instant petition is dismissed because it is improperly brought before this Court.

**WHEREFORE**, the petition is **DISMISSED** for lack of merit.

**SO ORDERED.**[19] (Emphasis in the original; citations omitted)

Petitioners moved to reconsider, but in a January 7, 2015 Resolution, the CA held its ground. Hence, the present Petition.

## Issues

Petitioners submit —

CAN COLLECTION OF BACK RENTALS BE AWARDED IN AN *EX PARTE* APPLICATION FOR WRIT OF POSSESSION UNDER ACT 3135?

ARE THE ORDERS DATED JULY 14, 2010 AND SEPTEMBER 2, 2010 FINAL ORDERS AND NOT INTERLOCUTORY WHICH CAN BE SUBJECTED TO CERTIORARI UNDER RULE 65?[20]

### *Petitioners' Arguments*

Petitioners, praying that this Court set aside the July 14 and September 2, 2010 Orders of the RTC, argue that a petition for the issuance of a writ of possession is not an action as contemplated by the Rules of Court (Rules), but a mere motion whose sole issue to be resolved is whether the movant is entitled to the possession of real or personal property sought to be possessed; that such a petition is "not an ordinary suit filed in court, by which one party sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong";[21] and that to collect back rentals, Aqui should file an independent action — and not simply seek the same in her petition for issuance of a writ of possession, since (a) the RTC, sitting as a land registration court, does not have jurisdiction to award back rentals or grant relief which should otherwise be sought in an ordinary civil action; and (b) Act No. 3135,[22]

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[19] *Id.* at 119-120.

[20] *Id.* at 15.

[21] Citing *Espinoza v. United Overseas Bank Philippines*, 630 Phil. 342, 348 (2010).

[22] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES, Approved March 6, 1924.

as amended by Act No. 4118,[23] contains no provision authorizing the award of back rentals to the purchaser at auction.

***Respondent's Arguments***

Respondent, in her Comment,[24] essentially submits that petitioners are guilty of delaying the proceedings precisely so that they may continue to unlawfully enjoy the use, fruits, and possession of the subject property; that the Petition for *Certiorari* before the CA was an improper remedy; and that what she is collecting from petitioners are not "back rentals" but rents collected by the latter from tenants of the property, which she is entitled to as a matter of law — being the owner of the subject property. Respondent thus prays that the instant Petition be denied for lack of merit.

**Our Ruling**

The Petition is denied.

When the redemption period expired on May 23, 2007, ICCS became the owner of the subject property and was, from then on, entitled to the fruits thereof. Petitioners ceased to be the owners of the subject property, and had no right to the same as well as to its fruits. Under Section 32, Rule 39 of the Rules,[25] on Execution, Satisfaction and Effect of Judgments, all rents, earnings and income derived from the property pending redemption shall belong to the judgment obligor, but only until the expiration of his period of redemption.

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[23] AN ACT TO AMEND ACT NUMBERED THIRTY-ONE HUNDRED AND THIRTY-FIVE ENTITLED "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES" Approved December 7, 1933.

[24] *Rollo*, pp. 146-159.

[25] Section 32. *Rents, earnings and income of property pending redemption*. — The purchaser or a redemptioner shall not be entitled to receive the rents, earnings and income of the property sold on execution, or the value of the use and occupation thereof when such property is in the possession of a tenant. All rents, earnings and income derived from the property pending redemption shall belong to the judgment obligor until the expiration of his period of redemption.

Thus, if petitioners leased out the property to third parties after their period for redemption expired, as was in fact the case here,[26] the rentals collected properly belonged to ICCS or Aqui, as the case may be. Petitioners had no right to collect them. Aqui acquired the subject property from ICCS only in 2010. Thus, Aqui cannot claim the subject rental collections from 2007, because she was not yet the owner of the subject property at the time; they belonged to ICCS. She is entitled to rentals collected only from the time she became the owner of the property. However, as the substituted party in these proceedings, this Court will allow her to collect the award of rentals collected by petitioners but which pertain to ICCS — with the obligation to remit the same to the latter. After all, she is merely ICCS's suceessor-in-interest. Procedurally the RTC should not have allowed Aqui to substitute for ICCS, but should have simply ordered her to be impleaded as additional necessary party in the proceedings, since ICCS still had a claim for unremitted rentals that was pending resolution in the case. On the other hand, it cannot simply be ignored that petitioners unlawfully collected rentals from the property that did not belong to them, but to ICCS without doubt; between this substantive issue and the court and parties' procedural *faux pas*, the latter should be overlooked so that the former may be corrected. The parties' substantive rights weigh more than procedural technicalities. "In rendering justice, courts have always been, as they ought to be conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around."[27]

In *China Banking Corporation v. Spouses Lozada*,[28] this Court held that —

In *IFC Service Leasing and Acceptance Corporation v. Nera*, the Court reasoned that if under Section 7 of Act No. 3135, as amended,

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[26] *Rollo*, pp. 69-73.

[27] *7107 Islands Publishing, Inc. v. The House Printers Corporation*, 771 Phil. 161, 168 (2015).

[28] 579 Phil. 454, 472-473 (2008).

the RTC has the power during the period of redemption to issue a writ of possession on the ex parte application of the purchaser, there is no reason why it should not also have the same power after the expiration of the redemption period, especially where a new title has already been issued in the name of the purchaser. Hence, the procedure under Section 7 of Act No. 3135, as amended, may be availed of by a purchaser seeking possession of the foreclosed property he bought at the public auction sale after the redemption period has expired without redemption having been made.

The Court recognizes the **rights acquired by the purchaser of the foreclosed property at the public auction sale upon the consolidation of his title when no timely redemption of the property was made**, to wit:

> It is settled that upon receipt of the definitive deed in an execution sale, legal title over the property sold is perfected (33 C. J. S. 554). And this court has also [said] and that the land bought by him and described in the deed deemed [sic] within the period allowed for that purpose, its ownership becomes consolidated in the purchaser, and **the latter,** "**as absolute owner . . . is entitled to its possession and to receive the rents and fruits thereof**." (Powell v. Philippine National Bank, 54 Phil., 54, 63.) x x x.

**It is thus settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale.** As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. The buyer can in fact demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act No. 3135, as amended. No such bond is required after the redemption period if the property is not redeemed. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court. (Emphasis supplied; citations omitted)

On the contention that the RTC — sitting as a land registration court — does not have jurisdiction to award back rentals or grant relief which should otherwise be sought in an ordinary

civil action, this is no longer tenable. The distinction between the trial court acting as a land registration court with limited jurisdiction, on the one hand, and a trial court acting as an ordinary court exercising general jurisdiction, on the other, has already been removed with the effectivity of Presidential Decree No. 1529, or the Property Registration Decree. "The change has simplified registration proceedings by conferring upon the designated trial courts the authority to act not only on applications for 'original registration' but also 'over all petitions filed after original registration of title, with power to hear and determine all questions arising from such applications or petition.'"[29]

Moreover, under Section 6, Rule 135 of the Rules, on Powers and Duties of Courts and Judicial Officers, it is provided that —

> Sec. 6. *Means to carry jurisdiction into effect*. — When by law, jurisdiction is conferred on a court of judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.

Given the above-cited rule and the pronouncement in *China Banking Corporation v. Spouses Lozada*,[30] it can be understood why the RTC issued the two separate Orders of July 14, 2010 — one on the issue covering the propriety of issuing the writ of possession sought, and another resolving the prayer for the surrender of rentals unlawfully collected by petitioners, who ceased to be the owners of the subject property and thus had no right to collect rent from the lessee of the property. The First Order was issued relative to the main remedy sought by ICCS — that is, for the court to Issue a writ of possession. The Second Order was issued pursuant to the court's authority under Section 6 of Rule 135 of the Rules, to the end that a patent inequity may be immediately remedied and justice served in

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[29] *Durisol Philippines, Inc. v. Court of Appeals*, 427 Phil. 604, 615 (2002).

[30] *Supra* note 28.

accordance with the objective of the Rules to secure a just, speedy and inexpensive disposition of every action and proceeding. In the eyes of the law, petitioners clearly had no right to collect rent from the lessee of the subject property; they were no longer the owners thereof, yet they continued to collect and appropriate for themselves the rentals on the property to which ICCS was entitled. This is a clear case of unjust enrichment that the courts may not simply ignore.

Indeed, to deprive a court of power to give substantial justice is to render the administration thereof impotent and ineffectual. The prevailing precept is currently embodied in Section 6, Rule 135 of the Rules of Court, which categorically provides:

> Sec. 6. *Means to carry jurisdiction into effect*. — When by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.[31]

In a manner of speaking, courts have not only the power to maintain their life, but they have also the power to make that existence effective for the purpose for which the judiciary was created. They can, by appropriate means, do all things necessary to preserve and maintain every quality needful to make the judiciary an effective institution of Government. Courts have therefore inherent power to preserve their integrity, maintain their dignity and to insure effectiveness in the administration of justice.[32]

Besides, the matter of remitting collected rentals to ICCS and Aqui does not involve the litigation and resolution of a complex legal issue. It proceeds from the simple fact that after the redemption period expired without petitioners redeeming the subject property, ICCS became the absolute owner thereof,

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[31] *Go Lea Chu v. Gonzales*, 130 Phil. 767, 777 (1968).

[32] *The Province of Bataan v. Hon. Villafuerte, Jr.*, 419 Phil. 907, 916 (2001), citing *People v. Hon. Gutierrez*, 146 Phil. 761 (1970).

and petitioners lost all their rights thereto, including the right to lease out the same and collect rentals on said lease. And when Aqui acquired the property and became the owner thereof, she as well became entitled to the said rentals that petitioners unduly collected. Petitioners simply hold the amounts collected in trust — with the obligation to return the same to their rightful owners. These amounts and the periods during which they were collected also appeal on record — as shown by the lease agreement presented and the respective admissions of the parties — and are thus liquidated and determinable without need of further litigation or proof.

Contrary to petitioners' stance, the compromise agreement they executed together with Standard before the Makati trial court in Civil Case No. 06-227 did not cover the subject rentals collected from leasing the subject property; it referred only to a waiver of deficiency claims rooted in the original loan transaction between them.[33] As owner of the subject property, ICCS is entitled to the fruits thereof — the rentals — which were wrongly collected by petitioners after losing their ownership; this has nothing to do with the previous loan transaction between petitioners and Standard, to which ICCS was a complete stranger.

Finally, the Court deems it unnecessary to resolve the other issues raised by the parties. They are irrelevant in the context of the foregoing disquisition; their resolution contributes nothing to the validity and integrity of the Court's opinion.

**WHEREFORE**, the Petition is **DENIED**.

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[33] *Rollo*, p. 55. The Makati trial court's July 23, 2010 Judgment (Based on Compromise Agreement) declares, among others:

> Acting on the Motion (Judgment be rendered based on the Compromise Agreement) dated July 22, 2010 filed by the defendant through counsel, the following; terms and conditions of the Compromise Agreement are hereunder quoted as follows:
>
> x x x x x x x x x
>
> 3. That the Second party shall absolutely waive its claim for deficiency against First parties relative to the contracts of loan executed on November 21 & 28, 1996, respectively;

**SO ORDERED.**

*Leonardo-de Castro*[*] *(Acting Chairperson), Jardeleza*, and *Tijam, JJ.*, concur.

*Sereno, C.J.*, on leave.

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**THIRD DIVISION**

[G.R. No. 219240. April 4, 2018]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **BRYAN GANABA *y* NAM-AY,** *accused-appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S EVALUATION AND CONCLUSION THEREON IN RAPE CASES ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT ON APPEAL.—** Jurisprudence has emphatically maintained that the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, especially after the CA, as the intermediate reviewing tribunal, has affirmed the findings; unless there is a clear showing that the findings were reached arbitrarily, or that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated that, if properly considered, would alter the result of the case.

**2. ID.; ID.; ID.; GUIDELINES IN EVALUATING THE TESTIMONY OF A RAPE VICTIM; APPLIED IN CASE AT BAR.—** By the distinctive nature of rape cases, conviction

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[*] Designated as Acting Chairperson pursuant to Special Order No. 2540 dated February 28, 2018.

usually rests solely on the basis of the testimony of the victim; provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. Thus, the victim's credibility becomes the primordial consideration in the resolution of rape cases. Noteworthily, both the RTC and the CA found the testimony of AAA credible and persuasive. In conjunction thereto, jurisprudence has firmly upheld the guidelines in evaluating the testimony of a rape victim, *viz*: first, while an accusation for rape can be made with facility, it is difficult to prove but more difficult for the person accused, though innocent, to disprove; second, in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and lastly, 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 of the defense. The Court has meticulously applied these guidelines in its review of the records of this case, but found no reason to depart from the well-considered findings and observations of the lower courts.

3. **ID.; ID.; ID.; THE CONDUCT OF THE RAPE VICTIM IMMEDIATELY FOLLOWING THE ALLEGED SEXUAL ASSAULT IS OF UTMOST IMPORTANCE IN TENDING TO ESTABLISH THE TRUTH OR FALSITY OF THE CHARGE OF RAPE.—** A catena of cases sustains the ruling that the conduct of the victim immediately following the alleged sexual assault is of utmost importance in tending to establish the truth or falsity of the charge of rape. In this case, after the accused-appellant had carnal knowledge of her, AAA immediately left his house and proceeded to her brother's house where she narrated what had happened to her. On that same day, AAA went to the barangay to report the incident, then to the police station to give her statements, and subsequently to the crime laboratory to submit herself to physical examination. The act of AAA in wasting no time in reporting her ordeal to the authorities validates the truth of her charge against the accused-appellant.

4. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; THE MEDICAL EXAMINATION OF THE VICTIM AND THE ISSUANCE OF A MEDICAL CERTIFICATE ARE NOT INDISPENSABLE IN THE PROSECUTION OF RAPE BUT THEY ARE VERITABLE CORROBORATIVE PIECES OF**

**EVIDENCE WHICH STRONGLY BOLSTER THE RAPE VICTIM'S TESTIMONY.—** Dr. Chua testified that, based on her findings, her conclusion was that AAA was sexually abused. Of significance in this case is the legal teaching that while it is settled that a medical examination of the victim is not indispensable in the prosecution of a rape case, and no law requires a medical examination for the successful prosecution of the case, the medical examination conducted and the medical certificate issued are veritable corroborative pieces of evidence, which strongly bolster the victim's testimony. Together, these pieces of evidence produce a moral certainty that the accused-appellant indeed raped the victim.

5. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT ADVERSELY AFFECTED BY THE INACCURACIES AND INCONSISTENCIES IN A RAPE VICTIM'S TESTIMONY.—** The Court emphasizes that it has been its consistent declaration that inaccuracies and inconsistencies in a rape victim's testimony are generally expected x x x. Moreover, since human memory is fickle and prone to the stresses of emotions, accuracy in a testimonial account has never been used as a standard in testing the credibility of a witness. To the Court, what is essential is that AAA's testimony meets the test of credibility notwithstanding the gruelling cross-examination by the defense, and that it persuasively conformed to the evidence on record.

6. **ID.; ID.; DENIAL AND ALIBI; CANNOT PREVAIL OVER THE POSITIVE AND CATEGORICAL TESTIMONY AND IDENTIFICATION OF THE COMPLAINANT.—** Nothing is more settled in criminal law jurisprudence than that alibi and denial cannot prevail over the positive and categorical testimony and identification of the complainant. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. Alibi, on the one hand, is viewed with suspicion because it can easily be fabricated. For the defense of alibi to prosper, the accused must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission. Unless supported by clear and convincing evidence, alibi cannot prevail over the positive declaration of a victim who, in a natural and

straightforward manner, convincingly identifies the accused-appellant.

**7. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.** — For a successful prosecution of rape, the following elements must be proved beyond reasonable doubt, to wit: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished: (a) through the use of force and intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.

**8. ID.; ID.; ID.; FORCE, THREAT OR INTIMIDATION; NEED NOT BE IRRESISTIBLE, BUT JUST ENOUGH TO BRING ABOUT THE DESIRED RESULT.—** The evidence of the prosecution unmistakably validates the conclusion that the accused-appellant had carnal knowledge of AAA on 1 July 2009, through the use of force and intimidation. AAA persuasively narrated that, despite her effort to escape from the room after the accused-appellant pinned her arms, mounted her, and pinched her shoulder, the accused-appellant was able to get hold of a knife that he used to threaten her while he dragged her to the bed and, thereafter, successfully have carnal knowledge of her. Jurisprudence imparts that 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 to submission, although the victim does not even need to prove resistance. Force, threat or intimidation, as an element of rape, need not be irresistible, but just enough to bring about the desired result.

## APPEARANCES OF COUNSEL

*Office of the Solicitor General* for petitioner.
*Public Attorney's Office* for accused-appellant.

## D E C I S I O N

**MARTIRES, *J.*:**

This resolves the appeal of accused-appellant Bryan Ganaba *y* Nam-ay (*accused-appellant*) assailing the 27 August 2014

Decision[1] of the Court of Appeals (*CA*), Seventh Division in CA-G.R. CR-HC No. 06030 affirming, with modification as to the award of damages, the 9 January 2013 Decision[2] of the Regional Trial Court (*RTC*), Branch 172, Valenzuela City, finding him guilty beyond reasonable doubt of the crime of Rape under Article (*Art.*) 266-A[3] of the Revised Penal Code (*RPC*).

## THE FACTS

Accused-appellant was charged with rape in an Information docketed as Criminal Case No. 429-V-09, the accusatory portion of which reads as follows:

> That on or about July 1, 2009 in Valenzuela City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation employed upon the person of AAA, 16 years old (DOB: June 16, 1993), did then and there wilfully, unlawfully, and feloniously have sexual intercourse with the complainant, against her will and without her consent, thereby subjecting the said minor to sexual abuse which debased, degraded, and demeaned [her] intrinsic worth and dignity as a human being.
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> CONTRARY TO LAW.[4]

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[1] *Rollo*, pp. 2-14. Penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes, Jr. and Mario V. Lopez.

[2] Records, pp. 76-78. Penned by Judge Nancy Rivas-Palmones.

[3] 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) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

[4] Records, p. 1.

When arraigned, the accused-appellant pleaded not guilty to the charge against him;[5] hence, trial proper ensued.

To establish its case, the prosecution presented the victim, AAA,[6] and P/Supt. Bonnie Y. Chua (*Dr. Chua*), a medico-legal officer of the Northern Police District Crime Laboratory (*crime laboratory*).

PO1 Archie P. Castillano (*PO1 Castillano*) was no longer put on the witness stand after the parties stipulated that he would be testifying on his affidavit[7] relative to the arrest of the accused-appellant.

To prove his defense, the accused-appellant testified.

***Version of the Prosecution***

AAA had been working at the house of the accused-appellant since 1 June 2009, as nanny to his four-month-old child. On 1 July 2009, at about 2:30 p.m., while AAA was inside the room feeding the child, the accused-appellant sneaked in and closed the door and window. AAA did not notice that the accused-appellant, who was supposed to enter the room only when the child's mother was around, was behind her wearing only his shorts.[8]

When AAA turned, the accused-appellant held both her arms and mounted her. AAA kicked the accused-appellant who in

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[5] *Id*. at 16.

[6] The true name of the victim has been replaced with fictitious initials in conformity with Administrative Circular No. 83-2015 (*Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/ Personal Circumstances*). The confidentiality of the identity of the victim is mandated by Republic Act (R.A.) No. 7610 (*Special Protection of Children Against Abuse, Exploitation and Discrimination Act);* R.A. No. 8505 *(Rape Victim Assistance and Protection Act of 1998*); R.A. No. 9208 (*Anti-Trafficking in Persons Act of 2003*); R.A. No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*); and R.A. No. 9344 (*Juvenile Justice and Welfare Act of 2006*).

[7] Index of Exhibits, p. 8; Exh. "B".

[8] TSN, 19 May 2010, pp. 5-9; TSN, 17 November 2010, p. 2.

turn pinched her left shoulder. When AAA kicked again, the accused-appellant stood up and got a knife. AAA stood up also and tried to open the door but was unable to do so as it was locked. The accused-appellant poked the knife at AAA, threatened he would kill her, dragged her to the bed, mounted her, parted her legs, and inserted his penis into her vagina.[9]

When his friend arrived at the house, the accused-appellant went out of the room and proceeded right away to the restroom. AAA immediately left for her brother's house and there confided what had happened to her.[10]

That same afternoon, AAA proceeded to the barangay where she was advised to report the incident to the police station. After AAA narrated[11] what had happened to her at the Valenzuela City police station, POI Castillano and two other police officers arrested the accused-appellant at his residence.[12]

At around 5:45 p.m. on the same day, AAA was physically examined by Dr. Chua.

***Version of the Defense***

On 1 July 2009, at about 2:30 p.m., the accused-appellant was at home with his wife Jane, their son Edison, and a boarder named Erickson. He was watching television.[13]

The accused-appellant claimed that the accusation against him was not true and that he was implicated by AAA to ask for money. He was told by Jane that AAA asked for ₱200,000.00 in exchange for dropping the case against him. Although the accused-appellant and Jane were only factory workers, that amount of money could be raised by his relatives; but the accused-

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[9] *Id*. at 11-14.

[10] *Id*. at 9-11.

[11] Index of Exhibits, pp. 6-7; Exh. "A".

[12] TSN, 19 May 2010, pp. 14-17; TSN, 26 February 2010, pp. 2-4; Index of Exhibits, p. 8; Exh. "B".

[13] TSN, 8 May 2012, pp. 6-9.

appellant did not give in to AAA's demand because nothing happened between him and AAA.[14]

***The Ruling of the RTC***

The RTC held that the accused-appellant had carnal knowledge of AAA by using force and intimidation. According to the RTC, AAA gave details of her ordeal that took place on 1 July 2009, and that she positively identified the accused-appellant as the person who raped her. Moreover, AAA's testimony, coupled with the medical findings, confirmed the truth of her charges.[15]

The RTC found the accused-appellant's denial without merit. It ruled that his denial was negative and self-serving which pales in comparison with AAA's clear and convincing narration and positive identification of the accused-appellant.[16]

The *fallo* of the RTC decision provides:

> WHEREFORE, the court finds the accused BRYAN GANABA *y* NAM-AY guilty beyond reasonable doubt as principal of the crime of rape and in the absence of mitigating and aggravating circumstance, he is hereby sentenced to suffer the penalty of reclusion perpetua and ordered to pay AAA ₱75,000.00 as civil indemnity *ex delicto*, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages.
>
> SO ORDERED.[17]

Not satisfied with the RTC's ruling, the accused-appellant appealed to the CA.

***The Ruling of the CA***

The CA ruled that the prosecution had indubitably established that the accused-appellant raped AAA. It held that the accused-appellant's act was consummated through force, threat, and intimidation. Moreover, AAA's unrelenting narration of what transpired, accompanied by her categorical identification of

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

[15] Records, p. 78.

[16] *Id.*

[17] *Id.*

the accused-appellant as the malefactor, established the case for the prosecution. On the one hand, it held that the defense of denial and alibi offered by the accused-appellant was weak since he failed to prove that it was physically impossible for him to be at the crime scene at the time of its commission.[18]

While the CA affirmed the penalty imposed by the RTC upon the accused-appellant, it found the need to modify the award of damages; hence, it ruled as follows:

> **WHEREFORE**, premises considered, the appealed Decision dated 9 January 2013 of the Regional Trial Court (RTC), Branch 172, Valenzuela City is **AFFIRMED WITH MODIFICATION**. Accused-appellant Bryan Ganaba *y* Nam-ay is found **GUILTY** beyond reasonable doubt of RAPE and is sentenced to suffer the penalty of reclusion perpetua and ordered to pay the victim AAA ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages. The award of damages shall earn legal interest at the rate of 6% per annum from date of finality of this judgment until fully paid. Costs against accused-appellant.
>
> **SO ORDERED.**[19]

## ISSUES

**I.**

**THE TRIAL COURT ERRED IN NOT FINDING ILL MOTIVE ON THE PART OF THE PRIVATE COMPLAINANT AS THE REASON FOR THE FILING OF THE CRIME OF RAPE AGAINST THE ACCUSED-APPELLANT.**

**II.**

**THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.**[20]

## OUR RULING

The appeal has no merit.

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[18] *Rollo*, pp. 8-10.

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

[20] CA *rollo*, p. 41.

***The testimony of AAA deserves weight and credence.***

Jurisprudence has emphatically maintained that the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, especially after the CA, as the intermediate reviewing tribunal, has affirmed the findings; unless there is a clear showing that the findings were reached arbitrarily, or that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated that, if properly considered, would alter the result of the case.[21]

The Court has amply elucidated on the reason for according weight to the findings of the trial court, *viz*:

It is well-settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that theappellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be

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[21] *People v. Domingo*, G.R. No. 225743, 7 June 2017.

transcribed upon the record, and hence they can never be considered by the appellate court."[22]

Consequently, it was incumbent upon the accused-appellant to present clear and persuasive reasons to persuade the Court to reverse the lower courts' unanimous determination of her credibility as a witness in order to resolve the appeal his way.[23] The onus is upon the accused-appellant to prove those facts and circumstances which the lower courts allegedly failed to consider and appreciate, and that would fortify his position that they seriously erred in finding him guilty of the crime charged. The accused-appellant, however, miserably failed to discharge his burden.

By the distinctive nature of rape cases, conviction usually rests solely on the basis of the testimony of the victim; provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. Thus, the victim's credibility becomes the primordial consideration in the resolution of rape cases.[24] Noteworthily, both the RTC and the CA found the testimony of AAA credible and persuasive.

In conjunction thereto, jurisprudence has firmly upheld the guidelines in evaluating the testimony of a rape victim, *viz*: first, while an accusation for rape can be made with facility, it is difficult to prove but more difficult for the person accused, though innocent, to disprove; second, in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and lastly, 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 of the defense.[25] The Court has meticulously applied these guidelines in its review

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[22] *People v. Primavera*, G.R. No. 223138, 5 July 2017, citing *People v. Sapigao*, 614 Phil. 589, 599 (2009).

[23] *People v. Domingo*, *supra* note 21.

[24] *People v. Palanay*, G.R. No. 224583, 1 February 2017.

[25] *People v. Garrido*, 763 Phil. 339, 347 (2015).

of the records of this case, but found no reason to depart from the well-considered findings and observations of the lower courts.

The Court notes that the testimony of AAA was full of convincing details which, in her young age, could not have been known to her unless these were the truth. "When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity."[26]

A catena of cases sustains the ruling that the conduct of the victim immediately following the alleged sexual assault is of utmost importance in tending to establish the truth or falsity of the charge of rape.[27] In this case, after the accused-appellant had carnal knowledge of her, AAA immediately left his house and proceeded to her brother's house where she narrated what had happened to her. On that same day, AAA went to the barangay to report the incident, then to the police station to give her statements, and subsequently to the crime laboratory to submit herself to physical examination. The act of AAA in wasting no time in reporting her ordeal to the authorities validates the truth of her charge against the accused-appellant.

AAA's positive and categorical statement that the accused-appellant had carnal knowledge of her was reinforced by the testimony and medico-legal report of Dr. Chua. The pertinent findings of Dr. Chua were as follows:

> LABIA MINORA: Hyperemic with abrasion at 6 o'clock position.
>
> HYMEN: Deep healed laceration at 5 and 6 o'clock positions.
>
> POSTERIOR FOURCHETTE: Congested.
>
> CONCLUSION: Clear evidence of penetrating trauma/force to the hymen with recent penetration trauma to the Labia Majora and Minora.[28]

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[26] *People v. Descartin*, G.R. No. 215195, 7 June 2017.

[27] *People v. Cadampog*, 472 Phil. 358, 378 (2004).

[28] Index of Exhibits, p. 1; Exh. "F".

Dr. Chua testified that, based on her findings, her conclusion was that AAA was sexually abused.[29] Of significance in this case is the legal teaching that while it is settled that a medical examination of the victim is not indispensable in the prosecution of a rape case, and no law requires a medical examination for the successful prosecution of the case, the medical examination conducted and the medical certificate issued are veritable corroborative pieces of evidence, which strongly bolster the victim's testimony.[30] Together, these pieces of evidence produce a moral certainty that the accused-appellant indeed raped the victim.[31]

To prove that the RTC erred in according credence to AAA's testimony, the accused-appellant offered the absurd contention that AAA's testimony can only prove that she had shared an intimate moment with someone else and not with him. Accused-appellant anchored his contention in his testimony on the witness stand, *viz*: that on 1 July 2009, he was at home watching television with his wife; that AAA was not in his house that day; that he was told by his wife that AAA had asked ₱200,000.00 in exchange for her dropping the case against him; and that he did not give in to the demand of AAA because nothing happened between him and AAA. In contrast, according to the accused-appellant, was the testimony of AAA where she admitted that nothing happened between them.[32]

Accused-appellant's contentions have no basis. When AAA affirmed her sworn statement[33] before the RTC, she clarified and firmly maintained that the accused-appellant had carnal knowledge of her. Her testimony was as follows:

Q. What happened next after he pinched you on your left shoulder?
A. I kicked him again and he stood up. He took a knife, threatened to kill me. And after that his friend arrived.

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[29] TSN, 26 February 2010, pp. 11-12.

[30] *People v. Palanay*, *supra* note 24.

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

[32] CA *rollo*, pp. 44-47.

[33] Index of Exhibits, pp. 6-7; Exh. "A".

Q. And he went out?
A. I went out of the room, got my slippers, told the matter to my brother and we went to the barangay but the barangay referred us to the police.

Q. Let us go back to the holding of the knife and his friend has not yet arrived. What happened when Bryan got that knife?
A. He threatened to kill me if I would tell it to anybody (Papatayin kita pag nagsumbong ka).

Q. What happened next?
A. His friend arrived. When his friend arrived he proceeded to the c.r. Bryan followed him. I immediately went out of the room and got my pair of slippers and proceeded to our house and reported the matter to my brother.

Q. So nothing happened, there was no sex?
A. None, sir.

Q. You gave your sworn statement to the police marked as Exh "A". I will read your sworn statement to the police given on July 2, 2009 wherein you stated: "Una po, nagpadede po ako ng bata, four months old na anak ng amo ko, tapos isinarado niya po iyong pintuan at tsaka iyong bintana. Dapat kami lang ng bata sa higaan, tsaka lang siya pupunta sa higaan pag dumating iyong asawa niya, tapos tumabi siya sa akin. Ako po ang umalis, tapos sinampal niya ako, bakit daw ako umaalis e umiiyak yung bata. Pinabalik niya ako sa higaan, bumalik ako noong umalis siya, pumunta siya sa higaan sa kabila. Bumalik ako, pinadede ko iyong bata, wala akong kamalay-malay na nandyan na pala siya sa tabi ko. Paglingon ko nakahubad na siya, hinawakan niya ang kamay ko binanda ako sa pader malapit sa higaan, sinabi kong huwag mong gawin sa akin kasi hindi ako ang asawa mo, katulong lang ako. Pero ginawa niya pa rin. Hinubaran niya ako, hinawakan niya ang dalawang kamay ko tapos sinampal pa niya ako. Tapos pinatungan niya po ako, tapos dun, tinadyakan ko siya, pag pangalawang tadyak kinurot niya ako dito sa may balikat ko. Lumaban ako, tapos pagtayo niya tumayo na rin ako, bubuksan ko iyong pinto pero hindi mabuksan iyong pinto pag walang susi. Tapos kumuha siya ng kutsilyo, tinutukan niya ako ng kutsilyo, tinutok niya dito sa noo ko, sinabi niya sa akin 'sige, sige anong gusto mo papatayin kita ngayon,' hinila niya ako sa higaan. Lumaban po ako

pero hindi ko siya kaya. Tapos pinabuka niya iyong paa ko, pinasok na niya iyong oten niya sa pekpek ko. Sinampal pa niya ako, napasok niya iyong oten niya, nilabas pasok niya..." **Is that not true?**

**A. That is true.**

**Q. So before the friend arrived, was Bryan able to have sex with you?**

**A. Yes, sir.**

**Q. Why did you not say before when I asked you? You went once to the friend?**

**A. When he was already naked, he was able to pin my both hands on the wall, and he parted my legs and inserted his penis in my vagina and after that he kicked me and he pinched me on my shoulder.**[34] (emphasis supplied)

The Court emphasizes that it has been its consistent declaration that inaccuracies and inconsistencies in a rape victim's testimony are generally expected,[35] *viz*:

> Rape is a painful experience which is oftentimes not remembered in detail. For such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving; rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget. Thus, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.[36]

Moreover, since human memory is fickle and prone to the stresses of emotions, accuracy in a testimonial account has never been used as a standard in testing the credibility of a witness.[37] To the Court, what is essential is that AAA's testimony meets the test of credibility notwithstanding the gruelling cross-

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[34] TSN, 19 May 2010, pp. 9-14.

[35] *People v. Pareja*, 724 Phil. 759, 773 (2014).

[36] *People v. Saludo*, 662 Phil. 738, 753 (2011), cited in *People v. Pareja*, *id.* at 774.

[37] *People v. Pareja*, *supra* note 35 at 774.

examination by the defense, and that it persuasively conformed to the evidence on record.

In the same vein, the assertion of the accused-appellant that AAA had ill motive in filing the present charge, i.e., demanding ₱200,000.00 in exchange for dropping the case against him, fails to convince. Notably, it would be the accused-appellant's wife, Jane, who would be in the best position to testify on this matter considering that AAA allegedly had demanded the ₱200,000.00 from her. Jane, however, never took the witness stand to corroborate the claim of the accused-appellant. Likewise, the record is bereft of any showing as to any documentary evidence that would substantiate AAA's demand for ₱200,000.00.

The legal teaching continuously invigorated by our jurisprudence is that motives have never swayed this Court from giving full credence to the testimony of a minor rape victim.[38] A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.[39]

***The defense proferred by the accused-appellant was inherently weak.***

The defense proffered by the accused-appellant that he was home with his wife during the time material to the charge against him, cannot suffice to reverse his conviction.

Nothing is more settled in criminal law jurisprudence than that alibi and denial cannot prevail over the positive and categorical testimony and identification of the complainant. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.[40] Alibi, on the one hand, is viewed with suspicion because it can

[38] *Id*. at 786.

[39] *People v. Descartin*, *supra* note 26.

[40] *Id*.

easily be fabricated. For the defense of alibi to prosper, the accused must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission.[41] Unless supported by clear and convincing evidence, alibi cannot prevail over the positive declaration of a victim who, in a natural and straightforward manner, convincingly identifies the accused-appellant.[42]

Accused-appellant's alibi and denial easily came to nothing in view of his admission that he was actually at the place of the crime at the time of its commission. Even granting for the sake of argument that there was truth to the accused-appellant's contention that he was with his wife on that day, this, however, cannot justify a conclusion that he did not have carnal knowledge of AAA. The consistent ruling of the Court is that "Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed. Lust is no respecter of time and place x x x."[43] More importantly, AAA's unfailing positive identification of the accused-appellant as the one who had carnal knowledge of her, fastened to the fact that there was no showing that she had ill motive in filing this charge, prevails over his defense of alibi and denial.

The dearth of evidence that would corroborate the implausibility that the accused-appellant had carnal knowledge of AAA weakens his defense of denial and alibi. To stress, not even Jane or Erickson testified to reinforce his position that he could not have raped AAA on 1 July 2009.

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[41] *People v. Palanay*, *supra* note 24.

[42] *People v. Deniega*, *supra* note 31.

[43] *People v. Descartin*, *supra* note 26.

***The crime of rape was proven beyond reasonable doubt by the prosecution.***

For a successful prosecution of rape, the following elements must be proved beyond reasonable doubt, to wit: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished: (a) through the use of force and intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.[44]

The evidence of the prosecution unmistakably validates the conclusion that the accused-appellant had carnal knowledge of AAA on 1 July 2009, through the use of force and intimidation. AAA persuasively narrated that, despite her effort to escape from the room after the accused-appellant pinned her arms, mounted her, and pinched her shoulder, the accused-appellant was able to get hold of a knife that he used to threaten her while he dragged her to the bed and, thereafter, successfully have carnal knowledge of her.

Jurisprudence imparts that 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 to submission, although the victim does not even need to prove resistance.[45] Force, threat or intimidation, as an element of rape, need not be irresistible, but just enough to bring about the desired result.[46]

***The penalty to be imposed upon the accused-appellant***

The Court finds that the RTC and the CA were correct in imposing upon the accused-appellant the penalty of *reclusion perpetua* in accordance with Art. 266-B of the RPC.

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[44] *People v. Primavera*, *supra* note 22.

[45] *People v. Neverio*, 613 Phil. 507, 516 (2009).

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

As to the award of damages, the Court finds the need to modify the same to conform with the jurisprudence laid down in *People v. Jugueta*,[47] *viz*: civil indemnity, moral damages, and exemplary damages at ₱75,000.00 each. The civil indemnity and the moral and exemplary damages shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

**WHEREFORE**, the appeal is **DISMISSED**. The 27 August 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06030, finding the accused-appellant Bryan Ganaba *y* Nam-ay **GUILTY** of Rape and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED** with **MODIFICATION** as to the award of damages as follows: civil indemnity of ₱75,000.00, moral damages of ₱75,000.00, and exemplary damages of ₱75,000.00. The civil indemnity and the moral and exemplary damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

**SO ORDERED.**

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

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**THIRD DIVISION**

[G.R. No. 219957. April 4, 2018]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **ELEUTERIO URMAZA *y* TORRES,** *accused-appellant.*

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[47] 783 Phil. 806 (2016).

## SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; CARNAL KNOWLEDGE OF A WOMAN WITH MENTAL DISABILITY, WHEN CONSIDERED RAPE; THE TERM "DEMENTED" AND THE PHRASE "DEPRIVED OF REASON", DISTINGUISHED.—** Article 266-A, paragraph 1 of the RPC, as amended, provides for two circumstances when having carnal knowledge of a woman with a mental disability is considered rape: 1. Paragraph 1(b): when the offended party is deprived of reason x x x; 2. Paragraph 1(d): when the offended party is x x x demented. It was alleged in the Amended Information that AAA is a demented person (deaf-mute). The tapestry of this case, however, depicts a victim who is suffering from mental retardation, not dementia. For clarity's sake, the Court must restate that mental retardation and dementia are not synonymous and thus should not be loosely interchanged. The cases of *People v. Caoile* and *People v. Ventura* laid down a technical definition of the term "demented" as referring to a person who has dementia, which is a condition of deteriorated mentality, characterized by marked decline from the individual's former intellectual level and often by emotional apathy, madness, or insanity. On the other hand, the phrase *deprived of reason* under paragraph 1(b) has been interpreted to include those suffering from mental abnormality, deficiency, or retardation. Thus, AAA, who was clinically diagnosed to be a mental retardate, can be properly classified as a person who is "deprived of reason," not one who is "demented." At any rate, the erroneous designation of AAA as a demented person will not invalidate the Amended Information.

2. **ID.; ID.; ID.; ELEMENTS.—** The elements necessary to sustain a conviction for rape are: (1) the accused had carnal knowledge of the victim; and (2) said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.

3. **ID.; ID.; ID.; CARNAL KNOWLEDGE OF A WOMAN SUFFERING FROM MENTAL RETARDATION IS RAPE SINCE SHE IS INCAPABLE OF GIVING CONSENT TO THE SEXUAL ACT.—** [I]t is beyond cavil that the prosecution was able to prove AAA's mental retardation. In our jurisdiction,

carnal knowledge of a woman suffering from mental retardation is rape since she is incapable of giving consent to a sexual act. Under these circumstances, all that needs to be proved for a successful prosecution are the facts of sexual congress between the rapist and his victim, and the latter's mental retardation.

**4. REMEDIAL LAW; EVIDENCE; SWEETHEART THEORY OR SWEETHEART DEFENSE; MUST BE PROVEN BY COMPELLING EVIDENCE TO BE GIVEN CREDENCE.—** Urmaza does not deny having sexual congress with AAA in the morning of 7 September 2011. He, however, claims that the act was consensual as he has been in a relationship with AAA for quite sometime now. Urmaza must be reminded that the sweetheart theory or sweetheart defense is an oft-abused justification that rashly derides the intelligence of this Court and sorely tests its patience. To even consider giving credence to such defense, it must be proven by compelling evidence. Mere testimonial evidence will not suffice. Independent proof is required — such as tokens, mementos, and photographs. None of such were presented here by the defense.

**5. ID.; ID.; CREDIBILITY OF WITNESSES; THE COMPETENCE AND CREDIBILITY OF MENTALLY DEFICIENT RAPE VICTIMS AS WITNESSES HAVE BEEN UPHELD BY THE COURT WHERE IT IS SHOWN THAT THEY COULD COMMUNICATE THEIR ORDEAL CAPABLY AND CONSISTENTLY.—** [T]he competence and credibility of mentally deficient rape victims as witnesses have been upheld by this Court where it was shown that they could communicate their ordeal capably and consistently. Rather than undermine the gravity of the complainant's accusations, it lends even greater credence to her testimony, as someone feeble-minded and guileless could speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered such crime at the hands of the accused.

**6. ID.; ID.; ID.; THE TRIAL COURT'S ASSESSMENT THEREON DESERVES GREAT RESPECT IN THE ABSENCE OF ANY ATTENDANT GRAVE ABUSE OF DISCRETION, FOR IT IS IN THE BEST POSITION TO RULE ON THE MATTER.—** [T]he RTC's assessment of the credibility of witnesses deserves great respect in the absence of any attendant grave abuse of discretion, since it has the advantage of actually examining the real and testimonial

evidence, including the conduct of the witnesses, and is in the best position to rule on the matter. This rule finds greater application when the RTC's findings are sustained by the CA, as in this case. Accordingly, the Court finds nary a reason to depart from the RTC's assessment of the testimony of AAA.

**7. CRIMINAL LAW; REVISED PENAL CODE; RAPE; MENTAL DISABILITY OF VICTIM; KNOWLEDGE OF THE OFFENDER OF THE VICTIM'S MENTAL DISABILITY AT THE TIME OF THE COMMISSION OF RAPE QUALIFIES THE CRIME, BUT AN ALLEGATION IN THE INFORMATION OF SUCH KNOWLEDGE OF THE OFFENDER IS NECESSARY.—** [K]nowledge of the offender of the victim's mental disability at the time of the commission of rape qualifies the crime and makes it punishable by death under Article 266-B, paragraph 10 of the RPC, as amended by Republic Act No. 8353. Nevertheless, it appears that the tribunals *a quo* lost sight of the precondition that an allegation in the Information of such knowledge of the offender is necessary, as a crime can only be qualified by circumstances pleaded in the indictment. A contrary ruling would result in denial of the right of the accused to be informed of the charges against him, and hence, a denial of due process. Here, the offender's knowledge of the mental disability of the victim was not properly alleged. There was no averment in the Amended Information stating that Urmaza knew of AAA's mental retardation during the commission of the rape. While the erroneous designation of AAA as a demented person did not cause material and substantial harm to Urmaza, the same cannot be said of the prosecution's failure to recite the aforesaid qualifying circumstance. Sections 8 and 9 of Rule 110 of the Rules of Court require that the qualifying circumstances be specifically alleged in the Information to be appreciated as such. As elucidated in *People v. Tagud*, the purpose is to alert the accused that his life hangs in the balance because a special circumstance would raise the crime to a higher category.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for petitioner.
*Public Attorney's Office* for accused-appellant.

## D E C I S I O N

**MARTIRES, *J.*:**

On appeal is the 27 February 2015 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR H.C. No. 06343, which affirmed the 19 July 2012 Decision[2] of the Regional Trial Court, Branch 41, Dagupan City (*RTC*), in Criminal Case No. 2011-0462-D finding accused-appellant Eleuterio Urmaza *y* Torres (*Urmaza*) guilty beyond reasonable doubt of the crime of qualified rape.

## FACTS

On the basis of a *Sinumpaang Salaysay* subscribed by the private complainant AAA, a deaf-mute, Urmaza was charged with qualified rape before the RTC of Dagupan City, in an Amended Information which reads:

> That on or about the 7th day of September 2011, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ELEUTERIO URMAZA y TORRES, by means of force and intimidation, did then and there, wilfully, unlawfully and criminally, have carnal knowledge upon complainant [AAA], who is a demented person (deaf-mute), against her will and consent to the damage and prejudice of the latter.
>
> Contrary to Article 266-A par. 1-a of the Revised Penal Code, as amended by RA 8353.[3]

When arraigned, Urmaza entered a plea of "not guilty." Thereafter, trial ensued.

### *Evidence for the Prosecution*

The prosecution presented seven (7) witnesses, namely: AAA, AAA's mother BBB, Joshua Illumin (*Joshua*), Dr. Mary

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[1] *Rollo*, pp. 2-17; penned by Associate Justice Stephen C. Cruz, with Associate Justices Fernanda Lampas Peralta and Ramon Paul L. Hernando, concurring.

[2] CA *rollo*, pp. 39-45; penned by Presiding Judge Emma M. Torio.

[3] *Rollo*, p. 3.

Gwendolyn Luna (*Dr. Luna*), Dr. Rosalina Caoile (*Dr. Caoile*), Police Officer 1 (*PO1*) Jocelyn Tappa, and PO1 Jobert Sarzadilla. Their combined testimonies tended to establish the following:

With the assistance of a sign language interpreter, AAA recounted that on 7 September 2011, at about 11:00 o'clock in the morning, she was inside her house in Dagupan City taking care of her newborn baby when someone arrived.[4] She put down her baby and saw that it was Urmaza who entered the house. She prepared coffee for him. After he had drunk the coffee, AAA asked him to leave as she was about to sleep. Urmaza, however, did not leave; instead he closed the door and windows. He embraced AAA, touched her breasts, and removed her shirt.[5] He then removed his pants and held AAA with both hands. AAA struggled and pushed him away to free herself, but Urmaza was strong and he was able to insert his penis into her vagina four (4) times; after which AAA felt something wet and sticky.[6]

Joshua, AAA's neighbor, attested that on 7 September 2011, at about 11:30 in the morning, he was in front of AAA's house[7] making a cage for doves when he saw Urmaza enter AAA's house.[8] He peeped through a hole and he saw Urmaza insert his penis into AAA's vagina[9] while touching AAA's breasts. He was frightened so he called his cousin John Mark and they both watched Urmaza and AAA.[10] Joshua got hold of a cellular phone, handed it to John Mark, while they looked for a good place where they could take a video of what was happening between Urmaza and AAA. John Mark, however, accidentally touched a galvanized iron that made a sound. The noise caught Urmaza's attention prompting him to leave AAA's house.[11]

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[4] TSN, 10 December 2012, p. 3.

[5] *Id*.

[6] *Id*. at 4.

[7] TSN, 23 May 2012, p. 3.

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

[9] *Id*. at 8-9.

[10] *Id*. at 5.

[11] *Id*.

BBB testified that Urmaza was the brother-in-law of her late husband.[12] After her husband's death, Urmaza stood as father to her children. BBB's children were close to Urmaza and he would usually visit them.[13] On 7 September 2011, BBB learned from Joshua that Urmaza had raped AAA. BBB was shocked and confronted Urmaza, but the latter denied any wrongdoing. Upon reaching home, AAA, through sign language, admitted to BBB that she was raped by Urmaza. Thereafter, BBB went to the police station and reported the incident. She then accompanied the police to Urmaza's house where he was arrested.

Dr. Caoile testified on the psychiatric examination she conducted on AAA, as well as on the findings in the medical certificate dated 10 October 2011,[14] and the Psychiatric Evaluation Report dated 23 October 2011.[15] She attested that AAA suffered from mental retardation and did not know the idea of safety.[16] Meanwhile, the prosecution and the defense stipulated on the findings made by Dr. Luna which was detailed in the Medico Legal Report.[17]

***Evidence for the Defense***

The defense presented the lone testimony of Urmaza.

He deposed that on 7 September 2011, at 11:30 in the morning, he went to see AAA at her house to inform the latter that her grandmother had died.[18] Upon arriving at AAA's house, her sister-in-law served him coffee. After he had drunk the coffee, AAA approached him and asked for money; then he and AAA had sexual intercourse, which many of their neighbors allegedly witnessed. After the tryst, AAA bid him goodbye. In the afternoon of the said date, he was arrested.

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[12] TSN, 13 June 2012, p. 4.

[13] *Id*. at 5.

[14] Evidence for the prosecution, p. 11; Exh. "H".

[15] *Id*. at 12-13; Exh. "I".

[16] TSN, 12 March 2012, p. 4.

[17] TSN, 22 February 2012, p. 3.

[18] TSN, 8 May 2013, p. 3.

Urmaza asserted that he and AAA had a relationship, and they had engaged in sexual intercourse for quite a long time even before 7 September 2011.[19]

***The RTC Ruling***

In its decision, the RTC found Urmaza guilty beyond reasonable doubt of the crime of qualified rape and sentenced him to suffer the penalty of *reclusion perpetua*.

In so ruling, the RTC noted Urmaza's admission that he had sexual intercourse with AAA on 7 September 2011. It did not believe Urmaza's claim that AAA consented to the sexual congress because they were in a relationship. Rather, the trial court found that AAA was suffering from mental retardation and was thereby deprived of reason. Hence, it concluded that the deed was tantamount to rape, qualified by Urmaza's knowledge of AAA's mental retardation. The *fallo* reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered finding the accused Eleuterio Urmaza ***GUILTY*** beyond reasonable doubt of the crime of Qualified Rape defined and penalized under Article 266-A, sub-par, b in relation to Article 266-B, par. 6 sub-par. 10 of the Revised Penal Code, as amended by Republic Act No. 8353 and is hereby sentenced the (sic) suffer the penalty of *Reclusion Perpetua*. The accused is further ordered to indemnify the private complainant the amounts of ₱50,000.00 as compensatory damages, ₱50,000.00 as moral damages; and ₱25,000.00 as exemplary damages.
>
> The period during which the accused was detained at the District Jail, Dagupan City, shall be credited to him in full.
>
> **SO ORDERED.**

Aggrieved, Urmaza filed an appeal before the CA.

***The CA Ruling***

In its assailed decision, the CA affirmed with modification the RTC's ruling. It held that AAA's testimony was credible and her narration of the rape was convincing and straightforward, with detailed specifics as only one telling the truth could give.

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[19] *Id*. at 4.

The appellate court took into account Dr. Caoile's psychiatric evaluation and found that AAA was indeed a mental retardate. Citing jurisprudence, it ruled that carnal knowledge of a woman who is a mental retardate is considered rape, and proof of force or intimidation is unnecessary because a mental retardate is incapable of giving consent to the sexual act.

Finally, the CA adjusted the RTC's monetary awards in keeping with recent jurisprudence. The dispositive portion reads:

> **WHEREFORE**, in view of the foregoing premises, the instant appeal is hereby **DENIED**. The Decision dated July 19, 2012 of the Regional Trial Court of Dagupan City, Branch 41 is hereby **AFFIRMED with MODIFICATION**, that is, accused-appellant Eleuterio Urmaza *y* Torres is found **GUILTY** beyond reasonable doubt of the crime of Qualified Rape defined and penalized under Article 266-A, sub-par. b in relation to Article 266-B, par. 6, sub-par. 10 of the Revised Penal Code, as amended by Republic Act No. 8353 and is hereby sentenced to suffer the penalty of *Reclusion Perpetua* without eligibility for parole, in lieu of death. Accused-appellant is **ORDERED** to pay the victim AAA the following sums: a) Php 75,000.00 as and for civil indemnity; b) Php 75,000.00 as and for moral damages; c) Php 30,000.00 as and for exemplary damages as provided by the Civil Code in line with recent jurisprudence plus legal interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this Decision until fully paid.
>
> **SO ORDERED.**

Hence, this appeal.

**ISSUE**

**WHETHER IT WAS PROVEN BEYOND REASONABLE DOUBT THAT URMAZA IS GUILTY OF QUALIFIED RAPE.**

In a Resolution,[20] dated 9 November 2015, the Court required the parties to submit their respective supplemental briefs simultaneously, if they so desired. In his Manifestation in lieu of Supplemental Brief,[21] Urmaza manifested that he was adopting

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[20] *Rollo*, pp. 23-24.

[21] *Id.* at 26-28.

the Appellant's Brief filed before the CA as his supplemental brief, for the same had adequately discussed all the matters pertinent to his defense. In its Manifestation and Motion,[22] the Office of the Solicitor General stated that it was likewise adopting its Brief filed before the CA and would already dispense with the filing of a supplemental brief.

## THE COURT'S RULING

Foremost, this Court would like to address its observation as to the use of the word "demented" in the Amended Information under which Urmaza was charged.

Article 266-A, paragraph 1 of the RPC, as amended, provides for two circumstances when having carnal knowledge of a woman with a mental disability is considered rape:

1. Paragraph 1(b): when the offended party is deprived of reason x x x;

2. Paragraph 1(d): when the offended party is x x x demented.[23]

It was alleged in the Amended Information that AAA is a demented person (deaf-mute). The tapestry of this case, however, depicts a victim who is suffering from mental retardation, not dementia. For clarity's sake, the Court must restate that mental retardation and dementia are not synonymous and thus should not be loosely interchanged.

The cases of *People v. Caoile*[24] and *People v. Ventura*[25] laid down a technical definition of the term "demented" as referring to a person who has dementia, which is a condition of deteriorated mentality, characterized by marked decline from the individual's former intellectual level and often by emotional apathy, madness, or insanity.[26]

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[22] *Id.* at 31-33.

[23] *People v. Caoile*, 710 Phil. 564, 574 (2013).

[24] *Id.* at 581.

[25] 729 Phil. 566, 572 (2014).

[26] *People v. Caoile*, *supra* note 23.

On the other hand, the phrase *deprived of reason* under paragraph 1(b) has been interpreted to include those suffering from mental abnormality, deficiency, or retardation. Thus, AAA, who was clinically diagnosed to be a mental retardate, can be properly classified as a person who is "deprived of reason," not one who is "demented."[27]

At any rate, the erroneous designation of AAA as a demented person will not invalidate the Amended Information. In the first place, Urmaza did not raise any objection at all on the matter. More importantly, none of his rights was violated, particularly that of being informed of the nature and cause of the accusation against him.[28] The material facts necessary to establish the essential elements of rape were succinctly alleged, and the Amended Information by itself is sufficient to enable Urmaza to suitably prepare for his defense.

The elements necessary to sustain a conviction for rape are: (1) the accused had carnal knowledge of the victim; and (2) said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.[29] In the case at bar, Urmaza never denied having carnal knowledge of AAA. Thus, the only matter to be resolved by this Court is whether appellant had carnal knowledge of AAA against her will using threats, force or intimidation; or that AAA was deprived of reason or otherwise unconscious, or was under 12 years of age or is demented.[30]

In his appellant's brief, Urmaza impugns the finding that AAA was a mental retardate. He argues that retardation is belied by no less than AAA herself, considering that she was even able to prepare coffee for him; and that she was able to narrate her alleged ordeal with clarity of thought and precision.

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[27] *People v. Caoile*, *supra* note 23 at 574-575.

[28] *Id*. at 575.

[29] *People v. Patentes*, 726 Phil. 590, 598 (2014).

[30] *Id*.

Urmaza's suggestions fail to persuade.

The RTC and the CA both found that AAA was a mental retardate. Well-settled is the rule that findings of fact of the trial court, particularly when affirmed by the CA, are binding upon this Court.[31] Besides, there is no cogent reason to disturb the conclusions reached by the tribunals *a quo* with respect to AAA's mental condition.

Both clinical and testimonial evidence were presented by the prosecution to prove that AAA was a mental retardate. The prosecution presented the Psychiatric Evaluation Report made by Dr. Caoile whose qualification as an expert witness was admitted by the defense.[32] Based on the psychological tests performed on AAA, she was found to be suffering from MENTAL RETARDATION, SEVERITY UNSPECIFIED. Such diagnosis was grounded on AAA's significant sub-average intellectual functioning and concurrent deficits or impairment in adaptive functioning, i.e., difficulty expressing what she likes, constant need to be supervised with regard to hygiene and basic household chores, and difficulty understanding or following simple instructions.

Dr. Caoile testified that:[33]

PROSECUTOR OLIVA B. NUDO (*PROS. NUDO*) on direct examination:

Q: What were your findings?

A: On examination, interview and observation, the patient is suffering from mental retardation and as specified (sic),[34] madam.

Q: What do you mean by on examination, interview and observation, the patient is suffering from mental retardation and as specified (sic)?

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[31] *Castillo v. CA*, 329 Phil. 150, 152 (1996).

[32] TSN, 12 March 2012, p. 3.

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

[34] The Psychiatric Examination Report states "UNSPECIFIED."

A: Actually, there are three bases of mental retardation.

1.) Sub-average intellectual functioning meaning IQ below 70.

2.) There is an impairment in the patient adoptive functioning such as communication, safety health care, home living direction and the onset should be for age 18, so this case of [AAA] is considered suffering from mental retardation because of the impairment of the adoptive function, as we can see she could not do simple chores at home, she was supervised in sweeping the floor, washing the dishes or cooking which a person could already do at age 35;

3.) She does not know the importance of safety; she was abused for several times, this is a fourth incident, when asked what the accused did to her, she just smile and never answer; with regard to the communication she has difficulty (sic) communicating; she has difficulty of understanding simple instructions. So those are the impairment of simple communication. However, an IQ test was not done in this patient because she has a difficulty understanding simple question; however, even though there was no IQ test done still as we can say the patient still suffering from a mental retardation because of the impairment in adoptive functioning, madam.

In addition to the Psychiatric Report and Dr. Caoile's testimony, AAA's mental retardation was further substantiated by the testimony of Urmaza himself,[35] *viz*:

PROS. NUDO on cross-examination:

Q: You are related to the complainant?

A: Yes, madam, her father and my wife are siblings.

Q: And the father of the complainant is already dead?

A: Yes, madam.

Q: And even with the death of the complainant's father, you frequent the house of the complainant?

A: Yes, madam.

Q: So you know the complainant since her birth?

[35] TSN, 8 May 2013, pp. 5-6.

A: Yes, madam.

Q: You know that she is mentally challenged?

A: Yes, madam. (emphasis ours)

Q: Such that even at this age, she even thinks like a child?

A: Yes, madam.

Q: And you claimed that you have a relationship with AAA for quite sometime now?

A: Yes, madam.

Q: This, despite the fact that she is your niece and she is a mentally challenged? (sic)

A: Yes, madam.

From the foregoing, it is beyond cavil that the prosecution was able to prove AAA's mental retardation. In our jurisdiction, carnal knowledge of a woman suffering from mental retardation is rape since she is incapable of giving consent to a sexual act. Under these circumstances, all that needs to be proved for a successful prosecution are the facts of sexual congress between the rapist and his victim, and the latter's mental retardation.[36]

Urmaza does not deny having sexual congress with AAA in the morning of 7 September 2011. He, however, claims that the act was consensual as he has been in a relationship with AAA for quite sometime now.

Urmaza must be reminded that the sweetheart theory or sweetheart defense is an oft-abused justification that rashly derides the intelligence of this Court and sorely tests its patience. To even consider giving credence to such defense, it must be proven by compelling evidence. Mere testimonial evidence will not suffice. Independent proof is required — such as tokens, mementos, and photographs. None of such were presented here by the defense.[37]

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[36] *People v. Brion*, 717 Phil. 100, 109 (2013).

[37] *People v. Eco Yaba*, 742 Phil. 298, 306 (2014).

That the sexual congress was against AAA's will is further shown by her testimony on cross-examination by Urmaza's counsel.[38]

Atty. Ferrer:

Q: You said a while ago that Eleuterio Urmaza entered your house, is that correct?

A: Yes, sir.

Q: What did you do when he entered your house?

A: I asked him to leave because I will sleep but he refused and I waited for him to leave but he did not leave, sir.

Q: When he refused to leave, can you tell us what did you do next?

A: I was already angry and asked him to leave, sir.

Q: You said that Eleuterio Urmaza closed the door and the window of your house is that correct?

A: Yes, sir.

Q: Where were you when he closed the window of your house?

A: He closed the door and the window, sir.

Q: You said a while ago that he embraced you and touched your breast?

A: He embraced me, and I tried to push him away but he embraced me and he inserted his penis, sir.

Q: You said a while ago that when he was allegedly inserting his penis you were holding on to something, that your hand is holding something?

A: Yes, sir.

Q: Can you tell us what was that thing you were holding in your house? (sic)

A: (Witness demonstrating a post and shaking post made of wood)

Q: With your both hands on that position, you were able to hit or push Eleuterio Urmaza on that point?

[38] TSN, 10 December 2012, pp. 6-7.

A: I kept on pushing him but he kept on touching me, sir.

It bears emphasis that the competence and credibility of mentally deficient rape victims as witnesses have been upheld by this Court where it was shown that they could communicate their ordeal capably and consistently. Rather than undermine the gravity of the complainant's accusations, it lends even greater credence to her testimony, as someone feeble-minded and guileless could speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered such crime at the hands of the accused.[39]

Moreover, it has been repeatedly held that the RTC's assessment of the credibility of witnesses deserves great respect in the absence of any attendant grave abuse of discretion, since it has the advantage of actually examining the real and testimonial evidence, including the conduct of the witnesses, and is in the best position to rule on the matter. This rule finds greater application when the RTC's findings are sustained by the CA, as in this case.[40] Accordingly, the Court finds nary a reason to depart from the RTC's assessment of the testimony of AAA.

In sum, the prosecution has sufficiently established Urmaza's guilt beyond reasonable doubt. His conviction therefore stands.

While the Court affirms the RTC and the CA's ruling of conviction, it cannot, however, subscribe to the penalty imposed upon Urmaza lest it runs afoul with the tenets of due process. Indeed, knowledge of the offender of the victim's mental disability at the time of the commission of rape qualifies the crime and makes it punishable by death under Article 266-B, paragraph 10 of the RPC, as amended by Republic Act No. 8353.[41] Nevertheless, it appears that the tribunals *a quo* lost sight of the precondition that an allegation in the Information of such knowledge of the offender is necessary, as a crime can

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[39] *People v. Dela Paz*, 569 Phil. 684, 704 (2008).

[40] *People v. Brion*, *supra* note 36 at 113.

[41] *People v. Dela Paz*, *supra* note 39 at 705.

only be qualified by circumstances pleaded in the indictment. A contrary ruling would result in denial of the right of the accused to be informed of the charges against him, and hence, a denial of due process.[42]

Here, the offender's knowledge of the mental disability of the victim was not properly alleged. There was no averment in the Amended Information stating that Urmaza knew of AAA's mental retardation during the commission of the rape. While the erroneous designation of AAA as a demented person did not cause material and substantial harm to Urmaza, the same cannot be said of the prosecution's failure to recite the aforesaid qualifying circumstance. Sections 8 and 9 of Rule 110 of the Rules of Court require that the qualifying circumstances be specifically alleged in the Information to be appreciated as such. As elucidated in *People v. Tagud*,[43] the purpose is to alert the accused that his life hangs in the balance because a special circumstance would raise the crime to a higher category.[44]

Lamentably, even if the prosecution was able to prove that Urmaza had knowledge of AAA's mental retardation, the Court is constrained to find him guilty of rape only in its simple form.

**WHEREFORE,** the Court **AFFIRMS** the assailed 27 February 2015 Decision of the CA with the **MODIFICATION** that appellant ELEUTERIO URMAZA y TORRES is pronounced **GUILTY** beyond reasonable doubt of **SIMPLE RAPE** and is sentenced to suffer the penalty of *reclusion perpetua*; and to pay the victim ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages; all such amounts to earn interest at the rate of six percent (6%) per annum from the finality of this decision until full payment.

**SO ORDERED.**

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

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[42] *Id.* at 705-706.

[43] 425 Phil. 928-950 (2002).

[44] *Id.* at 946-949.

**THIRD DIVISION**

[G.R. No. 231053. April 4, 2018]

**DESIDERIO DALISAY INVESTMENTS, INC.,** *petitioner, vs.* **SOCIAL SECURITY SYSTEM,** *respondent.*

**SYLLABUS**

1. **REMEDIAL LAW; ACTIONS; ACTION TO QUIET TITLE; ELEMENTS.—** For an action to quiet title to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its prima facie appearance of validity or legal efficacy. x x x Additionally, it is well to emphasize that in order that an action for quieting of title may prosper, it is essential that the plaintiff must have legal or equitable title to, or interest in, the property which is the subject-matter of the action. Legal title denotes registered ownership, while equitable title means beneficial ownership. In the absence of such legal or equitable title, or interest, there is no cloud to be prevented or removed.

2. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT OR PERFORMANCE; DATION IN PAYMENT; IN *DACION EN PAGO*, THE DEBTOR DELIVERS AND TRANSMITS TO THE CREDITOR THE FORMER'S OWNERSHIP OVER A THING AS AN ACCEPTED EQUIVALENT OF THE PAYMENT OR PERFORMANCE OF AN OUTSTANDING DEBT.—** Among other modes, an obligation is extinguished by payment or performance. There is payment when there is delivery of money or performance of an obligation. Corollary thereto, Article 1245 of the Civil Code provides for a special mode of payment called dation in payment (*dacion en pago*). In *dacion en pago*, property is alienated to the creditor in satisfaction of a debt in money. The debtor delivers and transmits to the creditor the former's ownership over a thing as an accepted equivalent of the payment or performance of an outstanding debt. In such cases, Article

1245 provides that the law on sales shall apply, since the undertaking really partakes—in one sense—of the nature of sale; that is, the creditor is really buying the thing or property of the debtor, the payment for which is to be charged against the debtor's obligation.

**3. ID.; ID.; ID.; ID.; ID.; ID.; THERE IS NO DATION IN PAYMENT WHEN THERE IS NO TRANSFER OF OWNERSHIP IN THE CREDITOR'S FAVOR, AS WHEN THE POSSESSION OF THE THING IS MERELY GIVEN TO THE CREDITOR BY WAY OF SECURITY.—** As a mode of payment, *dacion en pago* extinguishes the obligation to the extent of the value of the thing delivered, either as agreed upon by the parties or as may be proved, unless the parties by agreement—express or implied, or by their silence—consider the thing as equivalent to the obligation, in which case the obligation is totally extinguished. It requires delivery and transmission of ownership of a thing owned by the debtor to the creditor as an accepted equivalent of the performance of the obligation. There is no dation in payment when there is no transfer of ownership in the creditor's favor, as when the possession of the thing is merely given to the creditor by way of security.

**4. ID.; ID.; ID.; SALES; CONTRACT OF SALE; STAGES; ELUCIDATED.—** [T]he stages of a contract of sale are: (1) *negotiation*, covering the period from the time the prospective contracting parties indicate interest in the contract to the time the contract is perfected; (2) *perfection*, which takes place upon the concurrence of the essential elements of the sale, which is the meeting of the minds of the parties as to the object of the contract and upon the price; and (3) *consummation*, which begins when the parties perform their respective undertakings under the contract of sale, culminating in the extinguishment thereof. x x x [T]he negotiation stage covers the period from the time the prospective contracting parties indicate interest in the contract to the time the contract is perfected. This then includes the making of an offer by one party to another and ends when both parties agree on the object and the price. x x x Within the purview of the law on sales, a contract of sale is perfected by mere consent, upon a meeting of the minds on the offer and the acceptance thereof based on subject matter, price and terms of payment. It is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract

> and upon the price. x x x While a contract of sale is perfected by mere consent, ownership of the thing sold is acquired only upon its delivery to the buyer. Upon the perfection of the sale, the seller assumes the obligation to transfer ownership and to deliver the thing sold, but the real right of ownership is transferred only "by tradition" or delivery thereof to the buyer.

**APPEARANCES OF COUNSEL**

*Quitain Law Office* for petitioner.
*Office of the Solicitor General* for respondent.

## D E C I S I O N

**VELASCO, JR., *J.*:**

### The Case

This Petition for Review on Certiorari under Rule 45 of the Rules of Court seeks the reversal and setting aside of the August 12, 2016 Decision[1] and March 10, 2017 Resolution of the Court of Appeals (CA) in CA-G.R. CV No. 03233-MIN.

### The Facts

Involved is a parcel of land covered by Transfer Certificate of Title (TCT) Nos. T-18203, T-18204, T-255986, and T-255985, with an aggregate area of 2,450 sq.m., including the building erected thereon, situated in Agdao, Davao City.

Sometime in the year 1976, respondent Social Security System (SSS) filed a case before the Social Security Commission (SSC) against the Dalisay Group of Companies (DGC) for the collection of unremitted SSS premium contributions of the latter's employees. The said cases are: (1) *SSS v. Desiderio Dalisay Investments, Inc.* (SSC Case No. 6414); (2) *SSS v. Desidal Fruits Corporation* (SSC Case No. 6415); and (3) *SSS v. Davao Stevedore Terminal Co., Inc.* (SSC Case No. 6416).[2]

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[1] Penned by Associate Justice Ronaldo B. Martin with the concurrence of Associate Justices Romulo V. Borja and Oscar V. Badelles.

[2] *Rollo*, p. 9.

On March 11, 1977, Desiderio Dalisay, then President of petitioner Desiderio Dalisay Investments, Inc. (DDII), sent a Letter to SSS offering the subject land and building to offset DGC's liabilities subject of the aforementioned cases at ₱3,500,000.[3] The parties, however, failed to arrive at an agreement as to the appraised value thereof. Thus, no negotiation took place.

Later, or on December 15, 1981, Desiderio Dalisay sent another Letter seeking further negotiation with SSS by recommending that the appraisal be done by Asian Appraisal, Co. Inc.[4] SSC agreed, but it later turned out that Asian Appraisal, Inc. did not respond to Dalisay's request. Thus, Atty. Honesto Cabarroguis, DGC's lawyer, suggested that the appraisal be done by Joson, Capili and Associates instead. The suggestion was later approved.[5]

On July 24, 1982, DDII's Special Board of Directors issued a Resolution stating that the properties covered by TCT Nos. T-18204 and T-8227[6] together with all improvements thereon be sold to SSS in order to settle the unremitted premiums and penalty obligations of DDII, Davao Stevedore Terminal Co., and Desidal Fruits, Inc. In the same Board Resolution, Desiderio Dalisay, or in his absence, Veronica Dalisay-Tirol (Dalisay-Tirol), was authorized to sign in behalf of the corporation any and all papers pertinent to effect full and absolute transfer of said properties to the SSS.[7]

On May 21, 1982, the real estate appraisers Joson, Capili and Associates, whose services Dalisay engaged for the purpose of appraising the value of the properties being offered to SSS, sent a letter[8] to him informing him that the total value of the

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[3] Records, p. 69.

[4] *Id*. at 70.

[5] *Id*. at 111.

[6] *Id*. at 240.

[7] *Id*. at 241.

[8] *Id*. at 86.

lots is One Million Nine Hundred Fifty Four Thousand Seven Hundred Seventy-Seven & 78/100 (₱1,954,777.78), rounded to ₱1,955,000.[9] This Appraisal Report was then indorsed to the SSC.[10]

On May 27, 1982, during a meeting (1982 Meeting) of the SSS' Committee on Buildings, Supplies and Equipment (Committee) attended by Atty. Cabarroguis, the latter, representing DGC, explained that the DGC is in financial distress and is in no way capable of settling its obligation in cash.[11] When asked what the DGC's offer is, he stated that he has "the authority to offer [the properties] in the amount of 2 million pesos."[12] He also assured them that they will turn the properties over to SSS free of liens and encumbrances.[13] The offer for *dación* was accepted at the appraised value of ₱2,000,000. As regards the implementation of the *dación*, Atty. Cabarroguis stated that "[t]he Legal Department of the SSS can prepare the Deed of Sale or whatever documents that have to be prepared. My clients are ready to vacate the premises and you can have it occupied anytime."[14] During the same Meeting, Atty. Cabarroguis likewise relayed to SSS that they are requesting that the ₱2,000,000 amount be applied first to the unpaid premiums and the excess be used to settle part of the penalties due.[15]

On May 28, 1982, DDII's total liabilities with SSS covering unpaid premium contributions, inclusive of penalties and salary/calamity loan amortizations, amounted to ₱4,421,321.62.[16]

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

[10] *Id*. at 111.

[11] *Id*. at 129.

[12] *Id*. at 130.

[13] *Id*. at 132.

[14] *Id*. at 147.

[15] *Id*. at 133.

[16] *Rollo*, p. 9.

On June 9, 1982, the SSC issued Resolution No. 849 — s. 82.[17] In said Resolution, it accepted DDII's proposed *dacion en pago* pegged at the appraised value of ₱2,000,000. Said Resolution reads:

On motion duly seconded,

RESOLVED, that the acceptance of the offer of the Dalisay Group of Companies to offset their outstanding liabilities with the SSS with their lot and building at Davao City valued at 2M, as recommended by the SSC Committee on Building, Supplies and Equipment, be, as it is hereby, approved and confirmed, subject to the terms and conditions contained in the Memorandum, dated June 8, 1982, of the Executive Officer of the said Committee.

RESOLVED FURTHER, That the following additional conditions be, as they are hereby, imposed:

1. That part of tge (sic) 2M is to be applied to its outstanding educational/salary loans obligations;
2. That the criminal cases against the Dalisay Group of companies shall not be withdrawn as the penalties are not being paid in full and it is up to them to make the necessary representations with the Fiscal's Office.[18]

The SSC then informed DDII of its acceptance of the proposed dation in payment, including its specified terms and conditions, via a Letter dated June 17, 1982.[19] Said Letter[20] reads:

We are pleased to inform you that pursuant to Resolution No. 849 dated June 9, 1982, the Social Security Commission approved and confirmed the acceptance of the offer of your client, the Dalisay Group of Companies, that they be allowed to offset their outstanding liabilities with the SSS with their property (lot and building), as described in the offer, at Davao City valued at ₱2 million, subject to the following terms and conditions:

1. The ₱2 million consideration in this transaction shall be applied first to the premium contribution in arrears which

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[17] Records, p. 287.

[18] *Id.* at 287-288.

[19] *Rollo*, p. 9.

[20] Records, p. 315.

amounts to ₱1.5 million, more or less, and whatever amount in excess of the ₱2 million after premium contribution shall then be applied to the payment of penalties.

2. Part of the ₱2 million shall also be applied to its outstanding education/salary loan obligations.
3. The criminal cases against the Dalisay Group of Companies shall not be withdrawn as the penalties have not as yet been valid (sic) in full and it is up to them to make the necessary representations with the Fiscal's Office.

May we invite you, therefore, to sit down with us for the preparation of the documents preparatory to the final transfer of the titles of the properties to the SSS.

On July 8, 1982, Dalisay-Tirol, then Acting President and General Manager of Dalisay Investment, informed SSS that the company is preparing the subject property, especially the building, for its turnover on August 15, 1982.[21] Said Letter reads:

We are pleased to advise you that by August 15, 1982, we will already transfer to the next building. Desidal Building will already be available for you to prepare for you own transfer. The delay is caused by the preparation we have to make for the transfer of our office equipment and records.

Kindly, send somebody on August 15th, so we can effect the proper turnover of the building to you.[22]

Later, or on July 31, 1982, An Affidavit of Consent for the Sale of Real Property was executed by the surviving heirs of the late Regina L. Dalisay, stating that in order to settle the companies' obligations to SSS, they expressly agree to the sale thereof to the SSS for its partial settlement.[23]

On September 18, 1989, Desiderio Dalisay passed away.

As of November 30, 1995, the company's total obligations allegedly amounted to ₱15,689,684.93.[24]

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[21] *Rollo*, p. 10.

[22] Records, p. 152.

[23] *Id*. at 153.

[24] *Id*. at 195.

Later, or on December 29, 1995, the Philippine National Bank (PNB) executed a Deed of Confirmatory Sale in favor of DDII for properties that it reacquired, including the property subject of the present dispute.

On March 20, 1998, Eddie A. Jara (Jara), Assistant Vice-President of the SSS — Davao I Branch, executed an Affidavit of Adverse Claim[25] over the properties subject of the instant case because of the companies' failure to turn over the certificates of title to SSS.

Then, on April 2, 1998, Jara sent a letter to Dalisay-Tirol, formally demanding the certificates of title over the properties subject of the *dación*.[26] In said letter, Jara stated that "[t]he mortgage with PNB has already been settled by Desiderio Dalisay Investments, Inc. last January 20, 1994, but the titles were not delivered to the SSS in violation of the express terms in the dation in payment that the Dalisay group should deliver the titles after the release of the mortgage with the PNB."[27]

In her reply dated May 5, 1998 to the April 2, 1998 Letter, Dalisay-Tirol, who was then the President of DDII, stated that the corporation could not at that time give due course to and act on the matter because of several issues that need to be resolved first, including two cases involving the subject properties, to wit: (1) the properties are being claimed by the estate of Desiderio F. Dalisay, Sr. and included in the inventory already filed by the executrix, where the corporation's stockholders are contesting said inclusion; and (2) the SSS' pending petition covering the properties where the accuracy and propriety of the amount of ₱15,605,079.25 contained therein has yet to be substantiated and verified.[28] She likewise pointed out that the "Board Resolution covers only two (2) parcels of land which were proposed and submitted for the purpose of a negotiated sale to settle unremitted premiums and penalties."[29]

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[25] *Id*. at 337.

[26] *Id*. at 188.

[27] *Id*.

[28] *Id*. at 189.

[29] *Id*. at 190.

On November 18, 1999, DDII, through its Managing Director Edith L. Dalisay-Valenzuela (Dalisay-Valenzuela), wrote a letter addressed to SSS President and Chief Executive Officer Carlos A. Arellano, requesting the reevaluation and reconsideration of their problem.[30] In said Letter, DDII requested the following:

1) Condonation of penalties and interest or accrual of rentals for off-setting against the penalties, interest and principal;
2) Payment of original liabilities for unpaid premiums of ₱4,421,321.62;
3) Return of the property to DDII; and
4) Withdrawal of claim against the Estate of Desiderio F. Dalisay, Sr.[31]

On January 18, 2000, DDII issued a Letter to SSS proposing the "offset of SSS obligations with back rentals on occupied land and building of the obligor." It alleged that SSS is bound to pay back rentals totaling ₱34,217,988.19[32] for its use of the subject property from July 1982 up to the present. It likewise demanded for the return of the said property.[33]

Meanwhile, despite repeated written and verbal demands made by SSS for DDII to deliver the titles of the subject property, free from all liens and encumbrances, DDII still failed to comply.

On October 8, 2002, DDII filed a complaint for Quieting of Title, Recovery of Possession and Damages against SSS with the Regional Trial Court (RTC), Branch 14, in Davao City, docketed as Civil Case No. 29, 353-02.

In said complaint, DDII asserted that it is the owner of the subject property. It averred that when SSS filed the abovementioned cases, the late Desiderio Dalisay, during his lifetime and as president of the company, offered the property appraised at ₱3,500,000 to SSS for the offsetting of said amount

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[30] *Id*. at 341.

[31] *Id*. at 341-342.

[32] *Id*. at 344.

[33] *Rollo*, p. 10.

against DGC's total liability to SSS. SSS accepted such but only in the amount of ₱2,000,000 and subject to certain conditions. It also insists that while negotiations with SSS were still ongoing, it decided to vacate the subject property in favor of SSS to show goodwill on its part. Unfortunately, the negotiations were not fruitful as they failed to agree on the terms and conditions set forth by SSS. Furthermore, DDII insists that Atty. Cabarroguis' alleged acceptance of the proposals of SSS was not covered by any Board Resolution or Affidavit of Consent by the corporate and individual owners of the properties. Thus, according to DDII, there was no meeting of the minds between the parties. Consequently, there was no dation in payment to speak of, contrary to the claim of SSS. With these, DDII asserted that SSS owes it ₱43,208,270.99 as back rentals for its use of the property from 1982 onwards. It also prayed for attorney's fees and costs of litigation.[34]

In its Answer, SSS argued that the offer for *dacion* was categorically accepted by SSS, thereby perfecting such.[35]

**RTC Judgment**

On July 22, 2010, the RTC resolved the case in favor of DDII, holding that there was no perfected dation in payment between the parties. Consequently, SSS has no legal personality to own, possess, and occupy the property. The dispositive portion thereof reads:

WHEREFORE, judgment is hereby rendered as follows:

a) Declaring [DDII] as the true and absolute owner of the properties covered by TCT Nos. T-18203, T-18204, T-255986 and T-255985, free from all liens and encumbrances, and that [SSS] has no right or interest over the same whatsoever;
b) Ordering the Registrar, Registry of Deeds, Davao City, to cancel the adverse claims caused by [SSS] to be annotated on the foregoing [TCTs];
c) Ordering [SSS] to pay [DDII] the reasonable amount of ₱50,000.00 a month for the use and continued occupation

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

[35] *Id.* at 11.

by [SSS] of the subject properties reckoned from the date of [DDII's] demand to vacate on June 6, 2002 until [SSS] vacates the subject properties;

d) Ordering [SSS] to turn over the possession and occupation of the properties to [DDII] in peace, there being no perfected dation in payment or *dacion en pago*;

e) Ordering [SSS] to reimburse [DDII] the sum of ₱100,000.00 as attorney's fees; and

f) To pay the cost.

SO ORDERED.[36]

Ruling in favor of DDII, the RTC found that the June 8, 1982 Memorandum is not an acceptance of DDII's offer for the reason that it contained terms and conditions––a qualified acceptance which amounts to a counter-offer.[37] The RTC further noted that there is no iota of proof that said counter-offer was accepted by DDII.[38]

As to the contention of SSS that the turnover of the properties in its favor shows that there was, indeed, a perfected dation in payment, the RTC ruled that said transfer of possession was not tantamount to delivery as an element of a contract of sale which transmits ownership of the thing from the vendor to the vendee. The RTC likewise noted that the June 8, 1982 Memorandum included a provision on automatic cancellation of its supposed acceptance of Dalisay's offer if, for any reason, the offsetting cannot be implemented. Correlating this with SSS' non-receipt of the certificates of title to the property, the RTC ruled that SSS' supposed acceptance was thereby automatically cancelled effective June 8, 1982––the date of the Memorandum containing the provision on automatic cancellation. This being the case, the trial court held, SSS' occupation of the property on July 24, 1982, a month after its acceptance was automatically cancelled, has no leg to stand on.[39] It was, therefore, only by

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

[37] *Id*. at 82.

[38] *Id*. at 83.

[39] *Id*.

mere tolerance which tolerance ended when DDII made a demand for SSS to vacate the premises on June 6, 2002.[40]

Its motion for reconsideration having been denied by the RTC in its September 20, 2010 Order,[41] SSS appealed the case to the CA.

**CA Ruling**

Finding merit in the appeal, the CA reversed the RTC's ruling, disposing of the appeal in this wise:

> **WHEREFORE,** the appealed Decision of the [RTC], Branch 14, Davao City, in Civil Case No. 29,353-02 is **REVERSED** and **SET ASIDE** insofar as it granted the complaint for quieting of title, recovery of possession and damages in favor of [DDII], and the said complaint is hereby **DISMISSED** for lack of merit. No pronouncement as to costs.
>
> **SO ORDERED**.[42]

According to the CA, the pivotal issue in the appeal is whether there was a perfected dation in payment, in which it ruled in the affirmative.

The CA held that the records establish that DGC has an outstanding obligation in favor of SSS that it proposed to pay the amount via *dacion en pago*, said offer was categorically accepted by SSS, and the agreement was consummated by DDII's delivery of the property to SSS.[43]

As to DDII's argument that the acceptance by SSS included certain conditions, this, according to the appellate court, is inconsequential because its acceptance was unequivocal and absolute. In this respect, it held that dation in payment being in the nature of a contract of sale, the principle that a deed of sale is considered absolute where there is neither a stipulation

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[40] *Id*. at 84.

[41] *Id*. at 100.

[42] *Id*. at 19.

[43] *Id*. at 14.

in the deed that title to the property sold is reserved in the seller until full payment thereof, nor one giving the vendor the right to unilaterally resolve the contract the moment the buyer fails to pay within a fixed period, applies to the instant dispute. The CA, thus, concluded that applying said principle, the contract of sale or *dacion* between the parties is absolute, not conditional. To be sure, the CA said, there is no reservation of ownership of the subject property or a stipulation providing for unilateral rescission by either party. In fact, according to the CA, the sale was consummated upon the delivery of the subject property to SSS.[44]

Anent the stipulations in the June 17, 1982 letter of the SSS according to the CA, the conditions were not of a nature that would affect the efficacy of the contract of sale. It, the CA said, merely provided the manner by which the full consideration is to be applied to DDII's liability and the implication of the payment vis-à-vis the pending criminal cases filed against DDII.[45]

The CA, thus, ruled that all the requisites for a valid dation are present. The sale and transfer of the subject property in favor of SSS are valid and binding against DDII.

The CA went on to state that even assuming that the dation is defective, said defect is immaterial due to DDII's inaction which lasted for 20 years.[46] Applying the principle of laches, DDII's failure to assert its rights over the property against SSS for 20 years since its consummation bars it from recovering the subject property.[47]

With respect to the award of attorney's fees, the CA held that such is improper,[48] there being no factual, legal, or equitable justification for the award of attorney's fees in favor of DDII.

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[44] *Id*. at 15.

[45] *Id*. at 16.

[46] *Id*. at 17.

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

[48] *Id*. at 18.

As regards the award of litigation expenses, the CA likewise deleted such for lack of factual or legal justification therefor.[49]

Its Motion for Reconsideration having been denied by the CA in its March 10, 2017 Resolution,[50] DDII now comes before this Court for relief.

**The Issues**

I. Whether or not there was a perfected "*Dacion en Pago*"
II. Whether or not the fact that the Transfer Certificates of Title over the subject properties remained in the name of the petitioner is a strong indicium that the parties remained in the preparatory stage of contract-making
III. Whether or not the prescriptive period to file the action had already prescribed
IV. Whether or not petitioner slept on its rights that would warrant the imposition of laches.

The pivotal issue in the instant case is whether or not there was a perfected *dacion en pago*; and if answered in the affirmative, whether or not SSS validly acquired title or interest over the subject properties. This is so since if there was a perfected *dación* and if title or interest over the property was transferred to SSS, then an action for quieting of title filed by DDII would not prosper since SSS has a legitimate interest and claim over the properties subject of the case.

In the present petition, DDII argues that its offer to SSS contained in the December 15, 1981 letter was never categorically accepted by the latter.[51] For DDII, the seemingly unambiguous language of the SSS' Memorandum is, in truth, a rejection of its offer, it being a qualified acceptance thereof. It maintains that for there to be an acceptance of the offer, it should be identical in all respects and must not contain any modification or variation from the terms of the offer.[52]

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[49] *Id*. at 19.

[50] *Id.* at 21.

[51] *Id*. at 48.

[52] *Id*. at 49.

Furthermore, petitioner claims, no document or instrument proving that it accepted SSS' counter-offer exists, as it, in fact, remains unaddressed.[53]

Moreover, DDII points out that in SSS' Brief, it admitted that it indeed made a counter-offer to DDII, although it insists that DDII accepted said counter-offer.[54] In this respect, DDII maintains that contrary to SSS' position that it impliedly accepted the counter-offer by turning over to SSS the possession and occupation of the property, said turnover was done not because it is accepting the counter-offer but to show goodwill in the negotiations.[55]

To further bolster its claim, DDII argues that the fact that the TCTs over the property remain in the name of the original owner clearly indicates that no dation in payment ever occurred.[56]

As to the CA's ruling that DDII's claim is barred by laches, it posits that the cause of action did not arise when the possession of the property was transferred to SSS.[57] According to it, the transfer being a show of goodwill, there was, at that time, no threat against its title over the property that would prompt DDII to seek redress from the courts and commence the running of the prescriptive period. DDII maintains that the reason why it took a long time before it sought the removal of a cloud in its title is because it was under the impression that no offsetting took place and that SSS was merely in physical possession thereof.[58]

In our January 31, 2018 Resolution, We required SSS to file its Comment on the petition within a non-extendible period of 10 days. But as of this date, the SSS has yet to file said Comment. In view of the fact that the previous pleadings of the SSS sufficiently allow Us to decide the instant dispute, We resolve

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[53] *Id*. at 50.

[54] *Id*. at 51.

[55] *Id*. at 54.

[56] *Id*. at 52.

[57] *Id*. at 53.

[58] *Id*. at 54.

to dispense with the SSS' Comment and decide the case based on the records.

**Our Ruling**

We resolve to deny the petition.

Article 476 of the Civil Code provides:

> Art. 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.
>
> An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

For an action to quiet title to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its prima facie appearance of validity or legal efficacy.[59]

Here, the presence or absence of these two requisites is hinged on the question of whether or not the proposed *dación en pago* was indeed perfected, thereby vesting unto SSS a legitimate title and interest over the properties in question. In other words, if it can be proved that the proposed *dación* was perfected, or even consummated, then SSS' claim which allegedly casts a cloud on DDII's title is valid and operative, and consequently, the action for quieting of title filed by DDII will not prosper.

***Dación en pago***

Among other modes, an obligation is extinguished by payment or performance.[60] There is payment when there is delivery of

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[59] *Mananquil v. Moico*, G.R. No. 180076, November 21, 2012, 686 SCRA 123,129-130.

[60] CIVIL CODE, Art. 1231 (1).

money or performance of an obligation.[61] Corollary thereto, Article 1245 of the Civil Code provides for a special mode of payment called dation in payment (*dación en pago*).

In *dación en pago*, property is alienated to the creditor in satisfaction of a debt in money.[62] The debtor delivers and transmits to the creditor the former's ownership over a thing as an accepted equivalent of the payment or performance of an outstanding debt.[63] In such cases, Article 1245 provides that the law on sales shall apply, since the undertaking really partakes—in one sense—of the nature of sale; that is, the creditor is really buying the thing or property of the debtor, the payment for which is to be charged against the debtor's obligation.[64]

As a mode of payment, *dación en pago* extinguishes the obligation to the extent of the value of the thing delivered, either as agreed upon by the parties or as may be proved, unless the parties by agreement—express or implied, or by their silence—consider the thing as equivalent to the obligation, in which case the obligation is totally extinguished.[65] It requires delivery and transmission of ownership of a thing owned by the debtor to the creditor as an accepted equivalent of the performance of the obligation. There is no dation in payment when there is no transfer of ownership in the creditor's favor, as when the possession of the thing is merely given to the creditor by way of security.[66]

In the case at hand, in order to determine whether or not there was indeed a perfected, or even consummated, dation in

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[61] *Id*., Art. 1232.

[62] *Id*., Art. 1245. Dation in payment, whereby property is alienated to the creditor in satisfaction of a debt in money, shall be governed by the law of sales.

[63] *Tan Shuy v. Maulawin*, G.R. No. 190375, February 8, 2012, 665 SCRA 604, 614.

[64] *Id*.

[65] *Id.* at 614-615.

[66] *Fort Bonifacio Development Corporation v. Yllas Lending Corporation*, G.R. No. 158997,October 6, 2008, 567 SCRA 454, 465.

payment, it is necessary to review and assess the evidence and events that transpired and see whether these correspond to the three stages of a contract of sale. This is so since, as previously mentioned, *dación en pago* agreements are governed, among others, by the law on sales.

***Stages of a contract of sale***

Briefly, the stages of a contract of sale are: (1) *negotiation*, covering the period from the time the prospective contracting parties indicate interest in the contract to the time the contract is perfected; (2) *perfection*, which takes place upon the concurrence of the essential elements of the sale, which is the meeting of the minds of the parties as to the object of the contract and upon the price; and (3) *consummation*, which begins when the parties perform their respective undertakings under the contract of sale, culminating in the extinguishment thereof.[67] Each shall hereinafter be discussed *in seriatim.*

**First Stage: Negotiation**
**Offer validly reduced**

To recall, the negotiation stage covers the period from the time the prospective contracting parties indicate interest in the contract to the time the contract is perfected. This then includes the making of an offer by one party to another and ends when both parties agree on the object and the price.

In the instant case, the late Desiderio Dalisay, on March 11, 1977, offered to SSS that they partially settle their obligations to the latter via *dación*. Dalisay offered several properties for ₱3,500,000 in favor of SSS to partially extinguish petitioner's obligation which amounted to ₱4,421,321.62.[68]

Then, years later or on May 27, 1982, the SSS' Committee met with the corporation, represented by Atty. Cabarroguis.

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[67] *Serrano v. Caguiat*, G.R. No. 139173, February 28, 2007, 517 SCRA 57, 63, citing *San Miguel Properties Philippines, Inc. v. Spouses Huang*, G.R. No. 137290, July 31, 2000, 336 SCRA 737.

[68] *Rollo*, p. 9.

During said meeting, Atty. Cabarroguis explained that he has "the authority to offer [the properties] in the amount of 2 million pesos."[69] He also gave them an assurance that they will turn the properties over to SSS free of liens and encumbrances,[70] and that his clients are ready to vacate the premises and you can have it occupied anytime.[71]

In this respect, petitioner argues that Atty. Cabarroguis did not have the requisite authority to make said representations and thereby bind the corporation. DDII thus maintains that the offer to SSS remained at ₱3,500,000. We beg to disagree.

While petitioner is correct that there is no evidence of Atty. Cabarroguis' authority to represent the company in said meeting, this however is outweighed by the fact that no one questioned Atty. Cabarroguis' representations and authority after the conclusion of the negotiations; and that a few days after the said meeting, the company immediately arranged for the property's turnover through Dalisay-Tirol, Acting President and General Manager, and eventually delivered possession thereof to SSS.

What makes matters worse for petitioner is that it was well aware of what transpired during the meeting and the agreements reached. In fact, after the SSC issued Resolution No. 849 – s. 82 where it accepted DDII's proposed *dacion en pago* at ₱2,000,000,[72] it sent a Letter dated June 17, 1982, communicating that:

> We are pleased to inform you that pursuant to Resolution No. 849 dated June 9, 1982, the Social Security Commission approved and confirmed the acceptance of the offer of your client, the Dalisay Group of Companies, that they be allowed to offset their outstanding liabilities with the SSS with their property (lot and building), as described in the offer, at Davao City valued at ₱2 million, subject to the following terms and conditions:

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[69] Records, p. 130.

[70] *Id*. at 132.

[71] *Id*. at 147.

[72] *Rollo*, p. 9.

1. The ₱2 million consideration in this transaction shall be applied first to the premium contribution in arrears which amounts to ₱1.5 million, more or less, and whatever amount in excess of the ₱2 million after premium contribution shall then be applied to the payment of penalties.
2. Part of the ₱2 million shall also be applied to its outstanding education/salary loan obligations.
3. The criminal cases against the Dalisay Group of Companies shall not be withdrawn as the penalties have not as yet been valid (sic) in full and it is up to them to make the necessary representations with the Fiscal's Office.

May we invite you, therefore, to sit down with us for the preparation of the documents preparatory to the final transfer of the titles of the properties to the SSS.[73]

We emphasize that it is only now, in this action for quieting of title filed decades after the conclusion of the 1982 Meeting, that DDII questioned Atty. Cabarroguis' authority to represent the corporation. If it were true that Atty. Cabarroguis did not possess the requisite authority to represent the company in said Meeting, then it could have opposed such, contested his presence thereat, or even deny that the corporation is reducing its offer to ₱2,000,000. Unfortunately for petitioner, despite knowledge thereof, there is no evidence manifesting any opposition thereto.

This acquiescence to Atty. Cabarroguis' representations and authority to do so is strengthened by the fact that a few days after the conclusion of the meeting, the company's Vice-President at that time, Dalisay-Tirol, sent a Letter dated July 8, 1982, informing the SSS that they will be vacating the premises offered and will turn over the possession thereof to SSS, consistent with what was agreed upon during said meeting. Thus:

We are pleased to advise you that by August 15, 1982, we will already transfer to the next building. Desidal Building will already be available for you to prepare for your own transfer. The delay is caused by the preparation we have to make for the transfer of our office equipment and records.

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[73] Records, p. 315.

Kindly, send somebody on August 15th, so we can effect the proper turnover of the building to you.[74]

Without an iota of evidence of any opposition to the offered ₱2,000,000 price coming from the company when it could have communicated such to the SSS after the conclusion of the 1982 Meeting, plus the fact that its Vice-President even informed SSS that they will be turning over the property to the latter, We are sufficiently convinced that, contrary to petitioner's claim, Atty. Cabarroguis acted within the scope of the authority given him, which includes offering the properties at ₱2,000,000.

It may be argued that the absence of the written document embodying Atty. Cabarroguis' authority prevents the courts from unearthing what indeed the extent of said authority is. Nevertheless, We are of the view that the aforementioned events that transpired thereafter and the absence of opposition coming from the company are sufficient proof that they tacitly ratified Atty. Cabarroguis' acts during the meeting, assuming he went beyond his authority in so doing. Thus, Article 1910 of the Civil Code provides:

**Art.1910.**The principal must comply with all the obligations which the agent may have contracted within the scope of his authority.

**As for any obligation wherein the agent has exceeded his power, the principal is not bound except when he ratifies it expressly or tacitly.** (emphasis ours)

These, plus the absence of any allegation or proof that the SSS relied upon Atty. Cabarroguis' actions in bad faith, convince Us that the corporation bound itself to said representations and agreements reached during the meeting via implied ratification.[75]

Accordingly, We conclude that DDII's offer was validly reduced from ₱3,500,000 to ₱2,000,000.

We shall now discuss whether SSS' acceptance of the new offer perfects the agreement on dation.

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[74] *Id.* at 152.

[75] See *Country Bankers Insurance Corporation v. Keppel Cebu Shipyard*, G.R. No. 166044, June 18, 2012, 673 SCRA 427, 448.

**Second Stage: Perfection**
**Acceptance absolute and unqualified**

As regards the question whether the parties were able to perfect the agreement on *dación en pago*, the RTC ruled that they did not. According to the trial court, SSS' "acceptance" was qualified which is tantamount to a counter-offer, and not an absolute acceptance which perfects the contract. Thus, said the RTC, there being no evidence to show that petitioner accepted SSS' counter-offer, there was no dation to speak of.

The CA was of a different view. According to the CA, SSC Resolution No. 849 – s. 82 constitutes an absolute and unequivocal acceptance which perfected the offered *dación.* Thus, when possession of the subject property was delivered to SSS, this signified a transfer of ownership thereon, consistent with the supposedly perfected agreement.

We agree with the CA that there was perfected dation in payment.

Article 1319 of the New Civil Code reads:

> Art. 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.
>
> Acceptance made by letter or telegram does not bind the offeror except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made.

Relevant thereto are the following principles, as summarized by the Court in *Traders Royal Bank v. Cuison Lumber Co., Inc.*,[76] thus:

> Under the law, a contract is perfected by mere consent, that is, from the moment that there is a meeting of the offer and the acceptance upon the thing and the cause that constitutes the contract. The law requires that the offer must be certain and *the acceptance absolute*

[76] G.R. No. 174286, June 5, 2009, 588 SCRA 690, 701, 703.

*and unqualified*. An acceptance of an offer may be express and implied; a qualified offer (sic) constitutes a counter-offer. Case law holds that an offer, to be considered certain, must be definite, while *an acceptance is considered absolute and unqualified when it is identical in all respects with that of the offer so as to produce consent or a meeting of the minds*. We have also previously held that the ascertainment of whether there is a meeting of minds on the offer and acceptance depends on the circumstances surrounding the case.

The offer must be certain and definite with respect to the cause or consideration and object of the proposed contract, while the *acceptance of this offer — express or implied — must be unmistakable, unqualified, and identical in all respects to the offer*. x x x (Italics supplied)

Also, in *Manila Metal Container Corporation v. Philippine National Bank*,[77] the Court ruled:

A qualified acceptance or one that involves a new proposal constitutes a counter-offer and a rejection of the original offer. A counter-offer is considered in law, a rejection of the original offer and an attempt to end the negotiation between the parties on a different basis. Consequently, *when something is desired which is not exactly what is proposed in the offer, such acceptance is not sufficient to guarantee consent because any modification or variation from the terms of the offer annuls the offer*. The acceptance must be identical in all respects with that of the offer so as to produce consent or meeting of the minds. (Italics supplied)

Within the purview of the law on sales, a contract of sale is perfected by mere consent, upon a meeting of the minds on the offer and the acceptance thereof based on subject matter, price and terms of payment.[78] It is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price.[79]

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[77] G.R. No. 166862, December 20, 2006, 511 SCRA 444, 465-466.

[78] See *Ainza v. Padua*, G.R. No. 165420, June 30, 2005, 462 SCRA 614, 618.

[79] *Co v. Court of Appeals*, G.R. No. 123908, February 9, 1998, 286 SCRA 76, cited in *Yason v. Arciaga*, G.R. No. 145017, January 28, 2005, 449 SCRA 458, 465.

Applying said principles to the case at bar convinces us that SSS' acceptance of the offer at ₱2,000,000 resulted in a perfected dation. As discussed earlier, the offer was validly reduced from ₱3,500,000 to ₱2,000,000. Consequently, SSS' agreement to the ₱2,000,000 offer was not a counter-offer as petitioner would have it, but an acceptance of the new reduced offer communicated by the company's representative, Atty. Cabarroguis, which acceptance perfected the proposed dation in payment. DDII has the onus of proving that the ₱2,000,000 offer made to SSS was invalid which would result in SSS' acceptance at said amount to be different from the price offered. Petitioner, however, failed to discharge said burden.

As regards petitioner's contention that the following conditions set forth in the SSS' Letter dated June 17, 1982[80] make its acceptance a qualified one, We find otherwise. To recall, said conditions are as follows:

> We are pleased to inform you that pursuant to Resolution No. 849 dated June 9, 1982, the Social Security Commission approved and confirmed the acceptance of the offer of your client, the Dalisay Group of Companies, that they be allowed to offset their outstanding liabilities with the SSS with their property (lot and building), as described in the offer, at Davao City valued at ₱2 million, subject to the following terms and conditions:
>
> 1. The ₱2 million consideration in this transaction shall be applied first to the premium contribution in arrears which amounts to ₱1.5 million, more or less, and whatever amount in excess of the ₱2 million after premium contribution shall then be applied to the payment of penalties.
> 2. Part of the ₱2 million shall also be applied to its outstanding education/salary loan obligations.
> 3. The criminal cases against the Dalisay Group of Companies shall not be withdrawn as the penalties have not as yet been valid (sic) in full and it is up to them to make the necessary representations with the Fiscal's Office.
>
> May we invite you, therefore, to sit down with us for the preparation of the documents preparatory to the final transfer of the titles of the properties to the SSS.[81]

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[80] *Rollo*, p. 9.

[81] Records, p. 315.

A reading of the transcript of the 1982 Meeting reveals that the procedure in applying the proceeds of the *dación en pago* actually came from the company, through Atty. Cabarroguis, and not from SSS. Thus:

> Atty. Cabarroguis: We only pray that in order that the penalties will not continue to run, on the unpaid remittance premiums, we only request that the amount of ₱2 million be applied first to the premiums, unremitted premiums, the excess would be part of the penalty so that what will remain will be the penalties themselves.[82]

This to Us clearly shows that the SSS simply agreed to said proposal when it included such in its Resolution. It is not a new condition imposed by the SSS as petitioner argues.

Having settled that the parties were in agreement as to the price and that the acceptance by SSS was, in fact, unqualified, We are convinced that the parties indeed have a perfected contract. We shall now determine whether said contract was consummated, thereby solidifying SSS' title, interest, and claim over the properties.

**Third Stage: Consummation**
**Transfer of possession to SSS tantamount to "delivery"**

Agreeing with SSS, the CA held that the agreement on *dación en pago* was consummated by DDII's delivery of the property to SSS.[83] We agree.

The third stage of a contract of sale is consummation which begins when the parties perform their respective undertakings under the contract of sale, culminating in the extinguishment thereof.[84]

While a contract of sale is perfected by mere consent, ownership of the thing sold is acquired only upon its delivery

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[82] *Id.* at 133.

[83] *Rollo*, p. 14.

[84] *San Miguel Properties Philippines, Inc. v. Spouses Huang*, G.R. No. 137290, July 31, 2000, 336 SCRA 737.

to the buyer. Upon the perfection of the sale, the seller assumes the obligation to transfer ownership and to deliver the thing sold, but the real right of ownership is transferred only "by tradition" or delivery thereof to the buyer.[85]

In this regard, reference must be made to Article 1496 of the Civil Code, which reads:

> ARTICLE 1496.The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee. (n)

Material to the case at bar is tradition by **real or actual delivery** contemplated Article 1497 of the same Code. Thus:

> ARTICLE 1497.The thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee. (1462a)

In *Cebu Winland Development Corporation v. Ong Siao Hua*, We explained that:

> Under the Civil Code, ownership does not pass by mere stipulation but only by delivery. Manresa explains, "**the delivery of the thing . . . signifies that title has passed from the seller to the buyer.**" According to Tolentino, the purpose of delivery is not only for the enjoyment of the thing but also a mode of acquiring dominion and determines the transmission of ownership, the birth of the real right. The delivery under any of the forms provided by Articles 1497 to 1505 of the Civil Code **signifies that the transmission of ownership from vendor to vendee has taken place**.[86] (Citations omitted)

Here, petitioner DDII insists that its delivery of the property to SSS was only to show its goodwill in the negotiations. The records, however, reveal otherwise.

It is well to emphasize that **nowhere in their communications or during the discussions at the meeting is it stated that the**

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[85] *Alcantara-Daus v. De Leon*, G.R. No. 149750, June 16, 2003, 404 SCRA 74, 75.

[86] G.R. No. 173215, May 21, 2009, 588 SCRA 120, 131-132.

**company will turn over possession of the property to SSS to show its goodwill while the negotiations were pending**.

Too, consider the following turn of events:

1. During the 1982 Meeting, the following discussions took place:

> Atty. Cabarroguis: Yes. Now it is the earnest desire of Mr. Dalisay somehow, to be able to compensate for the benefits of the employees, that's why he is offering this. And if this would be considered seriously by the System, Mrs. Tirol made arrangements with the Philippine National Bank that this property be released because x x x if a portion of the obligation will be paid to the PNB, then it will release this particular property, so we will be turning this over to you clear of any liens or encumbrances. Thank you very much.[87]
>
> x x x x x x x x x
>
> Atty. Cabarroguis: The Legal Department of the SSS can prepare the Deed of Sale or whatever documents that have to be prepared. My clients are ready to vacate the premises and you can have it occupied anytime.[88] x x x

2. Thereafter, or on July 8, 1982, DDII, through Dalisay-Tirol, informed SSS that the company is preparing the subject property, especially the building, for its turnover on August 15, 1982.[89] Guilty of reiteration, the said Letter reads, thusly:

> We are pleased to advise you that by August 15, 1982, we will already transfer to the next building. Desidal Building will already be available for you to prepare for your own transfer. The delay is caused by the preparation we have to make for the transfer of our office equipment and records.
>
> Kindly, send somebody on August 15th, so we can effect the proper turnover of the building to you.[90]

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[87] Records, p. 132.

[88] *Id*. at 147.

[89] *Rollo*, p. 10.

[90] Records, p. 152.

3. Then, on January 4, 1983, the corporation arranged for the release or replacement of the properties subject of the *dación* from its mortgage with the PNB. Thus:

DESIDERIO DALISAY INVESTMENTS, INC.
Desidal Building, Agdao, Davao City

January 4, 1983

Mr. Julius L. Campo
Asst. Vice-President & Manager
Philippine National Bank
Davao Branch, Davao City

RE: DESIDAL INVESTMENTS
COLLATERAL

Dear Mr. Campo:

This is to formally inform your good office that Desidal Investments, Inc. and the Estate of Regina L. Dalisay would like to request for substitution of collaterals or properties encumbered with your bank.

x x x x x x x x x

**This request for substitution of collaterals had been made primarily because Social Security System, Regional Office of Davao, is very much interested to purchase our Desidal office building**. (emphasis ours)

x x x x x x x x x

Truly yours,

(SGD)
DESIDERIO DALISAY
President
Desidal Investments, Inc.[91]

4. As regards the obligation to deliver to SSS the certificates of title over the properties, DDII failed to do so even after the PNB has already executed a Deed of Confirmatory Sale in favor of DDII for properties that

[91] *Id*. at 156.

it reacquired, including the property subject of the present dispute. This prompted Jara to execute an Affidavit of Adverse Claim[92] over the properties.

5. Jara then sent a letter to Dalisay-Tirol, formally demanding the certificates of title over the properties subject of the *dación*, stating that "[t]he mortgage with PNB has already been settled by Desiderio Dalisay Investments, Inc. last January 20, 1994, but the titles were not delivered to the SSS in violation of the express terms in the dation in payment that the Dalisay group should deliver the titles after the release of the mortgage with the PNB."[93]

6. In her reply, Dalisay-Tirol, now President of DDII, stated that the corporation could not at that time give due course and act on the matter because of several issues that need to be resolved first.

The aforementioned events that transpired convince Us that contrary to petitioner's claim, the turnover of the properties to SSS was tantamount to delivery or "tradition" which effectively transferred the real right of ownership over the properties from DDII to SSS.[94] **Even after a review of the records of the case, this Court is unable to find any indication that when they turned over the properties to SSS, the company reserved its ownership over the property and only transferred the *jus possidendi* thereon to SSS**.

Too, if it indeed turned over the possession of the property to simply show goodwill in the negotiations, then there would be no need for it to give SSS possession of the subject property free from all liens and encumbrances.

Thus, contrary to petitioner's arguments, We are of the view that the turnover was in fact tantamount to *tradition* and was

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[92] *Id*. at 337.

[93] *Id*. at 188.

[94] *Alcantara-Daus v. De Leon*, G.R. No. 149750, June 16, 2003, 404 SCRA 74, 79.

not done simply to show goodwill on the part of the company. What was only left to be done was for the corporation to surrender the certificates of title over the properties, free from all liens and encumbrances as promised during the 1982 meeting, so as to facilitate its transfer in SSS' name.

Indeed, as expounded by this Court in *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*: [95]

> Delivery has been described as a composite act, a thing in which both parties must join and the minds of both parties concur. **It is an act by which one party parts with the title to and the possession of the property, and the other acquires the right to and the possession of the same.** In its natural sense, delivery means something in addition to the delivery of property or title; it means transfer of possession. **In the Law on Sales, delivery may be either actual or constructive, but both forms of delivery contemplate "the absolute giving up of the control and custody of the property on the part of the vendor, and the assumption of the same by the vendee.**"

This being the case, We find that SSS has validly and in good faith acquired title to the property subject of the dispute, making the action to quiet title filed by DDII improper.

Additionally, it is well to emphasize that in order that an action for quieting of title may prosper, it is essential that the plaintiff must have legal or equitable title to, or interest in, the property which is the subject-matter of the action.[96] Legal title denotes registered ownership, while equitable title means beneficial ownership. In the absence of such legal or equitable title, or interest, there is no cloud to be prevented or removed.[97]

Here, DDII having divested itself of any claim over the property in favor of SSS by means of sale via *dación en pago*,

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[95] G.R. No. 133879, November 21, 2001, 370 SCRA 56, 70-71. Cited in *Cebu Winland Development Corporation v. Ong Siao Hua*, G.R. No. 173215, May 21, 2009, 588 SCRA 120.

[96] *Mananquil v. Moico*, G.R. No. 180076, November 21, 2012, 686 SCRA 123, 124.

[97] *Id*.

petitioner has lost its title over the property which would give it legal personality to file said action.

Thus, the CA did not err in dismissing the complaint for lack of merit.

A necessary consequence of this ruling is the recomputation of DDII's obligations to SSS as a result of the application of the ₱2,000,000 amount agreed upon in the *dación*. Thus, SSS shall recompute said outstanding obligations by deducting from the total obligations as of June 17, 1982 the amount of ₱2,000,000, following the terms and conditions agreed upon. Said date refers to SSS communication of its acceptance of the offer, resulting in the perfection of the contract.[98]

At this point, it is well to remind DDII that it cannot escape its liability from SSS by giving the latter possession over the property with the representation that it is doing so as partial settlement of its unremitted SSS premiums and penalties due only to take the property back decades thereafter, seek condonation of its obligations, and to make matters worse, claim payment of back rentals from SSS. While it is true that the value of the property has definitely significantly increased over the years compared to the ₱2,000,000 amount for which it was offered to SSS, still, such is not sufficient justification for DDII to turn its back on its obligations under the *dación en pago* agreement. In fact, the turn of events convinces Us that DDII's actions are tainted with bad faith.

If We were to grant the reliefs prayed for by DDII, an injustice will definitely be caused to SSS, which in good faith relied upon the company's representations. Too, We find it proper to remind DDII that it would not have lost ownership over the property if, in the first place, it diligently paid the SSS premiums due.

With these, We need not belabor the other assigned errors.

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[98] See *Insular Life Assurance Company, Ltd. v. Asset Builders Corporation*, G.R. No. 147410, February 5, 2004, 422 SCRA 148, 162. (Moreover, the Civil Code provides that no contract shall arise unless its acceptance is communicated to the offeror.)

**WHEREFORE,** the instant petition is **DENIED**. The assailed August 12, 2016 Decision and March 10, 2017 Resolution of the Court of Appeals in CA-G.R. CV No. 03233-MIN are hereby **AFFIRMED**. The complaint for quieting of title, recovery of possession and damages, docketed as Civil Case No. 29,353-02, is **DISMISSED** for lack of merit.

Petitioner Desiderio Dalisay Investments, Inc. is hereby ordered to:

1. Execute the Deed of Sale over the properties in favor of respondent Social Security System, consistent with the terms and conditions of the *dación en pago* agreed upon by the parties as embodied in SSC Resolution No. 849 – s. 82 within ten (10) days from finality of this Decision; and

2. Surrender the Owner's Duplicate of Transfer Certificate of Title Nos. T-18203, T-18204, T-255986, and T-255985, as well as the Tax Declarations over said properties to respondent Social Security System within ten (10) days from finality of this Decision.

Should petitioner Desiderio Dalisay Investments, Inc. refuse to execute said Deed of Sale, the Clerk of Court shall execute such in favor of respondent Social Security System.

The Register of Deeds of Davao City is directed to cancel the subject titles and issue new ones in the name of respondent Social Security System.

Respondent Social Security System is ordered to re-compute petitioner's obligations accordingly, reckoned from June 17, 1982, the date when respondent communicated its acceptance of the offer.

**SO ORDERED.**

*Bersamin, Leonen, Martires,* and *Gesmundo, JJ.,* concur.

**SECOND DIVISION**

[A.C. No. 9186. April 11, 2018]

**ATTY. JUAN PAULO VILLONCO,** *complainant, vs.* **ATTY. ROMEO G. ROXAS,** *respondent.*

**SYLLABUS**

1. **LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP IS STRICTLY PERSONAL AND HIGHLY CONFIDENTIAL AND FIDUCIARY.—** In engaging the services of an attorney, the client reposes on him special powers of trust and confidence. Their relationship is strictly personal and highly confidential and fiduciary. The relation is of such delicate, exacting, and confidential nature that is required by necessity and public interest. Only by such confidentiality and protection will a person be encouraged to repose his confidence in an attorney. Thus, the preservation and protection of that relation will encourage a client to entrust his legal problems to an attorney, which is of paramount importance to the administration of justice.

2. **ID.; ID.; RESPONDENT'S DEFIANT ATTITUDE TOWARDS HIS CLIENT'S REQUESTS ON HOW TO PROCEED WITH THE CASE ESPECIALLY ON NON-PROCEDURAL MATTERS, WHICH CAUSED THE CLIENT TO LOSE ITS TRUST IN HIM CONSTITUTES VIOLATION OF CANON 17 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.—** Atty. Roxas's defiant attitude ultimately caused his client to lose its trust in him. He intentionally denied his client's requests on how to proceed with the case and insisted on doing it his own way. He could not possibly use the supposed blanket authority given to him as a valid justification, especially on non-procedural matters, as in the case at bar, if he would be contradicting his client's trust and confidence in the process. Atty. Roxas clearly disregarded the express commands of the Code of Professional Responsibility (*CPR*), specifically Canon 17.

3. **ID.; ID.; ID.; WHILE THE COURT SEES THAT RESPONDENT WAS PRINCIPALLY MOVED BY HIS DESIRE TO BE COMPENSATED FOR THE ADVANCED EXPENSES OF LITIGATION AND HIS PROFESSIONAL**

**FEES, RESPONDENT HAS FALLEN SHORT OF THE HIGH STANDARD OF MORALITY, INTEGRITY AND FAIR DEALING EXPECTED OF HIM; CLIENT'S RIGHT TO DISMISS HIS ATTORNEY IS SUBJECT TO THE LATTER'S RIGHT TO BE COMPENSATED.—** The Court upholds the IBP's finding that Atty. Roxas was so principally moved by his desire to be compensated for the advanced expenses of litigation and his professional fees that he proceeded with the filing of the motion for the issuance of a Writ of Execution against the express advice of his client. Then he later filed the motion for inhibition and administrative complaints against the CA Justices out of extreme exasperation and disappointment. x x x Atty. Roxas has fallen short of the high standard of morality, honesty, integrity, and fair dealing expected of him. Thus, RREC's termination of his retainer is proper and justified. A client may absolutely discharge his lawyer at any time, with or without cause, and without need of the lawyer's consent or the court's approval. He may, at any time, dismiss his attorney or substitute another in his stead. Such right, however, is subject to the lawyer's right to be compensated. In the discretion of the court, the attorney may intervene in the case to protect his rights and he shall have a lien upon all judgments for the payment of money and executions issued in pursuance of such judgment, rendered in the case where his services had been retained by the client, for the payment of his compensation.

**4. ID.; ID.; ID.; PENALTY OF SIX (6) MONTHS SUSPENSION FROM THE PRACTICE OF LAW INCREASED TO ONE (1) YEAR IN VIEW OF RESPONDENT'S PAST INFRACTION AND HIS CONSTANT DISPLAY OF CONTUMACIOUS ATTITUDE NOT ONLY AGAINST HIS CLIENT BUT ALSO AGAINST THE COURTS.—** There can be no question that a lawyer is guilty of misconduct sufficient to justify his suspension or disbarment if he so acts as to be unworthy of the trust and confidence involved in his official oath and is found to be wanting in that honesty and integrity that must characterize the members of the Bar in the performance of their professional duties. Although a six (6)-month suspension from the practice of law would suffice for violating Canon 17 of the CPR, the Court deems it proper to increase the penalty of suspension in this case to one (1) year, as that would be more proportionate to the offense charged and established. The Court notes that in 2007, Atty. Roxas was also found guilty of

indirect contempt and was fined the amount of ₱30,000.00 for insinuating that then Associate Justice Minita V. Chico-Nazario had decided his cases on considerations other than the pure merits of the case, and called the Supreme Court a "dispenser of injustice." The Court warned him that a repetition of a similar act will warrant a more severe penalty. Verily, for the constant display of contumacious attitude on the part of Atty. Roxas, not only against his very own client, but likewise against the courts, a more serious penalty is warranted.

**APPEARANCES OF COUNSEL**

*Siguion Reyna Montecillo & Ongsiako Law Offices* for complainant.

**D E C I S I O N**

**PERALTA, *J.*:**

The present case stemmed from the complaint of Atty. Juan Paolo T. Villonco against respondent Atty. Romeo G. Roxas for gross misconduct and for violating the Code of Professional Responsibility (*CPR*).

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

Republic Real Estate Corporation (*RREC*), with complainant Atty. Juan Paolo T. Villonco as its president, hired respondent Atty. Romeo G. Roxas as its counsel on a contingent basis in its case against the Republic of the Philippines with respect to a reclaimed land which is now the Cultural Center of the Philippines (*CCP*) complex. Subsequently, RREC was awarded around ₱10,926,071.29 representing the sum spent in the reclamation of the CCP complex.

The case was later remanded to the Regional Trial Court (*RTC*) of Pasay City for the execution of the decision. RREC's Board of Directors enjoined Atty. Roxas to defer the filing of the motion for the issuance of a Writ of Execution until further instruction, but he still filed the same. Thereafter, the Republic filed a Petition for *Certiorari* against the Writ of Execution

eventually issued by the trial court. On February 27, 2009, the Court of Appeals (*CA*) issued an Order granting said petition and declared the Writ of Execution null and void. Aggrieved, Atty. Roxas, without first securing RREC's consent and authority, filed a Motion for Reconsideration and a Motion for Inhibition with the CA.

Without being approved or authorized by the RREC's Board of Directors, he likewise filed a complaint for serious misconduct against CA Justices Sesinando E. Villon, Andres B. Reyes, Jr. and Jose Catral Mendoza, and a petition assailing the constitutionality of Presidential Decree No. 774, both on RREC's behalf. For his foregoing unauthorized acts, RREC's Board requested Atty. Roxas to voluntarily withdraw as counsel for the corporation. When Atty. Roxas refused, RREC terminated its retainer agreement with Atty. Roxas and engaged the services of another lawyer to replace him in the representation of the company.

However, despite his termination, Atty. Roxas still appeared for RREC and continued to argue for the corporation in the case. He also threatened to sue the members of the RREC Board unless they reinstated him as counsel. Thus, Atty. Villonco was compelled to file the instant administrative complaint against Atty. Roxas.

For his part, Atty. Roxas denied the accusations and claimed that from August 1992 up to the time of the filing of the complaint, or a period of twenty-one (21) years, his law firm had been competently rendering legal services for RREC. Through those years, he singlehandedly advanced the necessary expenses to sustain and pursue the case. He claimed that he could not be removed as counsel for RREC since they had a contract for a contingency fee coupled with interest. He argued that his appearance before the CA was proper since his removal by the RREC Board was illegal and unfair. Securing the Board's approval before he could file pleadings on RREC's behalf was unnecessary since he had been explicitly given the blanket authority to exercise his sound discretion in the pursuit of the case. He pointed out that he filed the administrative complaint against the CA Justices only to further RREC's case.

On May 17, 2013, the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) recommended the penalty of censure:[1]

> Foregoing premises considered, the undersigned believes and so holds that the Respondent had violated Sec. 27 of Rule 138 of the Rules of Court and Canon 15 of the CPR. Accordingly, he recommends that he be meted with the penalty of CENSURE with a warning that a repetition of the same would invite a stiffer penalty.

On September 27, 2014, the IBP Board of Governors issued Resolution No. XXI-2014-660,[2] adopting 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", and for Respondent's blatant violation of Section 27 of Rule 138 of the Rules of Court and Canon 15 of the Code of Professional Responsibility, instead of Censure* ***Atty. Romeo G. Roxas*** *is* ***hereby SUSPENDED from the practice of law for six (6) months****.*

### *The Court's Ruling*

The Court finds no cogent reason to depart from the findings and recommendation of the IBP that Atty. Roxas must be held administratively liable.

It is settled that the relationship between a lawyer and his client is one imbued with utmost trust and confidence. In this regard, clients are led to expect that lawyers would be ever-mindful of their cause, and accordingly, exercise the required degree of diligence in handling their affairs.[3]

Here, RREC's Board of Directors specifically instructed Atty. Roxas to postpone the filing of the motion for the issuance of

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[1] Report and Recommendation submitted by Commissioner Oliver A. Cachapero dated May 17, 2013; *rollo*, Vol. III, pp. 1373-1380.

[2] *Rollo*, Vol. III, pp. 1426-1427.

[3] *Samonte v. Atty. Jumamil*, A.C. No. 11668, July 17, 2017.

a Writ of Execution until further notice, but he defied the same and still filed the motion. He then filed a Motion for Reconsideration and a Motion for Inhibition with the CA without first securing RREC's consent and authority. Again, without being authorized, he likewise filed an administrative complaint against several CA Justices and a petition assailing the constitutionality of Presidential Decree No. 774, both on RREC's behalf. Said unauthorized acts caused RREC's Board to request Atty. Roxas to voluntarily withdraw as counsel for the corporation and to finally terminate its retainer agreement with him when he refused. Even after he was terminated, Atty. Roxas still continued to appear and argue for RREC. Worse, he also threatened to sue the members of the RREC Board unless they reinstated him as the company's counsel.

In engaging the services of an attorney, the client reposes on him special powers of trust and confidence. Their relationship is strictly personal and highly confidential and fiduciary. The relation is of such delicate, exacting, and confidential nature that is required by necessity and public interest. Only by such confidentiality and protection will a person be encouraged to repose his confidence in an attorney. Thus, the preservation and protection of that relation will encourage a client to entrust his legal problems to an attorney, which is of paramount importance to the administration of justice.[4]

In the instant case, Atty. Roxas's defiant attitude ultimately caused his client to lose its trust in him. He intentionally denied his client's requests on how to proceed with the case and insisted on doing it his own way. He could not possibly use the supposed blanket authority given to him as a valid justification, especially on non-procedural matters, as in the case at bar, if he would be contradicting his client's trust and confidence in the process. Atty. Roxas clearly disregarded the express commands of the Code of Professional Responsibility (*CPR*), specifically Canon 17.

Canon 17 of the CPR states:

**CANON 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.**

[4] *Mercado v. Atty. Vitriolo*, 498 Phil. 49, 57 (2007).

The Court upholds the IBP's finding that Atty. Roxas was so principally moved by his desire to be compensated for the advanced expenses of litigation and his professional fees that he proceeded with the filing of the motion for the issuance of a Writ of Execution against the express advice of his client. Then he later filed the motion for inhibition and administrative complaints against the CA Justices out of extreme exasperation and disappointment.

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]

Atty. Roxas has fallen short of the high standard of morality, honesty, integrity, and fair dealing expected of him. Thus, RREC's termination of his retainer is proper and justified. A client may absolutely discharge his lawyer at any time, with or without cause, and without need of the lawyer's consent or the court's approval. He may, at any time, dismiss his attorney or substitute another in his stead. Such right, however, is subject to the lawyer's right to be compensated. In the discretion of the court, the attorney may intervene in the case to protect his rights and he shall have a lien upon all judgments for the payment of money and executions issued in pursuance of such judgment, rendered in the case where his services had been retained by the client, for the payment of his compensation.[6]

There can be no question that a lawyer is guilty of misconduct sufficient to justify his suspension or disbarment if he so acts as to be unworthy of the trust and confidence involved in his official oath and is found to be wanting in that honesty and

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[5] *Tabang v. Atty. Gacott*, 713 Phil. 578, 593 (2013).

[6] *Malvar v. Kraft Food Phils., Inc., et al.*, 717 Phil. 427, 450-451 (2013).

integrity that must characterize the members of the Bar in the performance of their professional duties. Although a six (6)-month suspension from the practice of law would suffice for violating Canon 17 of the CPR, the Court deems it proper to increase the penalty of suspension in this case to one (1) year, as that would be more proportionate to the offense charged and established.[7] The Court notes that in 2007, Atty. Roxas was also found guilty of indirect contempt and was fined the amount of ₱30,000.00 for insinuating that then Associate Justice Minita V. Chico-Nazario had decided his cases on considerations other than the pure merits of the case, and called the Supreme Court a "dispenser of injustice." The Court warned him that a repetition of a similar act will warrant a more severe penalty.[8] Verily, for the constant display of contumacious attitude on the part of Atty. Roxas, not only against his very own client, but likewise against the courts, a more serious penalty is warranted.

**WHEREFORE, IN VIEW OF THE FOREGOING**, the Court **SUSPENDS** Atty. Romeo G. Roxas from the practice of law for a period of one (1) year and **WARNS** him that a repetition of the same or similar offense shall be dealt with more severely.

Let copies of this Decision be included in the personal records of Atty. Romeo G. Roxas and entered in his 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*, and *Caguioa, JJ.*, concur.

*Reyes, Jr., J.*, on wellness leave.

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[7] *Ramiscal v. Atty. Orro*, A.C. No. 10945, February 23, 2016.

[8] *Roxas v. De Zuzuarregui*, G.R. No. 152072, July 12, 2007.

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

**FIRST DIVISION**

[G.R. No. 191310. April 11, 2018]

**PRINCESS TALENT CENTER PRODUCTION, INC., AND/OR LUCHI SINGH MOLDES,** *petitioners, vs.* **DESIREE T. MASAGCA,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; CONFINED ONLY TO ERRORS OF LAW AND DOES NOT EXTEND TO QUESTIONS OF FACT; EXCEPTION.—** Normally, it is not the task of the Court to re-examine the facts and weigh the evidence on record, for basic is the rule that the Court is not a trier of facts, and this rule applies with greater force in labor cases. Questions of fact are for the labor tribunals to resolve. It is elementary that the scope of this Court's judicial review under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact. However, the present case falls under one of the recognized exceptions to the rule, *i.e.*, when the findings of the Labor Arbiter, the NLRC, and/or the Court of Appeals are in conflict with one another. The conflicting findings of the Labor Arbiter, the NLRC, and the Court of Appeals pave the way for this Court to review factual issues even if it is exercising its function of judicial review under Rule 45.

**2. ID.; RULES OF PROCEDURE; APPEALS; SUBMISSION OF EVIDENCE FOR THE FIRST TIME ON APPEAL WITH THE NATIONAL LABOR RELATIONS COMMISSION MAY BE ALLOWED IN THE INTEREST OF SUBSTANTIAL JUSTICE BUT IT IS REQUIRED THAT THE DELAY SHOULD BE ADEQUATELY EXPLAINED AND THE ALLEGATIONS SOUGHT TO BE PROVEN BE SUFFICIENTLY PROVED.—** [P]etitioners are presenting new evidence herein never presented in the previous proceedings, particularly, Park's notarized "Reply" dated January 11, 2010 and the attached Entertainer Wage Roster. The Court is precluded from considering and giving weight to said evidence

which are presented for the first time on appeal. Fairness and due process dictate that evidence and issues not presented below cannot be taken up for the first time on appeal. It is true that the Court had declared in previous cases that strict adherence to the technical rules of procedure is not required in labor cases. However, the Court also highlights that in such cases, it had allowed the submission of evidence for the first time **on appeal with the NLRC** in the interest of substantial justice, and had further required for the liberal application of procedural rules that the party should **adequately explain** the delay in the submission of evidence and should **sufficiently prove** the allegations sought to be proven. In the instant case, petitioners did not submit the evidence during the administrative proceedings before the Labor Arbiter and NLRC or even during the *certiorari* proceedings before the Court of Appeals, and petitioners did not offer any explanation at all as to why they are submitting the evidence only on appeal before this Court. Hence, the Court is not inclined to relax the rules in the present case in petitioners' favor.

**3. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; CONSIDERED SUFFICIENT IN ADMINISTRATIVE AND QUASI-JUDICIAL PROCEEDINGS.—** [I]n its review of the evidence on record, the Court bears in mind the settled rule that in administrative and quasi-judicial proceedings, substantial evidence is considered sufficient. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. It is also a basic rule in evidence that each party must prove his/her affirmative allegations. Since the burden of evidence lies with the party who asserts an affirmative allegation, the plaintiff or complainant has to prove his/her affirmative allegation in the complaint and the defendant or the respondent has to prove the affirmative allegations in his/her affirmative defenses and counterclaim.

**4. POLITICAL LAW; SOCIAL JUSTICE AND HUMAN RIGHTS; LABOR; SECURITY OF TENURE; MEANS THAT NO EMPLOYEE SHALL BE DISMISSED UNLESS THERE ARE JUST OR AUTHORIZED CAUSES AND ONLY AFTER COMPLIANCE WITH PROCEDURAL**

**AND SUBSTANTIVE DUE PROCESS.—** The Constitutional guarantee of security of tenure extends to Filipino overseas contract workers as the Court declared in *Sameer Overseas Placement Agency, Inc. v. Cabiles* x x x. Since respondent's Employment Contract was executed in the Philippines on February 3, 2003, Philippine Constitution and labor laws governed respondent's employment with petitioners and SAENCO. An employee's right to security of tenure, protected by the Constitution and statutes, means that no employee shall be dismissed unless there are just or authorized causes and only after compliance with procedural and substantive due process. A lawful dismissal by an employer must meet both substantive and procedural requirements; in fine, the dismissal must be for a just or authorized cause and must comply with the rudimentary due process of notice and hearing.

**5. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; DISMISSAL FROM EMPLOYMENT; THE BURDEN OF PROOF RESTS UPON THE EMPLOYER TO SHOW THAT THE DISCIPLINARY ACTION WAS MADE FOR LAWFUL CAUSE OR THAT THE TERMINATION OF EMPLOYMENT WAS VALID.—** Dismissal from employment has two facets: *first*, the legality of the act of dismissal, which constitutes substantive due process; and, *second*, the legality of the manner of dismissal, which constitutes procedural due process. The burden of proof rests upon the employer to show that the disciplinary action was made for lawful cause or that the termination of employment was valid. Unsubstantiated suspicions, accusations, and conclusions of the employer do not provide legal justification for dismissing the employee. When in doubt, the case should be resolved in favor of labor pursuant to the social justice policy of our labor laws and the 1987 Constitution.

**6. ID.; ID.; ID.; TWO-NOTICE REQUIREMENT; THE EMPLOYER IS REQUIRED TO GIVE THE EMPLOYEE A FIRST NOTICE WHICH APPRISES THE EMPLOYEE OF THE PARTICULAR ACTS OR OMISSIONS FOR WHICH HER DISMISSAL IS BEING SOUGHT ALONG WITH THE OPPORTUNITY OF THE EMPLOYEE TO AIR HER SIDE, AND A SUBSEQUENT NOTICE OF THE EMPLOYER'S DECISION TO DISMISS HER.—** Article

277(b) of the Labor Code, as amended, mandates that the employer shall furnish the worker whose employment is sought to be terminated a written notice stating the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself/herself with the assistance of his/her representative, if he/she so desires. Per said provision, the employer is actually required to give the employee two notices: the first is the notice which apprises the employee of the particular acts or omissions for which his/her dismissal is being sought along with the opportunity for the employee to air his/her side, while the second is the subsequent notice of the employer's decision to dismiss him/her. Again, the Court stresses that the burden of proving compliance with the requirements of notice and hearing prior to respondent's dismissal from employment falls on petitioners and SAENCO, but there had been no attempt at all by petitioners and/or SAENCO to submit such proof. Neither petitioners nor SAENCO described the circumstances how respondent was informed of the causes for her dismissal from employment and/or the fact of her dismissal.

**7. ID.; REPUBLIC ACT NO. 8042 (THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995); MONEY CLAIMS; FOR THE MONEY CLAIMS AND DAMAGES OF AN OVERSEAS FILIPINO WORKER, THE JOINT AND SEVERAL LIABILITY OF THE PRINCIPAL/ EMPLOYER, RECRUITMENT/PLACEMENT AGENCY, AND THE CORPORATE OFFICERS OF THE LATTER IS ABSOLUTE AND WITHOUT QUALIFICATION.—** Respondent's monetary claims against petitioners and SAENCO is governed by Section 10 of Republic Act No. 8042, otherwise known as The Migrant Workers and Overseas Filipinos Act of 1995 x x x. The Court finds that respondent had been paid her salaries for the nine months she worked in Ulsan, South Korea, so she is no longer entitled to an award of the same. x x x Nonetheless, pursuant to the fifth paragraph of Section 10 of Republic Act No. 8042, respondent is entitled to an award of her salaries for the unexpired three months of her extended Employment Contract, *i.e.*, July to September 2004. Given that respondent's monthly salary was US$600.00, petitioners and SAENCO shall pay respondent a total of US$1,800.00 for the remaining three months of her extended Employment Contract. The said amount, similar to backwages, is subject to legal interest of 12% per annum from respondent's illegal dismissal in June

2004 to June 30, 2013 and 6% per annum from July 1, 2013 to the date this Decision becomes final and executory. Respondent also has the right to the reimbursement of her placement fee with interest of 12% per annum from her illegal dismissal in June 2004 to the date this Decision becomes final and executory. x x x [T]he explicit language of the second paragraph of Section 10 of Republic Act No. 8042 x x x is plain and clear, the joint and several liability of the principal/employer, recruitment/placement agency, and the corporate officers of the latter, for the money claims and damages of an overseas Filipino worker is absolute and without qualification. It is intended to give utmost protection to the overseas Filipino worker, who may not have the resources to pursue her money claims and damages against the foreign principal/employer in another country. The overseas Filipino worker is given the right to seek recourse against the only link in the country to the foreign principal/employer, *i.e.*, the recruitment/placement agency and its corporate officers. As a result, the liability of SAENCO, as principal/employer, and petitioner PTCPI, as recruitment/placement agency, for the monetary awards in favor of respondent, an illegally dismissed employee, is joint and several. In turn, since petitioner PTCPI is a juridical entity, petitioner Moldes, as its corporate officer, is herself jointly and solidarity liable with petitioner PTCPI for respondent's monetary awards, regardless of whether she acted with malice or bad faith in dealing with respondent.

**8. ID.; LABOR CODE; PAYMENT OF WAGES; ATTORNEY'S FEES; IN ACTIONS FOR RECOVERY OF WAGES OR WHERE AN EMPLOYEE WAS FORCED TO LITIGATE AND INCUR EXPENSES TO PROTECT HER RIGHT AND INTEREST, SHE IS ENTITLED TO AN AWARD OF ATTORNEY'S FEES EQUIVALENT TO 10% OF THE AWARD.—** [T]he award of attorney's fees to respondent is likewise justified. It is settled that in actions for recovery of wages or where an employee was forced to litigate and incur expenses to protect his/her right and interest, he/she is entitled to an award of attorney's fees equivalent to 10% of the award.

**APPEARANCES OF COUNSEL**

*Francisco S. De Guzman Law Office* for petitioners.
*Legal Advocates for Worker's Interest (LAWIN)* for respondent.

## D E C I S I O N

**LEONARDO-DE CASTRO,[*] *J.*:**

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court filed by petitioners Princess Talent Center Production, Inc. (PTCPI) and Luchi Singh Moldes (Moldes) assailing: (1) the Decision[1] dated November 27, 2009 of the Court of Appeals in CA-G.R. SP No. 110277, which annulled and set aside the Resolutions dated November 11, 2008[2] and January 30, 2009[3] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 049990-06, and ordered petitioners and their foreign principal, Saem Entertainment Company, Ltd. (SAENCO), to jointly and severally pay respondent Desiree T. Masagca her unpaid salaries for one year, plus attorney's fees; and (2) the Resolution[4] dated February 16, 2010 of the appellate court in the same case, which denied the Motion for Reconsideration of petitioners and SAENCO.

## I
## FACTUAL ANTECEDENTS

Sometime in November 2002, respondent auditioned for a singing contest at ABC-Channel 5 in Novaliches, Quezon City when a talent manager approached her to discuss her show business potential. Enticed by thoughts of a future in the entertainment industry, respondent went to the office of petitioner PTCPI, a domestic corporation engaged in the business of training and development of actors, singers, dancers, and musicians in the movie and entertainment industry.[5] At the office, respondent

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[*] Per Special Order No. 2540 dated February 28, 2018.

[1] CA *rollo*, pp. 420-438; penned by Associate Justice Ramon R. Garcia with Associate Justices Portia Aliño-Hormachuelos and Fernanda Lampas Peralta concurring.

[2] *Id*. at 242-247; penned by Presiding Commissioner Gerardo C. Nograles with Commissioners Perlita B. Velasco and Romeo L. Go concurring.

[3] *Id*. at 285-286.

[4] *Id*. at 451-452.

[5] *Id*. at 82.

met petitioner Moldes, President of petitioner PTCPI, who persuaded respondent to apply for a job as a singer/entertainer in South Korea.

A Model Employment Contract for Filipino Overseas Performing Artists (OPAS) To Korea[6] (Employment Contract) was executed on February 3, 2003 between respondent and petitioner PTCPI as the Philippine agent of SAENCO, the Korean principal/promoter. Important provisions of the Employment Contract are reproduced below:

1. DURATION AND PERIOD OF EFFECTIVITY OF THE CONTRACT

   1.1 Duration: This contract shall be enforced for the period of six months, Extendible by another six months by mutual agreement of the parties.
   Affectivity (sic): The contract shall commence upon the Talent's departure from The Philippines (Date 6) and shall remain in force as Stipulated in the duration, unless sooner terminated by the mutual consent of The parties or due to circumstances beyond their control. Booking of Talent Shall be effected within three (3) days upon arrival in Korea, But only after Undergoing Mandatory Post-Arrival Briefing at the Philippine Embassy Overseas Labor Office (POLO), Philippine Embassy in Seoul.

2. NAME OF PERFORMANCE VENUE:
   *Siheung Tourist Hotel Night Club*
   NAME OF OWNER:
   *Cho Kang Hyung*
   ADDRESS:
   *1622-6 (B2) Jung Wang Dons Siheung Kyung Ki Do*

   x x x x x x x x x

   (Subject to ocular inspection, Verification, and approval by the POLO)

3. COMPENSATION: The Talent shall receive a monthly compensation of a Minimum of U.S.D. $600, (Ranging from

[6] *Id*. at 120-124.

U.S.D. 500 to 800 based on The categories of the ARB, skill and experience of the Talent, and of the Performance Venue) which shall accrue beginning on the day of the Talent's Departure from the Philippines and shall be paid every end of the month directly To The Talent. By the Employer, minus the authorized fees of the Philippine Agent and The Talent Manager, which shall be deducted at a maximum monthly Rates of U.S. $100 and U.S. $100 for the Philippine Agent and Talent Manager, respectively. *Deductions of $200/month is good for three (3) months only.*

4. HOURS OF WORK, RESTDAY AND OVERTIME PAY

4.1 Hours of work: Maximum of Five (5) hours per day.
4.2 Rest day: One (1) day a week
4.3 Overtime Rate: (100) percent of regular rate or the prevailing rate in Korea as Required by the Labor Standard Act.

x x x x x x x x x

9. The services of the Talents as provided in this contract shall only be rendered at the Performance Venue identified in this contract. Should there be a need and mutual agreement of the parties for the talent to transfer to another Performance Venue There shall be executed a new contract. The new contract shall be subject of Verification requirement of the Philippine Overseas Labor Office, Philippine Embassy.

x x x x x x x x x

12. TERMINATION:

A. Termination by the Employer: The Employer may terminate the Contract of Employment for any of the following just causes: serious misconduct or Willful disobedience of the lawful orders of the employer, gross or habitual Neglect of duties, violation of the laws of the host country. When the Termination of the contract is due to the foregoing causes, the Talent shall Bear the cost of repatriation. In addition, the Talent may be liable to Blacklisting and/or other penalties in case of serious offense.

B. Termination by the Talent: The Talent may terminate the contract for any of The following just causes: when

> the Talent is maltreated by the Employer or Any of his/her associates, or when the employer commits of (sic) the following — Non-payment of Talent salary, underpayment of salary in violation of this Contract, non-booking of the Talent, physical molestation, assault or Subjecting the talent to inhumane treatment or shame. Inhumane treatment Shall be understood to include forcing or letting the talent to be used in Indecent performance or in prostitution. In any of the foregoing case, the Employer shall pay the cost of repatriation and be liable to garnishment of The escrow deposit, aside from other penalties that may arise from a case.
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> C. Termination due to illness: Any of the parties may terminate the contract on The ground of illness, disease, or injury suffered by the Talent, where the Latter's continuing employment is prohibited by law or prejudicial to his/her Health, or to the health of the employer, or to others. The cost of the Repatriation of the Talent for any of the foregoing reasons shall be for the Account of the employer.[7]

Respondent left for South Korea on September 6, 2003 and worked there as a singer for nine months, until her repatriation to the Philippines sometime in June 2004. Believing that the termination of her contract was unlawful and premature, respondent filed a complaint against petitioners and SAENCO with the NLRC.

***Respondent's Allegations***

Respondent alleged that she was made to sign two Employment Contracts but she was not given the chance to read any of them despite her requests. Respondent had to rely on petitioner Moldes's representations that: (a) her visa was valid for one year with an option to renew; (b) SAENCO would be her employer; (c) she would be singing in a group with four other Filipinas[8] at

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[7] *Id.* at 121-123; Quoted portions in italics were handwritten on the Employment Contract.

[8] Sheila Marie Tiatco, Carolina Flores, Ma. Cristina Cuba, and Mary Jane Ignacio.

Seaman's Seven Pub at 82-8 Okkyo-Dong, Jung-Gu, Ulsan, South Korea; (d) her Employment Contract had a minimum term of one year, which was extendible for two years; and (e) she would be paid a monthly salary of US$400.00, less US$100.00 as monthly commission of petitioners. Petitioner Moldes also made respondent sign several spurious loan documents by threatening the latter that she would not be deployed if she refused to do so.

For nine months, respondent worked at Seaman's Seven Pub in Ulsan, South Korea — not at Siheung Tourist Hotel Night Club in Siheung, South Korea as stated in her Employment Contract — without receiving any salary from SAENCO. Respondent subsisted on the 20% commission that she received for every lady's drink the customers purchased for her. Worse, respondent had to remit half of her commission to petitioner Moldes for the payment of the fictitious loan. When respondent failed to remit any amount to petitioner Moldes in May 2004, petitioner Moldes demanded that respondent pay the balance of the loan supposedly amounting to US$10,600.00. To dispute the loan, respondent engaged the legal services of Fortun, Narvasa & Salazar, a Philippine law firm, which managed to obtain copies of respondent's Employment Contract and Overseas Filipino Worker Information Sheet. It was only then when respondent discovered that her employment was just for six months and that her monthly compensation was US$600.00, not just US$400.00.

Respondent further narrated that on June 13, 2004, petitioner Moldes went to South Korea and paid the salaries of all the performers, except respondent. Petitioner Moldes personally handed respondent a copy of the loan document for US$10,600.00 and demanded that respondent terminate the services of her legal counsel in the Philippines. When respondent refused to do as petitioner Moldes directed, petitioner Moldes withheld respondent's salary. On June 24, 2004, Park Sun Na (Park), President of SAENCO,[9] went to the club where respondent

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

worked, dragged respondent outside, and brought respondent to his office in Seoul where he tried to intimidate respondent into apologizing to petitioner Moldes and dismissing her counsel in the Philippines. However, respondent did not relent. Subsequently, Park turned respondent over to the South Korean immigration authorities for deportation on the ground of overstaying in South Korea with an expired visa. It was only at that moment when respondent found out that petitioner Moldes did not renew her visa.

Respondent filed the complaint against petitioners and SAENCO praying that a decision be rendered declaring them guilty of illegal dismissal and ordering them to pay her unpaid salaries for one year, inclusive of her salaries for the unexpired portion of her Employment Contract, backwages, moral and exemplary damages, and attorney's fees.

***Petitioners' Allegations***

Petitioners countered that respondent signed only one Employment Contract, and that respondent read its contents before affixing her signature on the same. Respondent understood that her Employment Contract was only for six months since she underwent the mandatory post-arrival briefing before the Philippine Labor Office in South Korea, during which, the details of her Employment Contract were explained to her. Respondent eventually completed the full term of her Employment Contract, which negated her claim that she was illegally dismissed.

Petitioners additionally contended that respondent, on her own, extended her Employment Contract with SAENCO, and so petitioners' liability should not extend beyond the original six-month term of the Employment Contract because the extension was made without their participation or consent.

Petitioners likewise averred that they received complaints that respondent violated the club policies of SAENCO against wearing skimpy and revealing dresses, dancing in a provocative and immoral manner, and going out with customers after working hours. Respondent was repatriated to the Philippines on account of her illegal or immoral activities. Petitioners also insisted

that respondent's salaries were paid in full as evidenced by the nine cash vouchers[10] dated October 5, 2003 to June 5, 2004. Petitioners submitted the *Magkasamang Sinumpaang Salaysay*[11] of respondent's co-workers, Sheila Marie V. Tiatco (Tiatco) and Carolina Flores (Flores), who confirmed that respondent violated the club policies of SAENCO and that respondent received her salaries.

Petitioners submitted as well the Sworn Statement[12] dated November 9, 2004 of Baltazar D. Fuentes (Baltazar), respondent's husband, to prove that respondent obtained a loan from petitioner PTCPI. Baltazar affirmed that petitioner PTCPI lent them some money which respondent used for her job application, training, and processing of documents so that she could work abroad. A portion of the loan proceeds was also used to pay for their land in Lagrimas Village, Tiaong, Quezon, and respondent's other personal expenses.

Petitioner Moldes, for her part, disavowed personal liability, stating that she merely acted in her capacity as a corporate officer of petitioner PTCPI.

Petitioners thus prayed that the complaint against them be dismissed and that respondent be ordered to pay them moral and exemplary damages for their besmirched reputation, and attorney's fees for they were compelled to litigate and defend their interests against respondent's baseless suit.

***Labor Arbiter's Ruling***

On May 4, 2006, Labor Arbiter Antonio R. Macam rendered a Decision[13] dismissing respondent's complaint, based on the following findings:

> The facts of the case and the documentary evidence submitted by both parties would show that herein [respondent] was not illegally

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[10] *Id*. at 159-167.

[11] *Id*. at 157-158.

[12] *Id*. at 176.

[13] *Id*. at 183-192.

dismissed. This Office has noted that the POEA approved contract declares that the duration of [respondent's] employment was for six (6) months only. The fact that the duration of [respondent's] employment was for six (6) months only is substantiated by the documentary evidence submitted by both parties. Attached is [respondent's] Position Paper as Annex "D" is a Model Employment Contract for Filipino Overseas Performing Artist to Korea signed by the parties and approved by the POEA. Also attached to the Position Paper of the [petitioners] as Annex "1" is a copy of the Employment Contract signed by the parties and approved by POEA. We readily noted that the common evidence submitted by the parties would prove that [respondent's] employment was for six (6) months only. The deploying agency, Princess Talent Center Production, Inc. processed the [respondent] for a six-month contract only and there is no showing that the deploying agency participated in the extension of the contract made by the [respondent] herself. There is likewise no evidence on record which would show that the POEA approved such an extension. As matters now stand, this Office has no choice but to honor the six months duration of the contract as approved by the POEA. The conclusion therefore is that the [respondent] was not illegally dismissed since she was able to finish the duration of the contract as approved by the POEA.

Following the above ruling, the [respondent] is likewise not entitled to the payment of the unexpired portion of the employment contract. This Office could not exactly determine what [respondent] means when she refers to the unexpired portion of the contract. The [respondent] comes to this Office alleging that [petitioners] are still liable to the new extended contract of the employment without however presenting the said contract binding the recruitment agency as jointly and solidarily liable with the principal employer. Such a document is vital as this will prove the participation of the [petitioners] and the latter's assumption of responsibility. Without the presentation of the "extended" contract, the "unexpired portion" could not be determined. [Respondent's] claim therefore for the payment of the unexpired portion of the contract must also fail.

The crux of the present controversy is whether or not [respondent] was paid her salaries during the period she worked in Korea. [Respondent] claims that she was not paid her salaries during the time she worked in Korea. [Petitioners] presented an Affidavit executed by Filipino workers who worked with [respondent] in Korea declaring that they, together with the [respondent], were paid by the foreign

employer all their salaries and wages. [Petitioners and SAENCO] likewise presented vouchers showing that the [respondent] received full payment of her salaries during the time that she worked in Korea. In the pleading submitted by the [respondent], she never denied the fact that she indeed signed the vouchers showing full payment of her salaries.

It becomes clear therefore that [respondent] miserably failed to destroy the evidentiary value of the vouchers presented by the [petitioners]. This Office will not dare to declare as void or incompetent the vouchers signed by the [respondent] in the absence of any evidence showing any irregularity so much so that this Office did not fail to notice the inconsistencies in the [respondent's] position paper.

[Respondent's] claim for the payment of overtime pay likewise lacks merit. There was no showing that [respondent] actually rendered overtime work. Mere allegation is not sufficient to establish [respondent's] entitlement to overtime pay. It is [respondent's] obligation to prove that she actually rendered overtime work to entitle her for the payment of overtime pay.[14]

In the end, the Labor Arbiter dismissed for lack of merit respondent's complaint, as well as all other claims of the parties.[15]

***Ruling of the NLRC***

Respondent appealed the Labor Arbiter's Decision before the NLRC.[16] In a Decision[17] dated May 22, 2008, the NLRC ruled in respondent's favor, reasoning that:

There is sufficient evidence to establish the fact that [respondent] was not paid her regular salaries. A scrutiny of the vouchers presented shows that it bears the peso sign when in fact the salaries of [respondent] were to be received in Korea. Furthermore, it appears that the vouchers were signed in one instance due to similarities as to how they were written.

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[14] *Id*. at 189-192.

[15] *Id*. at 192.

[16] *Id*. at 193-202; Memorandum on Appeal.

[17] *Id*. at 203-208; penned by Presiding Commissioner Gerardo C. Nograles with Commissioners Perlita B. Velasco and Romeo L. Go, concurring.

Despite the fact that We find the vouchers questionable, they prove that [respondent] was allowed to work beyond the effectivity of her visa. [Petitioners], wanting to prove that they paid [respondent's] salary, presented vouchers for the period starting October 2003 up to June 2004. It covers nine (9) months which implies that, despite having a visa good for six months, they consented to [respondent] working up to nine months. Otherwise, if they were against [respondent's] overstaying in Korea, they could have asked for her deportation earlier. Also, if [respondent] was misbehaving and went against their policy, they could have taken disciplinary action against her earlier.

The "Magkasamang Sinumpaang Salaysay" of Ms. Tiatco and Ms. Flores, which was presented by [petitioners] to prove the alleged immoral acts of [respondent] and that they received their salaries on time, is self-serving and deserves scant weight as the affiants are beholden to [petitioners and SAENCO] from whom they depended their employment.

We find as more credible [respondent's] allegations that she was made to believe that her contract was for one year and that her overstaying in Korea was with the consent of [petitioners and SAENCO], and that when she refused to surrender the 50% of her commission, that was the only time they questioned her stay and alleged that she committed immoral and illegal acts.

Further, the zealousness of [respondent] in filing a case against [petitioners and SAENCO] in different government agencies for different causes of action manifests the intensity of her desire to seek justice for the sufferings she experienced.

There is sufficient evidence to establish that [petitioners and SAENCO] misrepresented to [respondent] the details of her employment and that she was not paid her salaries. Hence, she is entitled to be paid her salaries for one year at the rate of $600 per month as this was what [petitioners and SAENCO] represented to her.

For lack of proof, however, [respondent] is not entitled to her claim for overtime pay.[18]

Based on the foregoing, the NLRC ruled:

WHEREFORE, premises considered, the Decision of Labor Arbiter Antonio R. Macam dated 4 May 2006 is hereby REVERSED and

[18] *Id.* at 206-207.

SET ASIDE and a NEW ONE entered ordering [petitioners and SAENCO] to jointly and severally pay [respondent] her salaries for one year at a rate of $600 per month, or a total of US$7,200. The claim for overtime pay is DENIED for lack of sufficient basis.[19]

Acting on the Motion for Reconsideration[20] of petitioners, however, the NLRC issued a Resolution[21] on November 11, 2008, reversing its previous Decision. According to the NLRC, respondent's appeal was dismissible for several fatal procedural defects, to wit:

> Perusal of the records show that [respondent's] new counsel filed on May 31, 2006 a Motion for Extension of Time to File a Motion for Reconsideration due to lack of material time in preparing a Motion for Reconsideration. However, [respondent's] counsel filed a Memorandum of Appeal through registered mail on June 1, 2006 x x x and paid the appeal fee on July 17, 2006 x x x.
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> Rule VI, Section 4 of the 2005 Revised Rules and Procedures of the National Labor Relations Commission provides that:
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> > Section 4, requisites for Perfection of Appeal. — a) The appeal shall be: 1) filed within the reglementary period provided in Section 1 of this Rule; 2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; 3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, resolution or order; 4) in three (3) legibly typewritten or printed copies; and 5) accompanied by i) proof of payment of the required appeal fee, ii) posting of a cash or surety bond as provided in Section 6 of this Rule; iii) a certificate of non-forum shopping; and iv) proof of service upon the other parties.
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> The above-quoted Rules explicitly provides for the requisites for perfecting an appeal, which [respondent] miserably failed to comply. [Respondent's] Memorandum of Appeal contains no averments as to the date [respondent] or her counsel received the Decision of the

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[19] *Id*. at 207-208.

[20] *Id*. at 209-228.

[21] *Id*. at 242-247.

Labor Arbiter. The appeal is unverified. No certificate of non-forum shopping was attached to the appeal. The appeal fee was paid only on July 17, 2006, or after more than forty-six (46) days from the filing of the Memorandum of Appeal on June 1, 2006. Lacking these mandatory requirements, [respondent's] appeal is fatally defective, and no appeal was perfected within the reglementary period. Consequently, the Decision of the Labor Arbiter had become final and executory. The belated filing of the verification and certification on non-forum shopping will not cure its defect and it only proves that indeed [respondent's] appeal was not perfected at all.[22]

Nonetheless, the NLRC set technicalities aside and still proceeded to resolve the case on the merits, ultimately finding that respondent failed to present evidence to prove she had been illegally dismissed:

We cannot subscribe to [respondent's] contention that she was illegally dismissed from her employment. Records show that the Model Employment Contract presented as evidence by both [respondent] and [petitioners and SAENCO] would prove that [respondent's] employment was for a period of six (6) months only. Aside from [respondent's] allegation that [petitioners and SAENCO] misrepresented to her that her contract is for a period of one (1) year, there is no other evidence on record which will corroborate and strengthen such allegation. We took note of the fact that [respondent's] Model Employment Contract was verified by the Labor Attache of the Philippine Embassy in Korea and duly approved by the Philippines Overseas Employment Administration (POEA). There is no showing that her contract was extended by [petitioners and SAENCO], or that an extension was approved by the POEA. All the pieces of documentary evidence on record prove otherwise.

We agree with [petitioners and SAENCO's] argument that [respondent] was given a copy of her employment contract prior to her departure for Korea because [respondent] was required to submit a copy thereof to the Philippine Labor Office upon her arrival in Korea. We are also convinced that [respondent] read and understood the terms and conditions of her Model Employment Contract because of the following reasons: First, [respondent] was informed thereof when a post arrival briefing was conducted at the Philippine Embassy Overseas Labor Office. This procedure is mandatory, and the booking

[22] *Id.* at 243-244.

of the talent shall be effective only within three (3) days after her arrival in Korea. Second, [respondent's] passport shows that her visa is valid only for six (6) months x x x. Third, the Model Employment Contract has been signed by [respondent] on the left hand margin on each and every page and on the bottom of the last page thereof x x x. Fourth, [respondent's] claim that [petitioners and SAENCO] forced her in signing two (2) employment contracts appears to be doubtful considering that she avers that she was not able to read the terms and conditions of her employment contract. It is amazing how she was able to differentiate the contents of the two (2) contracts she allegedly signed without first reading it.

On the basis of the foregoing, [respondent's] contention that she did not know the terms and conditions of her Model Employment Contract, in particular the provision which states that her contract and her visa is valid only for six (6) months, lacks credence. Thus, it can be concluded that she was not dismissed at all by [petitioners and SAENCO] as her employment contract merely expired.

As to [respondent's] allegation that she was not paid her salaries during her stay in Korea, [petitioners and SAENCO] presented cash vouchers and affidavits of co-employees showing that [respondent] was paid US$600 per month by her Korean employer. [Respondent] failed to prove that the vouchers were faked, or her signatures appearing thereon were falsified. Hence, [respondent] is not entitled to her claim for unpaid salaries.

On her claim for the payment of her salary for the unexpired portion of her contract, We agree with the findings of the Labor Arbiter that the same lacks merit considering that she was able to finish her six (6) month employment contract.[23]

Consequently, the NLRC granted the Motion for Reconsideration of petitioners and reinstated the Labor Arbiter's Decision dated May 4, 2006 dismissing respondent's complaint against petitioners and SAENCO.[24]

In a subsequent Resolution dated January 30, 2009, the NLRC denied respondent's Motion for Reconsideration[25] as it raised

[23] *Id*. at 245-246.

[24] *Id*. at 246.

[25] *Id*. at 248-258.

no new matters of substance which would warrant reconsideration of the NLRC Resolution dated November 11, 2008.

***Ruling of the Court of Appeals***

Respondent sought remedy from the Court of Appeals by filing a Petition for *Certiorari*,[26] alleging that the NLRC acted with grave abuse of discretion amounting to excess or lack of jurisdiction in reinstating the Labor Arbiter's Decision.

The Court of Appeals, in its Decision dated November 27, 2009, took a liberal approach by excusing the technical lapses of respondent's appeal before the NLRC for the sake of substantial justice:

> The requisites for perfecting an appeal before the NLRC are laid down in Rule VI of the 2005 Revised Rules of Procedure of the NLRC. Section 4 of the said Rule requires that the appeal shall be verified by the appellant, accompanied by a certification of non-forum shopping and with proof of payment of appeal fee. As a general rule, these requirements are mandatory and non-compliance therewith would render the appealed judgment final and executory. Be that as it may, jurisprudence is replete that courts have adopted a relaxed and liberal interpretation of the rules on perfection of appeal so as to give way to the more prudent policy of deciding cases on their merits and not on technicality, especially if there was substantial compliance with the rules.
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> In the case of ***Manila Downtown YMCA vs. Remington Steel Corp.***, the Supreme Court held that non-compliance with [the] verification does not necessarily render the pleading fatally defective, hence, the court may order its correction if verification is lacking, or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the Rules may be dispensed with in order that the ends of justice may thereby served. Moreover, in ***Roadway Express, Inc. vs. CA***, the High Court allowed the filing of the certification against forum shopping fourteen (14) days before the dismissal of the petition. In ***Uy v. LandBank***, the petition was reinstated on the ground of substantial compliance even though the verification and certification were submitted only after the petition had already been originally dismissed.

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[26] *Id*. at 2-34.

Here, the records show that [respondent] had no intent to delay, or prolong the proceedings before the NLRC. In fact, the NLRC, in its Resolution dated November 11, 2008 took note that [respondent] belatedly filed her verification and certification on non-forum shopping. Such belated filing should be considered as substantial compliance with the requirements of the law for perfecting her appeal to the NLRC. Moreover, the appeal fee was eventually paid on July 17, 2006. Clearly, [respondent] had demonstrated willingness to comply with the requirements set by the rules. Besides, in its earlier Decision dated May 22, 2008, the First Division of the NLRC brushed aside these technicalities and gave due course to [respondent's] appeal.

Verily, We deem it prudent to give a liberal interpretation of the technical rules on appeal, taking into account the merits of [respondent's] case. After all, technical rules of procedure in labor cases are not to be strictly applied in order to serve the demands of substantial justice.[27] (Citations omitted.)

The appellate court then held that respondent was dismissed from employment without just cause and without procedural due process, and that petitioners and SAENCO were solidarily liable to pay respondent her unpaid salaries for one year and attorney's fees:

Time and again, it has been ruled that the *onus probandi* to prove the lawfulness of the dismissal rests with the employer. In termination cases, the burden of proof rests upon the employer to show that the dismissal was for just and valid cause. Failure to do so would necessarily mean that the dismissal was not justified and, therefore, was illegal. In ***Royal Crown Internationale vs. National Labor Relations Commission and Nacionales***, the Supreme Court held that where termination cases involve a Filipino worker recruited and deployed for overseas employment, the burden to show the validity of the dismissal naturally devolves upon both the foreign-based employer and the employment agency or recruitment entity which recruited the worker, for the latter is not only the agent of the former, but is also solidarily liable with its foreign principal for any claims or liabilities arising from the dismissal of the worker.

In the case at bar, [petitioners] failed to discharge the burden of proving that [respondent] was terminated from employment for a just and valid cause.

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[27] *Id.* at 429-431.

[Petitioners'] claim that [respondent] was deported because her employment contract has already expired, was without any basis. Before being deployed to South Korea, [petitioners] made [respondent] believe that her contract of employment was for one (1) year. [Respondent] relied on such misrepresentation and continuously worked from September 11, 2003 up [to] June 24, 2004 or for more than nine (9) months. [Petitioners] never questioned her stay beyond the six-month period. If [petitioners] were really against her overstaying in Korea, they could have easily asked their principal, [SAENCO], to facilitate her immediate deportation. Even when [petitioner] Moldes sent the demand letter to [respondent] in May 2004 or when she came to Korea to pay the salaries of the performers in June 2004, she never mentioned that [respondent's] contract has already expired.

Moreover, in the *Model Employment Contract for Filipino Overseas Performing Artists (OPAS)* to Korea filed with the POEA which was entered into between [respondent] and [petitioners], it was categorically stated therein that the name of her performance venue was *Si Heung Tourist Hotel Night Club*, owned by Cho Kang Hyung and with address at Jung Wang Dong Siheung Kuyng Ki Do. However, [respondent] was made to work at Seaman's Seven Pub located at Ulsan, South Korea owned by a certain Lee Young-Gun. [Respondent's] employment contract also states that she should be receiving a monthly salary of US$600.00 and not US$400.00 as represented to her by [petitioner] Moldes.

The Court cannot likewise adhere to [petitioners'] claim that [respondent] committed serious misconduct and willful disobedience to the lawful orders of her employer when she allegedly danced in an immoral manner, wore skimpy costumes, and went out with clients. This Court is convinced from the records and pictures submitted by [respondent] that her Korean employer, Lee Young-Gun, ordered them to wear provocative skirts while dancing and singing to make the pub more attractive to their customers. Even the Seaman's Seven Pub poster itself was advertising its singers and dancers wearing provocative dresses. [Respondent] was not even hired as a dancer, but only as a singer as shown by her Overseas Filipino Worker Information. Besides, if [respondent] was misbehaving offensively as early as September 2003, her employer could have likewise terminated her employment at the earliest opportunity to protect its interest. Instead, [respondent] was allowed to work even beyond the period of her contract. Thus, [petitioners'] defenses appear to be more of an afterthought which could not be given any weight.

Furthermore, [respondent] was not afforded her right to procedural due process of notice and hearing before she was terminated. In the same case of ***Royal Crown Internationale vs. National Labor Relations Commission and Nacionales***, the Supreme Court ruled that all Filipino workers, whether employed locally or overseas, enjoy the protective mantle of Philippine labor and social legislation, contract stipulations to the contrary notwithstanding. This pronouncement is in keeping with the basic policy of the State to afford full protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers.

In the instant case, the records show that [respondent] was publicly accosted and humiliated by one Park Sun Na, the President of [SAENCO], and was brought to its office in Seoul, Korea, which was a six (6) hour drive from the pub. Such acts were witnessed and narrated by Wolfgang Pelzer, a Professor in the School of English, University of Ulsan, South Korea and a frequent client of Seaman's Seven Pub, in his Affidavit dated August 16, 2004. When it became apparent that [respondent] would not be apologizing to [petitioner] Moldes nor would she dismiss her lawyer in the Philippines, Park Sun Na turned her over to the local authorities of South Korea. [Respondent] was then deported to the Philippines allegedly for expiration of her visa. Worst, she was not allowed to get her personal belongings which she left at the pub.

It may also be noted that [respondent] went to all the trouble of filing cases against [petitioners] in different government agencies for different causes of action. Such zealousness of [respondent] manifests the intensity of her desire to seek justice for the wrong done to her.[28] (Citations omitted.)

The Court of Appeals determined the respective liabilities of petitioners and SAENCO for respondent's illegal dismissal to be as follows:

For being illegally dismissed, [respondent] is rightfully entitled to her unpaid salaries for one (1) year at the rate of US$600.00 per month or a total of US$7,200.00. The US$600.00 per month was based on the rate indicated in her contract [of] employment filed with the POEA. [Petitioners] also failed to present convincing evidence

[28] *Id.* at 432-435.

that [respondent's] salaries were actually paid. The cash vouchers presented by [petitioners] were of doubtful character considering that they do not bear [SAENCO's] name and tax identification numbers. The vouchers also appear to have been signed in one instance due to the similarities as to how they were written.

[Petitioner PTCPI and SAENCO] should be held solidarily liable for the payment of [respondent's] salaries. In ***Datuman vs. First Cosmopolitan Manpower and Promotion Services, Inc.***, the Supreme Court ruled that private employment agencies are held jointly and severally liable with the foreign-based employer for any violation of the recruitment agreement or contract of employment. This joint and solidary liability imposed by law against recruitment agencies and foreign employers is meant to assure the aggrieved worker of immediate and sufficient payment of what is due him. This is in line with the policy of the state to protect and alleviate the plight of the working class.

We likewise rule that [petitioner] Moldes should be held solidarily liable with [petitioner PTCPI and SAENCO] for [respondent's] unpaid salaries for one year. Well settled is the rule that officers of the company are solidarily liable with the corporation for the termination of employees if they acted with malice or bad faith. Here, [petitioner] Moldes was privy to [respondent's] contract of employment by taking an active part in the latter's recruitment and deployment abroad. [Petitioner] Moldes also denied [respondent's] salary for a considerable period of time and misrepresented to her the duration of her contract of employment.

[Respondent] should also be awarded attorney's fees equivalent to ten percent (10%) of the total monetary awards. In ***Asian International Manpower Services, Inc., (AIMS) vs. Court of Appeals and Lacerna***, the Supreme Court held that in actions for recovery of wages or where an employee was forced to litigate and thus incurred expenses to protect his rights and interests, a maximum of ten percent (10%) of the total monetary award by way of attorney's fees is justified under Article 111 of the Labor Code, Section 8, Rule VIII, Book III of its Implementing Rules, and paragraph 7, Article 2208 of the Civil Code.[29] (Citations omitted.)

The dispositive portion of the judgment of the appellate court reads:

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[29] *Id.* at 435-437.

**WHEREFORE**, premises considered, the instant petition for *certiorari* is hereby **GRANTED**. The assailed Resolutions of public respondent NLRC, First Division, dated November 11, 2008 and January 30, 2009 are **ANNULLED AND SET ASIDE**. Accordingly, [petitioner PTCPI, SAENCO, and petitioner Moldes] are **ORDERED** to jointly and severally pay [respondent's] unpaid salaries for one (1) year at a rate of US$600.00 *per* month or a total of US$7,200.00. In addition, [petitioners and SAENCO] are ORDERED to jointly and severally pay [respondent] attorney's fees equivalent to ten percent (10%) of the total monetary award.[30]

The Motion for Reconsideration[31] of petitioners was denied by the Court of Appeals in a Resolution dated February 16, 2010 because the issues raised therein were already judiciously evaluated and passed upon by the appellate court in its previous Decision, and there was no compelling reason to modify or reverse the same.

## II
## THE RULING OF THE COURT

Petitioners filed the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assigning a sole error on the part of the Court of Appeals:

> The Honorable Court of Appeals erred and abused its action when it ruled that private respondent is entitled to recover from the petitioners her alleged unpaid salaries during her employment in South Korea despite of (sic) the abundance of proof that she was fully paid of (sic) her salaries while working as [an] overseas contract worker in South Korea.[32]

Petitioners maintain that respondent initially worked at Siheung Tourist Hotel Night Club (Siheung Night Club). After completing her six-month employment contract in Siheung Night Club, respondent decided to continue working at Ulsan Seaman's Seven Pub without the consent of petitioners. Throughout her

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[30] *Id.* at 437-438.

[31] *Id.* at 439-444.

[32] *Rollo*, p. 24.

employment in South Korea, respondent's salaries were paid as evidenced by the cash vouchers and Entertainer Wage Roster,[33] which were signed by respondent and attached to the "Reply"[34] dated January 11, 2010 of Park, Chief Executive Officer (CEO) of SAENCO, duly notarized per the Certificate of Authentication[35] dated January 25, 2010 issued by Consul General Sylvia M. Marasigan of the Philippine Embassy in Seoul, South Korea and the Notarial Certificate of Sang Rock Law and Notary Office, Inc.[36]

Petitioners contend that respondent totally failed to discharge the burden of proving nonpayment of her salaries, yet, the Court of Appeals still ordered petitioners to pay the same on the basis of respondent's bare allegations.

Petitioners also argue that SAENCO would not risk its status as a reputable entertainment and promotional entity by violating South Korean labor law. Petitioners assert that in the absence of any showing that SAENCO was at anytime charged with nonpayment of its employee's salaries before the Labor Ministry of South Korea, petitioners could not be deemed to have breached the Employment Contract with respondent. Petitioners describe respondent's complaint as plain harassment.

Thus, petitioners pray that the Court nullify the Decision dated November 27, 2009 and Resolution dated February 16, 2010 of the Court of Appeals.

The Petition is partly meritorious.

***Questions of Fact***

It is apparent from a perusal of the Petition at bar that it essentially raises questions of fact. Petitioners assail the findings of the Court of Appeals on the ground that the evidence on record does not support respondent's claims of illegal dismissal

[33] *Id*. at 37-42.

[34] *Id*. at 34-36.

[35] *Id*. at 32.

[36] *Id*. at 33.

and nonpayment of salaries. In effect, petitioners would have the Court sift through, calibrate, and re-examine the credibility and probative value of the evidence on record so as to ultimately decide whether or not there is sufficient basis to hold petitioners liable for the payment of respondent's salaries for one year, plus attorney's fees.[37]

Normally, it is not the task of the Court to re-examine the facts and weigh the evidence on record, for basic is the rule that the Court is not a trier of facts, and this rule applies with greater force in labor cases. Questions of fact are for the labor tribunals to resolve. It is elementary that the scope of this Court's judicial review under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact. However, the present case falls under one of the recognized exceptions to the rule, *i.e.*, when the findings of the Labor Arbiter, the NLRC, and/or the Court of Appeals are in conflict with one another. The conflicting findings of the Labor Arbiter, the NLRC, and the Court of Appeals pave the way for this Court to review factual issues even if it is exercising its function of judicial review under Rule 45.[38]

As the Court reviews the evidence on record, it notes at the outset that petitioners are presenting new evidence herein never presented in the previous proceedings, particularly, Park's notarized "Reply" dated January 11, 2010 and the attached Entertainer Wage Roster. The Court is precluded from considering and giving weight to said evidence which are presented for the first time on appeal. Fairness and due process dictate that evidence and issues not presented below cannot be taken up for the first time on appeal.[39]

It is true that the Court had declared in previous cases that strict adherence to the technical rules of procedure is not required in labor cases. However, the Court also highlights that in such

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[37] *Quintanar v. Coca-Cola Bottlers, Philippines, Inc.*, G.R. No. 210565, June 28, 2016, 794 SCRA 654, 667-668.

[38] *Raza v. Daikoku Electronics Phils., Inc.*, 765 Phil. 61, 79 (2015).

[39] *Coca-Cola Bottlers, Phils., Inc. v. Daniel*, 499 Phil. 491, 505 (2005).

cases, it had allowed the submission of evidence for the first time **on appeal with the NLRC** in the interest of substantial justice, and had further required for the liberal application of procedural rules that the party should **adequately explain** the delay in the submission of evidence and should **sufficiently prove** the allegations sought to be proven.[40] In the instant case, petitioners did not submit the evidence during the administrative proceedings before the Labor Arbiter and NLRC or even during the *certiorari* proceedings before the Court of Appeals, and petitioners did not offer any explanation at all as to why they are submitting the evidence only on appeal before this Court. Hence, the Court is not inclined to relax the rules in the present case in petitioners' favor.

Moreover, in its review of the evidence on record, the Court bears in mind the settled rule that in administrative and quasi-judicial proceedings, substantial evidence is considered sufficient. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[41] It is also a basic rule in evidence that each party must prove his/her affirmative allegations. Since the burden of evidence lies with the party who asserts an affirmative allegation, the plaintiff or complainant has to prove his/her affirmative allegation in the complaint and the defendant or the respondent has to prove the affirmative allegations in his/her affirmative defenses and counterclaim.[42]

***Petitioner's Illegal Dismissal***

The Constitutional guarantee of security of tenure extends to Filipino overseas contract workers as the Court declared in *Sameer Overseas Placement Agency, Inc. v. Cabiles*[43]:

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[40] *Loon v. Power Master, Inc.*, 723 Phil. 515, 528 (2013).

[41] *Salvador v. Philippine Mining Service Corporation*, 443 Phil. 878, 888-889 (2003).

[42] *Jimenez v. National Labor Relations Commission*, 326 Phil. 89, 95 (1996).

[43] 740 Phil. 403, 421-423 (2014).

Security of tenure for labor is guaranteed by our Constitution.

Employees are not stripped of their security of tenure when they move to work in a different jurisdiction. With respect to the rights of overseas Filipino workers, we follow the principle of *lex loci contractus*.

Thus, in *Triple Eight Integrated Services, Inc. v. NLRC*, this court noted:

> *Petitioner likewise attempts to sidestep the medical certificate requirement by contending that since Osdana was working in Saudi Arabia, her employment was subject to the laws of the host country.* Apparently, petitioner hopes to make it appear that the labor laws of Saudi Arabia do not require any certification by a competent public health authority in the dismissal of employees due to illness.
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> Again, petitioner's argument is without merit.
>
> First, established is the rule that ***lex loci contractus (the law of the place where the contract is made) governs in this jurisdiction. There is no question that the contract of employment in this case was perfected here in the Philippines. Therefore, the Labor Code, its implementing rules and regulations, and other laws affecting labor apply in this case.*** Furthermore, settled is the rule that the courts of the forum will not enforce any foreign claim obnoxious to the forum's public policy. Here in the Philippines, employment agreements are more than contractual in nature. The Constitution itself, in Article XIII, Section 3, guarantees the special protection of workers, to wit:
>
> > The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
> >
> > It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

x x x x x x x x x

> This public policy should be borne in mind in this case because to allow foreign employers to determine for and by themselves whether an overseas contract worker may be dismissed on the ground of illness would encourage illegal or arbitrary pre-termination of employment contracts x x x.

Even with respect to fundamental procedural rights, this court emphasized in *PCL Shipping Philippines, Inc. v. NLRC*, to wit:

> Petitioners admit that they did not inform private respondent in writing of the charges against him and that they failed to conduct a formal investigation to give him opportunity to air his side. However, petitioners contend that the twin requirements of notice and hearing applies strictly only when the employment is within the Philippines and that these need not be strictly observed in cases of international maritime or overseas employment.
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> The Court does not agree. ***The provisions of the Constitution as well as the Labor Code which afford protection to labor apply to Filipino employees whether working within the Philippines or abroad. Moreover, the principle of lex loci contractus (the law of the place where the contract is made) governs in this jurisdiction.*** In the present case, it is not disputed that the Contract of Employment entered into by and between petitioners and private respondent was executed here in the Philippines with the approval of the Philippine Overseas Employment Administration (POEA). Hence, the Labor Code together with its implementing rules and regulations and other laws affecting labor apply in this case. x x x.
>
> By our laws, overseas Filipino workers (OFWs) may only be terminated for a just or authorized cause and after compliance with procedural due process requirements. (Citations omitted.)

Since respondent's Employment Contract was executed in the Philippines on February 3, 2003, Philippine Constitution and labor laws governed respondent's employment with petitioners and SAENCO. An employee's right to security of tenure, protected by the Constitution and statutes, means that no employee shall be dismissed unless there are just or authorized causes and only after compliance with procedural and substantive

due process. A lawful dismissal by an employer must meet both substantive and procedural requirements; in fine, the dismissal must be for a just or authorized cause and must comply with the rudimentary due process of notice and hearing.[44]

It is undisputed that when respondent was dismissed from employment and repatriated to the Philippines in June 2004, her original six-month Employment Contract with SAENCO had already expired.

Per the plain language of respondent's Employment Contract with SAENCO, her employment would be enforced for the period of six months commencing on the date respondent departed from the Philippines, and extendible by another six months by mutual agreement of the parties. Since respondent left for South Korea on September 6, 2003, the original six-month period of her Employment Contract ended on March 5, 2004.

Although respondent's employment with SAENCO was good for six months only (*i.e.*, September 6, 2003 to March 5, 2004) as stated in the Employment Contract, the Court is convinced that it was extended under the same terms and conditions for another six months (*i.e.*, March 6, 2004 to September 5, 2004). Respondent and petitioners submitted evidence establishing that respondent continued to work for SAENCO in Ulsan, South Korea even after the original six-month period under respondent's Employment Contract expired on March 5, 2004. Ideally, the extension of respondent's employment should have also been reduced into writing and submitted/reported to the appropriate Philippine labor authorities. Nonetheless, even in the absence of a written contract evidencing the six-month extension of respondent's employment, the same is practically admitted by petitioners, subject only to the defense that there is no proof of their knowledge of or participation in said extension and so they cannot be held liable for the events that transpired between respondent and SAENCO during the extension period. Petitioners presented nine vouchers to prove that respondent received her

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[44] *Venzon v. ZAMECO II Electric Cooperative, Inc.*, G.R. No. 213934, November 9, 2016.

salaries from SAENCO for nine months. Petitioners also did not deny that petitioner Moldes, President of petitioner PTCPI, went to confront respondent about the latter's outstanding loan at the Seaman's Seven Club in Ulsan, South Korea in June 2004, thus, revealing that petitioners were aware that respondent was still working for SAENCO up to that time.

Hence, respondent had been working for SAENCO in Ulsan, South Korea, pursuant to her Employment Contract, extended for another six-month period or until September 5, 2004, when she was dismissed and repatriated to the Philippines by SAENCO in June 2004. With this finding, it is unnecessary for the Court to still consider and address respondent's allegations that she had been misled into believing that her Employment Contract and visa was good for one year.

Respondent decries that she was illegally dismissed, while petitioners assert that respondent was validly dismissed because of her expired work visa and her provocative and immoral conduct in violation of the club policies.

The Court finds that respondent was illegally dismissed.

Dismissal from employment has two facets: *first*, the legality of the act of dismissal, which constitutes substantive due process; and, *second*, the legality of the manner of dismissal, which constitutes procedural due process. The burden of proof rests upon the employer to show that the disciplinary action was made for lawful cause or that the termination of employment was valid. Unsubstantiated suspicions, accusations, and conclusions of the employer do not provide legal justification for dismissing the employee. When in doubt, the case should be resolved in favor of labor pursuant to the social justice policy of our labor laws and the 1987 Constitution.[45]

As previously discussed herein, SAENCO extended respondent's Employment Contract for another six months even after the latter's work visa already expired. Even though it is

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[45] *Maula v. Ximex Delivery Express, Inc.*, G.R. No. 207838, January 25, 2017.

true that respondent could not legitimately continue to work in South Korea without a work visa, petitioners cannot invoke said reason alone to justify the premature termination of respondent's extended employment. Neither petitioners nor SAENCO can feign ignorance of the expiration of respondent's work visa at the same time as her original six-month employment period as they were the ones who facilitated and processed the requirements for respondent's employment in South Korea. Petitioners and SAENCO should also have been responsible for securing respondent's work visa for the extended period of her employment. Petitioners and SAENCO should not be allowed to escape liability for a wrong they themselves participated in or were responsible for.

Petitioners additionally charge respondent with serious misconduct and willful disobedience, contending that respondent violated club policies by engaging in illegal activities such as wearing skimpy and revealing dresses, dancing in an immoral or provocative manner, and going out with customers after working hours. As evidence of respondent's purported club policy violations, petitioners submitted the joint affidavit of Tiatco and Flores, respondent's co-workers at the club.

The Court, however, is not swayed. Aside from their bare allegations, petitioners failed to present concrete proof of the club policies allegedly violated by respondent. The club policies were not written down. There is no allegation, much less, evidence, that respondent was at least verbally apprised of the said club policies during her employment.

To refute petitioners' assertions against her, respondent submitted a poster promoting the club and pictures[46] of respondent with her co-workers at the said club. Based on said poster and pictures, respondent did not appear to be wearing dresses that were skimpier or more revealing than those of the other women working at the club. Respondent also presented the Affidavit[47] dated August 16, 2004 of Wolfgang Pelzer (Pelzer), a Canadian

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[46] *Rollo*, pp. 243-245.

[47] *Id.* at 195-201.

citizen who was a regular patron of the club. According to Pelzer, respondent was appropriately dressed for the songs she sang, and while respondent was employed as a singer, she was also pressured into dancing onstage and she appeared hesitant and uncomfortable as she danced. As between the allegations of Pelzer, on one hand, and those of Tiatco and Flores, on the other hand, as regards respondent's behavior at the club, the Court accords more weight to the former as Pelzer can be deemed a disinterested witness who had no apparent gain in executing his Affidavit, as opposed to Tiatco and Flores who were still employed by SAENCO when they executed their joint affidavit.

Lastly, as the Court of Appeals pertinently observed, if respondent was truly misbehaving as early as September 2003 as petitioners alleged, SAENCO would have terminated her employment at the earliest opportunity to protect its interest. Instead, SAENCO even extended respondent's employment beyond the original six-month period. The Court likewise points out that there is absolutely no showing that SAENCO, at any time during the course of respondent's employment, gave respondent a reminder and/or warning that she was violating club policies.

This leads to another finding of the Court in this case, that petitioners also failed to afford respondent procedural due process.

Article 277(b) of the Labor Code, as amended, mandates that the employer shall furnish the worker whose employment is sought to be terminated a written notice stating the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself/herself with the assistance of his/her representative, if he/she so desires. Per said provision, the employer is actually required to give the employee two notices: the first is the notice which apprises the employee of the particular acts or omissions for which his/her dismissal is being sought along with the opportunity for the employee to air his/her side, while the second is the subsequent notice of the employer's decision to dismiss him/her.[48]

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[48] *Eastern Overseas Employment Center, Inc. v. Bea*, 512 Phil. 749, 755 (2005).

Again, the Court stresses that the burden of proving compliance with the requirements of notice and hearing prior to respondent's dismissal from employment falls on petitioners and SAENCO, but there had been no attempt at all by petitioners and/or SAENCO to submit such proof. Neither petitioners nor SAENCO described the circumstances how respondent was informed of the causes for her dismissal from employment and/or the fact of her dismissal.

In contrast, respondent was able to recount in detail the events which led to her dismissal from employment and subsequent repatriation to the Philippines, corroborated in part by Pelzer. It appears that on June 13, 2004, petitioner Moldes personally went to see respondent in Ulsan, South Korea to demand that respondent pay the loan and dismiss the counsel respondent hired in the Philippines to contest the same; respondent, however, refused. On June 24, 2004, Park confronted respondent while she was working at the club, forcibly took her away from the club in Ulsan, and brought her to his office in Seoul. Park tried to intimidate respondent into agreeing to Moldes's demands. When his efforts failed, Park surrendered respondent to the South Korean authorities and she was deported back to the Philippines on account of her expired work visa.

To reiterate, respondent could only be dismissed for just and authorized cause, and after affording her notice and hearing prior to her termination. SAENCO had no valid cause to terminate respondent's employment. Neither did SAENCO serve two written notices upon respondent informing her of her alleged club policy violations and of her dismissal from employment, nor afforded her a hearing to defend herself. The lack of valid cause, together with the failure of SAENCO to comply with the twin-notice and hearing requirements, underscored the illegality surrounding respondent's dismissal.[49]

***The Liabilities of Petitioners and SAENCO***

From its findings herein that (1) respondent's Employment Contract had been extended for another six months, ending on

[49] *Jardin v. National Labor Relations Commission*, 383 Phil. 187, 198 (2000).

September 5, 2004; and (2) respondent was illegally dismissed and repatriated to the Philippines in June 2004, the Court next proceeds to rule on the liabilities of petitioners and SAENCO to respondent.

Respondent's monetary claims against petitioners and SAENCO is governed by Section 10 of Republic Act No. 8042, otherwise known as The Migrant Workers and Overseas Filipinos Act of 1995, which provides:

> Section 10. *Money Claims*. — Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.
>
> **The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all monetary claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.**
>
> Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.
>
> Any compromise/amicable settlement or voluntary agreement on monetary claims inclusive of damages under this section shall be paid within four (4) months from the approval of the settlement by the appropriate authority.
>
> **In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker**

**shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) *per annum*, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.** (Emphases supplied.)

The Court finds that respondent had been paid her salaries for the nine months she worked in Ulsan, South Korea, so she is no longer entitled to an award of the same.

It is a settled rule of evidence that the one who pleads payment has the burden of proving it. Even where the plaintiff must allege nonpayment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove nonpayment.[50]

In the case at bar, petitioners submitted nine cash vouchers with respondent's signature. That the nine cash vouchers did not bear the name of SAENCO and its Tax Identification Number is insignificant as there is no legal basis for requiring such. The vouchers clearly state that these were "salary full payment" for the months of October 5, 2003 to June 5, 2004 for US$600.00 to respondent and each of the vouchers was signed received by respondent. After carefully examining respondent's signatures on the nine cash vouchers, and even comparing them to respondent's signatures on all the pages of her Employment Contract, the Court observes that respondent's signatures on all documents appear to be consistently the same. The consistency and similarity of respondent's signatures on all the documents supports the genuineness of said signatures. At this point, the burden of evidence has shifted to respondent to negate payment of her salaries.

Respondent, though, admits that the signatures on the nine cash vouchers are hers but asserts that she really had not received her salaries and was only made to sign said vouchers all in one instance. Respondent further avers that she was made to believe that her salaries would be deposited to her bank account, and

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[50] *Audion Electric Co., Inc. v. National Labor Relations Commission*, 367 Phil. 620, 632 (1999).

she presents as proof the passbook of her bank account showing that no amount equivalent to her salary was ever deposited.

The Court is not persuaded.

Absent any corroborating evidence, the Court is left only with respondent's bare allegations on the matter. Pelzer's statements in his Affidavit concerning the nonpayment of respondent's salaries are hearsay, dependent mainly on what respondent confided to him. It makes no sense to the Court that respondent would agree to an extension of her Employment Contract for another six months if she had not been receiving her salaries for the original six-month period. From her own actuations, respondent does not appear to be totally helpless and gullible. Respondent, in fact, was quite zealous in protecting her rights, hiring one of the well-known law firms in the Philippines to represent her against petitioner Moldes who was demanding payment of a loan which respondent insisted was fictitious. Respondent also stood up to and refused to given in to the demands of both petitioner Moldes and Park even during face-to-face confrontations. The Court then cannot believe that respondent would simply sign the nine cash vouchers even when she did not receive the corresponding salaries for the same. Respondent failed to establish that the passbook she submitted was for her bank account for payroll payments from SAENCO; it could very well just be her personal bank account to which she had not made any deposit. The Court, unlike the Court of Appeals, is not ready to jump to the conclusion that the vouchers were all prepared on the same occasion and disregard their evidentiary value simply based on their physical appearance and in the total absence of any corroborating evidence.

Nonetheless, pursuant to the fifth paragraph of Section 10 of Republic Act No. 8042, respondent is entitled to an award of her salaries for the unexpired three months of her extended Employment Contract, *i.e.*, July to September 2004.[51] Given

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[51] The clause "or for three months for every year of the unexpired term, whichever is less" in the fifth paragraph of Section 10 of Republic Act No. 8042 was declared unconstitutional in *Serrano v. Gallant Maritime Services,*

that respondent's monthly salary was US$600.00, petitioners and SAENCO shall pay respondent a total of US$1,800.00 for the remaining three months of her extended Employment Contract. The said amount, similar to backwages, is subject to legal interest of 12% per annum from respondent's illegal dismissal in June 2004 to June 30, 2013 and 6% per annum from July 1, 2013 to the date this Decision becomes final and executory.[52] Respondent also has the right to the reimbursement of her placement fee with interest of 12% per annum from her illegal dismissal in June 2004 to the date this Decision becomes final and executory.[53]

Moreover, the award of attorney's fees to respondent is likewise justified. It is settled that in actions for recovery of wages or where an employee was forced to litigate and incur expenses to protect his/her right and interest, he/she is entitled to an award of attorney's fees equivalent to 10% of the award.[54]

Finally, all of the foregoing monetary awards in respondent's favor shall earn legal interest of 6% per annum from the time this Decision becomes final and executory until fully satisfied.[55]

In an attempt to escape any liability to respondent, petitioners assert that only SAENCO should be answerable for respondent's illegal dismissal because petitioners were not privy to the extension of respondent's Employment Contract beyond the original six-month period. Petitioner Moldes additionally argues

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*Inc.* (601 Phil. 245, 306 [2009]). The said clause was reinstated only after the promulgation of Republic Act No. 10022 on March 8, 2010 (*Sameer Overseas Placement Agency, Inc. v. Cabiles*, *supra* note 43 at 434). It will not be applied in this case since respondent's employment and dismissal occurred in the years 2003 to 2004.

[52] *Nacar v. Gallery Frames*, 716 Phil. 267, 281 (2013).

[53] Fifth paragraph, Section 10 of Republic Act No. 8042.

[54] *Building Care Corporation v. National Labor Relations Commission*, 335 Phil. 1131, 1139 (1997); *United Phil. Lines, Inc. v. Sibug*, 731 Phil. 294, 303 (2014).

[55] *Nacar v. Gallery Frames*, *supra* note 52 at 283.

that she should not be held personally liable as a corporate officer of PTCPI without evidence that she had acted with malice or bad faith.

Petitioners' arguments are untenable considering the explicit language of the second paragraph of Section 10 of Republic Act No. 8042, reproduced below for easier reference:

> The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

The aforequoted provision is plain and clear, the joint and several liability of the principal/employer, recruitment/placement agency, and the corporate officers of the latter, for the money claims and damages of an overseas Filipino worker is absolute and without qualification. It is intended to give utmost protection to the overseas Filipino worker, who may not have the resources to pursue her money claims and damages against the foreign principal/employer in another country. The overseas Filipino worker is given the right to seek recourse against the only link in the country to the foreign principal/employer, *i.e.*, the recruitment/placement agency and its corporate officers. As a result, the liability of SAENCO, as principal/employer, and petitioner PTCPI, as recruitment/placement agency, for the monetary awards in favor of respondent, an illegally dismissed employee, is joint and several. In turn, since petitioner PTCPI is a juridical entity, petitioner Moldes, as its corporate officer, is herself jointly and solidarily liable with petitioner PTCPI for respondent's monetary awards, regardless of whether she acted with malice or bad faith in dealing with respondent.

**WHEREFORE,** premises considered, the Petition for Review on *Certiorari* is **PARTIALLY GRANTED**. The assailed Decision dated November 27, 2009 of the Court of Appeals is **AFFIRMED with MODIFICATIONS**. For the illegal dismissal of respondent Desiree T. Masagca, petitioners Princess Talent Center Production, Inc. and Luchi Singh Moldes, together with Saem Entertainment Company, Ltd., are **ORDERED** to jointly and severally pay respondent the following: (a) US$1,800.00, representing respondent's salaries for the unexpired portion of her extended Employment Contract, subject to legal interest of 12% per annum from June 2004 to June 30, 2013 and 6% per annum from July 1, 2013 to the date that this Decision becomes final and executory; (b) reimbursement of respondent's placement fees with 12% interest per annum from June 2004 to the date that this Decision becomes final and executory; and (c) attorney's fees equivalent to 10% of the total monetary award. The order for payment of respondent's salaries from September 2003 to May 2004 is **DELETED**. All the monetary awards herein to respondent shall earn legal interest of 6% per annum from the date that this Decision becomes final and executory until full satisfaction thereof.

**SO ORDERED.**

*Jardeleza* and *Tijam, JJ.*, concur.

*Sereno, C.J. (Chairperson)* and *del Castillo, J.*, on leave.

**FIRST DIVISION**

[G.R. Nos. 192595-96. April 11, 2018]

**NATIONAL ELECTRIFICATION ADMINISTRATION (NEA),** *petitioner, vs.* **MAGUINDANAO ELECTRIC COOPERATIVE, INC., represented by MAGUINDANAO ELECTRIC COOPERATIVE-PALMA AREA (MAGELCO-PALMA), represented by ATTY. LITTIE SARAH A. AGDEPPA, ANTONIO U. ACUB, EDGAR L. LAVEGA, RET. JUDGE TERESITA CARREON LLABAN, EMILY LLABAN, ARMANDO C. LLABAN, AUDIE D. MACASARTE, WILFREDO Q. LLABAN, EVANGELINE A. VARILLA, CORAZON TUMANG, and PRESCILLA LANO,** *respondents.*

[G.R. Nos. 192676-77. April 11, 2018]

**COTABATO ELECTRIC COOPERATIVE, INC. (COTELCO), represented by ALEJANDRO Q. COLLADOS As General Manager,** *petitioner, vs.* **MAGUINDANAO ELECTRIC COOPERATIVE-PALMA AREA (MAGELCO-PALMA), represented by ATTY. LITTIE SARAH A. AGDEPPA, ANTONIO U. ACUB, EDGAR L. LA VEGA, RET. JUDGE TERESITA CARREON LLABAN EVANGELINE A. VARILLA, and CORAZON TUMANG; and MAGUINDANAO ELECTRIC COOPERATIVE, INC., represented by its President, DATU TUMAGANTANG ZAINAL,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN THE OFFICIAL ACT OF A PUBLIC RESPONDENT IS CHALLENGED THROUGH A SPECIAL CIVIL ACTION FOR *CERTIORARI* AND THE JUDGMENT THEREIN IS ELEVATED TO A**

**HIGHER COURT, THE PUBLIC RESPONDENT REMAINS A NOMINAL PARTY.—** The NEA has no standing to file a petition for review on *certiorari* of a CA case nullifying its decision for grave abuse of discretion under Rule 65 of the Rules of Court. The second paragraph of Section 5 of Rule 65 is clear and unequivocal x x x. In *Barillo v. Lantion*, we explained that when the official act of a public respondent is challenged through a special civil action for *certiorari* and the judgment therein is eventually elevated to a higher court, the public respondent remains a nominal party. This means that the public respondent has no personal interest in the case. The public respondent "should maintain a detached attitude from the case and should not waste his time by taking an active part in a proceeding which relates to official actuations in a case but should apply himself to his principal task of hearing and adjudicating the cases in his court." x x x [W]hen Section 5 of Rule 65 speaks of public respondent as a nominal party, it makes no distinction. Thus, it refers to all classes of persons and instrumentalities that may become a respondent in a *certiorari* action, specifically any "judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person." x x x [W]hen the last paragraph of Section 5 refers to the elevation to a higher court of the decision in the *certiorari* action, it does not discriminate as to the mode of elevation. Thus, a public respondent judge elevating an adverse ruling through an appeal under Rule 45 is covered by the provision.

2. **POLITICAL LAW; STATUTES; PRESIDENTIAL DECREE NO. 269 (THE NATIONAL ELECTRIFICATION ADMINISTRATION DECREE); COOPERATIVES; A COOPERATIVE CANNOT BE CREATED FROM AN EXISTING ONE BY MERE AMENDMENT OF ITS BY-LAWS.—** MAGELCO Main is a duly-organized cooperative under PD 269. When its board of directors amended its by-laws and established two branches within MAGELCO Main, it did not create a separate cooperative. PD 269 details the process by which cooperatives are formed. This process does not allow for the creation of a cooperative from an existing one by mere amendment of its by-laws. Thus, no new cooperative arose from MAGELCO Main's act of amending its own by-laws. It affected only the internal operations of MAGELCO Main itself. The significance of the amendment of MAGELCO Main's by-laws *vis-a-vis* the status of MAGELCO-PALMA can be better

understood by taking into consideration the function of the by-laws in a cooperative and the management powers of a cooperative's board of directors. PD 269 provides that the by-laws is a document which contains the basic rights and duties of members and directors as well as provisions for the regulation and management of the affairs of the cooperative. By analogy, in the case of corporations, the by-laws governs the internal affairs of the corporation and the relationships between and among its members. The by-laws is intended as a guide in the management of the activities of the cooperative and the relationships of its members. Amendments to the by-laws, as such, affect only the management of the cooperative and its members. It is not a mechanism by which new cooperatives are created.

**3. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; ONLY NATURAL OR JURIDICAL PERSONS OR ENTITIES AUTHORIZED BY LAW MAY BE PARTIES IN A CIVIL ACTION; LACK OF LEGAL CAPACITY TO SUE AND LACK OF PERSONALITY TO SUE, DISTINGUISHED.—** That MAGELCO-PALMA never existed as a separate juridical entity affects its capacity to file the special civil action for *certiorari* before the CA. We note that this is not a mere issue of whether MAGELCO-PALMA has the personality to file the action. The question is more fundamental as it goes into the matter of whether MAGELCO-PALMA has the legal capacity to sue. In *Columbia Pictures, Inc. v. Court of Appeals*, we differentiated between *legal capacity to sue* and *the lack of personality to sue*. A litigant lacks the personality to sue when he or she is not the real party in interest. In this situation, the initiatory pleading may be dismissed through a motion to dismiss on the ground of failure to state a cause of action. The lack of the legal capacity to sue, on the other hand, refers to a litigant's "general disability to sue, such as on account of minority, insanity, incompetence, lack of juridical personality or any other general disqualifications of a party." In this case, the initiatory pleading may be dismissed on the ground of lack of legal capacity to sue. When an entity has no separate juridical personality, it has no legal capacity to sue. Section 1, Rule 3 of the Rules of Court states that "only natural or juridical persons or entities authorized by law may be parties in a civil action." Article 44 of the Civil Code enumerates the entities that are considered as juridical persons x x x. MAGELCO-PALMA was created as a branch within a cooperative. It never existed as a

juridical person. Hence, in accordance with the established rules and jurisprudence, MAGELCO-PALMA does not have the legal capacity to institute the special civil action for *certiorari* before the CA.

**4. POLITICAL LAW; STATUTES; PRESIDENTIAL DECREE NO. 269 (THE NATIONAL ELECTRIFICATION ADMINISTRATION DECREE); NATIONAL ELECTRIFICATION ADMINISTRATION; EMPOWERED TO ACQUIRE PROPERTIES BY PURCHASE OR BY ANY OTHER MEANS, AS AN AGENT OF A PUBLIC SERVICE ENTITY WHO SHALL, IN TURN, HAVE THE RIGHT TO RECEIVE SUCH PROPERTIES.—** Under PD 269, the NEA had the power to acquire assets which includes the exercise of the right to eminent domain. This right is conditioned upon compliance with the appropriate expropriation proceedings. Section 4(m), however, does not limit the NEA's power to expropriation alone. It, in fact, empowers the NEA to acquire properties by purchase or by any other means, as an agent of a public service entity who shall, in turn, have the right to receive such properties. This section also mentions that payment may be made directly by the public service entity or through reimbursement to the NEA. x x x When the NEA pursued mediation, subsequently approved the agreement of COTELCO and MAGELCO Main, and ordered the transfer of the assets to COTELCO, it effectively exercised its power to acquire the properties as agent for a public service entity—COTELCO in this case. It also exercised its option to allow COTELCO to pay MAGELCO directly instead of having COTELCO reimburse the NEA for the transfer.

**5. ID.; ID.; ID.; ID.; HAS THE POWER TO PREFER ONE COOPERATIVE OVER ANOTHER, IN CASES WHERE TWO OR MORE COOPERATIVES HAVE CONFLICTING INTERESTS WITH RESPECT TO THE GRANT, REPEAL, ALTERATION, OR CONDITIONING OF A FRANCHISE. —** The NEA's authority to order the disposition of the assets arises from its determination that COTELCO should acquire the franchise for the distribution of electricity over the PPALMA Area. While MAGELCO-PALMA argues that the NEA never cancelled its franchise over the PPALMA Area and thus, both COTELCO and MAGELCO can operate in the area, the Decision of the NEA reveals otherwise. By granting COTELCO's

application for the amendment of its franchise to include the PPALMA Area and ordering the transfer of MAGELCO's assets after hearings were conducted where both cooperatives were heard, the NEA necessarily and impliedly amended MAGELCO's franchise to exclude the area in dispute. This is the import of its ruling when it ordered COTELCO to pay MAGELCO just compensation. Under PD 269, in cases where two or more cooperatives have conflicting interests with respect to the grant, repeal, alteration, or conditioning of a franchise, the NEA has the power to prefer one cooperative over another.

**6. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; A COMPROMISE AGREEMENT IS BINDING ONLY UPON THE PARTIES AND A JUDGMENT THEREON IS A JUDGMENT ON THE MERITS AND OPERATES AS *RES JUDICATA*.—** The law recognizes a compromise agreement as a contract through which the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced. Once judicially approved, it becomes immediately final and executory. A judgment on compromise agreement is a judgment on the merits and operates as *res judicata*. However, its effects must be understood within the confines of the laws on contracts and the rules pertaining to *res judicata* in judicial decisions. A compromise agreement is essentially a contract. As in the case of ordinary contracts, it is binding only upon the parties. It cannot affect the rights of persons who did not sign it. We highlighted this doctrine in *Cebu International Finance Corporation v. Court of Appeals* (*CIFC*). In *CIFC*, we explained that a compromise agreement, even if judicially approved, is unenforceable against a non-party. Further, *res judicata* also limits the effect of a judgment to the parties to a case and their privies. A judgment is conclusive only as to the parties and their successors in interest as to the matter directly adjudged or any matter that could have been raised in the action. The effect of *res judicata* extends only to a litigation on the same thing by the party or the successor in interest under the same title and in the same action. While *res judicata* may operate in cases involving a different subject matter, the parties to the latter action must involve the same parties to the previous judgment or their successors in interest. In this instance, the prior judgment is *res judicata* only as to the issues directly adjudged and to matters that were actually and necessarily included in such issues. Thus, a judgment on compromise

agreement, while it is final and immediately executory, binds only the parties who signed the contract. Moreover, precisely because a judgment on compromise agreement has the force of *res judicata*, its binding effect must be seen within the parameters within which *res judicata* finds application.

**7. ID.; ID.; ID.; IMMUTABILITY OF JUDGMENTS; A FINAL AND EXECUTORY AGREEMENT IS IMMUTABLE AND OUGHT TO BE ENFORCED; EXCEPTIONS.—** A judgment on compromise agreement is immediately final and executory. This general rule, however, allows for exceptions. While a final and executory agreement is immutable and ought to be enforced, no execution will issue under the following exceptions: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. We rule that the last exception, the presence of a supervening event, prevents the execution of the judgment on compromise agreement.

## APPEARANCES OF COUNSEL

*Go Balleque & Completano* for Cotabato Electric Cooperative, Inc. (COTELCO).

*Littie Sarah A. Agdeppa* and *Teresita Carreon-Llaban* for respondent Maguindanao Electric Cooperative-Palma (MAGELCO-PALMA) and private respondents.

## D E C I S I O N

**JARDELEZA, *J.*:**

Before us are two consolidated petitions for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated March 15, 2010 of the Court of Appeals (CA) in CA-

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[1] *Rollo* (G.R. Nos. 192595-96), pp. 51-112.

[2] *Id.* at 120-187. Penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Leoncia R. Dimagiba and Angelita A. Gacutan.

G.R. SP Nos. 02547-MIN and 02759-MIN. The CA ruled on the consolidated petitions for *certiorari* under Rule 65 of the Rules of Court filed by Maguindanao Electric Cooperative-Palma Area (MAGELCO-PALMA) and Cotabato Electric Cooperative, Inc. (COTELCO). MAGELCO-PALMA challenged before the CA two letter-directives issued by the National Electrification Administration (NEA).[3] COTELCO, on the other hand, questioned the order of the Regional Trial Court (RTC) of Cotabato City, Branch 14 (RTC Branch 14) which granted the *ex-parte* motion for execution filed by MAGELCO-PALMA.[4] In the assailed Decision, the CA dismissed COTELCO's petition and granted that of MAGELCO-PALMA. The CA found that the NEA issued the two letter-directives in grave abuse of discretion.[5] The NEA and COTELCO separately filed an appeal through a petition for review on *certiorari* of this CA Decision before this Court. On March 11, 2011, we ordered the consolidation of these two petitions.[6]

Maguindanao Electric Cooperative, Inc. (MAGELCO) is a duly organized cooperative with a franchise to distribute electric light, and power to the municipalities of Sultan sa Barongis, Talayan, Pagalungan, Upi, South Upi, Ampatuan, Barrira, Buldon, Datu Piang, Dinaig, Kabuntalan, Maganoy, Matanog, Parang, and Sultan Kudarat in the province of Maguindanao. Its franchise also includes the authority to distribute electricity in six municipalities in Cotabato, namely Pigcawayan, Alamada, Libungan, Midsayap, Aleosan, and Pikit (PPALMA Area).[7]

COTELCO is also a duly organized cooperative with a franchise to distribute electric light, and power to the province of Cotabato except for the PPALMA Area.[8] In 2000, COTELCO

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[3] *Id.* at 122-124.

[4] *Id.* at 124-127.

[5] *Id.* at 179, 185, 187.

[6] *Id.* at 1332.

[7] *Id.* at 128-129.

[8] *Id.* at 129.

filed before the NEA an application for the amendment of its franchise to include the PPALMA Area. MAGELCO, which was the distributor of electricity in the area, opposed the application at that time. NEA conducted hearings attended by both COTELCO and MAGELCO.[9] In a Decision dated September 18, 2003,[10] the NEA, through the National Electrification Commission (NEC), granted COTELCO's application and ordered the transfer of MAGELCO's assets in the PPALMA Area to COTELCO upon payment of just compensation.[11]

MAGELCO filed before the CA a petition for review under Rule 43 of the Rules of Court to challenge this NEA Decision.[12] Hereafter, this petition shall be referred to as the First CA Case. While the First CA Case was pending, MAGELCO passed General Assembly Resolution No. 4, Series of 2007 (GA Resolution No. 4) which amended the MAGELCO by-laws. The resolution states that the general assembly has "approved the division and separation" of MAGELCO into "two (2) separate and independent branch units, x x x the MAGUINDANAO ELECTRIC COOPERATIVE, INC., as the mother unit or main branch, and THE MAGUINDANAO ELECTRIC COOPERATIVE, INC. - (PALMA AREA), as the daughter or branch unit."[13] Hereafter, MAGUINDANAO ELECTRIC COOPERATIVE, INC. shall be referred to as MAGELCO Main. The NEA approved GA Resolution No. 4 subject to its recommended modifications and the outcome of the pending First CA Case. It also required MAGELCO Main and MAGELCO-PALMA to submit a transition plan.[14] Upon its submission, NEA approved the transition plan and the two units began their separate operations.

Shortly after the commencement of MAGELCO-PALMA's operations, MAGELCO Main, on October 25, 2007, filed before

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[9] *Id.* at 203-204.

[10] *Id.* at 203-209.

[11] *Id.* at 208.

[12] *Id.* at 214.

[13] *Id.* at 1001.

[14] *Id.* at 607-612.

the RTC Branch 14 an action for injunction and prohibition against the NEA Administrator and MAGELCO-PALMA. The action sought the annulment of MAGELCO's division for being contrary to law and asked the RTC to order MAGELCO-PALMA to return to MAGELCO Main all the properties in its possession in connection with its operation in the PPALMA Area.[15]

However, on December 1, 2007, MAGELCO Main and MAGELCO-PALMA entered into a memorandum of agreement which they used as a compromise agreement to put an end to the earlier action.[16] The agreement essentially pertained to the implementation of the separate and independent operation of MAGELCO Main and MAGELCO-PALMA. It included an allocation of the properties of MAGELCO between MAGELCO Main and MAGELCO-PALMA in connection with their separate operations. The agreement also stated that MAGELCO Main consents to the grant to MAGELCO-PALMA "of the power, authority and jurisdiction to obtain, acquire and apply for a separate electric franchise over the six municipalities of Cotabato, namely Pigcawayan, Alamada, Libungan, Midsayap, Aleosan and Pikit all of the Province of Cotabato in whatsoever corporate and/or business name it may choose."[17] The agreement further provided that MAGELCO Main "transfers, waives, alienates and repudiates in favor of [MAGELCO-PALMA] its existing electric franchise over the above said six (6) municipalities in the Province of Cotabato."[18] Under the agreement, MAGELCO Main and MAGELCO-PALMA undertook to have the case dismissed and to sign the corresponding motions for its withdrawal or submit the necessary compromise agreement for its termination. The RTC approved the compromise agreement on December 6, 2007.[19]

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[15] *Id.* at 133.

[16] *Id.* at 1022-1037.

[17] *Id.* at 1033.

[18] *Id.*

[19] *Rollo* (G.R. Nos. 192595-96), p. 1037.

On January 18, 2008, the NEA issued a letter-directive approving the memorandum of agreement. It stated that pending MAGELCO-PALMA's acquisition of its own franchise, MAGELCO Main shall designate MAGELCO-PALMA as its agent and representative in the distribution of electricity in the PPALMA Area.[20]

Meanwhile, the CA rendered its Decision[21] on MAGELCO Main's appeal in the First CA Case. The CA held that the NEA had jurisdiction to rule on COTELCO's application and affirmed the NEA ruling which granted COTELCO's application for the amendment of its franchise. The Decision, however, modified the NEA ruling on the transfer of MAGELCO's assets to COTELCO upon payment of just compensation.[22]

The CA ruled that the NEA had the power to order the transfer of COTELCO's assets to MAGELCO. The CA held:

> In brief, the NEA, through the NEC, is empowered to acquire, by purchase or otherwise, and solely as agent for and on behalf of one or more public service entities, real and physical properties, together with all appurtenant rights, easements, licenses and privileges. This power is exercised upon determination by the NEA that such acquisition is necessary to accomplish the purposes of P.D. 269, especially the objective of making service available throughout the nation on an area coverage basis as rapidly as possible. Such power to acquire includes the right of eminent domain.[23]

It also recognized that the NEA can properly order a transfer of assets upon payment of just compensation.[24] However, the CA held that the NEA did not observe the proper proceedings for the exercise of its right of eminent domain. Thus, it ruled:

> In fine, We sustain the NEC's grant of COTELCO's Application but find void the NEC's requirement for COTELCO to pay just

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[20] *Id.* at 1271-1272.

[21] *Id.* at 214-229.

[22] *Id.* at 219-223.

[23] *Id.* at 226.

[24] *Id.* at 226-227.

compensation to MAGELCO for the assets attached to the six (6) municipalities for lack of sufficient basis. The disposition of these assets must still be subject to proper proceedings with the NEA pursuant to *Section 58 of Republic Act No. 9136 or the EPIRA of 2001* x x x.[25]

The CA further noted MAGELCO-PALMA's manifestation praying for a mediation conference with COTELCO. Thus, it ordered that the disposition of MAGELCO's assets in the PPALMA Area needs further proceedings and any efforts at mediation among the parties should be undertaken thereunder.[26]

The dispositive portion of the CA Decision stated:

**WHEREFORE**, the Decisions dated 18 September 2003 and 18 May 2004 of the National Electrification Commission in NEC Case No. 2000-03 are hereby **AFFIRMED with MODIFICATION** that the requirement number (2) contained in the 18 September 2003 Decision stating "that COTELCO shall pay just compensation to MAGELCO for the assets attached to the six (6) municipalities" be **DELETED**. Let the disposition of these assets be subject to further proceedings before the NEC, where mediation proceedings between the parties may likewise be conducted.[27]

The CA's Decision in the First CA Case became final on January 29, 2008.[28] Despite this, problems as to which among COTELCO, MAGELCO Main, and MAGELCO-PALMA should operate in the PPALMA Area persisted.

On April 19, 2008, MAGELCO Main issued Board Resolution No. 40, series of 2008 declaring the cancellation of the memorandum of agreement and transition plan executed by and between MAGELCO Main and MAGELCO-PALMA.[29] MAGELCO Main also issued Board Resolution No. 132.[30] This

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[25] *Id.* at 227-228.

[26] *Rollo* (G.R. Nos. 192595-96), pp. 228-229.

[27] *Id.*

[28] *Rollo* (G.R. Nos. 192595-96), p. 136.

[29] *Id.*

[30] *Rollo* (G.R. Nos. 192595-96), pp. 1269-1270.

resolution stated that, as the basis for the judgment on compromise agreement rendered by the RTC Branch 14 in the injunction case filed by MAGELCO Main, the memorandum of agreement between MAGELCO Main and MAGELCO-PALMA is unenforceable in the absence of a writ of execution. It then declared that MAGELCO Main repudiates any acts performed by MAGELCO-PALMA arising from the memorandum of agreement for lack of authority.

COTELCO, for its part, issued two resolutions concerning MAGELCO-PALMA. It issued Board Resolution No. 98-2008 requesting the NEA to revoke MAGELCO General Assembly Resolution No. 4 which amended the by-laws of MAGELCO and created MAGELCO Main and MAGELCO-PALMA. It also issued Resolution No. 99-2008 requesting the NEA to: (1) dissolve MAGELCO-PALMA; (2) order MAGELCO PALMA's depository banks to allow COTELCO to withdraw from its bank accounts to defray MAGELCO-PALMA's operational, incidental, and necessary expenses, and eventually order the closure of these bank accounts, and for the outstanding balances to be transferred to COTELCO's accounts in the PPALMA area; and (3) order that all future funds and payment collected by or in the possession of MAGELCO-PALMA be deposited or transferred to COTELCO's bank accounts.[31]

COTELCO also filed before the NEC a motion for the issuance of a writ of execution of the CA's Decision in the First CA Case.[32] The NEA responded to this motion through a letter stating that by virtue of the Electric Power Industry Reform Act of 2001, the NEC has ceased to exist. It thus referred COTELCO's motion to the NEA's Institutional Development Department for evaluation and appropriate action.[33]

On September 8, 2008, MAGELCO-PALMA filed an action before the RTC of Midsayap, Branch 18 (RTC Branch 18) for

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[31] *Id.* at 138-139, 230-232.

[32] *Id.* at 349.

[33] *Id.* at 350.

the "declaration of the existence and validity of MAGELCO's electric franchise; invalidity of COTELCO's franchise" with a prayer for the issuance of a writ of preliminary injunction/ temporary restraining order.[34] However, the presiding judge of RTC Branch 18 inhibited from the case. Pending the reassignment of the case to a new judge, MAGELCO-PALMA filed a petition with this court for the issuance of a status *quo ante* order and/ or a temporary restraining order.[35] We dismissed this petition on September 29, 2008.[36]

Meanwhile, on September 26, 2008, the NEA issued two letter-directives. The first letter-directive: (1) approved MAGELCO Main Board Resolution No. 40, Series of 2008 and COTELCO Board Resolution No. 98-2008; (2) revoked its approval of MAGELCO Board Resolution No. 4 which divided MAGELCO between MAGELCO Main and MAGELCO-PALMA; and (3) highlighted that the initial approval of MAGELCO Board Resolution No. 4 was made without prejudice to the outcome of the CA appeal. Hence, as the CA already ruled on the matter, the NEA found merit in the two resolutions passed by MAGELCO Main and COTELCO.[37] On the same date, the NEA issued a second letter-directive approving COTELCO Board Resolution No. 99-2008. In this second letter-directive, the NEA: (1) declared that the PPALMA Area is under the coverage of COTELCO and not MAGELCO Main or MAGELCO-PALMA, subject to the mediation proceedings between MAGELCO and COTELCO as to the disposition of assets; (2) ordered MAGELCO-PALMA's depository banks to disburse funds from MAGELCO-PALMA's bank accounts solely to COTELCO for the necessary and incidental expenses of the operation in the PPALMA Area; and (3) ordered the management of MAGELCO-PALMA to deposit all present and future funds, and payments to COTELCO's bank accounts in the PPALMA Area.[38]

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[34] *Id.* at 137-138.

[35] *Id.* at 493-522.

[36] *Id.* at 138.

[37] *Id.* at 233-234.

[38] *Id.* at 230-232.

It appears that MAGELCO Main and COTELCO pursued the mediation proceedings for the proper distribution of the assets in the PPALMA Area. On October 1, 2008, MAGELCO Main and COTELCO entered into an Interim Memorandum of Agreement.[39] This was amended through a Supplemental Memorandum of Agreement dated December 16, 2008.[40] The final round of negotiation was completed on July 16 and 17, 2009 and a final memorandum of agreement was executed.[41] MAGELCO Main waived in favor of COTELCO all of its rights and interests over the assets in the PPALMA Area in exchange for COTELCO's undertaking to pay MAGELCO Main a certain sum of money and to assume some of the latter's obligations to generation companies and the National Grid Corporation of the Philippines.[42]

As early as the execution of the Interim Memorandum of Agreement, COTELCO took over MAGELCO Main's assets in the PPALMA Area. Thus, on October 6, 2008, MAGELCO-PALMA filed a petition for *certiorari* and prohibition with application for status *quo ante* order, temporary restraining order and/or writ of preliminary injunction, and for the issuance of a writ of *habeas data* before the CA. This petition challenged the NEA's two letter-directives on the ground that they were issued in grave abuse of discretion. The CA denied the prayer for the issuance a writ of *habeas data* on November 11, 2008.[43]

MAGELCO-PALMA also filed an action for forcible entry against COTELCO before the Municipal Trial Court (MTC) of Midsayap.[44] The MTC eventually rendered a decision in favor of MAGELCO-PALMA.[45]

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[39] *Id.* at 1068-1070.

[40] *Id.* at 62, 1071-1073.

[41] *Id.* at 63, 1074-1078.

[42] *Id.* at 1075-1076.

[43] *Id.* at 140-141.

[44] *Id.* at 481-492.

[45] *Id.* at 141-142, 1053-1060.

As part of its efforts to retain control of the PPALMA Area, on December 17, 2008, MAGELCO-PALMA also filed before RTC Branch 14 an *ex-parte* motion for the issuance of a writ of execution in the injunction case which MAGELCO Main earlier filed. This is the same case where the RTC Branch 14 rendered a judgment on compromise agreement based on the memorandum of agreement entered into by MAGELCO Main and MAGELCO-PALMA. The RTC Branch 14 granted the motion for the issuance of a writ of execution a day from filing of the motion. MAGELCO-PALMA subsequently filed a motion asking the RTC Branch 14 to direct the banks to deliver to the custody of the sheriff all monies belonging to MAGELCO-PALMA and to submit an accurate bank statement. It also filed another motion asking the court to order identified persons to deliver certain properties to the court's sheriff. The RTC Branch 14 granted these motions in Orders dated January 5, 2009.[46]

COTELCO filed a special civil action for *certiorari* before the CA challenging these orders. The CA consolidated the COTELCO petition with the MAGELCO-PALMA petition challenging the two NEA letter-directives.[47]

The CA rendered its consolidated Decision[48] dated March 15, 2010. The CA dismissed COTELCO's petition and granted that of MAGELCO-PALMA. It nullified the NEA's two letter-directives and enjoined MAGELCO Main and MAGELCO-PALMA to comply with the terms and conditions of their compromise agreement.[49]

The CA found that the NEA issued the two letter-directives with grave abuse of discretion. It ruled that the NEA, in dissolving MAGELCO-PALMA, acted without jurisdiction. According to the CA, the power to dissolve a cooperative rests in its general membership under Section 33 of Presidential Decree No. (PD) 269,

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[46] *Id.* at 142-146.

[47] *Id.* at 122-128.

[48] *Supra* note 2.

[49] *Rollo* (G.R. Nos. 192595-96), p. 187.

the National Electrification Administration Decree. The CA also found that the NEA nullified MAGELCO Main and MAGELCO-PALMA's compromise agreement which the NEA had no power to do. It explained that a compromise agreement is in the nature of a contract. It is binding and has the force of law between the parties. Further, the CA held that MAGELCO Main cannot enter into an agreement with COTELCO concerning the assets in the PPALMA Area. By virtue of its compromise agreement and transition plan with MAGELCO-PALMA, these assets have ceased to belong to MAGELCO Main and are now rightfully owned by MAGELCO-PALMA. Nor can the NEA direct MAGELCO-PALMA to transfer its assets to COTELCO. Under PD 269, the disposition of the assets of a cooperative may be done either through its board or general membership, as the case may be. The NEA's authority on the matter is limited to approving such disposition. Finally, the CA highlighted that while it approved COTELCO's franchise over the PPALMA Area, it never cancelled that of MAGELCO. Under the compromise agreement, MAGELCO Main waived and transferred its franchise over the PPALMA Area to MAGELCO-PALMA. The NEA thus cannot cancel MAGELCO-PALMA's franchise and order the transfer of its assets without due process.[50]

Both COTELCO and the NEA filed their separate motions for reconsideration of this Decision. The CA, in a Resolution[51] dated June 3, 2010, expunged NEA's motion and denied that of COTELCO. As for NEA's motion for reconsideration, the CA held that it has never directed the NEA to participate in the proceedings and thus, as a nominal party in the Rule 65 petition, it should not appear in the case.

The NEA and COTELCO filed separate petitions for review on *certiorari* under Rule 45 of the Rules of Court before this Court. We ordered the consolidation of these two petitions. MAGELCO-PALMA filed two separate comments against COTELCO and the NEA.

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[50] *Id.* at 164A-173.

[51] *Id.* at 191-202.

The procedural issues presented are:

1. Whether the NEA can file an appeal of a special civil action for *certiorari* which challenges its official acts;
2. Whether MAGELCO-PALMA committed forum shopping; and
3. Whether the Decision in the First CA Case operates as *res judicata*.

The substantive issue presented is whether COTELCO can properly take over the assets of MAGELCO in the PPALMA Area upon payment of just compensation.

I.

The NEA has no standing to file a petition for review on *certiorari* of a CA case nullifying its decision for grave abuse of discretion under Rule 65 of the Rules of Court. The second paragraph of Section 5 of Rule 65 is clear and unequivocal:

> Sec. 5. x x x
>
> Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. **If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein.** (Emphasis supplied.)

In *Barillo v. Lantion*,[52] we explained that when the official act of a public respondent is challenged through a special civil action for *certiorari* and the judgment therein is eventually elevated to a higher court, the public respondent remains a nominal party. This means that the public respondent has no personal interest in the case. The public respondent "should maintain a detached attitude from the case and should not waste his time by taking an active part in a proceeding which relates to official actuations in a case but should apply himself to his

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[52] G.R. No. 159117 & A.M. No. MTJ-10-1752, March 10, 2010, 615 SCRA 39.

principal task of hearing and adjudicating the cases in his court."[53] In that case, a judge filed a special civil action for *certiorari* before this Court assailing a decision of the Commission on Elections (COMELEC). The decision of the COMELEC, in turn, found that the judge committed grave abuse of discretion in issuing a ruling in an election case. We ruled that the judge, as nominal party, has no standing to challenge the decision of the COMELEC before this Court.

This was also our ruling in *Calderon v. Solicitor General*.[54] In that case, the accused in a case pending before the CA filed a special civil action for *certiorari* challenging the ruling of the judge which increased the accused's bail. The CA nullified the ruling of the judge. The judge then filed a petition for *certiorari* and *mandamus* before this Court. We refused to rule on the petition on the ground that the petitioner judge has no standing to file it. We explained:

> Judge Calderon should be reminded of the well-known doctrine that a judge should detach himself from cases where his decision is appealed to a higher court for review. The raison d'etre for such doctrine is the fact that a judge is not an active combatant in such proceeding and must leave the opposing parties to contend their individual positions and for the appellate court to decide the issues without his active participation. By filing this case, petitioner in a way ceased to be judicial and has become adversarial instead.[55] (Citation omitted.)

While these cases both pertained to a respondent judge who elevated the case before us through a special civil action for *certiorari*, we rule that the doctrine in these cases apply to a public respondent quasi-judicial agency which files before this Court an appeal of a finding in a special civil action for *certiorari* that it acted with grave abuse of discretion. First, when Section 5 of Rule 65 speaks of public respondent as a nominal party, it makes no distinction. Thus, it refers to all classes of persons

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[53] *Id.* at 73.

[54] G.R. Nos. 103752-53, November 25, 1992, 215 SCRA 876.

[55] *Id.* at 881.

and instrumentalities that may become a respondent in a *certiorari* action, specifically any "judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person."[56] Second, when the last paragraph of Section 5 refers to the elevation to a higher court of the decision in the *certiorari* action, it does not discriminate as to the mode of elevation. Thus, a public respondent judge elevating an adverse ruling through an appeal under Rule 45 is covered by the provision. Finally, the logical underpinning for this rule—that a public respondent has no personal stake in the outcome of the *certiorari* case and as such must not become an active combatant—applies with equal force in the case of the NEA.

The NEA has no standing to file its petition for review on *certiorari* before this Court. Hence, it is as if no such petition was filed. We will not rule on the errors raised by the NEA. Nevertheless, as COTELCO is the proper party to file an appeal of the CA Decision, we shall rule on its petition before us.

II.

MAGELCO Main is a duly-organized cooperative under PD 269. When its board of directors amended its by-laws and established two branches within MAGELCO Main, it did not create a separate cooperative. PD 269 details the process by which cooperatives are formed. This process does not allow for the creation of a cooperative from an existing one by mere amendment of its by-laws. Thus, no new cooperative arose from MAGELCO Main's act of amending its own by-laws. It affected only the internal operations of MAGELCO Main itself.

The significance of the amendment of MAGELCO Main's by-laws *vis-a-vis* the status of MAGELCO-PALMA can be better understood by taking into consideration the function of the by-laws in a cooperative and the management powers of a cooperative's board of directors.

PD 269 provides that the by-laws is a document which contains the basic rights and duties of members and directors

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[56] RULES OF COURT, Rule 65, Sec. 5.

as well as provisions for the regulation and management of the affairs of the cooperative.[57] By analogy, in the case of corporations, the by-laws governs the internal affairs of the corporation and the relationships between and among its members.[58] The by-laws is intended as a guide in the management of the activities of the cooperative and the relationships of its members. Amendments to the by-laws, as such, affect only the management of the cooperative and its members. It is not a mechanism by which new cooperatives are created.

In truth, MAGELCO Main merely rearranged its structure by creating two branches. More specifically, it formed a separate branch to handle the distribution of electricity in the PPALMA Area. It is a matter related to the regulation of the affairs of MAGELCO Main; the board of directors is empowered under PD 269 to amend its by-laws to reflect this.[59] Furthermore, the board of directors is vested with the power to manage the affairs of the cooperative.[60] The by-laws provide that the board of directors shall "formulate and adopt policies and plans, promulgate rules and regulations for the management, operation and conduct of the Cooperative x x x."[61]

In sum, the decision of the board of directors of MAGELCO Main to amend its by-laws to create a new branch was never intended to give rise to a new cooperative. Legally, this was not feasible as PD 269 provides for the methods by which a cooperative is duly organized. Moreover, MAGELCO Main merely reorganized its own structure to improve its services. Finally, that MAGELCO-PALMA never existed as an independent cooperative is apparent not only from a reading of PD 269 but also from the language of the amendment in the

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[57] Presidential Decree No. 269, Sec. 20.

[58] See Villanueva and Villanueva-Tiansay, *Philippine Corporation Law* (2013), p. 212.

[59] See Presidential Decree No. 269, Sec. 20.

[60] Presidential Decree No. 269, Sec. 24.

[61] *Rollo* (G.R. Nos. 192595-96), p. 438. By-Laws of Maguindanao Electric Cooperative, Inc., Art. IV, Sec 1.

by-laws. It states that "[t]he branch units of [MAGELCO] namely, the Maguindanao Electric Cooperative, Inc. as the mother unit and the Maguindanao Electric Cooperative, Inc. as the daughter unit shall jointly co-exist under one and the same franchise x x x until such time as the herein MAGELCO-PALMA shall have organized as a separate electric cooperative with a separate franchise."[62] The amendment in the by-laws was never intended to be construed as the constitution of a separate cooperative. In fact, the amendment appears to be a means for the eventual separation of MAGELCO-PALMA once it acquires the necessary franchise. MAGELCO-PALMA, however, never met the requirements necessary to be an independent cooperative.

In view of all these, the CA erred in holding that through the compromise agreement with MAGELCO Main, MAGELCO-PALMA acquired ownership over the assets in the PPALMA Area. No ownership can be transferred to a mere branch without a separate legal personality. MAGELCO Main retained ownership over the assets. Through the amendment of its by-laws, as well as the memorandum of agreement and transition plan, MAGELCO Main merely streamlined its operations by granting its branch control to the assets in the PPALMA Area. No transfer of ownership took place precisely because the parent cooperative cannot transfer ownership to its unit within the same cooperative.

That MAGELCO-PALMA never existed as a separate juridical entity affects its capacity to file the special civil action for *certiorari* before the CA. We note that this is not a mere issue of whether MAGELCO-PALMA has the personality to file the action. The question is more fundamental as it goes into the matter of whether MAGELCO-PALMA has the legal capacity to sue.

In *Columbia Pictures, Inc. v. Court of Appeals*,[63] we differentiated between *legal capacity to sue* and *the lack of*

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[62] *Id.* at 1013. Amendments to the By-Laws of Maguindanao Electric Cooperative, Inc., Art. XI, Sec. 5. See also NEA letter dated October 2, 2007 approving GA Resolution No. 4, *id.* at 611.

[63] G.R. No. 110318, August 28, 1996, 261 SCRA 144.

*personality to sue*. A litigant lacks the personality to sue when he or she is not the real party in interest. In this situation, the initiatory pleading may be dismissed through a motion to dismiss on the ground of failure to state a cause of action. The lack of the legal capacity to sue, on the other hand, refers to a litigant's "general disability to sue, such as on account of minority, insanity, incompetence, lack of juridical personality or any other general disqualifications of a party."[64] In this case, the initiatory pleading may be dismissed on the ground of lack of legal capacity to sue.

When an entity has no separate juridical personality, it has no legal capacity to sue. Section 1, Rule 3 of the Rules of Court states that "only natural or juridical persons or entities authorized by law may be parties in a civil action." Article 44 of the Civil Code enumerates the entities that are considered as juridical persons:

> Art. 44. The following are juridical persons:
> (1) The State and its political subdivisions;
> (2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;
> (3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.

We applied these rules in *Alabang Development Corporation v. Alabang Hills Village Association*,[65] where we held that after the dissolution of a corporation and the lapse of the three-year period under Section 122 of the Corporation Code, this defunct corporation no longer has the capacity to sue because it has lost its juridical personality.[66] Further, in *S.C. Megaworld Construction and Development Corporation v. Parada*,[67] we

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[64] *Id.* at 162.

[65] G.R. No. 187456, June 2, 2014, 724 SCRA 321.

[66] *Id.* at 326-329.

[67] G.R. No. 183804, September 11, 2013, 705 SCRA 584.

ruled that the trade name being used by a sole proprietorship in the conduct of business has no separate juridical personality from the owner. Thus, it has no legal capacity to sue or be sued.[68]

MAGELCO-PALMA was created as a branch within a cooperative. It never existed as a juridical person. Hence, in accordance with the established rules and jurisprudence, MAGELCO-PALMA does not have the legal capacity to institute the special civil action for *certiorari* before the CA. The CA erred in granting due course to the petition.

In the light of these discussions, we find that only COTELCO's recourse to this Court merits adjudication.

III.

The confusion in this case arose from the varying interpretations given by the parties to the Decision in the First CA Case. MAGELCO-PALMA argues that the Decision only affirmed the NEA's order granting COTELCO's application for the amendment of its franchise. The proper resolution of the case before us requires a clear understanding of the CA's Decision in the First CA Case.

The CA stated that the NEA has the power to order the acquisition of the assets in the PPALMA Area under Section 4 of PD 269. It also held that the NEA's power includes the right of eminent domain. While the CA nullified the NEA's order for COTELCO to pay just compensation to MAGELCO for the transfer of the assets, what the CA found invalid was not the *right* to exercise the power but merely the *manner* by which it was exercised. To be clear, the CA unequivocally and properly found that the NEA can exercise its right to eminent domain. Thus, in its Decision, the CA ordered NEA to comply with the proper procedure for the expropriation of the assets if it seeks to exercise this right. The Decision, however, did not end there. It also gave the parties the option to proceed with the mediation proceedings, as stated in the wherefore clause, thus:

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[68] *Id.* at 598-599.

**WHEREFORE**, the Decisions dated 18 September 2003 and 18 May 2004 of the National Electrification Commission in NEC Case No. 2000-03 are hereby **AFFIRMED with MODIFICATION** that the requirement number (2) contained in the 18 September 2003 Decision stating "that COTELCO shall pay just compensation to MAGELCO for the assets attached to the six (6) municipalities" be **DELETED**. Let the disposition of these assets be subject to further proceedings before the NEC, where mediation proceedings between the parties may likewise be conducted.[69]

The CA's pronouncement can be better understood in light of the power granted to the NEA in PD 269. Section 4(m) of PD 269 states—

(m) **To acquire, by purchase or otherwise (including the right of eminent domain, which is hereby granted to the NEA, to be exercised in the manner provided by law for the institution and completion of expropriation proceedings by the National and local governments), real and physical properties, together with all appurtenant rights, easements, licenses and privileges, whether or not the same be already devoted to the public use of generating, transmitting or distributing electric power and energy, upon NEA's determination that such acquisition is necessary to accomplish the purposes of this Decree** and, if such properties be already devoted to the public use described in the foregoing, that such use will be better served and accomplished by such acquisition; *Provided*, **That the power herein granted shall be exercised by NEA solely as agent for and on behalf of one or more public service entities which shall timely receive, own and utilize or replace such properties for the purpose of furnishing adequate and dependable service on an area coverage basis**, which entity or entities shall then be, or in connection with the acquisition shall become, borrowers from NEA under sub-paragraph (f) of this section; and *Provided further*, **That the cost of such acquisition, including the cost of any eminent domain proceedings, shall be borne, either directly or by reimbursement to the NEA, whichever the NEA shall elect, by the public service entity or entitites on whose behalf the acquisition is undertaken**; and otherwise to acquire, improve, hold, transfer, sell, lease, rent, mortgage, encumber and otherwise dispose of property incident to, or necessary, convenient or proper to carry

[69] *Rollo* (G.R. Nos. 192595-96), pp. 228-229.

out, the purposes for which NEA was created; x x x. (Emphasis supplied.)

Section 4(m) outlines the extent of the NEA's power in connection with the disposition of properties necessary in the pursuit of the declared policy in favor of nationwide electrification. Under PD 269, the NEA had the power to acquire assets which includes the exercise of the right to eminent domain. This right is conditioned upon compliance with the appropriate expropriation proceedings. Section 4(m), however, does not limit the NEA's power to expropriation alone. It, in fact, empowers the NEA to acquire properties by purchase or by any other means, as an agent of a public service entity who shall, in turn, have the right to receive such properties. This section also mentions that payment may be made directly by the public service entity or through reimbursement to the NEA.

The import of the Decision in the First CA Case is that, *first*, the NEA ordered the payment of just compensation in the exercise of its right of eminent domain. *Second*, the exercise was improper and any attempt to expropriate MAGELCO's assets in the PPALMA Area must be done through the proper expropriation proceedings. *Third*, the disposition of the assets shall be subject to further proceedings before the NEA which may be in the form of mediation among the parties. In other words, the CA presented the options available to the NEA in determining the proper disposition of the assets in the PPALMA Area.

When the NEA pursued mediation, subsequently approved the agreement of COTELCO and MAGELCO Main, and ordered the transfer of the assets to COTELCO, it effectively exercised its power to acquire the properties as agent for a public service entity—COTELCO in this case. It also exercised its option to allow COTELCO to pay MAGELCO directly instead of having COTELCO reimburse the NEA for the transfer.

The NEA's authority to order the disposition of the assets arises from its determination that COTELCO should acquire the franchise for the distribution of electricity over the PPALMA Area. While MAGELCO-PALMA argues that the NEA never cancelled its franchise over the PPALMA Area and thus, both

COTELCO and MAGELCO can operate in the area, the Decision of the NEA reveals otherwise. By granting COTELCO's application for the amendment of its franchise to include the PPALMA Area and ordering the transfer of MAGELCO's assets after hearings were conducted where both cooperatives were heard, the NEA necessarily and impliedly amended MAGELCO's franchise to exclude the area in dispute. This is the import of its ruling when it ordered COTELCO to pay MAGELCO just compensation. Under PD 269, in cases where two or more cooperatives have conflicting interests with respect to the grant, repeal, alteration, or conditioning of a franchise, the NEA has the power to prefer one cooperative over another.[70]

Thus, the Decision in the First CA Case affirmed the NEA's actions granting COTELCO the franchise for the distribution of electricity in the PPALMA Area. If also affirmed the amendment of MAGELCO's franchise, thus excluding the PPALMA Area from its coverage. Further, the CA affirmed the NEA's authority to determine the proper disposition of the assets in the PPALMA Area. Finally, it agreed with the NEA that the assets ought to be transferred to COTELCO, subject to the proper proceedings for the NEA's exercise of its power under Section 4(m) of PD 269.

The NEA, acting in accordance with the Decision of the CA, proceeded with the mediation. When MAGELCO Main and COTELCO arrived at an agreement as to the transfer of the assets in the PPALMA Area, they executed a memorandum of agreement. They also separately passed board resolutions which the NEA approved through the two letter-directives. Thus, when the NEA issued these letter-directives, it acted in pursuit of its power under PD 269 and the Decision of the CA in the First CA Case.

IV.

Essential to the disposition of this case is the effect of the judgment on compromise agreement. The CA, in its assailed

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[70] Presidential Decree No. 269, Sec. 44.

Decision, theorized that the judgment on compromise agreement from RTC Branch 14 definitively settled the issue on the disposition of the assets in the PPALMA Area. It found that the judgment had already become final and operates as *res judicata* in this case. Thus, it affirmed the RTC Branch 14's issuance of a writ of execution on the judgment on compromise agreement.

We clarify the rules and doctrines governing judgments on compromise agreements.

The law recognizes a compromise agreement as a contract through which the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced.[71] Once judicially approved, it becomes immediately final and executory. A judgment on compromise agreement is a judgment on the merits and operates as *res judicata*. However, its effects must be understood within the confines of the laws on contracts and the rules pertaining to *res judicata* in judicial decisions.

A compromise agreement is essentially a contract.[72] As in the case of ordinary contracts, it is binding only upon the parties. It cannot affect the rights of persons who did not sign it.[73] We highlighted this doctrine in *Cebu International Finance Corporation v. Court of Appeals*[74] (*CIFC*). In *CIFC*, we explained that a compromise agreement, even if judicially approved, is unenforceable against a non-party.[75]

Further, *res judicata* also limits the effect of a judgment to the parties to a case and their privies. A judgment is conclusive only as to the parties and their successors in interest as to the matter directly adjudged or any matter that could have been raised in the action.[76] The effect of *res judicata* extends only

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[71] CIVIL CODE, Art. 2028.

[72] *Id.*

[73] CIVIL CODE, Art. 1317.

[74] G.R. No. 123031, October 12, 1999, 316 SCRA 488.

[75] *Id.* at 498-499.

[76] RULES OF COURT, Rule 39, Sec. 47(b).

to a litigation on the same thing by the party or the successor in interest under the same title and in the same action.[77] While *res judicata* may operate in cases involving a different subject matter, the parties to the latter action must involve the same parties to the previous judgment or their successors in interest.[78] In this instance, the prior judgment is *res judicata* only as to the issues directly adjudged and to matters that were actually and necessarily included in such issues.[79]

Thus, a judgment on compromise agreement, while it is final and immediately executory, binds only the parties who signed the contract. Moreover, precisely because a judgment on compromise agreement has the force of *res judicata*, its binding effect must be seen within the parameters within which *res judicata* finds application.

Hence, in *CIFC*,[80] we refused to enforce a judgment on compromise agreement against a person who was not privy to it. In that case, petitioner issued a check with respondent as the payee. It was intended to be drawn against petitioner's bank. When respondent tried to encash the check, the petitioner's bank dishonoured it. Petitioner then sued the bank. They entered into a compromise agreement through which they settled their dispute. In a separate action for the recovery of the amount of his check, respondent demanded payment from petitioner's bank. The bank raised the judgment on compromise agreement as basis for its claim that the check had been paid. We granted respondent's claim and explained that petitioner and the bank cannot enter into an agreement regarding the rights of the respondent who was not in any way a party to it. The compromise agreement between the petitioner and the bank settled their claims against each other but it cannot be construed as payment of respondent's claim as well.

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[77] *Id.*

[78] RULES OF COURT, Rule 39, Section 47(c).

[79] *Id.*

[80] *Supra* note 74.

The same principle applies in this case. The judgment on compromise agreement is a settlement of the dispute between MAGELCO Main and MAGELCO-PALMA. It cannot affect the rights of persons who were never parties to it. Through the compromise agreement, the parties in the RTC case agreed that MAGELCO-PALMA will have possession and control of the assets in the PPALMA Area. It must be noted that this agreement was entered into at a time when COTELCO's claim over the same properties were still being litigated before the CA. Any compromise agreement between MAGELCO Main and MAGELCO-PALMA, while it may settle the dispute between them, cannot be enforced against COTELCO whose rights were eventually recognized by the CA.

The compromise agreement was a settlement of the dispute within MAGELCO as a cooperative. It cannot be deemed to have settled the claim of COTELCO who was not a party to it and whose rights arose from a different source.

V.

A judgment on compromise agreement is immediately final and executory. This general rule, however, allows for exceptions. While a final and executory agreement is immutable and ought to be enforced, no execution will issue under the following exceptions: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[81] We rule that the last exception, the presence of a supervening event, prevents the execution of the judgment on compromise agreement.

In *Remington Industrial Sales Corporation v. Mariculum Mining Corporation*[82] (*Remington*), we explained a supervening event as "a fact which transpires or a new circumstance which develops after a judgment has become final and executory. This

[81] *Villa v. Government Service Insurance System*, G.R. No. 174642, October 30, 2009, 604 SCRA 742, 749-750.

[82] G.R. No. 193945, June 22, 2015, 759 SCRA 649.

includes matters which the parties were unaware of prior to or during trial because they were not yet in existence at that time."[83] To stop the execution of a final and executory judgment, a supervening event must transpire after the finality of the judgment[84] and must "create a substantial change in the rights or relations of the parties which would render the execution of a final judgment unjust, impossible or inequitable making it imperative to stay immediate execution in the interest ofjustice."[85]

In *Remington*, we halted the execution of an RTC decision that has long become final and executory because of the subsequent promulgation of a decision from this Court absolving the obligor in the RTC decision from any civil liability. We considered this Court's later decision as a supervening event that warrants the prevention of the execution of the RTC judgment. Similarly, in *Megaworld Properties and Holdings, Inc. v. Cobarde*,[86] we refused the execution of a judgment on compromise agreement. In that case, petitioner's obligation under the judgment on compromise agreement was conditioned upon the performance of an underlying development agreement. As the parties thereto unilaterally rescinded the development agreement, the contract from which petitioner's obligation could be sourced no longer existed. We deemed this as a supervening event preventing the execution of the judgment on compromise agreement.

The doctrine in these cases applies to the judgment on compromise agreement entered into by MAGELCO Main and MAGELCO-PALMA. There are two supervening events in this case preventing the execution of the judgment on compromise agreement.

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[83] *Id.* at 659. Citation omitted.

[84] See *Libongcogon v. Phimco Industries, Inc.*, G.R. No. 203332, June 18, 2014, 727 SCRA 1, 16-17.

[85] *Remington Industrial Sales Corporation v. Mariculum Mining Corporation, supra* note 82 at 659-660.

[86] G.R. No. 156200, March 31, 2004, 426 SCRA 689.

The first supervening event is the Decision in the First CA Case which granted COTELCO's application for the amendment of its franchise and consequently modified that of MAGELCO to exclude the PPALMA Area. Thus, the creation of any unit to handle the operations in the PPALMA Area will not only be superfluous (as it can no longer distribute electricity in the area), it will also be illegal since the CA and the NEA already amended the franchise. When MAGELCO Main agreed to sign the compromise agreement, it did so to end the litigation between it and MAGELCO-PALMA in pursuit of the restructuring of its internal organization. Nevertheless, because of the Decision in the First CA Case where MAGELCO was a party, it became imperative for MAGELCO to reconsider its management decisions. As the CA affirmed the NEA's grant of franchise over the PPALMA Area to COTELCO and ordered further proceedings before the NEA to settle the disposition of the assets from MAGELCO to COTELCO, MAGELCO could no longer pursue its organizational restructuring. It was bound to comply with the Decision in the First CA Case. As such, it passed a board resolution revoking the memorandum of agreement and transition plan with MAGELCO-PALMA. This, in effect, dissolved MAGELCO-PALMA.

*Second*, MAGELCO Main's revocation of the memorandum of agreement and the transition plan meant that MAGELCO-PALMA will no longer be a separate unit. In legal contemplation, therefore, MAGELCO-PALMA has ceased to exist. There is thus nothing in the compromise agreement that can still be enforced considering that one party thereto has been validly dissolved. These developments have created a substantial change in the rights and relations of the parties so as to make the execution of the judgment on compromise agreement impossible.

The CA thus erred in affirming the RTC issuance of the writ of execution.

VI.

The NEA issued the two letter-directives pursuant to its decision to exercise its power to acquire property under Section 4(m) of PD 269 and in line with the Decision in the First CA

Case which affirmed the grant of franchise to COTELCO and the transfer of assets to it.

As to the first letter-directive which revoked the NEA's approval of MAGELCO Main's board resolution amending its by-laws, it was performed in accordance with the ruling in the First CA Case that COTELCO should operate the franchise in the PPALMA Area and that it should own MAGELCO Main's assets necessary for its operations. As a party to the case, the NEA is bound to comply with the ruling of the court. Notably, even the NEA's prior approval of the memorandum of agreement was made with the caveat that it is subject to the outcome of the First CA Case, which was still pending at the time.

In the same vein, the second letter-directive was also an offshoot of the Decision in the First CA Case. In this letter-directive, the NEA merely stated that COTELCO is the proper holder of the franchise to distribute electricity in the PPALMA Area. Further, its approval of COTELCO and MAGELCO Main's board resolution is a mere execution of its decision to acquire the assets in the PPALMA Area in the manner laid down in Section 4(m) of PD 269.

Contrary to the CA's findings, the NEA did not annul the compromise agreement between MAGELCO Main and MAGELCO-PALMA. Instead, the NEA revoked its approval of the memorandum of agreement and the transition plan which, as we said, it was bound to do because of the ruling in the First CA Case. While the memorandum of agreement was used as a compromise agreement, it was not for the latter that the NEA withdrew its approval. The unenforceability of the judgment on compromise agreement arose due to an entirely different reason—the occurrence of a supervening event which prevented its execution.

Moreover, the NEA did not dissolve MAGELCO-PALMA as a separate cooperative. What it did was to merely approve resolutions issued by MAGELCO Main. In turn, MAGELCO Main's board of directors dissolved MAGELCO-PALMA through these resolutions. As we have already said, this is a management decision that MAGELCO Main's board of directors

can validly do in the pursuit of the affairs of the cooperative. More than this, MAGELCO Main was duty bound to cease further operations in the PPALMA Area by virtue of the CA Decision granting the franchise over the area to COTELCO.

Hence, in issuing the two letter-directives, the NEA committed no grave abuse of discretion. The CA erred in annulling these letter-directives and in upholding the RTC's issuance of the writ of execution. What is clear is that the NEA correctly granted the amendment to COTELCO's franchise to cover the PPALMA Area. This necessarily amended MAGELCO's franchise in that it no longer covers the same area given to COTELCO. The CA affirmed this ruling, as well as the NEA's power to order the disposition of the assets in the PPALMA Area. It was in the exercise of this power that the NEA conducted mediation proceedings between MAGELCO Main and COTELCO. This eventually led to the final memorandum of agreement detailing the transfer of assets in the PPALMA Area and the consideration for this disposition. It is this final memorandum of agreement, which is a direct result of the Decision in the First CA Case and the proper exercise of the NEA's power under Section 4(m) of PD 269, that must prevail.

**WHEREFORE,** in view of the foregoing, the Decision of the Court of Appeals dated March 15, 2010 is **REVERSED**. The NEA's two letter-directives both dated September 26, 2008 are **REINSTATED**. The Regional Trial Court of Cotabato City, Branch 14's writ of execution of the judgment on compromise agreement between MAGELCO Main and MAGELCO-PALMA is **NULLIFIED** and **SET ASIDE**.

**SO ORDERED.**

*Leonardo-de Castro*[*] and *Tijam, JJ.*, concur.

*Sereno, C.J. (Chairperson)* and *del Castillo, J.*, on leave.

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[*] Designated as Acting Chairperson of the First Division per Special Order No. 2540 dated February 28, 2018.

**THIRD DIVISION**

[G.R. No. 194575. April 11, 2018]

**ANGELITO N. GABRIEL,** *petitioner, vs.* **PETRON CORPORATION, ALFRED A. TRIO, and FERDINANDO ENRIQUEZ,** *respondents.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; APPEALS; ALL DECISIONS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) SHALL BE FINAL AND EXECUTORY AFTER TEN CALENDAR DAYS FROM RECEIPT THEREOF BY THE PARTIES BUT APPELLATE COURTS HAVE AN UNDERLYING POWER TO SCRUTINIZE DECISIONS OF THE NLRC ON QUESTIONS OF LAW EVEN THOUGH THE LAW GIVES NO EXPLICIT RIGHT TO APPEAL.—** Under our present labor laws, there is no provision for appeals from the decision of the NLRC. In fact, under Article 229 of the Labor Code, all decisions of the NLRC shall be final and executory after ten (10) calendar days from receipt thereof by the parties. Nevertheless, appellate courts — including this Court — still have an underlying power to scrutinize decisions of the NLRC on questions of law even though the law gives no explicit right to appeal. Simply said, even if there is no direct appeal from the NLRC decision, the aggrieved party still has a legal remedy.

**2. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUISITES.—** Certiorari proceedings are limited in scope and narrow in character because they only correct acts rendered without jurisdiction, in excess of jurisdiction, or with grave abuse of discretion. Indeed, relief in a special civil action for certiorari is available only when the following essential requisites concur: (a) the petition must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (b) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or in excess of jurisdiction; and (c) there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law. It will issue

to correct errors of jurisdiction and not mere errors of judgment, particularly in the findings or conclusions of the quasi-judicial tribunals (such as the NLRC). Accordingly, when a petition for certiorari is filed, the judicial inquiry should be limited to the issue of whether the NLRC acted with grave abuse of discretion amounting to lack or in excess of jurisdiction.

**3. ID.; ID.; ID.; ID.; THE PETITION MUST BE FILED WITHIN SIXTY DAYS FROM NOTICE OF THE JUDGMENT.—** Under Section 4 Rule 65 of the Rules of Court and as applied in the *Laguna Metts Corporation* case, the general rule is that a petition for certiorari must be filed within sixty (60) days from notice of the judgment. In *Labao v. Flores*, however, we laid down exceptions to the strict application of this rule x x x. In the motion for extension to file a petition for certiorari, it was stated that Gabriel had since been working and living in Australia for a few years subsequent to his separation from Petron. The week before the 60-day deadline for filing, Gabriel's counsel had already emailed a copy of the petition. Gabriel explained in his motion that he needed more time to secure an appointment with the Philippine Consular Office in Melbourne, Australia. Unlike those x x x exceptions when the period to file a petition for certiorari was not strictly applied, we do not find Gabriel's reason to meet the deadline compelling. x x x We must remember that the rationale for the amendments under A.M. No. 07-7-12-SC is essentially to prevent the use (or abuse) of the petition for certiorari under Rule 65 to delay a case or even defeat the ends of justice. Here, we cannot simply reward the lack of foresight on the part of Gabriel and his lawyer.

**APPEARANCES OF COUNSEL**

*Eugeryl T. Rondario* for petitioner.
*Laguesma Magsalin Consulta & Gastardo* for respondents.

## D E C I S I O N

**MARTIRES, *J.*:**

We resolve the petition for review on certiorari under Rule 45 of the Rules of Court filed by Angelito N. Gabriel *(Gabriel)*

of the 21 July 2010[1] and the 17 November 2010[2] Resolutions of the Court of Appeals *(CA)* in CA-G.R. SP No. 114858.

## THE FACTS

Gabriel was hired by Petron Corporation *(Petron)* as Maintenance Technician sometime in May 1987. Owing to his years of service and continued education, Gabriel rose from the ranks and eventually became a Quality Management Systems *(QMS)* Coordinator on 18 October 2004.[3] However, Gabriel did not get any increase in his salary or any additional benefits despite his new position in the company.

Gabriel lamented that he was unable to reap the benefits of his promotion because of a complaint letter filed by Ms. Charina Quiwa *(Quiwa)*,[4] goddaughter of Alfred A. Trio *(Trio)*, the General Manager of the Refining Division in Limay, Bataan. As a result, Gabriel was given notice to explain his side, though the notice failed to include the letter of Quiwa.[5] Nevertheless, Gabriel denied harassing Quiwa and her family, and explained he had already settled the misunderstanding in confidence.[6]

According to his complaint, Gabriel thereafter suffered a series of harassment acts from private respondents as the company interpreted all his acts as violations of its rules and regulations.[7] Hence, Gabriel claimed that he was constructively dismissed from Petron.

On their part, Petron's management explained that Gabriel's assignment as QMS Coordinator was not a promotion but was

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[1] *Rollo*, pp. 45-47; penned by Associate Justice Fernanda Lampas-Peralta, and concurred in by Associate Justices Priscilla J. Baltazar-Padilla and Rodil Z. Zalameda.

[2] *Id*. at 126.

[3] *Id*. at 175-176.

[4] *Id*. at 177. The complaint against Gabriel was about him fabricating e-mails to make it appear that they were involved in an extramarital affair.

[5] *Id*. at 187.

[6] *Id*. at 188.

[7] *Id*. at 240-242.

a result of company reorganization. Meanwhile, his relief as QMS Coordinator and detail to another office were not intended to harass or punish him, but were primarily to afford him the opportunity to defend himself in the ongoing investigation.

In the course of the investigation of Quiwa's complaint, it was brought to the attention of the company that Gabriel, as president of Gabriel Consultancy Services, proposed training services to another refinery plant in Bataan using the courses used at Petron's refinery.[8] Gabriel was required to explain his side.[9] A few months later, Gabriel was asked to address another violation[10] for his use of company equipment and resources to reproduce 1,603 pages of company proprietary materials without authorization.[11]

Eventually, the investigation on Gabriel was concluded sometime in March 2005, and he was formally charged with dishonesty, misconduct, misbehavior, and violation of "netiquette" policy, wherein he was required to justify why he should not be terminated.[12] Gabriel complied through a letter dated 30 March 2005, wherein he stressed that he had been placed in an unbearable and humiliating situation.[13]

After the hearing committee was convened, Gabriel failed to show up at work so he was given another notice of violation for absence without official leave.[14] In his explanation, Gabriel said that he was merely following the advice of his psychiatrist and that he had no work to report back to given that he had been placed under floating status since the beginning of the investigation.[15] On 12 May 2005, management took disciplinary action by suspending Gabriel from work for ten (10) days.[16]

[8] *Id*. at 178-186.

[9] *Id*. at 189.

[10] *Id*. at 190-191.

[11] *Id*. at 192.

[12] *Id*. at 197-198.

[13] *Id*. at 203-206.

[14] *Id*. at 208.

[15] *Id*. at 213.

[16] *Id*. at 216.

On 19 April 2007, after both parties had submitted their respective position papers, the labor arbiter rendered a decision in favor of Gabriel. Upon close scrutiny of the job description of a QMS Coordinator and its various duties and responsibilities, the labor arbiter concluded that it was a supervisory position and that Gabriel was indeed promoted from his previous position.[17]

Moreover, the labor arbiter noted that Gabriel's fate shifted after the complaint of Quiwa. While at first glance the complaint may appear serious, she found the matter not at all connected with Gabriel's work or would affect at all the performance of his duties.[18] She did not agree that the complaint could impact Gabriel's efficiency and compromise the company's operations.[19] As for the other charges attributed to Gabriel, the labor arbiter considered these as acts of harassment and offshoots of the complaint filed by Quiwa.[20]

As a result of the labor arbiter's findings, Gabriel was awarded full back wages, separation pay, moral and exemplary damages, and attorney's fees.[21]

***The NLRC Decision***

However, on 27 April 2009, the NLRC reversed the labor arbiter's ruling and dismissed the complaint against Petron.[22] In dismissing the complaint against Petron, the NLRC held that: (1) Gabriel's assignment as QMS Coordinator was a mere lateral transfer because the appointment letter did not indicate an increase in rank and/or salary; (2) his subsequent detail to another office was not a demotion since Gabriel still received the same salary and benefits; (3) instead of putting Gabriel under preventive suspension, Petron's management thought it best

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[17] *Id*. at 93.

[18] *Id*. at 96.

[19] *Id*.

[20] *Id*. at 97.

[21] *Id.* at 97-100.

[22] *Id*. at 101-109.

to just give him another assignment; and (4) there was no substantial evidence to support the acts of harassment perpetrated by management.

After his motion for reconsideration was denied, Gabriel turned to the CA for recourse.

***The Proceedings before the CA***

Since Gabriel's counsel on record received the denial of his motion for reconsideration on 14 May 2010, he had sixty (60) days or until 13 July 2010, to file a petition for certiorari. However, on 10 July 2010, Gabriel had to file a motion for extension due to time and distance constraints for Gabriel to secure an authentication from the Philippine Consular Office in Australia.[23]

In its 21 July 2010 resolution, the CA denied the motion for extension saying that no extensions are allowed under the amended Rule 65 of the Rules of Court, to *wit*:

> Section 4, Rule 65, 1997 Rules of Civil Procedure, as amended under A.M. No. 07-7-12-SC, December 7, 2007, no longer provides for an extension of period to file a petition for certiorari. Significantly, in Laguna Metts Corporation vs. Court of Appeals, 594 SCRA 139, July 27, 2009, the Supreme Court explicitly ruled:
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> WHEREFORE, petitioner's motion for extension is denied and accordingly, the present case is dismissed.[24]

From this, Gabriel filed his motion for reconsideration with prayer to admit the attached petition for certiorari claiming that the factual circumstances of his case are exceptional and merit a relaxation of the rules of procedure.[25]

After considering the submissions of both parties, the CA maintained that Gabriel's motion failed to present any substantial

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[23] *Id*. at 39-43.

[24] *Id*. at 45-47.

[25] *Id*. at 48-54.

and meritorious ground which would justify a reversal of its earlier ruling.[26]

## OUR RULING

Aggrieved, Gabriel now seeks relief before this Court through this present petition. At the onset, Gabriel wants to correct the serious error the CA committed in denying his motion for extension out of sheer technicality. At the same time, Gabriel imputes grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of the NLRC for setting aside the findings of constructive dismissal and reversing the decision of the labor arbiter.

Under our present labor laws, there is no provision for appeals from the decision of the NLRC. In fact, under Article 229 of the Labor Code, all decisions of the NLRC shall be final and executory after ten (10) calendar days from receipt thereof by the parties. Nevertheless, appellate courts — including this Court — still have an underlying power to scrutinize decisions of the NLRC on questions of law even though the law gives no explicit right to appeal. Simply said, even if there is no direct appeal from the NLRC decision, the aggrieved party still has a legal remedy.

Certiorari proceedings are limited in scope and narrow in character because they only correct acts rendered without jurisdiction, in excess of jurisdiction, or with grave abuse of discretion. Indeed, relief in a special civil action for certiorari is available only when the following essential requisites concur: (a) the petition must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (b) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or in excess of jurisdiction; and (c) there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.[27] It will issue to correct errors of jurisdiction and not

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[26] *Id*. at 126.

[27] *PALEA v. Cacdac*, 645 Phil. 494, 501 (2010).

mere errors of judgment, particularly in the findings or conclusions of the quasi-judicial tribunals (such as the NLRC). Accordingly, when a petition for certiorari is filed, the judicial inquiry should be limited to the issue of whether the NLRC acted with grave abuse of discretion amounting to lack or in excess of jurisdiction.[28]

In *St. Martin Funeral Home v. NLRC*,[29] the Court laid down the proper recourse should the aggrieved party seek judicial review of the NLRC decision:

> The Court is, therefore, of the considered opinion that ever since appeals from the NLRC to the Supreme Court were eliminated, the legislative intendment was that the special civil action of certiorari was and still is the proper vehicle for judicial review of decisions of the NLRC.
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> x x x x x x x x x
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> Therefore, all references in the amended Section 9 of B.P. No. 129 to supposed appeals from the NLRC to the Supreme Court are interpreted and hereby declared to mean and refer to petitions for certiorari under Rule 65. Consequently, all such petitions should henceforth be initially filed in the Court of Appeals in strict observance of the doctrine on the hierarchy of courts as the appropriate forum for the relief desired.[30]

From the CA, the labor case is then elevated to this Court for final review. In reviewing labor cases through a petition for review on certiorari, we are solely confronted with whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, and **not** whether the NLRC decision on the merits of the case was correct.[31] Specifically, we are limited to:

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[28] *Empire Insurance Company v. NLRC*, 355 Phil. 694, 701 (1998).

[29] 356 Phil. 811, 823 (1998).

[30] *Id*. at 824.

[31] *Montoya v. Transmed Manila Corporation*, 613 Phil. 696, 707 (2009); *Phimco Industries, Inc. v. Phimco Industries Labor Association (PILA)*, 642 Phil. 275, 288 (2010); *Niña Jewelry Manufacturing of Metal Arts, Inc.*

(1) Ascertaining the correctness of the CA's decision in finding the presence or absence of grave abuse of discretion. This is done by examining, on the basis of the parties' presentations, whether the CA correctly determined that at the NLRC level, all the adduced pieces of evidence were considered; no evidence which should not have been considered was considered; and the evidence presented supports the NLRC's findings; and

(2) Deciding other jurisdictional error that attended the CA's interpretation or application of the law.[32]

However, we are constrained from reviewing these issues in the present case because the CA, at the outset, denied Gabriel's motion for extension to file a petition for certiorari and did not make any finding on the presence or absence of grave abuse of discretion. In other words, we cannot dwell on matters covered under Gabriel's petition for certiorari because what was elevated before us via petition for review on certiorari was the CA's denial of his motion for extension. Under these circumstances, we can only look into the legal soundness behind the denial of the motion for extension because of our limited mode of judicial review under Rule 45 of the Rules of Court.

Under Section 4 Rule 65 of the Rules of Court and as applied in the *Laguna Metts Corporation* case,[33] the general rule is that a petition for certiorari must be filed within sixty (60) days from notice of the judgment. In *Labao v. Flores*,[34] however, we laid down exceptions to the strict application of this rule:

However, there are recognized exceptions to their strict observance, such as: (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply

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*v. Montecillo*, 677 Phil. 447, 464 (2011); *Gonzales v. Solid Cement Corporation*, 697 Phil. 619, 638 (2012); *Career Philippines Shipmanagement, Inc. v. Serna,* 700 Phil. 1, 9 (2012); *Century Iron Works, Inc. v. Banas*, 711 Phil. 576, 586-587 (2013).

[32] *Stanley Fine Furniture v. Gallano*, 748 Phil. 624, 637 (2014).

[33] Phil. 530, 537 (2009).

[34] 649 Phil. 213-225 (2010).

with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances. Thus, there should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.[35] (citations omitted)

In the motion for extension to file a petition for certiorari, it was stated that Gabriel had since been working and living in Australia for a few years subsequent to his separation from Petron. The week before the 60-day deadline for filing, Gabriel's counsel had already emailed a copy of the petition. Gabriel explained in his motion that he needed more time to secure an appointment with the Philippine Consular Office in Melbourne, Australia.

Unlike those mentioned exceptions when the period to file a petition for certiorari was not strictly applied, we do not find Gabriel's reason to meet the deadline compelling. In the first place, his counsel, who is supposed to be well-versed in our rules of procedure, should have anticipated that Gabriel needed to take his oath before the Philippine Consular Office. By giving Gabriel only one (1) week to comply with this requirement, his lawyer did not give him much time and simply assumed that Gabriel could deliver on time. On the other hand, Gabriel, assuming he really wanted to pursue his case against Petron, could have easily visited the Philippine Consular Office as soon as possible. Instead, he opted to wait for a few days thinking that time was not of the essence.

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

We must remember that the rationale for the amendments under A.M. No. 07-7-12-SC is essentially to prevent the use (or abuse) of the petition for certiorari under Rule 65 to delay a case or even defeat the ends of justice.[36] Here, we cannot simply reward the lack of foresight on the part of Gabriel and his lawyer.

As a final note, although the CA never ruled on the merits of the case, it had a chance to consider Gabriel's petition for certiorari because this was attached to the motion for reconsideration. For practical reasons, the CA would not have ignored outright the attached petition and not consider the merits of the case. Regardless whether the CA did or not, we can assume that it was acting within its judicial discretion.

**WHEREFORE,** premises considered, the present petition is **DENIED**. The assailed 21 July 2010 and 17 November 2010 Resolutions of the Court of Appeals in CA-G.R. SP No. 114858 are hereby **AFFIRMED**.

**SO ORDERED.**

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

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**SECOND DIVISION**

[G.R. No. 200256. April 11, 2018]

**REPUBLIC OF THE PHILIPPINES,** *petitioner, vs.* **NORTHERN CEMENT CORPORATION,** *respondent.*

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[36] *Supra* note 33 at 537.

## SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); ACQUISITION BY PRESCRIPTION; REQUIREMENT OF POSSESSION; THE BURDEN OF PROOF IS ON THE PERSON SEEKING ORIGINAL REGISTRATION OF LAND TO PROVE BY CLEAR, POSITIVE AND CONVINCING EVIDENCE THAT HIS POSSESSION AND THAT OF HIS PREDECESSORS-IN-INTEREST WAS OF THE NATURE AND DURATION REQUIRED BY LAW.—** [T]he evidence presented, the allegations in the pleadings as well as the discussion of the CA and the RTC in their respective decisions and resolutions, reveal that the present controversy was filed and tried based on Section 14(2) of PD 1529. Thus, the Petition shall be resolved on Northern Cement's proof of its acquisition of the Subject Lot by prescription. Unlike Section 14(1) which requires an open, continuous, exclusive, and notorious manner of possession and occupation since June 12, 1945 or earlier, Section 14(2) is silent as to the nature and period of such possession and occupation necessary. This necessitates a reference to the relevant provisions of the Civil Code on prescription — in this case, Articles 1137 and 1118 thereof x x x. The phrase "adverse, continuous, open, public, and in concept of owner," is a conclusion of law. The burden of proof is on the person seeking original registration of land to prove by clear, positive and convincing evidence that his possession and that of his predecessors-in-interest was of the nature and duration required by law. Applying the foregoing to the present case, the Court is unconvinced by the pieces of evidence submitted by Northern Cement to prove compliance with the requirement of possession under Section 14(2) of PD 1529 in relation to Articles 1137 and 1118 of the Civil Code for original registration of land.

2. **ID.; ID.; ID.; ID.; ID.; INTERMITTENT AND SPORADIC ASSERTION OF ALLEGED OWNERSHIP DOES NOT PROVE OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION AND OCCUPATION.—** [T]he seven (7) tax declarations (1971, 1974, 1980, 1985, 1995, 2001 and 2003) in the name of Northern Cement and one (1) tax declaration (1970) in the name of its predecessor-in-interest for a claimed possession of at least thirty-two (32) years (1968

- 2000) do not qualify as competent evidence to prove the required possession. It has been held that this type of intermittent and sporadic assertion of alleged ownership does not prove open, continuous, exclusive and notorious possession and occupation. x x x Moreover, Tax Declarations are not conclusive evidence of ownership but only a basis for inferring possession. It is only when these tax declarations are coupled with proof of actual possession of the property that they may become the basis of a claim of ownership.

**3. ID.; ID.; ID.; ID.; ID.; REGISTRATION OF LANDS MAY BE DISALLOWED WHEN, ALTHOUGH PLANTS AND FRUIT-BEARING TREES EXISTED ON THE CONTESTED LANDS, IT WAS NOT PROVEN THAT THEY WERE CULTIVATED BY THE REGISTRANT, OR THAT THEY WERE ACTIVELY AND REGULARLY CULTIVATED AND MAINTAINED BY THE REGISTRANT, OR THAT THEY WERE PLANTED BY HIM OR HIS PREDECESSORS-IN-INTEREST.—** Northern Cement miserably failed to prove possession of the Subject Lot in the concept of an owner, with the records bare as to any acts of occupation, development, cultivation or maintenance by it over the property. Indeed, from the evidence presented, the only "improvements" on the Subject Lot were "cogon" and "unirrigated rice." Cogon grass is hardly the "improvement" contemplated by law to prove satisfaction of the requirements of registering lands. It is a matter of common knowledge that cogon grass grows casually on lands in this country, without need of cultivation, and hardly has utility. More than anything, it is usually *indicia* that the land on which it grows is idle. As for the unirrigated rice which appeared latest in the 1995 Tax Declaration, plain common sense dictates that the fact of it being unirrigated and uncultivated further cements the character of the land as idle. The importance of exercising acts of dominion on a land sought to be registered cannot be downplayed. In a plethora of cases, the Court has disallowed registration of lands where, although plants and fruit-bearing trees existed on the contested lands, it was **not** proven that they were cultivated by the registrant, or that they were actively and regularly cultivated and maintained and not merely casually or occasionally tended to by the registrant, or that they were planted by him or his predecessors-in-interest. Evidently, this case where cogon and unirrigated rice appear to be the only things standing on the

Subject Lot and with no allegations or testimony that the same had been planted or cultivated by Northern Cement, pales in comparison with the aforementioned cases.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for petitioner.
*Villarin & Tinio Law Office* for respondent.

**D E C I S I O N**

**CAGUIOA, *J.*:**

Before the Court is a Petition for Review[1] on *Certiorari* under Rule 45 of the Rules of Court filed by petitioner Republic of the Philippines (Republic), assailing the Decision[2] dated August 15, 2011 (assailed Decision) and Resolution[3] dated January 13, 2012 (assailed Resolution) of the Court of Appeals (CA) Special Third Division in CA-G.R. CV No. 94172. The CA Special Third Division affirmed *in toto* the Decision[4] of the Regional Trial Court (RTC) of Urdaneta City, Pangasinan (Branch 47) dated July 6, 2009 in LRC Case No. U-1131, granting the application for registration filed by respondent Northern Cement Corporation (Northern Cement) over a parcel of land situated in Municipality of Sison, Pangasinan with an area of 58,617.96 square meters (Subject Lot).

At the outset, the Motion for Extension of Time to file the subject Petition for Review on *Certiorari* is hereby **GRANTED**, the records showing that the same had been filed on time, is reasonable, and is the first motion for extension filed in the instant case. Consequently, the present petition is timely filed.

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[1] *Rollo*, pp. 18-38.

[2] *Id*. at 39-45. Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Estela M. Perlas-Bernabe (now a Member of this Court) and Samuel H. Gaerlan, concurring.

[3] *Id*. at 46-47. Penned by Associate Justice Samuel H. Gaerlan with Associate Justices Ramon M. Bato, Jr. and Michael P. Elbinias, concurring.

[4] Records, pp. 111-119.

**Facts**

On June 16, 2000, Northern Cement[5] filed with the RTC an application for the registration of title over the Subject Lot — a Fifty Eight Thousand Six Hundred Seventeen point Ninety Six (58,617.96) square meters lot in Barangay Labayug, Sison, Pangasinan[6] — pursuant to Presidential Decree No. 1529 (PD 1529)[7] and to have the title thereto registered and confirmed under its name (Application).[8]

In its Application, Northern Cement alleged, *inter alia*, that: (1) it is the owner in fee simple of the Subject Lot which it acquired by way of a Deed of Absolute Sale (Deed of Sale) from the former owner, Rodolfo Chichioco (Chichioco);[9] (2) the Subject Lot was last assessed at ₱17,630.00 per Tax Declaration No. 023-01677;[10] and (3) Northern Cement is occupying said lot.[11]

To support its Application, Northern Cement offered, *inter alia*, the following documents: (1) Deed of Sale dated December 28, 1968[12] executed by Chichioco in favor of Northern Cement; (2) Affidavits[13] of alleged adjoining landowners Eugenia Batnag and Placido Saro attesting that Northern Cement is the owner and possessor of the Subject Lot; (3) seven (7) Tax Declarations[14] for various years from 1971 to 2003 in the name of Northern Cement and a Tax Declaration[15] for year 1970 in the name of Chichioco; (4) Tax Clearance Certificate[16] dated May 21, 2007;

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[5] Represented by its manager Olegario De Joya, Jr.

[6] *Rollo*, p. 20.

[7] Otherwise known as the Property Registration Decree.

[8] Records, pp. 1-4.

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

[10] *Id.* at 2.

[11] *Id.*

[12] *Id.* at 84-86.

[13] *Id.* at 78-79.

[14] *Id.* at 102-108.

[15] *Id.* at 109.

[16] *Id.* at 88.

(5) Technical Description[17] of the Subject Lot; (6) Approved Plan[18] certified by the Department of Environment and Natural Resources (DENR) stating that the Subject Lot is "x x x inside alienable and disposable area as per project No. 63, L.C. Map No. 698, certified on November 21, 1927 x x x."[19]

Likewise, Northern Cement submitted a Report[20] dated March 16, 2003 from Alfredo Reyes, Special Investigator I, Community Environment and Natural Resources Office (CENRO), DENR, Urdaneta City, stating, among others, that: (1) the land is agricultural;[21] (2) it has not been earmarked for public purposes;[22] (3) the entire area is within the alienable and disposable zone as classified on November 21, 1927[23] and (4) Northern Cement is the actual occupant of the Subject Lot with the improvement: "Cogon."[24]

Northern Cement likewise adduced in evidence the testimonies of the following witnesses: (1) Angelito Cabana, Northern Cement's duly authorized representative, who testified that Northern Cement acquired ownership over the Subject Lot from Chichioco by virtue of a Deed of Absolute Sale dated December 28, 1968, that Northern Cement has been paying the realty taxes due thereon, and that there is no other person who claims interest over the same;[25] and (2) Lilia Macanlalay and Macario Lopez, Jr., Records Officer and Special Investigator, respectively, of the CENRO Regional Office of Urdaneta City, who both testified that an investigation was conducted over the Subject Lot and that all the records relative thereto are complete.[26]

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

[18] *Id*. at 77.

[19] *Id*.

[20] *Id*. at 90-93.

[21] *Id*. at 91.

[22] *Id*.

[23] *Id*. at 90.

[24] *Id*. at 91.

[25] *Id*. at 113-114.

[26] *Id*. at 114-115.

The Office of the Solicitor General (OSG) filed its Notice of Appearance[27] for the Republic, deputizing the City Prosecutor of Urdaneta City to appear in the case.

*Ruling of the RTC*

In its Decision[28] dated July 6, 2009, the RTC granted the Application for registration of Northern Cement in this wise:

> **WHEREFORE**, premises considered, the Court, after confirming the Order of General Default, hereby adjudicates Lot 3250, Ap-01-004756, Pls 796 Sison Public Land Subd., which is the subject land of this registration proceedings in favor of applicant NORTHERN CEMENT CORPORATION, as its real property and hereby likewise orders the registration of title thereto in accordance with PRESIDENTIAL DECREE No. 1529 in the name of the applicant and on the basis of the approved Technical Description (Exh. "J").
>
> Upon finality of the Decision, let a corresponding Order for the issuance of Decree of Registration be issued.
>
> SO ORDERED.[29]

The RTC ruled that from the evidence presented, Northern Cement was able to prove, by preponderance of evidence, its claim of ownership over the Subject Lot.

The Republic appealed to the CA, alleging that the RTC erred in granting the application for registration despite the failure of Northern Cement to observe the requirements for original registration of title under PD 1529. The Republic pointed out, among others, that the CENRO Report and the Approved Plan submitted in evidence by Northern Cement hardly suffice to prove that the Subject Lot is an alienable portion of the public domain.

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[27] *Id*. at 21.

[28] *Id*. at 111-119.

[29] *Id*. at 119.

*Ruling of the CA*

In the assailed Decision[30] dated August 15, 2011, the CA denied the Republic's appeal and affirmed *in toto* the Decision of the RTC, disposing of the case as follows:

> WHEREFORE, in the light of the foregoing, the present appeal is hereby ***DENIED*** and the assailed decision dated 06 July 2009 is ***AFFIRMED in toto***.
>
> SO ORDERED.[31]

The CA ruled that the evidence sufficed to comply with the requirements of PD 1529.

The Republic filed a Motion for Reconsideration[32] but the same was denied in the assailed CA Resolution[33] for raising no additional arguments to warrant reconsideration of the assailed Decision.

Hence, this Petition.

**Issue**

The Republic raised the sole issue of whether the CA erred in affirming the RTC's Decision granting the application for registration of title in favor of Northern Cement despite non-compliance with the requirements under PD 1529.

**The Court's Ruling**

The Petition is meritorious.

The Republic, in its Petition, alleges that Northern Cement is not qualified to have the Subject Lot registered in its name under Section 14 of PD 1529, whether under (1) or (2), which states,

> **SECTION 14.** *Who may apply*. — The following persons may file in the proper Court of First Instance an application for registration

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[30] *Rollo*, pp. 39-45.

[31] *Id*. at 45.

[32] CA *rollo*, pp. 65-71.

[33] *Rollo*, pp. 46-47.

of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in--interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

(2) Those who have acquired ownership over private lands by prescription under the provisions of existing laws.

The Republic is correct.

At the outset, the Court notes that while the Republic makes a fairly lengthy disquisition on compliance by Northern Cement with the requirements of Section 14(1) of PD 1529 and while the RTC quoted[34] *in passing* this provision of the law, nowhere else in the records does it appear that Northern Cement's case is specifically hinged thereon. The Application itself does not enlighten as to whether it was filed under Section 14(1) or Section 14(2) of PD 1529. Northern Cement made no allegation nor presented evidence that it had been in possession of the subject property since June 12, 1945 or earlier. At any rate, the evidence presented, the allegations in the pleadings as well as the discussion of the CA and the RTC in their respective decisions and resolutions, reveal that the present controversy was filed and tried based on Section 14(2) of PD 1529. Thus, the Petition shall be resolved on Northern Cement's proof of its acquisition of the Subject Lot by prescription.

Unlike Section 14(1) which requires an open, continuous, exclusive, and notorious manner of possession and occupation since June 12, 1945 or earlier, Section 14(2) is silent as to the nature and period of such possession and occupation necessary. This necessitates a reference to the relevant provisions of the Civil Code on prescription — in this case, Articles 1137[35] and 1118 thereof, to wit:

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[34] Records, p. 117.

[35] The other period of acquisitive prescription (10 years) under Article 1134 of the Civil Code does not apply in original registration of alienable

**Article 1137.** Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for **thirty years**, without need of title or of good faith.

**Article 1118.** Possession has to be in the **concept of an owner, public, peaceful and uninterrupted**. (Emphasis and underscoring supplied)

The Court, in the case of *Heirs of Crisologo v. Rañon*,[36] stated:

> Prescription is another mode of acquiring ownership and other real rights over immovable property. It is concerned with lapse of time in the manner and under conditions laid down by law, namely, that the **possession should be in the concept of an owner, public, peaceful, uninterrupted and adverse. Possession is open when it is patent, visible, apparent, notorious and not clandestine.It is continuous when uninterrupted, unbroken and not intermittent or occasional; exclusive when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit; and notorious when it is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood x x x**. (Emphasis and underscoring supplied; citations omitted)

The phrase "adverse, continuous, open, public, and in concept of owner," is a conclusion of law.[37] The burden of proof is on the person seeking original registration of land to prove by clear, positive and convincing evidence that his possession and that of his predecessors-in-interest was of the nature and duration required by law.

Applying the foregoing to the present case, the Court is unconvinced by the pieces of evidence submitted by Northern Cement to prove compliance with the requirement of possession under Section 14(2) of PD 1529 in relation to Articles 1137 and 1118 of the Civil Code for original registration of land.

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and disposable lands of the public domain, such as this case, for lack of just title and good faith of the registrant.

[36] 559 Phil. 169, 181-182 (2007).

[37] *Republic v. East Silverlane Realty Development Corporation*, 682 Phil. 376, 394 (2012).

The RTC erred in haphazardly concluding otherwise and the CA, in turn, erred in affirming the RTC.

*First*, the seven (7) tax declarations (1971, 1974, 1980, 1985, 1995, 2001 and 2003) in the name of Northern Cement and one (1) tax declaration (1970) in the name of its predecessor-in-interest for a claimed possession of at least thirty-two (32) years (1968-2000) do not qualify as competent evidence to prove the required possession. It has been held that this type of intermittent and sporadic assertion of alleged ownership does not prove open, continuous, exclusive and notorious possession and occupation.[38] The Court has, in a catena of cases, found as lacking, episodic and random payments of realty taxes including five (5) Tax Declarations for a claimed possession of forty-five (45) years,[39] twenty-three (23) Tax Declarations on two (2) areas for a claimed possession of forty-six (46) years[40] and twenty (20) Tax Declarations on three (3) areas for a claimed possession of sixty-five (65) years.[41] The Court finds no reason to decide this case differently being that it shares the same factual milieu.

Moreover, Tax Declarations are not conclusive evidence of ownership but only a basis for inferring possession.[42] It is only when these tax declarations are coupled with proof of actual possession of the property that they may become the basis of a claim of ownership.[43]

*Second*, even if it be assumed that Northern Cement had been in possession of the subject property since 1968, it still failed to sufficiently demonstrate that its supposed possession was of the nature and character contemplated by law.

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[38] *Wee v. Republic*, 622 Phil. 944, 956 (2009).

[39] *Id*.

[40] *Republic v. East Silverlane Realty Development Corporation*, *supra* note 37, at 393.

[41] *Republic v. Heirs of Spouses Estacio*, G.R. No. 208350, November 14, 2016, p. 14.

[42] *Republic v. Heirs of Montoya*, 687 Phil. 542 (2012).

[43] *Cequeña v. Bolante*, 386 Phil. 419 (2000).

The testimonies of the adjoining owners presented by Northern Cement do not deserve serious consideration and they do not augment the inadequacy of the Tax Declarations. The two witnesses, claiming to be heirs of the owners of the lands adjoining the subject property, did not testify as to the specific acts of possession and ownership exercised by Northern Cement and/or its predecessors-in-interest. They merely made a uniform and sweeping claim that the subject property "is owned and possessed by [Northern Cement],"[44] which is a mere conclusion of law. This evidence is tenuous, at best.

*Third*, Northern Cement miserably failed to prove possession of the Subject Lot in the concept of an owner, with the records bare as to any acts of occupation, development, cultivation or maintenance by it over the property. Indeed, from the evidence presented, the only "improvements" on the Subject Lot were "cogon"[45] and "unirrigated rice."[46]

Cogon grass is hardly the "improvement" contemplated by law to prove satisfaction of the requirements of registering lands. It is a matter of common knowledge that cogon grass grows casually on lands in this country, without need of cultivation, and hardly has utility. More than anything, it is usually *indicia* that the land on which it grows is idle.[47]

As for the unirrigated rice which appeared latest in the 1995 Tax Declaration, plain common sense dictates that the fact of it being unirrigated and uncultivated further cements the character of the land as idle.

The importance of exercising acts of dominion on a land sought to be registered cannot be downplayed. In a plethora of

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[44] Records, pp. 78-79.

[45] Indicated on the CENRO Report and all the Tax Declarations.

[46] Indicated on Tax Declarations for years 1995, 1985, 1980, 1974, 1971 and 1970.

[47] See *Director of Lands vs. Intermediate Appellate Court*, 284-A Phil. 675 (1992) where this Court disallowed registration of a land largely considered as idle because of the prevalence of cogon grass in the area.

cases, the Court has disallowed registration of lands where, although plants and fruit-bearing trees existed on the contested lands, it was **not** proven that they were cultivated by the registrant, or that they were actively and regularly cultivated and maintained and not merely casually or occasionally tended to by the registrant,[48] or that they were planted by him or his predecessors-in-interest.[49]

Evidently, this case where cogon and unirrigated rice appear to be the only things standing on the Subject Lot and with no allegations or testimony that the same had been planted or cultivated by Northern Cement, pales in comparison with the aforementioned cases.

On a final note, this Court is well-aware that the Republic has raised issues bearing on the registrable nature of the subject property, pursuant to the landmark and oft-quoted case of *Malabanan v. Republic*[50] in relation to the relevant Civil Code provisions, *i.e.*, whether it was validly and sufficiently declared alienable and disposable and, even so, if it was further declared as no longer intended for public use or service or for the development of national wealth and whether the latter declaration is necessary for the subject land to be registrable. The Court deems it no longer necessary to address these matters as this case can be amply decided on the basis of the evident failure of Northern Cement to satisfy the required possession under PD 1529, Section 14(2) in relation to Articles 1137 and 1118 of the Civil Code. Perhaps, that issue is fated to be scrupulously discussed in a more opportune case.

**WHEREFORE,** premises considered, the instant petition for review is hereby **GRANTED**. The Decision dated August 15, 2011 and the Resolution dated January 13, 2012 of the CA Special Third Division in CA-G.R. CV No. 94172 are **SET ASIDE**. Northern Cement Corporation's application for

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[48] See *Republic v. Heirs of Montoya*, *supra* note 42, at 554.

[49] See *Wee v. Republic*, *supra* note 38.

[50] 605 Phil. 244 (2009).

registration of Lot 3250, Ap-01-004756, Pls 796 Sison Public Land is hereby **DENIED**.

**SO ORDERED.**

*Carpio*[*] *(Chairperson), Peralta,* and *del Castillo*,[**] *JJ.*, concur.

*Reyes, Jr., J.*, on wellness leave.

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**THIRD DIVISION**

[G.R. No. 203435. April 11, 2018]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **MARDY AQUINO, MARIO AQUINO, RECTO AQUINO, INYONG NARVANTE, ROMY FERNANDEZ, FELIX SAPLAN, BONIFACIO CAGUIOA and JUANITO AQUINO,** *accused,* **MARDY AQUINO and MARIO AQUINO,** *accused-appellants*.

**SYLLABUS**

**1. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS.—** Murder is defined and penalized under Article 248 of the Revised Penal Code (*RPC*), as amended x x x. Generally, the elements of murder 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 Art. 248; and 4) That the killing is not parricide or infanticide.

**2. ID.; ID.; AGGRAVATING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; TO TAKE ADVANTAGE OF SUPERIOR STRENGTH MEANS TO PURPOSELY USE**

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

[**] Designated additional Member per Raffle dated March 26, 2018.

**FORCE EXCESSIVELY OUT OF PROPORTION TO THE MEANS OF DEFENSE AVAILABLE TO THE PERSON ATTACKED.—** Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor/s that is plainly and obviously advantageous to the aggressor/s and purposely selected or taken advantage of to facilitate the commission of the crime. Evidence must show that the assailants consciously sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use force excessively out of proportion to the means of defense available to the person attacked. The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties. x x x [T]he presence of several assailants does not *ipso facto* indicate an abuse of superior strength. Mere superiority in numbers is not indicative of the presence of this circumstance.

3. **ID.; ID.; FRUSTRATED MURDER; ELEMENTS.—** The elements of frustrated homicide are: (1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in the assault; **(2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance**; and (3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code, as amended, is present.

4. **ID.; ID.; ATTEMPTED MURDER; COMMITTED IF THE VICTIM'S WOUNDS WERE NOT FATAL AND THERE WAS NO SHOWING THAT SUCH WOUNDS WOULD NOT HAVE CERTAINLY CAUSED HIS DEATH WERE IT NOT FOR TIMELY MEDICAL ASSISTANCE.—** If the victim's wounds are not fatal, the crime is only attempted homicide. Thus, the prosecution must establish with certainty the nature, extent, depth, and severity of the victim's wounds. In the case at bar, the prosecution failed to prove that Ernesto's wounds would have certainly resulted in his death were it not for the medical treatment he received. On the contrary, Dr. Carlito V. Arenas, who attended to Ernesto, testified that the possibility of death from such wounds is remote x x x. Hence, considering that Ernesto's wounds were not fatal and absent a showing that such wounds would have certainly caused his death were it not for timely medical assistance, the Court declares that in Criminal Case No. L-6576, accused-appellants' guilt is limited to the crime of **attempted homicide**.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for petitioner.
*Public Attorney's Office* for accused-appellants.

## D E C I S I O N

**MARTIRES, *J.*:**

This is an appeal from the 30 March 2012 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-H.C. No. 03659 which affirmed with modification the 23 July 2008 Joint Decision[2] of the Regional Trial Court, Branch 39, Lingayen, Pangasinan *(RTC),* in Criminal Case Nos. L-6575 and L-6576 finding Mardy Aquino, Mario Aquino, and Juanito Aquino guilty of murder and frustrated murder.[3]

## THE FACTS

In two Informations, both dated 15 August 2001, the accused were charged with murder and frustrated murder. The information for murder reads:

That on or about the 15th day of May 2001 at around 10:30 o'clock in the morning at Barangay Balogo-Pandel, in the municipality of Binmaley, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, conspiring, confederating and helping one another, with intent to kill, with evident premeditation and abuse of superior strength, did then and there, wilfully, unlawfully and feloniously attack, assault and stab Jackie N. Caguioa, inflicting upon the latter fatal wounds which caused his death as a consequence, to the damage and prejudice of his heirs.

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[1] *Rollo*, pp. 2-23; penned by Associate Justice Vicente S.E. Veloso with Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez, concurring.

[2] CA *rollo*, pp. 86-98; penned by Judge Dionisio C. Sison.

[3] Recto Aquino, Inyong Narvante, Romy Fernandez, Felix Saplan and Bonifacio Caguioa were also charged with murder and frustrated murder but they remain at large.

Contrary to Article 248 of the Revised Penal Code.[4]

On the other hand, the information for frustrated murder states:

That on or about the 15th day of May 2001 at around 10:30 o'clock in the morning at Barangay Balogo-Pandel, in the municipality of Binmaley, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, conspiring, confederating and helping one another, with intent to kill and with evident premeditation did then and there, wilfully, unlawfully and feloniously attack, assault and stab Ernesto Caguioa, inflicting upon the latter the following injuries:

- Stab wound lumbar area (L)
- Zci stab wound lumbar area (L) penetration perforation jejunum prox tst.
- Laceration thinner upper pale (L)
  Operation: Expeoratory Laparatomy Procedure Interroraphy Neophorraphy

the accused having thus performed all the acts of execution which would have produced the crime of Murder as a consequence but which nevertheless did not produce the felony by reason of causes independent of the will of the accused and that is due to timely and adequate medical assistance rendered to said Ernesto Caguioa, which prevented his death, to his damage and prejudice.

Contrary to Article 248 in relation to Article 6 of the RPC.[5]

Upon arraignment, the accused pleaded not guilty to the charges.

***Version of the Prosecution***

At around 10:30 in the morning of 15 May 2001, Inyong Narvante *(Inyong)* approached Ernesto Caguioa *(Ernesto)* and asked the latter for some fish as he was in a drinking spree with his friends. Ernesto, however, refused and teased Inyong for voting for a certain Domalante. An infuriated Inyong shouted, "vulva of your mother," and threatened that something would happen to Ernesto. Afterwards, Inyong returned to his friends.[6]

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[4] Records, Vol. I, pp. 1-2.

[5] Records, Vol. II, pp. 1-2.

[6] Records, Vol. I, p. 7.

Later in the morning, Ernesto was having a conversation with his son Jackie, Rick De Guzman, and Orlando Ferrer while they were waiting for a boat to transport their catch to Dagupan. A hundred meters away from them were Ernesto's twin sons, Edwin and Edward, together with Dicto de Guzman and Bonifacio Doria, who were washing their fishing nets. Suddenly, Mardy, Mario, Juanito, Inyong, Recto Aquino *(Recto),* Romy Fernandez *(Romy)*, Felix Saplan *(Felix),* and Bonifacio Caguioa *(Bonifacio)* arrived and threw stones at Edwin's group. Aggrieved, Edwin reported the incident to his elder brother Jackie and to his father Ernesto.[7]

Thereafter, Jackie went to where the accused were having a drinking session to ask them why they attacked his brothers. Ernesto followed him. Instead of answering, the accused laughed at him. All of a sudden, Raul Bautista, Aquilino Melendez, and Juanito grabbed and restrained Jackie who was then stabbed by Mardy and Recto.[8]

Ernesto attempted to help his son, but Mario held him by the neck while Felix, Inyong, Romy, and Bonifacio grabbed his left leg. In that position, Ernesto was stabbed by Mardy and Recto, hitting him in the left arm, left stomach, and left thigh.[9]

After the incident, the accused ran away leaving behind injured Ernesto and Jackie. The victims were brought to the hospital, but Jackie died on the way.[10]

***Version of the Defense***

Julius Caguioa, son of Bonifacio, testified that on 15 May 2001, at around one o'clock in the afternoon, he was at the house of Romy where he saw Mario, Felix, and Bonifacio drinking. Ernesto and Jackie then arrived and approached the

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[7] TSN, 17 January 2002, pp. 6-8; TSN, 11 June 2002, pp. 4-6.

[8] TSN, June 11, 2002, pp. 6-7.

[9] *Id*. at 8-9.

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

group. Ernesto then hit Bonifacio with a water pipe while Jackie stabbed Bonifacio in the upper right side of his body.[11]

Miriam Puroganan, daughter of Mario, narrated that on the same date and time, she was at the house of her mother-in-law, two meters away from Romy's house. While having lunch, she heard Romy's wife shout, "Don't make trouble." When Miriam went out of the house, she saw Ernesto hitting her father Mario with an iron pipe; Mardy then arrived and stabbed Ernesto in order to protect Mario.[12]

On his part, Mario recounted that on 15 May 2001, he was having a drinking spree with Recto, Felix, and Romy at the latter's place. At about one o'clock in the afternoon, Bonifacio and Inyong arrived and asked Romy if they could borrow money from him. Romy went to the balcony of his house. While Bonifacio and Inyong were waiting for Romy, Ernesto and his sons Jackie, Edwin, and Edward arrived. Jackie then stabbed Bonifacio and also attempted to stab Mardy but failed because Recto stabbed him first. Ernesto struck Inyong with an iron pipe. Mario was also hit by Ernesto on the right lower leg and head, which caused him to lose consciousness.[13]

Juanito vehemently denied any participation in the incident. On 15 May 2001, at around 10:00 o'clock in the morning, he was asleep in his house. He was named in the complaint because the family of deceased Jackie had a grudge against him because he once testified against them.[14]

In his defense, Mardy averred that on the day of the incident, he was asleep in his house, about 50 meters away from Romy's house, when his cousin Recto woke him up and informed him that his father, Mario, was being attacked. He immediately proceeded to Romy's place and saw Jackie stab Bonifacio. He then saw Ernesto hitting his father with a water pipe; thus, to

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[11] TSN, 15 May 2003, pp. 7-13.

[12] TSN, 18 December 2007, pp. 4-12.

[13] TSN, 18 May 2005, pp. 3-8; TSN, 1 June 2005, pp. 4-9.

[14] TSN, 17 April 2007; pp. 3-5.

protect his father, he stabbed Ernesto. Thereafter, he and his father went home.[15]

***The Regional Trial Court's Ruling***

In its decision, the RTC found Mardy, Mario, and Juanito guilty of murder and frustrated murder.[16] It reasoned that the testimonies of the prosecution witnesses clearly showed that they took advantage of their superior strength and they conspired with one another when they assaulted Jackie and Ernesto. The *fallo* reads:

> WHEREFORE, the prosecution having established beyond iota of doubt the guilt of the accused of the crimes of Murder in Criminal Case No. 6575 and Frustrated Murder in Criminal Case No. 6576, this Court in the absence of any modifying circumstance hereby sentences all the accused in the crime of Murder to suffer each the penalty of RECLUSION PERPETUA, to indemnify the legal heirs of the victim the amount of Php50,000.00 and to pay actual damages in the amount of Php70,000.00 for the wake and funeral expenses; Php40,000.00 as attorney's fees and Php100,000.00 as moral damages for the wounded feelings and moral shock suffered by the mother of victim Jackie Caguioa plus costs of suit; and in the crime of Frustrated Murder all the accused to suffer each the indeterminate prison term of five (5) years and one (1) day of Prision Correccional as minimum to twelve (12) years of Prision Mayor as maximum and to pay the victim actual damages in the amount of Php15,000.00; and attorney's fees in the amount of Php15,000.00 plus costs of suit.
>
> The period of preventive imprisonment suffered by the accused shall be credited in full in the service of their sentence in accordance with Article 29 of the Revised Penal Code.
>
> As far as accused Recto Aquino, Inyong Narvante, Romy Fernandez, Felix Saplan and Bonifacio Caguioa who are still at large are concerned, let this case be ARCHIVED.[17]

Aggrieved, Mario and Mardy *(accused-appellants)* appealed before the CA.

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[15] TSN, 6 November 2007; pp. 3-11.

[16] The case was archived as regards Recto Aquino, Inyong Narvante, Romy Fernandez, Felix Saplan and Bonifacio Caguio since they are still at large.

[17] CA *rollo*, pp. 97-98.

***The Court of Appeals Ruling***

In its decision, the CA affirmed the conviction of accused-appellants but modified the penalty for frustrated murder and the amount of damages awarded. As regards the contention that the prosecution failed to prove intent to kill, the CA opined that the use of a deadly weapon and the number of wounds inflicted demonstrated a deliberate and determined assault with intent to kill. It further held that a finding of abuse of superior strength was not negated by the fact that some of the accused suffered injuries. The appellate court declared that the prosecution sufficiently proved the presence of conspiracy considering that the victims were simultaneously restrained and stabbed by the accused. It, however, ruled that actual damages should be reduced to ₱20,000.00 because the receipts submitted by the prosecution showed that the heirs of Jackie incurred only ₱20,000.00 as funeral expenses and not ₱70,000.00 as awarded by the trial court. The CA disposed the case in this wise:

> WHEREFORE, premises considered, the instant appeal is DENIED for lack of merit. But while the assailed July 23, 2008 Joint Decision is AFFIRMED, the same is however MODIFIED as follows:
>
> (1) In the case of Frustrated Murder, accused-appellants are hereby sentenced to suffer the indeterminate sentence of 6 years and 1 day of prision mayor as minimum to 14 years, 8 months and 1 day of reclusion temporal as maximum;
>
> (2) In the case of Murder:
>
> a. The award of civil indemnity in increased to ₱75,000.00;
> b. The award of actual damages is reduced to ₱20,000.00;
> c. The award of moral damages is reduced to ₱50,000.00.[18]

Hence, this appeal.

**ISSUE**

**WHETHER THE GUILT OF ACCUSED-APPELLANTS FOR MURDER AND FRUSTRATED MURDER HAS BEEN PROVEN BEYOND REASONABLE DOUBT.**

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[18] *Rollo*, pp. 22-23.

## THE COURT'S RULING

***Accused-appellants may be held liable only for homicide.***

Murder is defined and penalized under Article 248 of the Revised Penal Code *(RPC)*, as amended, which provides:

> 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:
>
> 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, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
> 4. On occasion of any calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any 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.

Generally, the elements of murder 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 Art. 248; and 4) That the killing is not parricide or infanticide.[19]

That Jackie Caguioa died, that accused-appellants killed him, and that the killing is neither parricide nor infanticide remain undisputed. These circumstances are already established by the trial and appellate courts. Accused-appellants did not offer any substantial reason to deviate from the well-known rule that findings of fact and assessment of credibility of witnesses are

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[19] Luis B. Reyes, *The Revised Penal Code Criminal Code*, Book Two, 17th Ed., p. 496 (2008).

matters best left to the trial court.[20] No facts of substance and value were overlooked by the trial court which, if considered, might affect the result of the case.[21] The testimonies of the prosecution witnesses are clear and straightforward. Moreover, they are supported by the medical findings and they stand the test of reason. Thus, what remains to be resolved is the appreciation of abuse of superior strength as a qualifying circumstance.

Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor/s that is plainly and obviously advantageous to the aggressor/s and purposely selected or taken advantage of to facilitate the commission of the crime.[22] Evidence must show that the assailants consciously sought the advantage,[23] or that they had the deliberate intent to use this advantage.[24] To take advantage of superior strength means to purposely use force excessively out of proportion to the means of defense available to the person attacked.[25] The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties.[26]

The prosecution in this case failed to adduce evidence of a relative disparity in age, size, and strength, or force, except for the showing that two assailants stabbed the victim while three others restrained him. However, the presence of several assailants does not *ipso facto* indicate an abuse of superior strength. Mere superiority in numbers is not indicative of the presence of this circumstance.[27]

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[20] *People v. Mamaruncas*, 680 Phil. 192, 198 (2012).

[21] *Id*.

[22] *People v. Daquipil*, 310 Phil. 327, 348 (1995).

[23] *People v. Casingal*, 312 Phil. 945, 956 (1995).

[24] *People v. Escoto*, 313 Phil. 785, 799 (1995).

[25] *People v. Ventura*, 477 Phil. 458, 484 (2004).

[26] *People v. Beduya*, 641 Phil. 399, 410-411 (2010).

[27] *People v. Escoto*, *supra* note 24 at 800-801 (1995).

Further, the totality of the evidence shows that the encounter between the victim and his assailants was unplanned and unpremeditated. It must be noted that it was Jackie and Ernesto who went to the place where the accused were having a drinking session. Thus, there was no conscious effort on the part of the accused to use or take advantage of any superior strength that they then enjoyed. It has not been clearly established that the accused, taking advantage of their number, purposely resorted to holding Jackie by the arms so that two of them would be free to stab him. In view of the foregoing, the Court is compelled to rule out the presence of abuse of superior strength as a qualifying circumstance. Hence, accused-appellants' guilt must be limited to the crime of homicide.

***Abuse of superior strength was not alleged in the information for frustrated murder.***

An information to be sufficient must contain all the elements required by the Rules on Criminal Procedure. In the crime of murder, the qualifying circumstance raising the killing to the category of murder must be specifically alleged in the information.[28] Further, Sections 8 and 9, Rule 110 of the Rules of Criminal Procedure require that both the qualifying and aggravating circumstances must be specifically alleged in the information to be appreciated as such. In this case, the information for frustrated murder merely alleged the qualifying circumstance of evident premeditation. However, a perusal of the records shows that there was not even an attempt on the part of the prosecution to prove evident premeditation. The testimonies of the prosecution witnesses merely proved abuse of superior strength which, however, was not alleged in the information. As such, in the absence of any other qualifying circumstance in the information for Criminal Case No. L-6576, the charge against accused-appellants must be downgraded to homicide.

***Accused-appellants are guilty of attempted homicide.***

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[28] *People v. Lab-Eo*, 424 Phil. 482, 488 (2002).

The elements of frustrated homicide are: (1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in the assault; **(2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance**; and (3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code, as amended, is present.[29] If the victim's wounds are not fatal, the crime is only attempted homicide.[30] Thus, the prosecution must establish with certainty the nature, extent, depth, and severity of the victim's wounds.[31]

In the case at bar, the prosecution failed to prove that Ernesto's wounds would have certainly resulted in his death were it not for the medical treatment he received. On the contrary, Dr. Carlito V. Arenas, who attended to Ernesto, testified that the possibility of death from such wounds is remote:

> [Prosecutor Espinoza]: Based on your medical record, how many stab wounds suffered by Ernesto Caguioa?
>
> [Dr. Arenas]: There were four.
>
> Q: Will you please tell us those stab wounds based on your medical records?
> A: The first stab wound is on the left thoraco abdominal area chest, and the wound was as the boundary between the abdomen and the chest. And there was another on the thennar of the left hand, and the third stab wound is on the left thigh or the left leg.
>
> Q: That first injury doctor, will you consider that fatal injury or serious injury?
> A: The first wound, which was found at the thoraco abdominal area, on exploration during the operation, we found out that the wound was only up to the intercostals muscle. Meaning to say, it did not penetrate any of the internal organ.
>
> Q: Will the victim survive even in the absence of medical treatment?
> A: Yes, sir.

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[29] *Serrano v. People*, 637 Phil. 319, 337 (2010).

[30] *Colinares v. People*, 678 Phil. 482, 494 (2011).

[31] *Id*.

Q: How about the second injury that was found?
A: The second injury which was found on the left thennar which is 4 cm. in length and penetrating the tendons of the hand. Tendons are the structures which made the fingers move, and there were no vital organs affected.

Q: The third and fourth injury, will you consider that serious?
A: The third injury was about 2.5 cm. in length and affected the quadriceps muscle or the muscles of the thigh and there was a hematoma but there was no neurovascular involved. When I say neurovascular, blood vessels or nerves.

Q: And the fourth injury on the leg?
A: The fourth injury on the leg only penetrated the skins and the fat tissues.

Q: Let us go back to the first injury. You said it did not penetrate or affect any internal organ, does that require medical treatment?
A: Of course it requires medical treatment.

**Q: In the absence of medical treatment, will that cause to (sic) the death of the victim?**
**A: In this particular case, infection may follow later on which may cause some sort of blood poisoning but this is a remote possibility.**

**Q: How about the possibility of death due to loss of blood for lack of timely medical treatment?**
**A: No, I don't think so because there was no neurovascular injuries in this particular case**.[32] x x x (emphases supplied)

Hence, considering that Ernesto's wounds were not fatal and absent a showing that such wounds would have certainly caused his death were it not for timely medical assistance, the Court declares that in Criminal Case No. L-6576, accused-appellants' guilt is limited to the crime of **attempted homicide.**

***Penalty and award of damages***

Under Article 249 of the Revised Penal Code, the penalty imposed for the crime of homicide is *reclusion temporal*.

[32] TSN, 3 October 2002, pp. 4-5.

Considering that no aggravating circumstances attended the commission of the crime, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the maximum penalty shall be selected from the range of the medium period of *reclusion temporal*, with the minimum penalty selected from the range of *prision mayor*. Thus, we impose the penalty of imprisonment for a period of 8 years and 1 day of *prision mayor* as minimum to 14 years, 8 months and 1 day of *reclusion temporal* as maximum.

On the other hand, Article 51 of the Revised Penal Code provides that the imposable penalty for an attempted crime shall be lower by two degrees than that prescribed by law for the consummated felony. Two (2) degrees lower of *reclusion temporal* is *prision correccional* which has a duration of six (6) months and one (1) day to six (6) years.[33]

Under the Indeterminate Sentence Law, the *maximum term* of the indeterminate sentence shall be taken in view of the attending circumstances that could be properly imposed under the rules of the Revised Penal Code, and the *minimum term* shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code. Thus, the maximum term of the indeterminate sentence shall be taken within the range of *prision correccional*, depending on the modifying circumstances. In turn, the minimum term of the indeterminate penalty to be imposed shall be taken from the penalty one degree lower of *prision correccional*, that is *arresto mayor* with a duration of one (1) month and one (1) day to six (6) months.[34]

In the absence of any modifying circumstance, the maximum term of the indeterminate penalty shall be taken from the medium period of *prision correccional* or two (2) years and four (4) months and one (1) day to four (4) years and two (2) months. The minimum term shall be taken within the range of *arresto mayor*. Hence, the penalty for attempted homicide is six (6) months of *arresto mayor*, as minimum term of the indeterminate

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[33] *Serrano v. People*, *supra* note 29.

[34] *Id.* at 337-338.

penalty, to four (4) years and two (2) months of *prision correccional*, as maximum term of the indeterminate penalty.[35]

As regards the amount of damages in the crime of homicide, accused-appellants are ordered to pay the heirs of Jackie Caguioa ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.[36] Further, as declared by the Court in *People v. Villanueva*,[37] when actual damages proven by receipts during the trial amount to less than ₱25,000.00, as in this case, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages of a lesser amount.[38]

For the crime of attempted homicide, accused-appellants are ordered to pay Ernesto Caguioa ₱20,000.00 as civil indemnity and ₱20,000.00 as moral damages. Considering that abuse of superior strength was duly proved even though not alleged in the information, accused-appellants are further ordered to pay Ernesto Caguioa ₱20,000.00 as exemplary damages.[39]

**WHEREFORE,** the appeal is **PARTIALLY GRANTED**. The 30 March 2012 Decision of the Court of Appeals in CA-G.R. CR-HC No. 03659 is **AFFIRMED** with **MODIFICATIONS**. Accused-appellants **Mardy Aquino and Mario Aquino** are found **GUILTY** beyond reasonable doubt of **HOMICIDE** (Criminal Case No. L-6575) for the killing of **Jackie Caguioa** and are hereby sentenced to suffer the penalty of 8 years and 1 day of *prision mayor* as minimum to 14 years, 8 months and 1 day of *reclusion temporal* as maximum. They are ordered to pay the heirs of **Jackie Caguioa** the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱50,000.00 as exemplary damages, and ₱25,000.00 as temperate damages in lieu of actual damages.

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[35] *Id*. at 338.

[36] *People v. Jugueta*, 783 Phil. 806, 840 (2016).

[37] 456 Phil. 14 (2003).

[38] *Id*. at 29.

[39] *People v. Jugueta*, *supra* note 36 at 852-853.

Accused-appellants **Mardy Aquino and Mario Aquino** are also found **GUILTY** beyond reasonable doubt of the crime of **ATTEMPTED HOMICIDE** (Criminal Case No. L-6576) and are hereby sentenced to suffer the indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. They are ordered to pay Ernesto Caguioa the amount of ₱20,000.00 as civil indemnity, ₱20,000.00 as moral damages, and ₱20,000.00 as exemplary damages.

All monetary awards shall earn interest at the 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.

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**SECOND DIVISION**

[G.R. No. 210475. April 11, 2018]

**RAMON K. ILUSORIO, MA. LOURDES C. CRISTOBAL, ROMEO G. RODRIGUEZ, EDUARDO C. ROJAS, CESAR B. CRISOL, VIOLETA J. JOSEF, ERLINDA K. ILUSORIO, SHEREEN K. ILUSORIO, and CECILIA A. BISUÑA,** *petitioners, vs.* **SYLVIA K. ILUSORIO,** *respondent.*

**SYLLABUS**

**REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; RELIEF; A GENERAL PRAYER FOR OTHER RELIEFS JUST AND EQUITABLE APPEARING ON THE COMPLAINT OR PLEADING NORMALLY ENABLES THE COURT TO AWARD RELIEFS SUPPORTED BY THE COMPLAINT OR OTHER PLEADING, BY THE FACTS**

**ADMITTED AT THE TRIAL, AND BY THE EVIDENCE ADDUCED BY THE PARTIES, EVEN IF THESE RELIEFS ARE NOT SPECIFICALLY PRAYED FOR IN THE COMPLAINT.—** The pleading shall specify the relief sought, but it may add a general prayer for such further or other relief as may be deemed just or equitable. While the petition did not categorically state the reversal and setting aside of the Order dated April 3, 2013 as one of the specific reliefs desired, causing the CA to hastily conclude that there was no principal action sought by petitioners, it did contain a general prayer "*for other legal and equitable reliefs*." This general prayer should be interpreted to include the plea for the nullity of the Order because it is already evident from the allegations contained in the body of the petition. x x x Certainly, a general prayer for "other reliefs just and equitable" appearing on a complaint or pleading (a petition in this case) normally enables the court to award reliefs supported by the complaint or other pleadings, by the facts admitted at the trial, and by the evidence adduced by the parties, even if these reliefs are not specifically prayed for in the complaint.

**APPEARANCES OF COUNSEL**

*People's Law Office* for petitioners.
*Paris G. Real* for respondent.

**D E C I S I O N**

**PERALTA, *J.*:**

This petition for review on *certiorari* under Rule 45 of the Rules of Court (*Rules*) with prayer for temporary restraining order *(TRO)* or writ of preliminary injunction *(WPI)* seeks to annul and set aside the Resolutions dated July 17, 2013[1] and November 21, 2013,[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 130416, which denied due course and dismissed the petition for *certiorari* filed by petitioners assailing the Order[3] dated April 3, 2013 of the Regional Trial Court *(RTC)*, Branch 52, Manila.

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[1] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Mariflor P. Punzalan-Castillo and Zenaida T. Galapate-Laguilles concurring; *rollo*, pp. 44-46, 245-247, 349-351, 694-696.

[2] *Rollo*, pp. 52, 248, 352, 708.

[3] *Id.* at 47-50, 238-241, 342-345, 625-628, 665-668.

Based on a complaint for libel of respondent Sylvia K. Ilusorio, an Information[4] dated December 18, 2008 was filed against petitioners Ramon K. Ilusorio, Ma. Lourdes C. Cristobal, Romeo G. Rodriguez, Eduardo C. Rojas, Cesar B. Crisol, Violeta J. Josef, Erlinda K. Ilusorio, Shereen K. Ilusorio, and Cecilia A. Bisuña, together with their co-defendants Orlando D. Nepomuceno, Erwin C. Mutuc, Daniel C. Subido, and Marietta K. Ilusorio.[5] It stemmed from the alleged libelous book entitled *"On the Edge of Heaven"* authored by Erlinda and circulated by the Directors/Officers of PI-EKI Foundation (formerly House of St. Joseph Foundation), Senior Partners Foundation, Inc. (formerly Quantum Foundation of the Philippines), and Multinational Investment Bancorporation.

The case was docketed as Criminal Case No. 09-270043 and was initially raffled to the Manila RTC Br. 6. In August 2009, the defendants filed a Motion for Determination of Probable Cause (With Prayer to Defer the Issuance of Warrant of Arrest).[6] The exchange of pleadings revealed that the charge against the defendants was dismissed on August 12, 2005 by the Department of Justice *(DOJ)* Investigating Panel and Sylvia's motion for reconsideration *(MR)* was denied on November 10, 2005; that DOJ Secretary Raul Gonzales *motu proprio* dismissed Sylvia's petition for review on August 10, 2006, but, upon MR, reversed the Resolution on November 6, 2006; that the defendants filed their MR, which was denied on October 27, 2008; and, they filed a petition for *certiorari* before the CA, which did not issue any TRO or WPI against the filing of the Information. The defendants asserted that the findings of the DOJ Investigating Panel and the initial resolution of the DOJ Secretary as to the non-existence of probable cause to issue a warrant of arrest should be upheld.

On January 28, 2010, Presiding Judge Jansen R. Rodriguez denied the defendants' motion.[7] The Order stated:

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[4] *Id.* at 85-89.

[5] Per Order dated June 5, 2012, Marietta was later dropped as one of the defendants upon motion filed by Sylvia (*Id.* at 139, 236, 340, 545, 663).

[6] *Rollo*, pp. 90-101.

[7] *Id.* at 115-117, 231-233, 335-337, 508-510, 658-660.

After a judicious scrutiny of the records, *i.e., the Information, the Resolution of the Secretary of Justice, the Complaint-Affidavit, the Counter-Affidavits and the excerpts taken from the book entitled "On the Edge of Heaven*," this Court strongly opines and holds that probable cause indeed exists for the issuance of a warrant of arrest against all the accused herein.

The gravamen of libel is that words, written or printed, caused discredit to a person in the minds of any considerable and respectable class in the community, taking into account the emotions, prejudices and intolerance of every one surrounding the person being discredited.

Guided thereby, did the excerpts come into the purview of being a libelous matter? The Court believes so. After a perusal of the records, this Court finds that there is a probability that the crime of libel had indeed been committed and the herein accused are probably guilty thereof. A mere cursory reading of the alleged excerpts from the aforementioned book would indeed instill upon the mind of a reasonable man that the person being mentioned therein had committed the alleged crimes or wrongdoings. As hereinbeforehand stated, the Court, at this point, does not delve into the certainty of the offense but only on the probability thereof.

It is not disputed, as in fact it was admitted, that Erlinda K. Ilusorio was the source of the alleged writings, hence, she should be made to answer the Information filed in this Court. As to who shall be held accountable together with Erlinda K. Ilusorio, the Court, based on the documents attached to the records, finds that all the other accused, being officers of the publishing foundation, *PI-EKI Foundation*, must likewise be held accountable for the publication of the alleged libelous book.

Anent the other matters raised in the pleadings, the Court sees no need to discuss the same. To the mind of this Court, the same can be best ventilated in court during a full blown hearing, it being a matter of defense and is evidentiary in nature.[8]

A MR with motion to inhibit was filed by the defendants.[9] After Judge Rodriguez inhibited from the case,[10] it was re-raffled

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[8] *Id.* at 116-117, 232-233, 336-337, 509-510, 659-660.

[9] *Id.* at 118-136, 547-564.

[10] Per Order dated August 5, 2010 (*Id.* at 242, 346, 669).

to the Manila RTC Br. 52. On June 5, 2012, Acting Presiding Judge Ruben Reynaldo G. Roxas resolved to deny the MR, opining that the grounds raised have already been passed upon and exhaustively discussed in the challenged Order and that no additional evidence was presented to reverse or modify the same.[11]

Subsequently, the defendants[12] filed a Motion to Quash[13] on the grounds that: (1) the court has no jurisdiction over the offense charged (as the Information failed to allege the actual residence of Sylvia or where the libelous matter was printed or first published); (2) the Assistant Prosecutor who filed the Information had no authority to do so (as Sylvia was not alleged as a resident of Manila and that the libelous matter was printed or first published in Manila); (3) the facts charged do not constitute the offense of libel (as the book itself was not attached as part of the Information and its author or editor was not identified); and (4) the alleged criminal action for libel has been extinguished (as the Information did not allege the date when the book was printed or first published).

Justifying that the issues raised have already been discussed in the Order dated January 28, 2010 and that there is no reason to deviate therefrom, the court denied the motion on April 3, 2013.[14] Judge Roxas noted that the MR of the Order dated January 28, 2010 was already denied in the Order dated June 5, 2012; thus, any other motions to be filed pertaining or related to the issues raised in the MR and in the motions subject of the April 3, 2013 Order in the guise of a MR or otherwise would no longer be entertained.

Immediately, petitioners filed before the CA a petition for *certiorari* with prayer for TRO and/or WPI. They prayed:

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[11] *Rollo*, pp. 137-140, 234-237, 338-341, 543-546, 661-664.

[12] Except Marietta who was earlier excluded as a defendant, Orlando who is said to be already deceased, and Daniel who filed a separate pleading. In addition, Erwin filed an Omnibus Motion (*Id.* at 565-584).

[13] *Rollo*, pp. 102-114, 585-597.

[14] *Id.* at 47-50, 238-241, 342-345, 625-628, 665-668.

1. In view of extreme urgency and in order that the petitioners may not suffer great and irreparable injuries, a Temporary Restraining Order/Preliminary Injunction enjoining the respondents from proceeding with the subject criminal case;

2. The petitioners are willing to post a bond for this purpose as may be directed by this Honorable Court; [and]

3. The petitioners pray for other legal and equitable reliefs[.][15]

On July 17, 2013, the petition, which was docketed as CA-G.R. SP No. 130416, was denied due course and dismissed. According to the CA, petitioners are only seeking injunctive relief *sans* the requisite principal action for the nullification of any issuances rendered by the RTC. It ruled that the petition indubitably failed for lack of principal action on which the prayer for injunction relief rests.

Petitioners filed a MR and/or Admit Amended Petition for *Certiorari,* attaching therein the amended petition.[16] However, it was denied on November 21, 2013, saying:

x x x Where a petition for *certiorari,* as in this case, is incipiently defective in form and substance, [petitioners'] attempt to cure it beyond the 60-day non-extendible period cannot be allowed, lest such limitation be improperly circumvented. Further, the allegations in the amended petition sought to be admitted do not substantiate the imputation of grave abuse of discretion on public respondent as to otherwise warrant the availment of the extraordinary remedy of *certiorari*.[17]

The petition is granted.

The failure of petitioners to state in their prayer the declaration of nullity of the RTC Order dated April 3, 2013 is a mere formal defect. It was a result of a mere inadvertence; hence, constituting excusable negligence.

The CA should have disregarded the fact that the prayer of the petition in CA-G.R. SP No. 130416 did not specifically seek to declare as void the Order dated April 3, 2013. On its

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[15] *Id.* at 158-159, 688-689.

[16] *Id.* at 54-84, 164-183, 697-707.

[17] *Id.* at 52, 248, 352, 708.

face, the main object of the petition was clear and unmistakable considering that the following errors were assigned:

A. RESPONDENT PRESIDING JUDGE GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF OF *(sic)* JURISDICTION WHEN HE STATED IN HIS ORDER THAT HE SHALL NO LONGER [ENTERTAIN] ANY MOTION FOR RECONSIDERATION.

B. RESPONDENT PRESIDING JUDGE GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ORDER DATED APRIL 03, 2013 DENYING THE PETITIONERS' MOTION TO QUASH.[18]

To add, the petition alleged:

1. "3. Respondent Acting Presiding Judge has been impleaded in his official capacity for having issued the Order dated April 03, 2013, a copy of which is hereto attached as [Annex] 'A' x x x" (page 2)[19]
2. "This petition is being filed under Rule 65, Rules of Court, the questioned Order having been issued with grave abuse of discretion, and/or with lack or excess of jurisdiction." (page 2)[20]
3. "Sought to be declared void is the Order dated April 03, 2013 x x x issued by respondent Presiding Judge which denied petitioners' Motion to Quash x x x" (page 3)[21]

The pleading shall specify the relief sought, but it may add a general prayer for such further or other relief as may be deemed just or equitable.[22] While the petition did not categorically state the reversal and setting aside of the Order dated April 3, 2013 as one of the specific reliefs desired, causing the CA to hastily conclude that there was no principal action sought by petitioners, it did contain a general prayer *"for other legal and equitable*

[18] *Id.* at 153-154, 683-684.

[19] *Id.* at 143.

[20] *Id.*

[21] *Id.* at 144.

[22] RULES OF COURT, Rule 7, Section 2(c).

*reliefs."*[23] This general prayer should be interpreted to include the plea for the nullity of the Order because it is already evident from the allegations contained in the body of the petition. As held in *Spouses Gutierrez v. Spouses Valiente, et al.*:[24]

> x x x [The] general prayer is broad enough "to justify extension of a remedy different from or together with the specific remedy sought." Even without the prayer for a specific remedy, proper relief may be granted by the court if the facts alleged in the complaint and the evidence introduced so warrant. The court shall grant relief warranted by the allegations and the proof, even if no such relief is prayed for. The prayer in the complaint for other reliefs equitable and just in the premises justifies the grant of a relief not otherwise specifically prayed for.[25]

Certainly, a general prayer for "other reliefs just and equitable" appearing on a complaint or pleading (a petition in this case) normally enables the court to award reliefs supported by the complaint or other pleadings, by the facts admitted at the trial, and by the evidence adduced by the parties, even if these reliefs are not specifically prayed for in the complaint.[26]

Procedural imperfection should not serve as basis of decisions.[27] To prevent injustice, it is a better policy to dispose of a case on the merits rather than on a technicality, affording every party-litigant the amplest opportunity for the proper and just determination of his or her cause.[28]

It is significant to note that the DOJ Resolutions dated November 6, 2006 and October 27, 2008, which were the basis of the Information dated December 18, 2008 finding probable cause to indict petitioners of libel, were annulled and set aside by the CA in CA-G.R. SP Nos. 106111 and 106312 on April

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[23] *Rollo*, p. 159.

[24] 579 Phil. 486 (2008).

[25] *Sps. Gutierrez v. Sps. Valiente, et al., supra* at 500. (Citations omitted). See also *Prince Transport, Inc. v. Garcia,* 654 Phil. 296, 314 (2011) and *Philippine Airlines, Inc. v. PAL Employees Savings & Loan Association, Inc.,* 780 Phil. 795, 813 (2016).

[26] *Philippine Charter Insurance Corp. v. PNCC,* 617 Phil. 940, 951-952 (2009).

[27] See *Sps. Gutierrez v. Sps. Valiente, et al., supra* note 24, at 498.

[28] *Id*.

24, 2013.[29] The appellate court, likewise, denied Sylvia's MR on October 20, 2014.[30] Her petition for review on *certiorari*, which was docketed as G.R. Nos. 215004-05, as well as her Motion for Leave of Court to File and to Admit Motion for Reconsideration with Amended Petition were denied by this Court in a Resolution dated March 11, 2015 and July 13, 2015, respectively.[31] On the basis thereof, Judge Emma S. Young of the Manila RTC Br. 36,[32] granted the motion for the withdrawal of the Information on December 8, 2015.[33] When the trial court denied Sylvia's MR on March 21, 2016,[34] she filed a petition for *certiorari* before the CA. Based on records at hand, said case, docketed as CA-G.R. SP No. 145999, is still pending resolution.

**WHEREFORE,** the petition for review on *certiorari* is **GRANTED**. The Resolutions dated July 17, 2013 and November 21, 2013, of the Court of Appeals in CA-G.R. SP No. 130416, which denied due course and dismissed the petition for *certiorari* filed by petitioners assailing the Order dated April 3, 2013 of the Regional Trial Court, Branch 52, Manila, are **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Court of Appeals to resolve the same on the merits with reasonable dispatch.

**SO ORDERED**.

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

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[29] *Rollo*, pp. 186-199, 257-271, 353-367.

[30] *Id.* at 643, 789, 805.

[31] *Id.* at 643, 789-790, 805-806.

[32] Upon motion of some of petitioners, Judge Roxas of Manila RTC Br. 52 recused himself from Criminal Case No. 09-270043 per Order dated June 26, 2013. When the case was re-raffled to Judge Felicitas Laron-Cacanindin of Manila RTC Br. 17, she ordered for the arraignment of the accused. Later on, petitioners moved for the inhibition of Judge Cacanindin, which was granted. As a result, the case was re-raffled to Manila RTC Br. 36 under Judge Young. (See *Id.* at 242-244, 346-348, 669-671).

[33] *Rollo*, pp. 643-644, 849-850.

[34] *Id.* at 850.

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

[**] Additional Member in lieu of Associate Justice Andres B. Reyes, Jr., per Raffle dated March 26, 2018.

**FIRST DIVISION**

[G.R. No. 211232. April 11, 2018]

**COCA-COLA BOTTLERS PHILS., INC.,** *petitioner, vs.* **SPOUSES EFREN AND LOLITA SORIANO,** *respondents.*

**SYLLABUS**

1. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; MORTGAGES; REAL ESTATE MORTGAGE; THE NON-REGISTRATION OF A REAL ESTATE MORTGAGE IS IMMATERIAL TO ITS VALIDITY AS BETWEEN THE PARTIES TO THE MORTGAGE.—** We stress that the registration of a REM deed is not essential to its validity. The law is clear on the requisites for the validity of a mortgage x x x. [A]s between the parties to a mortgage, the non-registration of a REM deed is immaterial to its validity. In the case of *Paradigm Development Corporation of the Philippines, v. Bank of the Philippine Islands*, the mortgagee allegedly represented that it will not register one of the REMs signed by the mortgagor. In upholding the validity of the questioned REM between the said parties, the Court ruled that "with or without the registration of the REMs, as between the parties thereto, the same is valid and [the mortgagor] is bound thereby." x x x [T]he law is clear and explicit as to the validity of an unregistered REM between the parties. Indeed, if an unregistered REM is binding between the parties thereto, all the more is a registered REM, such as the REM deed in this case.

2. **ID.; ID.; ID.; ID.; ID.; THE DEFECTIVE NOTARIZATION OF THE REAL ESTATE MORTGAGE AGREEMENT MERELY STRIPS IT OF ITS PUBLIC CHARACTER AND REDUCES IT TO A PRIVATE DOCUMENT.—** Jurisprudence is replete with cases declaring that the notarization of documents that have no relation to the performance of official functions of the clerks of court is now considered to be beyond the scope of their authority as notaries public *ex officio*. Nonetheless, **the defective notarization of the REM agreement merely strips it of**

**its public character and reduces it to a private document**. Although Article 1358 of the New Civil Code requires that the form of a contract transmitting or extinguishing real rights over immovable property should be in a public document, the failure to observe such required form does not render the transaction invalid. The necessity of a public document for the said contracts is only for convenience; it is not essential for its validity or enforceability. 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. Thus, in order to determine the validity of the REM in this case, the REM agreement shall be subject to the requirement of proof under Section 20, Rule 132 x x x. Moreover, the party invoking the validity of the private document has the burden of proving its due execution and authenticity.

3. **ID.; ID.; ID.; VOIDABLE CONTRACTS; FRAUD; AS A GROUND FOR ANNULMENT OF CONTRACT, IT SHOULD BE SERIOUS AND SHOULD NOT HAVE BEEN EMPLOYED BY BOTH CONTRACTING PARTIES.—** Under Article 1344 of the Civil Code, fraud, as a ground for annulment of a contract, should be serious and should not have been employed by both contracting parties. Article 1338 of the same Code further provides that there is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to.

4. **MERCANTILE LAW; REAL ESTATE MORTGAGE LAW (ACT NO. 3135); EXTRAJUDICIAL FORECLOSURE PROCEEDINGS; NOTICE OF SALE; PERSONAL NOTICE TO THE MORTGAGOR IS NOT NECESSARY UNLESS THE PARTIES STIPULATE BECAUSE THE LAW ONLY REQUIRES THE POSTING OF THE NOTICE OF SALE IN THREE PUBLIC PLACES AND THE PUBLICATION OF THAT NOTICE IN A NEWSPAPER OF GENERAL CIRCULATION.—** As to the issue on the validity of the foreclosure proceedings, We find no cogent reason to nullify the same. Basic is the

rule that unless the parties stipulate, personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary because Section 3 of Act No. 3135 only requires the posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation. Moreover, the same was not put into issue in this case. The foreclosure proceedings were nullified by the courts *a quo* merely as a consequence of the nullification of the REM deed. Consequently, We find that the foreclosure proceedings are likewise valid.

**APPEARANCES OF COUNSEL**

*Vicente D. Lasam and Associates* for petitioner.
*Battung Law Office* for respondents.
*Mac Paul B. Soriano* co-counsel for respondents.

**D E C I S I O N**

**TIJAM, *J.*:**

This petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeks to reverse and set aside the Decision[2] dated June 18, 2013 and Resolution[3] dated February 4, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 97687, affirming the Decision[4] dated February 9, 2011 of the Regional Trial Court (RTC), Branch 01, Tuguegarao, Cagayan, in Case No. 6821.

**The Antecedents**

The CA summarized the antecedents as follows:

Plaintiffs-appellees spouses Efren and Lolita Soriano are engaged in the business of selling defendant-appellant Coca-Cola products

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

[2] Penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia; *id.* at 46-53.

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

[4] Penned by Judge Pablo M. Agustin; *id*. at 40-44.

in Tuguegarao City, Cagayan. Sometime in 1999, defendant-appellant thru Cipriano informed plaintiffs-appellees that the former required security for the continuation of their business. Plaintiffs-appellees were convinced to hand over two (2) certificates of titles over their property and were made to sign a document. Defendant Cipriano assured plaintiffs-appellees that it will be a mere formality and will never be notarized.

Subsequently, plaintiffs-appellees informed defendant-appellant Coca-Cola of their intention to stop selling Coca-Cola products due to their advanced age. Thus, plaintiffs-appellees verbally demanded from defendant-appellant the return of their certificates of titles. However, the titles were not given back to them.

When plaintiffs-appellees were contemplating on filing a petition for the issuance of new titles, they discovered for the first time that their land was mortgaged in favor of defendant-appellant Coca-Cola. Worse, the mortgage land was already foreclosed. Hence, plaintiffs-appellees filed a complaint for annulment of sheriffs foreclosure sale. They alleged that they never signed a mortgaged document and that they were never notified of the foreclosure sale. In addition, plaintiffs-appellees aver that they never had monetary obligations or debts with defendant-appellant. They always paid their product deliveries in cash.

Furthermore, plaintiffs-appellees claimed that they merely signed a document in Tuguegarao. They never signed any document in Ilagan, Isabela nor did they appear before a certain Atty. Reymundo Ilagan on 06 January 2000 for the notarization of the said mortgage document.

On their part, defendant-appellant alleged that plaintiffs-appellees are indebted to them. Plaintiffs-appellees' admission that they signed the real estate mortgage document in Tuguegarao, Cagayan indicates that the mortgage agreement was duly executed. The failure of the parties to appear before the notary public for the execution of the document does not render the same null and void or unenforceable.[5]

## Ruling of the RTC

On February 9, 2011, the RTC rendered its decision nullifying the real estate mortgage and the foreclosure proceedings. The dispositive portion of the decision reads:

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

WHEREFORE, premises considered, the court hereby renders judgment in favor of the plaintiffs and against the defendants as follows:

1. Declaring the real estate mortgage (Exhibit "A") to be null and void:

2. Declaring the Sheriff's Certificate of Sale (Exhibit "B") to be null and void;

3. Declaring the claim of the defendants that the land of the plaintiffs had been mortgaged to defendant corporation to be unlawful;

4. Declaring the cloud over the title and interest of the plaintiffs be removed;

5. Ordering the defendants to surrender and deliver TCT No. T-86200 and TCT No. T-84673 to the plaintiffs; and

6. Ordering the defendants in solidum to pay to plaintiffs the sum of ₱50,000.00 as moral damages and ₱20,000.00 as attorney's fees.

No pronouncement as to cost.

SO DECIDED.

Aggrieved, petitioner appealed to the CA.

**Ruling of the CA**

On June 18, 2013, the CA rendered the assailed decision affirming the RTC decision *in toto*. The CA ruled that the Real Estate Mortgage deed (REM deed) failed to comply substantially with the required form. Thus, it made the following findings:

A careful perusal of the mortgage deed has revealed that although the spouses signed the real estate mortgage deed, they never acknowledged the same before the Clerk of Court during the notarization. Likewise, only one witness has signed the document, instead of the required presence of two (2) witnesses as provided by law.

In the acknowledgment portion, only defendant Cipriano and defendant-appellant Coca Cola has appeared and acknowledged the real estate mortgage deed before the Clerk of Court. Nowhere did the plaintiffs-appellees acknowledge before the Clerk of Court the said deed as their free and voluntary act. Contrary to defendant-appellant's contention, this acknowledgment is not a mere superfluity because it is expressly required by law. Even granting *arguendo* that

the document should be considered properly notarized, the aforementioned real estate mortgage deed still fell short of the legal requirements under Section 112 of P.D. 1529.

Therefore, for failure to comply substantially with the required form, We find that plaintiffs-appellees' land cannot be bound by the real estate mortgage. We uphold the court *a quo* in finding both the real estate mortgage constituted over plaintiffs-appellees' property and the subsequent extrajudicial foreclosure invalid.[6]

Hence, the instant petition before Us. In its Petition and Reply,[7] petitioner argues that the defect in the notarization of the REM deed does not in any way affect its validity. Section 112 of Presidential Decree No. 1529 (P.D. 1529) only provides for the formal requirements for registrability and not validity. Assuming that the mortgage contract cannot be registrable due to lack of certain requirements, its only effect is that it does not bind third parties but the mortgage remains valid as between the parties.[8] Finally, petitioner alleges that there was no forgery considering that respondents admitted the due execution of the REM deed in their complaint. On the other hand, respondents, in their Comment,[9] reiterated the findings of the courts *a quo* and asseverated that petitioner failed to show any reversible error in the CA decision.

**The Issue**

Ultimately, the question posed before Us is the validity of a REM, the deed of which was: (1) admittedly signed by the mortgagors, albeit in a place other than that stated in the document, on the belief that the same would not be notarized; and (2) notarized without authority and compliance with the prescribed form under Section 112 of P.D. 1529. Corollary to the validity of the said mortgage is the validity of the foreclosure sale pursuant to it.

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[6] *Id*. at 52.

[7] *Id*. at 94-100.

[8] *Id*. at 98-99.

[9] *Id*. at 74-83.

**Our Ruling**

The petition is impressed with merit.

At the outset, We stress that the registration of a REM deed is not essential to its validity. The law is clear on the requisites for the validity of a mortgage, to *wit*:

> Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:
>
> (1) That they be constituted to secure the fulfillment of a principal obligation;
>
> (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;
>
> (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.
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> Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.

In relation thereto, Article 2125 provides:

> Article 2125. In addition to the requisites stated in Article 2085, it is indispensable, in order that a mortgage may be validly constituted, that the document in which it appears be recorded in the Registry of Property. **If the instrument is not recorded, the mortgage is nevertheless binding between the parties.** (Emphasis supplied)

Thus, as between the parties to a mortgage, the non-registration of a REM deed is immaterial to its validity. In the case of *Paradigm Development Corporation of the Philippines v. Bank of the Philippine Islands*,[10] the mortgagee allegedly represented that it will not register one of the REMs signed by the mortgagor. In upholding the validity of the questioned REM between the said parties, the Court ruled that "with or without the registration of the REMs, as between the parties thereto, the same is valid and [the mortgagor] is bound thereby." The Court, thus, cited its ruling in the case of *Mobil Oil*

[10] G.R. No. 191174, June 7, 2017.

*Philippines, Inc. v. Ruth R. Diocares, et al.*[11] a portion of which reads:

> Xxx. The codal provision is clear and explicit. Even if the instrument were not recorded, "the mortgage is nevertheless binding between the parties." The law cannot be any clearer. Effect must be given to it as written. The mortgage subsists; the parties are bound. **As between them, the mere fact that there is as yet no compliance with the requirement that it be recorded cannot be a bar to foreclosure.**
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> x x x x x x x x x
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> Moreover to rule as the lower court did would be to show less than fealty to the purpose that animated the legislators in giving expression to their will that the failure of the instrument to be recorded does not result in the mortgage being any the less "binding between the parties." In the language of the Report of the Code Commission: "In Article [2125] an additional provision is made that if the instrument of mortgage is not recorded, the mortgage, is nevertheless binding between the parties." We are not free to adopt then an interpretation, even assuming that the codal provision lacks the forthrightness and clarity that this particular norm does and therefore requires construction, that would frustrate or nullify such legislative objective.[12] (Citation omitted; emphasis ours)

Based on the foregoing, the CA, in the case at bar, clearly erred in ruling that the parties in the instant case cannot be bound by the REM deed. In arriving at such ruling, the CA relied on the following pronouncements of this Court in the case of *Spouses Adelina S. Cuyco and Feliciano U Cuyco v. Spouses Renaoa Cuyco and Filipina Cuyco*:[13]

> **In order to constitute a legal mortgage, it must be executed in a public document, besides being recorded.** A provision in a private document, although denominating the agreement as one of mortgage, cannot be considered as it is not susceptible of inscription in the property registry. A mortgage in legal form is not constituted by a private document, even if such mortgage be accompanied with delivery

[11] 140 Phil. 171 (1969).

[12] *Id.* at 176-177.

[13] 521 Phil. 796 (2006).

of possession of the mortgage property. **Besides, by express provisions of Section 127 of Act No. 496, a mortgage affecting land, whether registered under said Act or not registered at all, is not deemed to be sufficient in law nor may it be effective to encumber or bind the land unless made substantially in the form therein prescribed.** It is required, among other things, that the document be signed by the mortgagor executing the same, in the presence of two witnesses, and acknowledged as his free act and deed before a notary public. A mortgage constituted by means of a private document obviously does not comply with such legal requirements.[14] (Citations omitted; emphasis ours)

The aforecited pronouncements by this Court, however, relate to the issue on whether the subject realty of the REM was bound by the additional loans executed between the parties. The validity of the said REM was not put into question in the said case. Thus, in the present case, the CA erred in relying on the said pronouncements.

To reiterate, the law is clear and explicit as to the validity of an unregistered REM between the parties. Indeed, if an unregistered REM is binding between the parties thereto, all the more is a registered REM, such as the REM deed in this case.

Here, although the REM deed was registered and annotated on the back of the title, the petitioner failed to comply with the provisions under Section 112 of P.D. 1529, *viz*:

x x x x x x x x x

Deeds, conveyances, encumbrances, discharges, powers of attorney and other voluntary instruments, whether affecting registered or unregistered land, executed in accordance with law **in the form of public instruments** shall be registerable: Provided, that, every such instrument shall be signed by the person or persons executing the same in the presence of at least two witnesses who shall likewise sign thereon, and shall **acknowledged to be the free act and deed of the person or persons executing the same before a notary public or other public officer authorized by law to take acknowledgment**. Where the instrument so acknowledged consists of two or more pages including the page whereon acknowledgment is written, each page

[14] *Id*. at 810.

of the copy which is to be registered in the office of the Register of Deeds, or if registration is not contemplated, each page of the copy to be kept by the notary public, except the page where the signatures already appear at the foot of the instrument, shall be signed on the left margin thereof by the person or persons executing the instrument and their witnesses, and all the pages sealed with the notarial seal, and this fact as well as the number of pages shall be stated in the acknowledgment. Where the instrument acknowledged relates to a sale, transfer, mortgage or encumbrance of two or more parcels of land, the number thereof shall likewise be set forth in said acknowledgment. (Emphasis ours)

Respondents thus argue that the REM agreement is not a public document because it was notarized by a Clerk of Court of the RTC of Ilagan who is not allowed by law to notarize private documents not related to their functions as clerk of court.

We find merit in the said argument.

Jurisprudence is replete with cases declaring that the notarization of documents that have no relation to the performance of official functions of the clerks of court is now considered to be beyond the scope of their authority as notaries public *ex officio*.[15]

Nonetheless, **the defective notarization of the REM agreement merely strips it of its public character and reduces it to a private document**.[16] Although Article 1358 of the New Civil Code requires that the form of a contract transmitting or extinguishing real rights over immovable property should be in a public document, the failure to observe such required form does not render the transaction invalid.[17] The necessity of a public document for the said contracts is only for convenience; it is not essential for its validity or enforceability. Consequently, when there is a defect in the notarization of a document, the

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[15] *Mathaeus v. Medequiso*, 780 Phil. 309 (2016); *Coquia v. Laforteza*, A.C. No. 9364, February 8, 2017.

[16] *Rural Bank of Cabadbaran, Inc. v. Melecio-Yap, et al.*, 740 Phil. 35 (2014).

[17] *Bitte, et al. v. Sps. Jonas*, 775 Phil. 447, 462-463 (2015).

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.[18]

Thus, in order to determine the validity of the REM in this case, the REM agreement shall be subject to the requirement of proof under Section 20, Rule 132, *viz*:

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

Moreover, the party invoking the validity of the private document has the burden of proving its due execution and authenticity.[19] Here, the respondents claim that their signature was a forgery because they signed the REM deed in Tuguegarao and not in Isabela, as stated therein. Further, they alleged that they were assured by petitioner that the same will not be notarized and is a mere formality.

Although the burden was on the petitioner to prove the REM deed's due execution and authenticity, respondents' allegations and admissions should be weighed against their favor.

In the case of *Gloria and Teresita Tan Ocampo v. Land Bank of the Philippines Urdaneta, Pangasinan Branch and Ex Officio Provincial Sheriff of Pangasinan*,[20] the mortgagors sought the nullity of the REM on the ground of forgery. The Court ruled that forgery is present when any writing is counterfeited by

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[18] *Castillo v. Security Bank Corporation, et al*., 740 Phil. 145, 154 (2014).

[19] *Bitte, et al. v. Sps. Jonas*, *supra* at 464.

[20] 609 Phil. 337, 346 (2009).

the signing of another's name with intent to defraud. However, the Court affirmed the CA in finding no reason to discuss forgery in light of the admission by the mortgagor that she had affixed her signature to the subject Deed of REM.[21]

Likewise, in this case, it is undisputed that the respondents signed the REM deed. They merely invoke the nullity of the same on the grounds that it was not signed in the place stated therein and that they were made to believe that it will not be notarized. Thus, in their Amended Complaint,[22] respondents alleged:

> That defendants through the machinations and manipulations of defendant Reynaldo C. Cipriano as the General Manager, convinced the plaintiffs to give them titles of whatever lands as guaranty for the subsequent deliveries of coca-cola products and there is nothing to worry because the titles shall be returned any time after their accounts are fully settled; as the plaintiffs were in good faith, handed the titles of their lands described in paragraph 4, of this complaint to defendant Reynaldo C. Cipriano (why) who assured plaintiffs that is only a formality, and there is nothing to worry; **plaintiffs signed the said document in Tuguegarao City and not in Ilagan, Isabela and defendant Reynaldo C. Cipriano assured the plaintiffs that the document will not be notarized.** (Emphasis ours)

Clearly, the respondents did not specifically deny the due execution and genuineness of the REM deed. The early case of *Lamberto Songco v. George C. Sellner*[23] is instructive on how to deny the genuineness and due execution of an actionable document, to *wit*:

> X x x. This means that the defendant must declare under oath that he did not sign the document or that it is otherwise false or fabricated. Neither does the statement of the answer to the effect that the instrument was procured by fraudulent representation raise any issue as to its genuineness or due execution. On the contrary **such a plea is an admission both of the genuineness and due execution** thereof, since

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[21] *Id*.

[22] *Rollo*, p. 26.

[23] G.R. No. L-11513, December 4, 1917.

it seeks to avoid the instrument upon a ground not affecting either. x x x (Emphasis ours)

In light of the foregoing, We find merit in petitioner's argument that the due execution and genuineness of the REM deed was impliedly admitted by the respondents when they admitted signing the same. A perusal of all the pleadings filed by the respondents reveal that their arguments are anchored on the supposed fraud employed by the petitioner that led to their acts of surrendering the titles and signing the REM deed. Thus, respondents essentially seeks the annulment of the REM on the ground of fraud.

Under Article 1344 of the Civil Code, fraud, as a ground for annulment of a contract, should be serious and should not have been employed by both contracting parties. Article 1338 of the same Code further provides that there is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. In *PDCP*,[24] this Court refused to annul the REMs on the ground of fraud consisting of the mortgagee's assurances that the REMs already signed by the mortgagor would not be registered, thus:

In the present case, even if FEBTC represented that it will not register one of the REMs, PDCP cannot disown the REMs it executed after FEBTC reneged on its alleged promise. As earlier stated, with or without the registration of the REMs, as between the parties thereto, the same is valid and PDCP is already bound thereby. **The signature of PDCP's President coupled with its act of surrendering the titles to the four properties to FEBTC is proof that no fraud existed in the execution of the contract. Arguably at most, FEBTC's act of registering the mortgage only amounted to *dolo incidente* which is not the kind of fraud that avoids a contract.** (Emphasis supplied)

The foregoing factual circumstances in PDCP are attendant in the present case. The respondents herein also signed the REM deed and surrendered the titles of the properties to the petitioner.

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[24] *PDCP v. BPI, supra* note 10.

Thus, We find that a claim of fraud in favor of the respondents does not persuade.

Moreover, in the case of *Ocampo*,[25] the mortgagor maintained that when she signed the questioned REM deed in blank form, she was led to believe by the mortgagee that such would only be used to process her loan application. The Court, likewise, was not persuaded by such claim of fraud, thus:

> Unfortunately, Ocampo was unable to establish clearly and precisely how the Land Bank committed the alleged fraud. She failed to convince Us that she was deceived, through misrepresentations and/or insidious actions, into signing a blank form for use as security to her previous loan. Quite the contrary, circumstances indicate the weakness of her submissions. The Court of Appeals aptly held that:
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> > Granting, for the sake of argument, that appellant bank did not apprise the appellees of the real nature of the real estate mortgage, such stratagem, deceit or misrepresentations employed by defendant bank are facts constitutive of fraud which is defined in Article 1338 of the Civil Code as that insidious words or machinations of one of the contracting parties, by which the other is induced to enter into a contract which without them, he would not have agreed to. When fraud is employed to obtain the consent of the other party to enter into a contract, the resulting contract is merely a voidable contract, that is a valid and subsisting contract until annulled or set aside by a competent court. x x x

With the foregoing, We find that the preponderance of evidence tilts in favor of the petitioner. The due execution and genuineness of the REM deed was proven by the admission of the respondents that they signed the same. This is bolstered by the fact that the titles were surrendered to the petitioner. Other than bare allegations, respondents' claim of fraud is not supported by preponderance of evidence. Further, the courts *a quo*, in declaring the REM deed null and void, erred in ruling that registration and compliance with the prescribed form are essential

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[25] *Ocampo, et al. v. Land Bank of the Philippines, et al.*, *supra* note 20, *id*. at 350.

in the validity of a REM. In fine, We rule that the REM between the parties herein is valid.

As to the issue on the validity of the foreclosure proceedings, We find no cogent reason to nullify the same. Basic is the rule that unless the parties stipulate, personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary because Section 3 of Act No. 3135 only requires the posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation.[26] Moreover, the same was not put into issue in this case. The foreclosure proceedings were nullified by the courts *a quo* merely as a consequence of the nullification of the REM deed. Consequently, We find that the foreclosure proceedings are likewise valid.

**WHEREFORE,** premises considered, the petition is **GRANTED**. The Decisions of the Regional Trial Court dated February 9, 2011 and the Court of Appeals dated June 18, 2013 are **REVERSED** and **SET ASIDE**. The complaint filed by the respondents Spouses Efren and Lolita Soriano is hereby **DISMISSED** for lack of merit.

**SO ORDERED.**

*Leonardo-de Castro*[*] and *Peralta*,[**] *JJ*., concur.

*Sereno, C.J. (Chairperson)* and *del Castillo, J*., on leave.

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[26] *PDCP v. BPI*, *supra* note 10.

[*] Designated as Acting Chairperson pursuant to Special Order No. 2540 dated February 28, 2018.

[**] Designated as additional member, as per Raffle dated February 14, 2018.

**THIRD DIVISION**

[G.R. No. 218108. April 11, 2018]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **RODOLFO ADVINCULA *y* MONDANO,** *accused-appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE FINDINGS OF THE TRIAL COURT THEREON ARE GENERALLY ACCORDED HIGH RESPECT, IF NOT CONCLUSIVE EFFECT.—** [W]hen 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. Hence, unless some facts or circumstances of weight were overlooked, misapprehended, or misinterpreted as to materially affect the disposition of the case, factual findings of the RTC are accorded the highest degree of respect especially if the CA has adopted and confirmed them.

**2. CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; DEFENSE OF A RELATIVE; IF THE ACCUSED ADMITS THE KILLING, THE BURDEN OF EVIDENCE IS SHIFTED ON HIM TO PROVE WITH CLEAR AND CONVINCING EVIDENCE THE ESSENTIAL ELEMENTS THEREOF.—** [A]n accused who pleads a justifying circumstance under Article (*Art.*) 11 of the Revised Penal Code (*RPC*) admits to the commission of acts, which would otherwise engender criminal liability. If the accused admits the killing, the burden of evidence, as distinguished from burden of proof, is shifted on him to prove with clear and convincing evidence the essential elements of the justifying circumstance of defense of a relative, *viz*: (1) unlawful aggression by the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) in case the provocation was given by the person attacked, that the person making the defense took no part in the provocation. The justification for the shift in the assumption of the burden is that the accused,

having admitted the killing, is required to rely on the strength of his own evidence, not on the weakness of the prosecution's evidence which, even if it were weak, could not be disbelieved in view of his admission.

**3. ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION; THE TEST FOR THE PRESENCE THEREOF IS WHETHER THE AGGRESSION FROM THE VICTIM PUT IN REAL PERIL THE LIFE OR PERSONAL SAFETY OF THE PERSON DEFENDING HIMSELF.—** Unlawful aggression, as defined in the RPC, contemplates assault or at least threatened assault of an immediate and imminent kind. The test therefore for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be imagined or an imaginary threat. The accused-appellant admitted that no confrontation between him and Reggie took place inside the house, nor did they talk to each other, and nor were his siblings hurt by Reggie. These admissions readily negate unlawful aggression on the part of Reggie. But even assuming for the sake of argument that initially there was unlawful aggression on Reggie's part, such unlawful aggression ceased to exist when he left the accused-appellant's house and proceeded to a nearby store. At that point, too, it was obvious that there was no longer any aggression from Reggie that put in peril the life of the accused-appellant and his siblings.

**4. ID.; ID.; ID.; SELF-DEFENSE; UNLAWFUL AGGRESSION; WHEN UNLAWFUL AGGRESSION CEASES, THE DEFENDER NO LONGER HAS ANY RIGHT TO KILL OR WOUND THE FORMER AGGRESSOR, OTHERWISE RETALIATION AND NOT SELF-DEFENSE IS COMMITTED.—** [A]ccused-appellant confessed that he followed Reggie to the store with the specific intention of hurting Reggie; thus, controverting his claim that he was only defending himself or his siblings from the alleged threats of Reggie. Corollarily, when the accused-appellant stabbed Reggie, the former was already the unlawful aggressor retaliating to the alleged earlier unlawful aggression of the latter. Jurisprudence dictates, however, that a person making a defense has no more right to attack an aggressor when the unlawful aggression has ceased, as is true in this case. Aggression, if not continuous, does not constitute aggression warranting defense of one's self.

Retaliation is not the same as self-defense. In retaliation, the aggression that was begun by the injured party already ceased when the accused attacked him, while in self-defense the aggression still existed when the aggressor was injured by the accused. When unlawful aggression ceases, the defender no longer has any right to kill or wound the former aggressor, otherwise, retaliation and not self-defense is committed. As case law puts it, there can be no self-defense unless the victim committed unlawful aggression against the person who resorted to self-defense.

**5. ID.; ID.; ID.; ID.; ID.; UNLESS THE VICTIM HAD COMMITTED UNLAWFUL AGGRESSION AGAINST THE PERSON WHO RESORTED TO SELF-DEFENSE, THERE CAN BE NO SELF-DEFENSE, WHETHER COMPLETE OR INCOMPLETE.—** There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense. The absence of any unlawful aggression on the part of Reggie renders ineffectual the accused-appellant's alibi of defense of a relative.

**6. ID.; ID.; MURDER; ELEMENTS.—** To warrant a conviction for the crime of murder, the following essential elements must be present: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.

**7. ID.; ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; A FINDING OF THE EXISTENCE OF TREACHERY SHOULD BE BASED ON CLEAR AND CONVINCING EVIDENCE AND SUCH EVIDENCE MUST BE AS CONCLUSIVE AS THE FACT OF KILLING ITSELF.—** [T]here is treachery when a victim is set upon by the accused without warning, as when the accused attacks the victim from behind, or when the attack is sudden and unexpected and without the slightest provocation on the part of the victim or is, in any event, so sudden and unexpected that the victim is unable to defend himself, thus insuring the execution of the criminal act without risk to the assailant. "A finding of 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. In the absence of proof

beyond reasonable doubt that treachery attended the killing of the victim, the crime is homicide, not murder."

**8. ID.; ID.; CRIMINAL LIABILITY; INTENT TO KILL; REQUIRED IN MURDER OR HOMICIDE, FOR THE ABSENCE THEREOF MAKES THE OFFENDER LIABLE ONLY FOR PHYSICAL INJURIES.—** [R]egardless of whether it is murder or homicide, the offender must have the intent to kill the victim; otherwise, the offender shall be liable only for physical injuries. 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.

**9. ID.; ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; ELEMENTS.—** In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.

**10. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; DAMAGES; LOSS OF EARNING CAPACITY; MUST BE SUBSTANTIATED BY DOCUMENTARY EVIDENCE; EXCEPTIONS.—** Article 2206 of the Civil Code provides that the heirs of the victim are entitled to be indemnified for loss of earning capacity, which partakes of the nature of actual damages to be proven by competent evidence. The general rule is that documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity except in the following instances: (1) the deceased is self-employed and earning less than the minimum wage under current labor laws; in which case, judicial notice may be taken of the fact that in the deceased's line of work, no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.

**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 Rodolfo Advincula y Mondano *(accused-appellant)* assailing the 29 April 2014 Decision[1] of the Court of Appeals *(CA)*, Eleventh Division in CA-G.R. CR HC No. 06009, which affirmed the 17 December 2012 Decision[2] of the Regional Trial Court *(RTC)*, Branch 219, Quezon City, finding him guilty of Murder for the death of Reggie Tan y Arañes *(Reggie)*.

## THE FACTS

Accused-appellant was charged with murder in an Information docketed as Criminal Case No. Q05-136086, the accusatory portion of which reads:

> That on or about the 4th day of August 2005 in Quezon City, Philippines, the above-named accused, with intent to kill, qualified by evident premeditation and treachery, did then and there willfully, unlawfully, and feloniously attack, assault, and employ personal violence upon the person of REGGIE TAN y ARAÑES, by then and there stabbing him with a bladed weapon hitting him on the different parts of his body, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said offended party.[3]

After the accused-appellant pleaded not guilty to the charge against him,[4] trial proceeded.

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[1] *Rollo,* pp. 2-11; penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Vicente S.E. Veloso and Nina G. Antonio-Valenzuela.

[2] Records, pp. 250-261; penned by Acting Presiding Judge Maria Filomena D. Singh.

[3] *Id*. at 1.

[4] *Id*. at 28.

***Version of the Prosecution***

To fortify its case against the accused-appellant, the prosecution called to the witness stand Rollane Enriquez *(Rollane)* who testified that:

On 4 August 2005, at about 6:00 p.m., while Rollane, Reggie, and Joseph delos Santos *(Joseph)* were at a store talking, the accused-appellant suddenly sneaked from Reggie's back, grabbed Reggie's neck with his left arm, and drove a knife at Reggie's side. Reggie was able to push away the accused-appellant causing both of them to fall down. Reggie got to his feet and ran away but when he stumbled the accused-appellant caught up with him and stabbed him twice in his chest while he was in a supine position. Reggie was brought to the hospital where he was pronounced dead on arrival.[5]

The other witnesses of the prosecution were no longer called to the witness stand after the parties agreed as to the nature of their testimony, *viz*:

SPO1 Salvador Casanova Buenviaje (*Buenviaje*) — (a) that he was the investigating officer of the case; (b) that it was in the performance of his duty that he investigated the case; (c) that he caused the preparation of the necessary documents; (d) that he took the testimonies of the private complainant and the complaining witnesses; and (e) that he has no personal knowledge of the circumstances surrounding the crime.[6]

BSDO Severino C. Yutan (*Yutan*) — (a) that he was one of the arresting officers of the accused; and (b) that in the course of the arrest, one (1) steel knife, about 9 inches in length, was recovered.[7]

P/Chief Inspector Joseph Palmero, M.D. *(Dr. Palmero)* — (a) that he is an accredited medico-legal officer of the Philippine National Police *(PNP)* Crime Laboratory, Camp Crame, Quezon City, who conducted the post-mortem examination on the body of Reggie; (b) that he reduced his findings and conclusion in writing; and (c) that he will identify and authenticate the medico-legal report number

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[5] TSN, 9 October 2008, pp. 5-13.

[6] Records, pp. 45-47.

[7] *Id*. at 57.

M-2933-05 and the other documents that he prepared in connection with the case.[8]

Teresita Tan *(Teresita)* — (a) that she is the mother and legal heir of Reggie; (b) that as a result of her son's death, she suffered actual damages in the amount of ₱67,460.00; (c) that she will affirm her affidavit attached to the case folder and authenticate the receipts, summary of expenses, and the supporting documents; and (d) that at the time of Reggie's death, he was a regular employee of the Lou Tisay Hog as butcher's helper with a ₱3,500.00 monthly salary.[9]

***Version of the Defense***

The accused-appellant was at home in the afternoon of 4 August 2005, when Reggie, armed with a kitchen knife, entered the living room and threatened to stab the accused-appellant's two siblings — one a mongoloid and the other mentally ill. When Reggie saw the accused-appellant, he scampered away and went to a nearby store.[10]

The accused-appellant followed Reggie to the store intending to hurt him because of the threats he made. Accused-appellant tried to grab the knife from Reggie but while they grappled for its possession, the accused-appellant got hold of it and stabbed the right side of Reggie's body.[11]

***The RTC ruling***

The RTC held that Rollane categorically and positively identified the accused-appellant as the one who stabbed Reggie with a knife, which the arresting officers confiscated. The RTC further ruled that treachery and evident premeditation attended the killing of Reggie; thus, it concluded that the accused-appellant should be held liable for murder.[12]

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[8] *Id*. at 77-78.

[9] *Id*. at 123.

[10] TSN, 24 September 2012, pp. 5-13 and 20.

[11] *Id*. at 13-16.

[12] Records, pp. 252-260.

The dispositive portion of the RTC decision reads:

WHEREFORE, judgment is hereby rendered finding the accused Rodolfo Advincula y Mondano GUILTY beyond reasonable doubt of the crime of Murder and is hereby sentenced to suffer the penalty of *reclusion perpetua* for the death of Reggie Tan y Arañes.

Accused Rodolfo Advincula y Mondano is further adjudged to pay the heirs of Reggie Tan y Arañes, represented by his mother, Teresita A. Tan, the following amounts:

1) Php75,000.00 as civil indemnity;
2) Php50,000.00 as moral damages;
3) Php30,000.00 as exemplary damages;
4) Php67,460.00 as actual damages; and
5) Php413,070.00 by way of lost earnings, plus costs of suit.[13]

Not contented with the RTC resolution of the case, the accused-appellant appealed before the CA.

***The Ruling of the CA***

The CA sustained the position of the accused-appellant that the qualifying circumstance of evident premeditation was absent in this case since the prosecution failed to show that the accused-appellant planned to kill Reggie. Notwithstanding the absence of evident premeditation, the CA maintained the finding of the RTC that treachery attended the assault upon Reggie; thus, it held the accused-appellant liable for murder. The CA found that the penalty imposed by the RTC was in accordance with law and the award of damages was in conformity with jurisprudence.[14]

The *fallo* of the CA decision reads:

**WHEREFORE**, the instant appeal is **DENIED**. The Decision dated 17 December 2012 of the Regional Trial Court of Quezon City, Branch 219, in Criminal Case No. Q-05-136086 is hereby **AFFIRMED**.[15]

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[13] *Id.* at 261.

[14] *Rollo*, pp. 9-10.

[15] *Id.* at 10.

## ISSUES

I.

THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING THE JUSTIFYING CIRCUMSTANCE OF DEFENSE OF A RELATIVE.

II.

THE TRIAL COURT GRAVELY ERRED IN APRRECIATING TREACHERY AND EVIDENT PREMEDITATION.

III.

THE TRIAL COURT GRAVELY ERRED IN IMPOSING ₱75,000.00 AS CIVIL INDEMNITY TO THE HEIRS OF THE VICTIM.[16]

## OUR RULING

The appeal is without merit.

***The justifying circumstance of defense of relative was not proven in this case.***

Jurisprudence emphatically maintains 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.[17] Hence, unless some facts or circumstances of weight were overlooked, misapprehended, or misinterpreted as to materially affect the disposition of the case,[18] factual findings of the RTC are accorded the highest degree of respect especially if the CA has adopted and confirmed them.[19]

Both the RTC and the CA found the testimony of Rollane credible and straightforward compared to the accused-appellant's

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[16] CA *rollo*, p. 28.

[17] *People v. Dayaday*, G.R. No. 213224, 17 January 2017.

[18] *People v. Macaspac*, G.R. No. 198954, 22 February 2017.

[19] *People v. Delector*, G.R. No. 200026, 4 October 2017.

claim that he acted in defense of his relatives. The Court found no reason to deviate from this finding considering that the records failed to prove that the RTC and the CA had overlooked a material fact that otherwise would change the outcome of the case or had misunderstood a circumstance of consequence in their evaluation of the credibility of the witnesses.[20]

The record is bereft of any showing that Rollane had ill motive to testify against the accused-appellant; thus, justifying the application of the well-established jurisprudence that when there is no evidence to show any improper motive on the part of the witness to testify falsely against the accused or to pervert the truth, the logical conclusion is that no such motive exists and that the former's testimony is worthy of full faith and credit.[21]

Equally important was that the testimony of Rollane as to the number of Reggie's wounds and how he sustained these found support in the medico-legal report[22] and the diagram[23] of Dr. Palmero. Rollane testified that the accused-appellant used his left arm to put a headlock on Reggie, and that with his right hand stabbed Reggie's side. Two more stab blows were delivered by the accused-appellant to Reggie's chest while he was already in a supine position after he stumbled. Dr. Palmero's report indicated that Reggie sustained the following fatal wounds which coincided with Rollane's narration, to wit:

Stab wound, left anterior chest-midclavicular line, measuring 3.2 cm x 1cm, 6 cm from the AML;

Stab wound, left anterior chest-anterior axillary line, measuring 3.2 cm x 1.2 cm, 11 cm from the AML; and

Stab wound, abdomen-right upper quadrant, measuring 4 [cm] x 1.5 cm, 17 cm from the AML.[24]

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[20] *People v. Amar,* G.R. No. 223513, 5 July 2017.

[21] *Ocampo v. People*, 759 Phil. 423, 433 (2015).

[22] Records, p. 79; Exh. "C".

[23] *Id*. at 80; Exh. "C-3".

[24] Records, p. 79; Exhibit "G".

Dr. Palmero's findings readily disprove the contention of the accused-appellant that he stabbed Reggie only once. Hence, the legal teaching that where the physical evidence on record runs counter to the testimonies of witnesses and the primacy of the physical evidence must be upheld,[25] finds its significance in this case.

On the one hand, Dr. Palmero's findings strengthen Rollane's testimony that Reggie stumbled after he ran away from the accused-appellant, *viz*:

> Scrapped (sic) wound, right palm, measuring 1 cm x 0.8 cm
> Area of multiple abrasions, right knee, 7 cm x 4 cm
> Area of multiple abrasions, left knee, 8 cm x 4 cm[26]

It must be remembered that an accused who pleads a justifying circumstance under Article (*Art.*) 11[27] of the Revised Penal Code

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[25] *Ocampo v. People*, *supra* note 21 at 432.

[26] Records, p. 79; Exhibit "G".

[27] Article 11. *Justifying circumstances.*— The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur;
   First. Unlawful aggression.
   Second. Reasonable necessity of the means employed to prevent or repel it.
   Third. Lack of sufficient provocation on the part of the person defending himself.
2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or his relatives by affinity in the same degrees and those consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the revocation was given by the person attacked, that the one making defense had no part therein.
3. Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this Article are present and that the person defending be not induced by revenge, resentment, or other evil motive.
4. Any person who, in order to avoid an evil or injury, does not act which causes damage to another, provided that the following requisites are present:

(*RPC*) admits to the commission of acts, which would otherwise engender criminal liability.[28] If the accused admits the killing, the burden of evidence, as distinguished from burden of proof, is shifted on him to prove with clear and convincing evidence the essential elements of the justifying circumstance of defense of a relative,[29] *viz*: (1) unlawful aggression by the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) in case the provocation was given by the person attacked, that the person making the defense took no part in the provocation.[30] The justification for the shift in the assumption of the burden is that the accused, having admitted the killing, is required to rely on the strength of his own evidence, not on the weakness of the prosecution's evidence which, even if it were weak, could not be disbelieved in view of his admission.[31]

The presence of unlawful aggression, which is a condition *sine qua non* for upholding self-defense,[32] has been described as follows:

Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. Without unlawful aggression, there can be no justified killing in defense of oneself. The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat. Accordingly, the

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First. That the evil sought to be avoided actually exists;
Second. That the injury feared be greater than that done to avoid it;
Third. That there be no other practical and less harmful means of preventing it.

5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.
6. Any person who acts in obedience to an order issued by a superior for some lawful purpose.

[28] *Velasquez v. People*, G.R. No. 195021, 15 March 2017.

[29] *People v. Aleta*, 603 Phil. 571, 581 (2009).

[30] *Medina v. People*, 724 Phil. 226, 237 (2014).

[31] *People v. Casas*, 755 Phil. 210, 219 (2015).

[32] *People v. Dulin,* 762 Phil. 24, 36-37 (2015).

accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.

Unlawful aggression is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.

The prosecution was able to establish from the testimony of Rollane, which the Court holds as convincing and forthright, that there was no unlawful aggression on the part of Reggie when he was stabbed by the accused-appellant. Records will confirm that the attack by the accused-appellant on Reggie was swift and deliberate and was not preceded by any provocation on the part of the latter.

The accused-appellant contends that the safety of his siblings was compromised because the threat to harm them was not a mere stance but a positively strong act of real danger considering that Reggie has already entered his house.[33]

Even granting for the sake of argument that the defense's version of the events be ruled as credible, the Court still cannot find any valid justification to declare that there existed unlawful aggression on the part of Reggie when he was stabbed by the accused-appellant. Unlawful aggression, as defined in the RPC, contemplates assault or at least threatened assault of an immediate and imminent kind.[34] The test therefore for the presence of

[33] CA *rollo*, pp. 28-29.

[34] *People v. Lopez*, 603 Phil. 521, 531-532 (2009).

unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be imagined or an imaginary threat.[35]

The accused-appellant admitted that no confrontation between him and Reggie took place inside the house, nor did they talk to each other,[36] and nor were his siblings hurt by Reggie.[37] These admissions readily negate unlawful aggression on the part of Reggie. But even assuming for the sake of argument that initially there was unlawful aggression on Reggie's part, such unlawful aggression ceased to exist when he left the accused-appellant's house and proceeded to a nearby store.[38] At that point, too, it was obvious that there was no longer any aggression from Reggie that put in peril the life of the accused-appellant and his siblings.

Worse, accused-appellant confessed that he followed Reggie to the store with the specific intention of hurting Reggie;[39] thus, controverting his claim that he was only defending himself or his siblings from the alleged threats of Reggie. Corollarily, when the accused-appellant stabbed Reggie, the former was already the unlawful aggressor retaliating to the alleged earlier unlawful aggression of the latter. Jurisprudence dictates, however, that a person making a defense has no more right to attack an aggressor when the unlawful aggression has ceased,[40] as is true in this case. Aggression, if not continuous, does not constitute aggression warranting defense of one's self.[41]

Retaliation is not the same as self-defense. In retaliation, the aggression that was begun by the injured party already ceased

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[35] *People v. Cosgafa*, G.R. No. 218250, 10 July 2017.

[36] TSN, 24 September 2012, pp. 11-12.

[37] *Id*. at 14.

[38] *Id*. at 13.

[39] *Id*. at 14.

[40] *People v. Casas*, *supra* note 31 at 220.

[41] *People v. Raytos*, G.R. No. 225623, 7 June 2017.

when the accused attacked him, while in self-defense the aggression still existed when the aggressor was injured by the accused.[42] When unlawful aggression ceases, the defender no longer has any right to kill or wound the former aggressor, otherwise, retaliation and not self-defense is committed.[43] As case law puts it, there can be no self-defense unless the victim committed unlawful aggression against the person who resorted to self-defense.[44]

Suffice it to say that a plea of self-defense is belied by the nature, number, and location of the wounds inflicted on the victim since the gravity of said wounds is indicative of a determined effort to kill and not just to defend.[45] The stab blows delivered by the accused-appellant to Reggie resulted in three fatal wounds that pierced his heart, lung, and liver. These wounds unmistakably support the conclusion as to accused-appellant's intent to kill Reggie.

The claim of the accused-appellant that Reggie entered his house armed with a knife and threatened his siblings miserably failed in view of the absence of evidence, documentary or testimonial, to fortify it. It must be stressed that self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself.[46]

There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense.[47] The absence of any unlawful aggression on the part of Reggie renders ineffectual the accused-appellant's alibi of defense of a relative. Consequently, the two other essential elements of self-defense would have no

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[42] *Belbis, Jr. v. People*, 698 Phil. 706, 721 (2012).

[43] *People v. Casas*, *supra* note 31 at 220.

[44] *Id.* at 219.

[45] *Ocampo v. People*, *supra* note 21 at 433.

[46] *Belbis, Jr. v. People*, *supra* note 42 at 719.

[47] *People v. Macaraig*, G.R. No. 219848, 7 June 2017.

factual and legal bases without any unlawful aggression to prevent or repel.[48] For this reason, it becomes immaterial to further discuss the two other elements of defense of a relative.

***The crime committed by the accused-appellant was murder.***

The accused-appellant was charged with and convicted of murder under Art. 248[49] of the RPC.

To warrant a conviction for the crime of murder, the following essential elements must be present: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.[50]

There is no issue that the first, second, and fourth elements are present in this case. On the third element, while the CA

[48] *People v. Dulin*, *supra* note 32 at 36.

[49] 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:

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. (As amended by R.A. No. 7659 entitled "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as amended, Other Special Penal Laws, and for Other Purposes.")

[50] *People v. Villanueva*, G.R. No. 226475, 13 March 2017.

upheld the finding of the RTC that treachery attended the killing of Reggie by the accused-appellant, it ruled against the presence of evident premeditation.

Jurisprudence maintains that there is treachery when a victim is set upon by the accused without warning, as when the accused attacks the victim from behind, or when the attack is sudden and unexpected and without the slightest provocation on the part of the victim or is, in any event, so sudden and unexpected that the victim is unable to defend himself, thus insuring the execution of the criminal act without risk to the assailant.[51] "A finding of 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. In the absence of proof beyond reasonable doubt that treachery attended the killing of the victim, the crime is homicide, not murder."[52] But regardless of whether it is murder or homicide, the offender must have the intent to kill the victim; otherwise, the offender shall be liable only for physical injuries.[53] 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.[54]

In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.[55]

The prosecution was able to prove beyond doubt that the accused-appellant had consciously and deliberately adopted the means of execution to ensure his success in killing Reggie,

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[51] *People v. Dayaday*, *supra* note 17.

[52] *People v. Bugarin,* G.R. No. 224900, 15 March 2017.

[53] *Cirera v. People*, 739 Phil. 25, 39 (2014).

[54] *Id*. at 40.

[55] *People v. Racal,* G.R. No. 224886, 4 September 2017.

i.e., the accused-appellant surreptitiously sneaked behind Reggie and gave him a headlock that restrained his movement, thus denying him the chance to defend himself or to parry the stab blows the accused-appellant would deliver. It is noteworthy that despite the fact that Reggie tried to escape further aggression by running, he failed because the accused-appellant caught up with him when he stumbled. Obviously, Reggie, who was then bleeding, was no longer in a position to protect himself when the accused-appellant delivered two more fatal blows.

Considering that the elements of treachery attended the killing of Reggie, the CA was correct in convicting the accused-appellant of murder.

***The penalty to be imposed upon the accused-appellant***

Article 248 of the RPC provides that the penalty for murder is *reclusion perpetua* to death. By applying Art. 63(2)[56] of the RPC, the lesser of the two indivisible penalties, i.e., *reclusion perpetua*, shall be imposed upon the accused-appellant in view of the absence of any mitigating or aggravating circumstances.

Following jurisprudence in *People v. Jugueta,*[57] the accused-appellant shall be held liable for civil indemnity, moral damages, and exemplary damages in the amount of ₱75,000.00 each.

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[56] Article 63. *Rules for the application of indivisible penalties.*— In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

x x x x x x x x x

[57] 783 Phil. 806, 840 (2016).

On the temperate damages, Teresita claimed that she spent ₱67,400.00 for the wake and burial of Reggie. Records reveal that only the expenses totalling to ₱29,600.00 were properly receipted, *viz*: niche for ₱4,000.00;[58] memorial services for ₱25,000.00;[59] and burial permit for ₱600.00.[60] Considering that the damages substantiated by receipts presented during the trial is less than the prescribed ₱50,000.00 temperate damages in *Jugueta*,[61] the award of ₱50,000.00 as temperate damages, in lieu of the actual damages for a lesser amount, is justified.[62]

Article 2206[63] of the Civil Code provides that the heirs of the victim are entitled to be indemnified for loss of earning capacity, which partakes of the nature of actual damages to be proven by competent evidence. The general rule is that documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity except in the

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[58] Records, p. 134; Exh. "I-6".

[59] *Id*. at 135; Exh. "1-7".

[60] *Id*. at 136; Exh. "I-9".

[61] *People v. Jugueta*, *supra* note 57 at 853.

[62] *Ocampo v. People, supra* note 21 at 435.

[63] Article 2206**.** The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the deceased was obliged to give support according to the provisions of Article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

following instances: (1) the deceased is self-employed and earning less than the minimum wage under current labor laws; in which case, judicial notice may be taken of the fact that in the deceased's line of work, no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.[64]

Through a certification[65] issued by Reggie's employer, Teresita was able to prove that her son, who was then 21 years old, was earning a monthly salary of ₱3,500.00 as butcher's helper, and which fact was not disputed by the accused-appellant.

The formula for the computation of loss of earning capacity is as follows:[66]

Net earning capacity = Life Expectancy x [Gross Annual Income - Living Expenses (50% of gross annual income)], where life expectancy
= 2/3 (80 - the age of the deceased).

With the established facts that Reggie was 21 years old at the time he was killed by the accused-appellant, and that he was earning ₱3,500.00 monthly, the loss of earning capacity is computed as follows:

Net earning capacity = [2/3(80-21)] x [(₱ 3,500.00 x 12) - (₱ 3,500.00 x 12) x 50%)]
= [2/3(59)] x [₱ 42,000.00 - ₱ 21,000.00]
= 39.33 x ₱21,000.00
= ₱825,930.00

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.[67]

**WHEREFORE,** the appeal is **DISMISSED**. The 29 April 2014 Decision of the Court of Appeals in CA-G.R. CR HC No. 06009

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[64] *Da Jose v. Angeles*, 720 Phil. 451, 463 (2013).

[65] Records, p. 132; Exh. "I-2".

[66] *People v. Casas*, *supra* note 31.

[67] *People v. Jugueta, supra* note 57 at 856.

finding the accused-appellant RODOLFO ADVINCULA y MONDANO guilty beyond reasonable doubt of Murder is hereby **AFFIRMED** with **MODIFICATION** that he shall be liable to the heirs of Reggie Tan y Arañes for the following: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; exemplary damages of ₱75,000.00; temperate damages of ₱50,000.00; and loss of earning capacity of ₱825,930.00. 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.

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**THIRD DIVISION**

[G.R. No. 218255. April 11, 2018]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **JERRY BUGNA *y* BRITANICO,** *accused-appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE; ELEMENTS.—** There is qualified rape when a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree or the common-law spouse of the victim has carnal knowledge with a minor through force, threat or intimidation. In other words, the element[s] of qualified rape x x x [are] as follows: (a) there is sexual congress; (b) with a woman; (c) done by force and without consent; (d) the victim is a minor at the time of the rape; and (e) offender is a parent (whether legitimate, illegitimate or adopted) of the victim.

**2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE EVALUATION OF THE TRIAL JUDGE THEREON, COUPLED BY THE FACT THAT THE COURT OF APPEALS AFFIRMED THE TRIAL COURT'S FINDINGS, IS GENERALLY BINDING UPON THE SUPREME COURT.—** [T]he evaluation of the RTC judge of the credibility of the witness, coupled by the fact that the CA affirmed the trial court's findings, is binding upon the Court, unless it can be established that facts and circumstances have been overlooked or misinterpreted, which could materially affect the disposition of the case in a different manner.

**3. ID.; ID.; ID.; CONVICTION MAY BE BASED SOLELY ON THE TESTIMONY OF THE WITNESS, PROVIDED THAT IT IS CREDIBLE, NATURAL, CONVINCING AND CONSISTENT WITH HUMAN NATURE AND THE NORMAL COURSE OF THINGS.—** [A]n accused may be convicted based solely on the testimony of the witness, provided that it is credible, natural, convincing and consistent with human nature and the normal course of things. In her testimony, AAA unflinchingly recalled her harrowing experience at the hands of [redacted], who was supposed to be her protector but was instead the monster lurking in her nightmares. In addition, AAA's testimony is rendered more credible and believable because Bugna neither alleged nor proved that AAA was motivated with ill will or malice in testifying against him.

**4. ID.; ID.; ID.; WHEN THE VICTIM FAILS TO CLEARLY SEE THE FACE OF THE ACCUSED, THE LATTER'S POSITIVE IDENTIFICATION STILL MEETS THE STANDARD OF MORAL CERTAINTY IF THE VICTIM IS INTIMATELY FAMILIAR WITH THE PHYSICAL FEATURES OF THE ACCUSED.—** It is true that the identification of the accused in a criminal case is vital to the prosecution because it can make or break its case. This is so because the prosecution has the burden to prove the commission of the crime and the positive identification with moral certainty of the accused as the perpetrator thereof. Here, AAA was able to identify Bugna as the assailant because while the room they were in was dark, the moon provided sufficient illumination for her to see his face. Further, even if AAA could not clearly see Bugna's face, the latter's positive identification still meets the standard of moral certainty. x x x Being her [redacted], AAA

is intimately familiar with the physical features of Bugna, such as his voice or stature. She could easily distinguish [redacted] from other persons inside the room especially since only her siblings were with them during the rape incidents. Thus, AAA was adamant that it was Bugna who raped her; according to her there was no other tall person inside the room. Further, she could identify him through his voice because after the rape incident they still had a conversation. It is noteworthy that in one of the conversations, the assailant even identified himself as AAA's [redacted].

**5. ID.; ID.; ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION.—** To defend himself, Bugna claims that he was not home from April until December 2007. It is settled that positive identification prevails over alibi because it can easily be fabricated and is inherently unreliable. In *People v. Dadao*, the Court explained that the defense of alibi must be corroborated by disinterested witnesses x x x. In the case at bar, other than his testimony, Bugna failed to present disinterested witnesses to corroborate his claim that he was not at home from April to December 2007. Faced with such appalling allegations, he could only muster a measly self-serving alibi to defend himself. Surely, such defense fails to convince the Court of Bugna's innocence especially since AAA had positively and convincingly identified him as her abuser.

**6. CRIMINAL LAW; REVISED PENAL CODE; RAPE; FORCE OR INTIMIDATION; IN INCEST RAPE OF A MINOR, THE MORAL ASCENDANCY OF THE ASCENDANT SUBSTITUTES FORCE OR INTIMIDATION.—** [I]n rape cases, the prosecution must prove that force or intimidation was actually employed by the accused upon the victim because failure to do is fatal to its cause. Nevertheless, in [redacted] rape of a minor, [redacted] substitutes force or intimidation. x x x In the present case, actual force and intimidation need not be present to convict Bugna with rape. He was AAA's [redacted] and such relationship or influence rendered her unable to resist [redacted] advances.

**7. ID.; ID.; ID.; RESISTANCE IS NOT AN ELEMENT OF RAPE AND THE LACK THEREOF DOES NOT NECESSARILY LEAD TO AN ACQUITTAL OF THE ACCUSED.—** Bugna's insistence that AAA's lack of resistance belies her allegation of rape deserves scant consideration. In *People v. Joson*, the

Court explained that resistance is not an element of rape and the lack thereof does not necessarily lead to an acquittal of the accused x x x. Like other forms of sexual abuse or assault, rape essentially boils down to the lack of consent on the part of the victim. In turn, consent should not be implied from the lack of resistance of the abused. x x x [I]t could be reasonably expected that AAA could not have offered any resistance considering that her very abuser was [redacted]. Bugna's influence [redacted] over AAA had crippled her to such an extent that she succumbed to his dastardly plans. x x x Thus, where there is force and intimidation or in cases where the [redacted] or influence of the accused validly substitutes actual force and violence, the lack of resistance should never be used as indicia of consent. For after all, such violence or [redacted] may have reduced the victim to nothing more but an object, devoid of free will, to satisfy the abuser's ungodly desires.

**8. ID.; ID.; ID.; LUST IS NO RESPECTER OF TIME AND PLACE.—** Bugna x x x questions AAA's testimony claiming that it was impossible for him to have raped AAA because her siblings were in the room at the time of the incident. It must be remembered, however, that it has been long settled that lust is no respecter of time and place. The presence of AAA's siblings does not necessarily contradict her allegations of rape especially since she had categorically, consistently, and positively identified Bugna as his abuser.

**9. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THERE IS NO EXPECTED UNIFORM REACTION FROM A RAPE VICTIM CONSIDERING THAT THE WORKINGS OF THE HUMAN MIND PLACED UNDER EMOTIONAL STRESS ARE UNPREDICTABLE.—** Bugna assails that AAA's actions during and after the alleged rape renders her credibility questionable. Nevertheless, it must be remembered that there is no expected uniform reaction from a rape victim considering that the workings of the human mind placed under emotional stress are unpredictable. In other words, a rape victim's survival instincts may trigger her attempt to fight her abuser or at least to shout for help; or the victim may be rendered paralyzed or helpless or hopeless due to the trauma caused by the abuse.

**APPEARANCES OF COUNSEL**

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

## D E C I S I O N

**MARTIRES, *J.*:**

This is an appeal from the 17 December 2014 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 01055-MIN, which affirmed with modification the 15 May 2012 Decision[2] of the Regional Trial Court, [redacted] South Cotabato (*RTC*), in Criminal Case Nos. 4613-S and 4614-S, finding accused-appellant Jerry Bugna *y* Britanico (*Bugna*) guilty beyond reasonable doubt of two counts of Qualified Rape defined and penalized under Article 266-B(1) of the Revised Penal Code (*RPC*).

## THE FACTS

In an Information dated 28 March 2008, Bugna was charged with the crime of Rape committed against [redacted] AAA.[3] The accusatory portion of the information reads:

That on or about the 7th day of April 2007 at around 8:00 o'clock in the evening, in their own house situated at [redacted] Province

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[1] *Rollo*, pp. 3-20; penned by Associate Justice Maria Filomena D. Singh, and concurred in by Associate Justices Romulo V. Borja and Oscar V. Badelles.

[2] CA *rollo*, pp. 38-45; penned by Presiding Judge Roberto L. Ayco.

[3] The true name of the victim has been replaced with fictitious initials in conformity with Administrative Circular No. 83-2015 (Subject: *Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/ Personal Circumstances*). The confidentiality of the identity of the victim is mandated by Republic Act (R.A.) No. 7610 (*Special Protection of Children Against Abuse, Exploitation and Discrimination Act*); R.A. No. 8508 (*Rape Victim Assistance and Protection Act of 1998*); R.A. No. 9205 (*Anti-Trafficking in Persons Act of 2003*); R.A. No. 9262 (*Anti-Violence Against Women and their Children Act of 2004*); and R.A. No. 9344 (*Juvenile Justice and Welfare Act of 2006*).

of South Cotabato and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of one [AAA], 16 years old and [redacted] against her will and consent.[4]

In a separate information of the same date, Bugna was charged with another count of rape against AAA. The accusatory portion of the information reads:

That on or about the 21st day of December 2007 at around 2:00 o'clock in the morning, in their own house situated at [redacted], [redacted] Province of South Cotabato and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of one [AAA], 16 years old and [redacted] against her will and consent.[5]

During his arraignment on 16 July 2008, Bugna, with the assistance of his counsel, pleaded "Not Guilty" to both counts of rape.[6]

***Evidence for the Prosecution***

The prosecution presented AAA and Dr. Neil T. Crespo (*Dr. Crespo*) as witnesses. Their combined testimonies tended to establish the following:

Sometime in April 2007, AAA and her four siblings were about to go to sleep when Bugna arrived drunk from a drinking session. At around 8:00 P.M., while they were sleeping, she felt [redacted] removing her shorts. Bugna then inserted his fingers into AAA's vagina. Unsatisfied, he removed his finger and decided to mount AAA and inserted his penis into her vagina. Perturbed, AAA asked Bugna why he was doing this to her — to which the latter replied that if [redacted] was able to use her why not [redacted]. During the incident AAA felt pain in

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[4] Records (Criminal Case No. 4614-S), p. 1.

[5] Records (Criminal Case No. 4613-S), p. 1.

[6] *Id*. at 15.

her genitals and was nervous and scared of [redacted]. Her mother was away during that time.[7]

Thereafter, on 21 December 2007, AAA and her siblings were again left alone in their house with their [redacted] because their mother went to General Santos City. At around 2:00 A.M. of the said date, she again felt her [redacted] pulling down her shorts. AAA attempted to run but Bugna was able to grab her and instructed her to lie down. While on the floor, he went on top of her scared [redacted] and inserted his penis into her vagina. Thereafter, Bugna went back to sleep and left AAA in pain, who felt a sticky watery substance come out of her vagina. AAA was able to report the incident to her mother only after some time because Bugna warned her that her mother might send him to jail if she found out.[8]

On 2 January 2008, Dr. Crespo conducted a physical examination on AAA, wherein he noted that AAA's genital area had healed lacerations.[9]

***Evidence for the Defense***

The defense presented Bugna as its lone witness whose testimony sought to prove the following:

On 4 April 2007, at around 8:30 A.M., Bugna travelled with his ducks to Tacurong, Sultan Kudarat, and stayed there until 1 May 2007. Thereafter, he went to Bayugan, Agusan del Sur, until 31 December 2007, and was never able to go back home.[10]

***The RTC Ruling***

In its 15 May 2012 decision, the RTC found Bugna guilty of two counts of rape. The trial court noted that AAA positively identified [redacted] as her assailant; as such, Bugna's defense of denial and alibi deserved scant consideration. The dispositive portion reads:

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[7] TSN, 25 June 2009, pp. 8-13.

[8] *Id*. at 15-18.

[9] TSN, 23 July 2009, pp. 6 and 10-11.

[10] TSN, 22 February 2012, pp. 5-6.

WHEREFORE, foregoing premises considered and discussed, the court finds the evidence of the prosecution sufficient to establish the guilt of the accused beyond reasonable doubt. Accused, Jerry B. Bugna, is therefore found GUILTY of the crime of two (2) counts of Rape against [redacted] as charged in the above informations.

ACCORDINGLY, he is hereby sentenced to suffer the penalty of reclusion perpetua in each of the cases.

He is further ordered to pay the private offended party the amount of ₱50,000.00 in each case, as moral damages.[11]

Aggrieved, Bugna appealed before the CA.

***The CA Ruling***

In its assailed 17 December 2014 decision, the CA substantially affirmed the RTC judgment and modified only the damages awarded. The appellate court found AAA's testimony to be credible considering it was straightforward and consistent. It expounded that Bugna's [redacted] substituted the element of violence and intimidation. The CA explained that Bugna's unsubstantiated alibi has no leg to stand on in view of AAA's positive identification of him. It ruled:

WHEREFORE, the appeal is DENIED. The Decision dated May 15, 2012 of the Regional Trial Court, [redacted] South Cotabato, [redacted] in Criminal Cases Nos. 4613-S and 4614-S is hereby AFFIRMED, finding accused-appellant Jerry Bugna y Britanico GUILTY beyond reasonable doubt of two (2) counts of qualified rape, with MODIFICATION of the award of civil indemnity, ordering accused-appellant to pay [AAA], in each case, ₱75,000.00 as civil indemnity ex delicto, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages. The award of damages shall earn legal interest at the rate of 6% per annum from date of finality of this judgment until fully paid.[12]

Hence, this appeal.

**ISSUE**

**WHETHER THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE**

[11] CA *rollo*, p. 45.

[12] *Rollo*, p. 19.

## THE COURT'S RULING

The appeal has no merit.

There is qualified rape when a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree or the common-law spouse of the victim has carnal knowledge with a minor through force, threat or intimidation.[13] In other words, the element of qualified rape is as follows: (a) there is sexual congress; (b) with a woman; (c) done by force and without consent; (d) the victim is a minor at the time of the rape; and (e) offender is a parent (whether legitimate, illegitimate or adopted) of the victim.[14]

In the case at bench, all the foregoing elements are present to convict Bugna for two counts of rape committed against AAA.

It is axiomatic that the evaluation of the RTC judge of the credibility of the witness, coupled by the fact that the CA affirmed the trial court's findings, is binding upon the Court,[15] unless it can be established that facts and circumstances have been overlooked or misinterpreted, which could materially affect the disposition of the case in a different manner.

After a careful scrutiny of the records, the Court finds no reason to depart from the findings of the courts *a quo*.

It is settled that an accused may be convicted based solely on the testimony of the witness, provided that it is credible, natural, convincing and consistent with human nature and the normal course of things.[16] In her testimony, AAA unflinchingly recalled her harrowing experience at the hands of [redacted] who was supposed to be her protector but was instead the monster lurking in her nightmares. In addition, AAA's testimony is rendered more credible and believable because Bugna neither

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[13] Article 266-A in connection with Article 266-B of the RPC.

[14] *People v. Buclao*, 736 Phil. 325, 336 (2014).

[15] *People v. Colentava*, 753 Phil. 361, 376 (2015).

[16] *People v. Gahi*, 727 Phil. 642, 657 (2014).

alleged nor proved that AAA was motivated with ill will or malice in testifying against him.[17] She testified:

PROSECUTOR VALDEZ-DAMO:

Q: And you filed two (2) cases of rape against [redacted] right?
A: Yes, ma'am.

Q: Could you recall when was the first incident?
A: In April, 2007.

Q: What time when the alleged incident happened, if you could recall?
A: In the evening.

Q: Where were you then at that time?
A: I was at home.

Q: While you were at home, what were you doing?
A: We were about to go to sleep.

x x x x x x x x x

Q: What happened on that night?
A: After they drank, he locked all the doors.

Q: And after he locked all the doors, what else did [redacted] do?
A: We fell asleep already and I just felt that he removed my shorts.

PROSECUTOR VALDEZ-DAMO:

May we put it on record, Your Honor, that the victim is already crying.

Q: You said that you felt that [redacted] was removing your shorts, right?
A: Yes, ma'am.

Q: What did you do then?
A: I did not move then he inserted his finger.

Q: Where did he insert his finger, will you tell the court?
A: Into my vagina.

Q: What did you feel at that time?
A: I was nervous.

[17] *People v. Jalbonian*, 713 Phil. 93, 104 (2013).

Q: What did you do when your [redacted] inserted his finger into your vagina?
A: It was painful.

Q: And after that, what did [redacted] do?
A: He removed his finger then he put himself on top of me.

Q: What else did [redacted] do?
A: That was when he abused me.

Q: You said that [redacted] abused you. Will you tell the court what do you mean by that?
A: He placed himself on top of me then he inserted his penis into my vagina.

x x x x x x x x x

Q: Was that the only incident that [redacted] sexually abused you?
A: There were other incidents. The last sexual abuse happened on December 21, 2007.

x x x x x x x x x

Q: And what happened while you were at home on that date?
A: Early morning, around 2:00 o'clock, I felt that [redacted] was pulling my shorts.

Q: What did you do when you felt that [redacted] was pulling down your shorts?
A: I was trying to prevent his hand and I seated.

Q: And after that, what happened next?
A: I attempted to run but he pulled me.

Q: And after [redacted] pulled you, what happened next?
A: He held my hand, instructed me to lie down and then he put himself on top of me.

Q: What did you feel at that time when [redacted] instructed you to lie down and then he put himself on top of you?
A: I was scared.

Q: And after that, what did [redacted] do?
A: He inserted his penis into my vagina.

Q: For how long?
A: For only around one (1) minute.

Q: After that, what else did [redacted] do?
A: He left and went back to where he was sleeping.

Q: What did you feel when [redacted] put himself on top of you and inserted his penis into your vagina?
A: It was painful.

Q: What else?
A: Then a sticky substance like water came out.[18]

Based on AAA's testimony, it was established that she had sexual contact with Bugna and that the same was against her will or was done without her consent. Her testimony was corroborated by the medical findings that she had healed lacerations on her hymen.[19] On the other hand, it was admitted that AAA was Bugna's [redacted] and was only 16 years old at the time of the rape.[20] Thus, it is painstakingly clear that there is overwhelming evidence to find Bugna guilty of the atrocities he had committed against AAA on two separate occasions.

***Positive identification of the accused with moral certainty***

Bugna challenges that AAA's identification of him as her assailant was doubtful. He points out that at the time of the incident, there were several persons inside the room and that it was not well-illuminated. Bugna highlights that AAA merely inferred his identity when she concluded that it was [redacted] because there were no other tall persons inside the room and that she only saw a figure and assumed it was [redacted].

It is true that the identification of the accused in a criminal case is vital to the prosecution because it can make or break its case. This is so because the prosecution has the burden to prove the commission of the crime and the positive identification with moral certainty of the accused as the perpetrator thereof.[21] Here,

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[18] TSN, 25 June 2009, pp. 8-12 and 15-17.

[19] TSN, 23 July 2009, pp. 10-11.

[20] Records, p. 26.

[21] *People v. Maguing*, 452 Phil. 1026, 1045 (2003).

AAA was able to identify Bugna as the assailant because while the room they were in was dark, the moon provided sufficient illumination for her to see his face.

Further, even if AAA could not clearly see Bugna's face, the latter's positive identification still meets the standard of moral certainty. In *People v. Caliso*,[22] the Court expounded on what constitutes moral certainty in the identification of the accused, to wit:

> In every criminal prosecution, no less than moral certainty is required in establishing the identity of the accused as the perpetrator of the crime. x x x The test to determine the moral certainty of an identification is its imperviousness to skepticism on account of its distinctiveness. To achieve such distinctiveness, the identification evidence should encompass *unique* physical features or characteristics, like the face, the voice, the dentures, the distinguishing marks or tattoos on the body, fingerprints, DNA, or any other physical facts that set the individual apart from the rest of humanity.[23]

Being her [redacted], AAA is intimately familiar with the physical features of Bugna, such as his voice or stature. She could easily distinguish [redacted] from other persons inside the room especially since only her siblings were with them during the rape incidents. Thus, AAA was adamant that it was Bugna who raped her; according to her there was no other tall person inside the room. Further, she could identify him through his voice because after the rape incident they still had a conversation. It is noteworthy that in one of the conversations, the assailant even identified himself as AAA's [redacted]. AAA testified accordingly:

PROSECUTOR VALDEZ-DAMO:

Q: What did you do when [redacted] allegedly put himself on top of you and inserted his penis into your vagina?
A: I was asking him why he did it to me.

Q: What was the answer of [redacted]

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[22] 675 Phil. 742 (2015).

[23] *Id*. at 756.

A: Allegedly, [redacted] was able to use me, so why not me being the [redacted].

x x x x x x x x x

Q: After that, what else did [redacted] do?
A: He removed himself from me and slept beside me and he further asked me if I already have experienced a sexual intercourse.[24]

***Positive identification trumps denial and alibi.***

To defend himself, Bugna claims that he was not home from April until December 2007. It is settled that positive identification prevails over alibi because it can easily be fabricated and is inherently unreliable.[25] In *People v. Dadao*,[26] the Court explained that the defense of alibi must be corroborated by disinterested witnesses, to wit:

> It is a time-honored principle in jurisprudence that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable. Hence, **it must be supported by credible corroboration from disinterested witnesses, and if not, is fatal to the accused**. x x x While the witnesses presented by the defense to corroborate the respective alibis of Marcelino Dadao and Antonio Sulindao **consisted of friends and relatives who are hardly the disinterested witnesses that is required by jurisprudence**.[27] (emphasis supplied)

In the case at bar, other than his testimony, Bugna failed to present disinterested witnesses to corroborate his claim that he was not at home from April to December 2007. Faced with such appalling allegations, he could only muster a measly self-serving alibi to defend himself. Surely, such defense fails to convince the Court of Bugna's innocence especially since AAA had positively and convincingly identified him as her abuser.

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[24] TSN, 25 June 2009, pp. 12-13.

[25] *People v. Ramos*, 715 Phil. 193, 207 (2013).

[26] 725 Phil. 298 (2014).

[27] *Id*. at 312.

***Resistance in rape committed with force and intimidation***

Bugna assails that he cannot be guilty of rape through force and intimidation because it was never mentioned whether he had a weapon to threaten AAA with. In addition, he argues that there could be no force and intimidation because after the incident, AAA slept beside him as if nothing happened. Likewise, Bugna bewails that if AAA was indeed truly raped, she should have at least offered resistance or attempted to shout for help to awaken her siblings who were in the same room at that time.

It is true that in rape cases, the prosecution must prove that force or intimidation was actually employed by the accused upon the victim because failure to do is fatal to its cause.[28] Nevertheless, in [redacted] rape of a minor, [redacted] substitutes force or intimidation. In *People v. Castel*,[29] the Court explained:

> **It is hornbook doctrine that in the [redacted] rape of a minor, actual force or intimidation need not even be employed where the overpowering [redacted] influence [redacted] would suffice [redacted]**. One should bear in mind that in [redacted] rape, the minor victim is at a great disadvantage. The assailant, by his overpowering and overbearing moral influence, can easily consummate his bestial lust with impunity. **As a consequence, proof of force and violence is unnecessary [redacted] of the victim.**[30]
> (emphasis and underlining supplied)

In the present case, actual force and intimidation need not be present to convict Bugna with rape. He was AAA's [redacted] and such relationship or influence rendered her unable to resist [redacted] advances. Similarly, Bugna's insistence that AAA's lack of resistance belies her allegation of rape deserves scant consideration.

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[28] *People v. Tionloc*, G.R. No. 212193, 15 February 2017.

[29] 593 Phil. 288 (2008).

[30] *Id.* at 319.

In *People v. Joson*,[31] the Court explained that resistance is not an element of rape and the lack thereof does not necessarily lead to an acquittal of the accused, *viz*:

> We are not persuaded by the accused-appellant's insistence that the absence of any resistance on the part of AAA raised doubts as to whether the sexual congress was without her consent. **The failure of the victim to shout for help or resist the sexual advances of the rapist is not tantamount to consent.** Physical resistance need not be established in rape when threats and intimidation are employed and the victims submit herself to her attackers because of fear.
>
> Besides, physical resistance is not the sole test to determine whether a woman voluntarily succumbed to the lust of an accused. Rape victims show no uniform reaction. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. **After all, resistance is not an element of rape and its absence does not denigrate AAA's claim that the accused-appellant consummated his bestial act.**[32] (emphases supplied)

Like other forms of sexual abuse or assault, rape essentially boils down to the lack of consent on the part of the victim. In turn, consent should not be implied from the lack of resistance of the abused. As is now seen of the recent Me Too Movement, women have been coming forward about the sexual abuse they had suffered from prominent figures or persons of influence across all industries. What stands out among from these allegations is that the victims failed to show resistance to the advances of their abusers precisely because of the influence the latter possessed.

As applied in the present case, it could be reasonably expected that AAA could not have offered any resistance considering that her very abuser was [redacted]. Bugna's influence [redacted] over AAA had crippled her to such an extent that she succumbed to his dastardly plans. How could AAA resist when the person she expects to keep her safe would ultimately be the one to violate her dignity and rob her of her innocence?

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[31] *People v. Joson*, 751 Phil. 450 (2015).

[32] *Id*. at 460.

Thus, where there is force and intimidation or in cases where the [redacted] or influence of the accused validly substitutes actual force and violence, the lack of resistance should never be used as indicia of consent. For after all, such violence or [redacted] may have reduced the victim to nothing more but an object, devoid of free will, to satisfy the abuser's ungodly desires.

Bugna also questions AAA's testimony claiming that it was impossible for him to have raped AAA because her siblings were in the room at the time of the incident. It must be remembered, however, that it has been long settled that lust is no respecter of time and place.[33] The presence of AAA's siblings does not necessarily contradict her allegations of rape especially since she had categorically, consistently, and positively identified Bugna as his abuser.

Likewise, Bugna assails that AAA's actions during and after the alleged rape renders her credibility questionable. Nevertheless, it must be remembered that there is no expected uniform reaction from a rape victim considering that the workings of the human mind placed under emotional stress are unpredictable.[34] In other words, a rape victim's survival instincts may trigger her attempt to fight her abuser or at least to shout for help; or the victim may be rendered paralyzed or helpless or hopeless due to the trauma caused by the abuse.

***Modification of damages to conform to recent jurisprudence***

The appellate court affirmed the conviction of Bugna but modified the damages awarded. It increased the award of moral damages to ₱75,000.00, and awarded ₱75,000.00 as civil indemnity and ₱30,000.00 as exemplary damages.

Under Article 266-B of the RPC, the penalty of death shall be imposed when the victim is under eighteen (18) years old and the offender is a parent. In view of Republic Act (*R.A.*) No. 9346,[35]

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[33] *People v. Cabral*, 623 Phil. 809, 815 (2009).

[34] *People v. Lucena*, 728 Phil. 147, 163 (2014).

[35] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

however, the penalty of *reclusion perpetua* shall be imposed in lieu of the death penalty when the law violated uses the nomenclature of the penalties under the RPC.

On the other hand, the Court in *People v. Jugueta*[36] set the award of damages for the crime of Rape, among others. There, it was held that when the penalty imposed is Death but reduced to *reclusion perpetua* because of R.A. No. 9346, the victim is entitled to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and another ₱100,000.00 as exemplary damages. In conformity with the said ruling, all damages awarded to AAA should be increased accordingly.

**WHEREFORE,** the 17 December 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01055-MIN is **AFFIRMED with MODIFICATION**. Accused-appellant Jerry Bugna *y* Britanico is ordered to pay AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and another ₱100,000.00 as exemplary damages for each count of rape with an interest at the rate of six percent (6%) per annum computed from the finality of this judgment until fully paid.

**SO ORDERED.**

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

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[36] 783 Phil. 806 (2016).

**SECOND DIVISION**

[G.R. No. 223321. April 11, 2018]

**ROGELIO M. FLORETE, SR., THE ESTATE OF THE LATE TERESITA F. MENCHAVEZ, represented by MARY ANN THERESE F. MENCHAVEZ, ROSIE JILL F. MENCHAVEZ, MA. ROSARIO F. MENCHAVEZ, CRISTINE JOY F. MENCHAVEZ, and EPHRAIM MENCHAVEZ, and DIANE GRACE F. MENCHAVEZ,** *petitioners, vs.* **MARCELINO M. FLORETE, JR. and MA. ELENA F. MUYCO,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; LIMITED TO REVIEWING ONLY ERRORS OF LAW; EXCEPTION.—** As a rule, the re-examination of the evidence proffered by the contending parties during the trial of the case is not a function that this Court normally undertakes inasmuch as the findings of fact of the Court of Appeals are generally binding and conclusive on the Supreme Court. The jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law. A reevaluation of factual issues by this Court is justified when the findings of fact complained of are devoid of support by the evidence on record, or when the assailed judgment is based on misapprehension of facts, which we find in the case at bar.

**2. ID.; EVIDENCE; JUDICIAL ADMISSIONS; A PARTY MAY MAKE JUDICIAL ADMISSIONS IN THE PLEADINGS, DURING THE TRIAL OR IN OTHER STAGES OF THE JUDICIAL PROCEEDINGS.—** [P]etitioners' claim that Marsal is not a close corporation deserves scant consideration as they had already admitted that it is. x x x Petitioners judicially admitted that Marsal is a close corporation. x x x A party may make judicial admissions in (a) the pleadings, (b) during the trial, either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceeding.

**3. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; CLOSE CORPORATIONS; A CLOSE CORPORATION IS ALLOWED TO PROVIDE FOR RESTRICTIONS ON THE TRANSFER OF ITS STOCKS.—** As Marsal is a close corporation, it is allowed under the Corporation Code to provide for restrictions on the transfer of its stocks. x x x The AOI of Marsal provides for the procedure for the sale of shares of stock of a stockholder x x x. [T]he stockholder seller must notify in writing the Board of Directors of his intention to sell, who, in turn, must notify all the stockholders of records within 5 days upon receipt of such letter, and the stockholder must exercise the preemptive right within ten days from notice of the Board, otherwise, the sale shall be null and void. Here, Teresita's 3,464 Marsal shares were sold by petitioner estate to petitioner Rogelio in a Compromise Agreement and Deed of Assignment they entered into which was approved by the Probate Court. x x x While it would appear that petitioner estate of Teresita, through its administrator Ephraim and petitioner Rogelio, did not comply with the procedure on the sale of Teresita's Marsal shares as stated under paragraph 7 of the AOI, however, it appeared in the records that respondents had nonetheless been informed of such sale to which they had already given their consent thereto x x x. There was already substantial compliance with paragraph 7 of the AOI when respondents obtained actual knowledge of the sale of Teresita's 3,464 Marsal shares to petitioner Rogelio as early as 1995. In fact, respondents had already given their consent and conformity to such sale by their inaction for 17 years despite knowledge of the sale. Moreover, they had already waived the procedure of the stockholder's sale of stocks as provided under Paragraph 7 of the AOI.

**4. ID.; ID.; ID.; ID.; ISSUANCE OF TRANSFER OF STOCKS; TRANSFER OF STOCKS MADE IN VIOLATION OF THE RESTRICTIONS IS STILL VALID IF IT HAS BEEN CONSENTED TO BY ALL THE STOCKHOLDERS AND THE CORPORATION CANNOT REFUSE TO REGISTER THE TRANSFER OF STOCKS IN THE NAME OF THE TRANSFEREE.—** Section 99 of the Corporation Code provides for the effects of transfer of stock in breach of qualifying conditions x x x. [E]ven if the transfer of stocks is made in violation of the restrictions enumerated under Section 99, such transfer is still valid if it has been consented to by all the

> stockholders of the close corporation and the corporation cannot refuse to register the transfer of stock in the name of the transferee. In this case, We find that the sale of Teresita's 3,464 Marsal shares had already been consented to by respondents x x x and may be registered in the name of petitioner Rogelio.

**APPEARANCES OF COUNSEL**

*A.D. Corvera & Associates* for petitioners.
*Go Silla & Associates Law Offices* for respondents.

**D E C I S I O N**

**PERALTA, *J.*:**

Before us is a petition for review on *certiorari* seeking to nullify the Decision[1] dated August 3, 2015 of the Court of Appeals in CA-G.R. SP No. 07673, as well as the Resolution[2] dated February 19, 2016 denying the motion for reconsideration thereof.

On October 7, 1966, Marsal & Co., Inc. (*Marsal*) was organized as a close corporation by Marcelino Sr., Salome, Rogelio, Marcelino Jr., Ma. Elena, and Teresita (all surnamed Florete). Since its incorporation, the Articles of Incorporation (*AOI*) had been amended[3] several times to increase its authorized capital stocks of ₱500,000.00 to ₱5,000,000.00. Notwithstanding the amendments, paragraph 7 of their AOI which provides for the procedure in the sale of the shares of stocks of a stockholder remained the same, to wit:

> SEVENTH. — x x x Any stockholder who desires to sell his share of stock in the company must notify in writing the Board of Directors

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[1] Penned by Justice Edward B. Contreras and concurred in by Associate Justices Edgardo L. delos Santos and Renato C. Francisco; *rollo,* pp. 77-84.

[2] Penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo L. delos Santos and Geraldine C. Fiel-Macaraig; *id.* at 85-86.

[3] *Rollo,* pp. 99-135.

of the company of his intention to sell. The Board of Directors upon receipt of such notice must immediately notify all stockholders of record within five days upon receipt of the letter of said stockholder. Any stockholder of record has the preemptive right to buy any share offered for sale by any stockholder of the company on book value base[d] on the balance sheet approved by the Board of Directors. The aforementioned preemptive right must be exercised by any stockholder of the company within ten (10) days upon his receipt of the written notice sent to him by the Board of Directors of the offer to sell. Any sale or transfer in violation of the above terms and conditions shall be null and void. The above terms and conditions must be printed at the back of the stock certificate.[4]

And as of June 1, 1982, the capital profile of Marsal was as follows:

| Name | Shareholdings |
|---|---|
| Marcelino M. Florete, Sr. | 7,569 shares |
| Rogelio M. Florete | 3,489 shares |
| Ma. Elena F. Muyco | 3,489 shares |
| Marcelino M. Florete, Jr. | 3,489 shares |
| Teresita F. Menchavez | 3,464 shares[5] |

On September 19, 1989, Teresita Florete Menchavez died. In 1992, Ephraim Menchavez, Teresita's husband, filed a Petition for Issuance of Letters of Administration[6] over her estate. An Amended Opposition was filed by petitioner Rogelio Florete, Sr. and Marsal, represented by petitioner as President thereof, with Atty. Raul A. Muyco, the husband of respondent Ma. Elena, as counsel, on the ground of Ephraim's incompetency. Ephraim, however, was later granted letters of administration. In 1995, Ephraim, the special administrator, entered into a Compromise Agreement and Deed of Assignment[7] with petitioner Rogelio ceding all the shareholdings of Teresita in various corporations owned and controlled by the Florete family, which

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[4] *Id.* at 132.

[5] *Id.* at 140.

[6] *Id.* at 142-144; Docketed as SPL. PROC. NO. 4855.

[7] *Id.* at 154-155.

included the 3,464 shares in Marsal corporation, as well as her shares, interests and participation as heir in all the real and personal properties of her parents to petitioner Rogelio. A Motion to Approve Compromise Agreement and Deed of Assignment was filed by respondent Ephraim, through counsel Atty. Henry Villegas, with the conformity of Atty. Raul Muyco, the oppositors' counsel. The motion was granted and approved by the Probate Court in its Order[8] dated February 14, 1995.

On October 3, 1990, Marcelino Florete Sr., patriarch of the Florete family, died. An intestate proceeding to settle his estate was filed by petitioner Rogelio, who was later appointed as administrator of the estate. Petitioner Rogelio filed a project of partition enumerating therein all the properties of the estate of Marcelino Sr. in accordance with the inventory earlier filed with the intestate court. In the Order[9] dated May 16, 1995, the court approved the project of partition adjudicating to petitioner Rogelio one-half (½) share of the whole estate; and to respondents Ma. Elena and Marcelino Jr., the undivided one-fourth (¼) share each of the enumerated properties. In the same Order, the Probate Court had noted the sale of all the shares of the late Teresita which she inherited from her deceased parents to petitioner Rogelio.[10]

On February 21, 2012, respondents Marcelino Jr. and Ma. Elena filed with the Regional Trial Court (*RTC*), Branch 39, Iloilo City, a case[11] for annulment/rescission of sale of shares of stocks and the exercise of their pre-emptive rights in Marsal corporation and damages against petitioners Rogelio Florete, Sr. and the estate of the late Teresita F. Menchavez, herein represented by her heirs, namely, Mary Ann Therese Menchavez, Christine Joy F. Menchavez, Ma. Rosario F. Menchavez, Diane Grace Menchavez, Rosie Jill F. Menchavez, and Ephraim Menchavez. Respondents claimed that the sale of Teresita's

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[8] *Id.* at 156; Per Assisting Judge Lolita Contreras-Besana.

[9] *Id.* at 173-179; Per Judge Jose G. Abdallah.

[10] *Id.* at 174.

[11] *Id.* at 88-97.

3,464 Marsal shares of stocks made by petitioner estate to petitioner Rogelio was *void ab initio* as it violated paragraph 7 of Marsal's AOI, since the sale was made *sans* written notice to the Board of Directors who was not able to notify respondents in writing of the petitioner estate and heirs' intention to sell and convey the Marsal shares and depriving respondents of their preemptive rights.

On April 26, 2013, the RTC, as a Special Commercial Court, dismissed the complaint.[12] It found that the sale of Teresita's Marsal shares of stocks to petitioner Rogelio, being one of the incorporators and stockholders of Marsal at the time of sale, was not a sale to a third party or outsider as would justify the restriction on transfer of shares in the AOI. The RTC also found that *laches* and estoppel had already set in as respondents' inaction for 17 years constituted a neglect for an unreasonable time to question the same; and that respondents could not feign ignorance of the transactions as they knew of the same and yet they did not do anything at that time.

Respondents filed with the CA a petition for review under, Rule 43 with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction. Petitioners filed their Comment thereto.

On August 3, 2015, the CA rendered its assailed Decision, the decretal portion of which reads:

> WHEREFORE, in view of the foregoing, the instant appeal is GRANTED, the Decision dated April 26, 2013 of the Regional Trial Court, 6th Judicial Region, Branch 39, Iloilo City, in SCC Case No. 12-049 for Annulment/Rescission of Sale of Shares of Stocks, Pre-Emptive Rights and Damages is hereby REVERSED and SET ASIDE. Let a new one be entered declaring the conveyance of 3,464 Marsal shares of respondents in favor of Rogelio M. Florete Sr., NULL and VOID, in violation of Paragraph 7 of Marsal's Articles of Incorporation.[13]

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[12] *Id.* at 265-277; per Presiding Judge Victorino Oliveros Maniba, Jr.

[13] *Id.* at 84.

In so ruling, the CA found that Teresita's 3,464 Marsal shares of stocks were conveyed by petitioner estate to petitioner Rogelio in a Compromise Agreement and Deed of Assignment without first offering them to the existing stockholders as provided under paragraph 7 of the AOI; that since the AOI is considered a contract between the corporation and its stockholders, the sale of Teresita's shares in favor of petitioner Rogelio constituted a breach of contract on the part of petitioner estate, hence, null and void; and that it is inconsequential whether the transfer was made to one of the existing stockholders of the closed corporation. Anent Atty. Muyco's acting as counsel of petitioner Rogelio and Marsal in Teresita's intestate proceedings and who was presumed to have transmitted to respondents his knowledge regarding the sale of Teresita's Marsal shares to petitioner Rogelio, the CA ruled that the notice acquired from a third person even if true was not the notice meant under paragraph 7 of the AOI; and that Atty. Muyco admitted that he did not know of petitioner Rogelio's plan of acquiring Teresita's shares. A void contract has no effect from the beginning, thus, the action for its nullity even if filed 17 years later after its execution, cannot be barred by prescription for it is imprescriptible; and the defense of *laches* is unavailing as it had been jurisprudentially provided that courts should never apply the doctrine of *laches* earlier than the expiration of time limited for the commencement of action at law.

Petitioners filed a motion for reconsideration, which was denied by the CA in a Resolution dated February 19, 2016.

Hence, this petition filed by petitioners alleging the following assignment of errors:

I

THE COURT OF APPEALS GRIEVOUSLY ERRED IN REFUSING TO RULE ON WHETHER OR NOT THE VERY INVALIDATION CLAUSE IN THE SUBJECT SHARE TRANSFER RESTRICTION IS VOID FROM WHICH NO CAUSE OF ACTION MAY ORIGINATE.

II

THE COURT OF APPEALS GRIEVOUSLY ERRED IN REFUSING TO RULE ON WHETHER OR NOT THE SUBJECT SHARE TRANSFER

RESTRICTION CAN BE ENFORCED IN LIGHT OF THE CORPORATION CODE PROVISION WHICH RECOGNIZES AS VALID ONLY SUCH RESTRICTIONS IN A CLOSE CORPORATION AS DEFINED IN THE CODE, WHICH SUBJECT CORPORATION IS NOT.

III

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT RULING THAT ASSUMING *ARGUENDO* THE SUBJECT SHARE TRANSFER RESTRICTIONS ARE VALID, THE SAME CANNOT BE APPLIED TO THE QUESTIONED TRANSFER OR SALE OF STOCK. IT NOT BEING A SALE TO OUTSIDERS, AMONG OTHER MATTERS.

IV

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT RULING THAT RESPONDENTS' CAUSE OF ACTION, IF ANY, IS BARRED BY PRESCRIPTION.

V

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT RULING THAT RESPONDENTS' CAUSE OF ACTION, IF ANY, IS BARRED BY LACHES.

VI

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT RULING THAT RESPONDENTS ARE ESTOPPED BY THEIR DEEDS OR CONDUCT FROM PURSUING THEIR CLAIM.

VII

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT RULING THAT RESPONDENTS' CAUSE OF ACTION, IF ANY, IS BARRED BY *RES JUDICATA*.[14]

The pivotal issue for resolution is whether the CA erred in ruling that the sale of Teresita's 3,464 Marsal shares of stocks made by petitioner estate of Teresita to petitioner Rogelio was in violation of paragraph 7 of Marsal's Article of Incorporation and hence null and void and must be annulled or rescinded.

We rule in the affirmative.

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[14] *Id.* at 40-41.

The issue raised is factual. As a rule, the re-examination of the evidence proffered by the contending parties during the trial of the case is not a function that this Court normally undertakes inasmuch as the findings of fact of the Court of Appeals are generally binding and conclusive on the Supreme Court.[15] The jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law. A reevaluation of factual issues by this Court is justified when the findings of fact complained of are devoid of support by the evidence on record, or when the assailed judgment is based on misapprehension of facts, which we find in the case at bar.

Preliminarily, petitioners' claim that Marsal is not a close corporation deserves scant consideration as they had already admitted that it is. In his Affidavit[16] filed in this case, petitioner Rogelio alleged, among others:

> 10. That MARSAL & CO., INC. is a close family corporation, the stockholder of which are now three, since Teresita Menchavez is already dead, and so is our father Marcelino Florete, Sr. x x x.

and in his Answer with Compulsory Counterclaim,[17] he stated:

> 2. That answering defendant admits the allegations set forth in paragraphs 5, 6, 7, 8 ,9, 10, 11,12, 13, 14, 15 of the complaint;[18]
>
> x x x x x x x x x
>
> 16. That MARSAL & CO., INC., being a close family corporation, the presence of the said provision of pre-emptive right did not invalidate the acquisition by one stockholder of the share of another stockholder who exercised his pre-emptive right in view of the knowledge of the same by the other stockholders and their inaction which is equivalent to consent and acquiescence to the said acquisition.[19]

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[15] *Ayala Corporation v. Ray Burton Development Corporation,* 355 Phil. 475, 490 (1998).

[16] *Rollo*, pp. 180-184.

[17] *Id.* at 157-166.

[18] *Id.* at 157.

[19] *Id.* at 162.

The allegations under paragraph 6 of the complaint which petitioner Rogelio admitted stated:

6. MARSAL is a close corporation duly organized and registered with the Securities and Exchange Commission (SEC) on 07 October 1966 with the authorized capital stock of Five Hundred Thousand Pesos (₱500,000.00). x x x.

7. As close corporation, all stocks issued by MARSAL are subject to restrictions on transfer. x x x[20]

Petitioners judicially admitted that Marsal is a close corporation. Section 4, Rule 129 of the Revised Rules of Court provides:

Sec. 4. *Judicial admissions.* An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

A party may make judicial admissions in (a) the pleadings, (b) during the trial, either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceeding.[21] In *Alfelor v. Halasan*,[22] we held that:

A party who judicially admits a fact cannot later challenge that fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as

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

[21] *Spouses Binarao v. Plus Builders, Inc.,* 524 Phil. 361, 365 (2006), citing Regalado, *Remedial Law Compendium*, Volume Two, Seventh Revised Edition, p. 650.

[22] 520 Phil. 982 (2006).

against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded.[23]

As Marsal is a close corporation, it is allowed under the Corporation Code to provide for restrictions on the transfer of its stocks. We quote the pertinent provisions of the Code as follows:

Sec. 97. *Articles of incorporation.* — The articles of incorporation of a close corporation may provide:

1. For a classification of shares or rights and the qualifications for owning or holding the same and restrictions on their transfers as may be stated therein, subject to the provisions of the following section;

x x x x x x x x x

Sec. 98. *Validity of restrictions on transfer of shares.* — Restrictions on the right to transfer shares must appear in the articles of incorporation and in the by-laws as well as in the certificate of stock; otherwise, the same shall not be binding on any purchaser thereof in good faith. Said restrictions shall not be more onerous than granting the existing stockholders or the corporation the option to purchase the shares of the transferring stockholder with such reasonable terms, conditions or period stated therein. If upon the expiration of said period, the existing stockholders or the corporation fails to exercise the option to purchase, the transferring stockholder may sell his shares to any third person.

The AOI of Marsal provides for the procedure for the sale of shares of stock of a stockholder which we quote again for easy reference, to wit:

SEVENTH. x x x Any stockholder who desires to sell his share of stock in the company must notify in writing the Board of Directors of the company of his intention to sell. The Board of Directors upon receipt of such notice must immediately notify all stockholders of record within five days upon receipt of the letter of said stockholder. Any stockholder of record has the preemptive right to buy any share offered for sale by any stockholder of the company on book value based on the balance sheet approved by the Board of Directors.

[23] *Id.* at 991. (Citations omitted)

The aforementioned preemptive right must be exercised by any stockholder of the company within 10 days upon his receipt of the written notice sent to him by the Board of Directors of the offer to sell. Any sale or transfer in violation of the above terms and conditions shall be null and void. The above terms and conditions must be printed at the back of the stock certificate.[24]

Thus, the stockholder seller must notify in writing the Board of Directors of his intention to sell, who, in turn, must notify all the stockholders of records within 5 days upon receipt of such letter, and the stockholder must exercise the preemptive right within ten days from notice of the Board, otherwise, the sale shall be null and void. Here, Teresita's 3,464 Marsal shares were sold by petitioner estate to petitioner Rogelio in a Compromise Agreement and Deed of Assignment they entered into which was approved by the Probate Court. The CA found that such sale of stocks was null and void as it violated Paragraph 7 of their AOI.

We do not agree.

While it would appear that petitioner estate of Teresita, through its administrator Ephraim and petitioner Rogelio, did not comply with the procedure on the sale of Teresita's Marsal shares as stated under paragraph 7 of the AOI, however, it appeared in the records that respondents had nonetheless been informed of such sale to which they had already given their consent thereto as shown by the following circumstances:

*First.* Teresita died on September 19, 1989. Her husband Ephraim filed a petition for letters of administration of her estate in 1992, and alleged the following:

x x x x x x x x x

6. That the herein petitioner, as one of the legal heirs of the deceased, Teresita Florete Menchavez, had on several occasions, requested decedent's brothers and sisters to make a settlement and liquidation of the estate left by the said deceased Teresita Florete Menchavez and to deliver it to all the legal heirs what is due to each and every one of them, but this has not been done. x x x[25]

[24] *Supra* note 4.

[25] *Rollo,* p. 142-A.

Petitioner Rogelio filed an Opposition thereto which was later amended to include MARSAL & CO., INC. as represented by its President, herein petitioner. Notably, Atty. Raul A. Muyco was the oppositors' counsel and he is also the husband of respondent Ma. Elena. Subsequently, a Compromise Agreement and Deed of Assignment was entered into between petitioner estate through Ephraim and petitioner Rogelio with respect to Teresita's shares of stocks in various corporations which included the 3,464 shares in Marsal. A Motion to Approve Compromise Agreement and Deed of Assignment was filed by administrator Ephraim, through counsel, with the conformity of Atty. Muyco which was approved by the probate court. It bears stressing that Atty. Muyco was not only acting as counsel of petitioner Rogelio but also of Marsal. Thus, it would be impossible for Atty. Muyco, who had the duty to protect Marsal's interest in the intestate proceedings of Teresita's estate, not to have informed respondents of such compromise agreement since they are the stockholders and Board of Directors of Marsal who would be deprived of their preemptive right to the Marsal shares.

*Second.* The sale of all of Teresita's shares which she inherited from her deceased parents which were sold to petitioner Rogelio, and which included the 3,464 Marshal shares, had also been made known to respondents in the intestate proceedings to settle the estate of Marcelino Florete, Sr., who died on October 3, 1990. Petitioner Rogelio was later appointed as the administrator of the estate. In the Order dated May 16, 1995, the probate court stated, among others, that:

x x x The said deceased left the following heirs, namely :

Rogelio M. Florete, Ma. Elena Florete Muyco and Marcelino Florete Jr.

Further the deceased had a daughter by the name of Teresita Florete-Menchavez who predeceased him, having died on September 8, 1989 in the City of Iloilo leaving the following heirs;

x x x x x x x x x

On February 24, 1995, this Court has noted, as prayed by the counsel for the petitioner, of the sale by Ephraim Menchavez, the

special administrator of the intestate estate of the late Teresita F. Menchavez, of all the shares of the late Teresita F. Menchavez inherited from her deceased parents Marcelino and Salome Florete, to Rogelio M. Florete.

x x x x x x x x x

On May 5, 1995, no other heirs aside from those mentioned earlier have appeared in court to file their claim with regard to the property owned by the late Marcelino Florete, Sr. This Court, therefore, declared that Marcelino Florete, Sr. who died intestate in the City of Iloilo on October 3, 1990 had left only the following heirs, namely; 1. Rogelio M. Florete, 2. Ma. Elena Florete Muyco; 3. Marcelino Florete Jr.; 4. Teresita Florete-Menchavez. The last named heir predeceased the decedent and left the following children, namely; 1. Mary Ann Therese Menchavez; 2. Christine Joy Menchavez; 3. Rosie Jill Menchavez; 4. Diane Grace Menchavez; and 5. Ma. Rosario Menchavez.

All the shares of Teresita F. Menchavez, however, which she inherited from her parents were sold by Ephraim Menchavez, the special administrator of the estate of Teresita Menchavez, to petitioner Rogelio M. Florete. The sale was duly approved by the intestate court.

As stated earlier, on April 27, 1995, the administrator, through counsel, filed a Project of Partition enumerating therein all the properties of the estate in accordance with the inventory filed before this Court on March 3, 1995, which properties are enumerated as follows:

I. REAL PROPERTIES

x x x x x x x x x

II. PERSONAL PROPERTIES

x x x x x x x x x

This court hereby adjudicates the above-mentioned properties to the following heirs:

1. Rogelio M. Florete, married to Imelda Florete, the one half share of the whole estate;

2. Ma. Elena Florete Muyco, married to Raul Muyco, the undivided ¼ share of the above-enumerated properties;

3. Marcelino M. Florete, Jr., married to Susan Florete, the undivided ¼ share of all the properties as above enumerated.

This proceeding is hereby considered closed and terminated.

Furnish the Register of Deeds of the province of Iloilo and the province of Rizal with copies of this Order.[26]

There was already substantial compliance with paragraph 7 of the AOI when respondents obtained actual knowledge of the sale of Teresita's 3,464 Marsal shares to petitioner Rogelio as early as 1995. In fact, respondents had already given their consent and conformity to such sale by their inaction for 17 years despite knowledge of the sale. Moreover, they had already waived the procedure of the stockholder's sale of stocks as provided under Paragraph 7 of the AOI. In *People v. Judge Donato*,[27] We explained the doctrine of waiver as follows:

> Waiver is defined as "a voluntary and intentional relinquishment or abandonment of a known existing legal right, advantage, benefit, claim or privilege, which except for such waiver the party would have enjoyed; the voluntary abandonment or surrender, by a capable person, of a right known by him to exist, with the intent that such right shall be surrendered and such person forever deprived of its benefit; or such conduct as warrants an inference of the relinquishment of such right; or the intentional doing of an act inconsistent with claiming it."
>
> As to what rights and privileges may be waived, the authority is settled:
>
> > x x x the doctrine of waiver extends to rights and privileges of any character, and, since the word "waiver" covers every conceivable right, it is the general rule that a person may waive any matter which affects his property, and any alienable right or privilege of which he is the owner or which belongs to him or to which he is legally entitled, whether secured by contract, conferred with statute, *or guaranteed by constitution,* provided such rights and privileges rest in the individual, are intended for his sole benefit, do not infringe on the rights of others, and further provided the waiver of the right or privilege is not forbidden by law, and does not contravene public policy; and

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[26] *Id.* at 173-179.

[27] 275 Phil. 145 (1991).

> the principle is recognized that everyone has a right to waive, and agree to waive, the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, if it can be dispensed with and relinquished without infringing on any public right, and without detriment to the community at large x x x.[28]

Moreover, Section 99 of the Corporation Code provides for the *effects of transfer of stock in breach of qualifying conditions, to wit:*

> Sec. 99. *Effects of issuance or transfer of stock in breach of qualifying conditions. —*
>
> x x x x x x x x x
>
> 3. If a stock certificate of any close corporation conspicuously shows a restriction on transfer of stock of the corporation, the transferee of the stock is conclusively presumed to have notice of the fact that he has acquired stock in violation of the restriction, if such acquisition violates the restriction.
>
> 4. Whenever any person to whom stock of a close corporation has been issued or transferred has, or is conclusively presumed under this section to have, notice either (a) that he is a person not eligible to be a holder of stock of the corporation, or (b) that transfer of stock to him would cause the stock of the corporation to be held by more than the number of persons permitted by its articles of incorporation to hold stock of the corporation, or (c) that the transfer of stock is in violation of a restriction on transfer of stock, the corporation may, at its option, refuse to register the transfer of stock in the name of the transferee.
>
> 5. The provisions of subsection (4) shall not applicable if the transfer of stock, though contrary to subsections (1), (2) of (3), has been consented to by all the stockholders of the close corporation, or if the close corporation has amended its articles of incorporation in accordance with this Title.

Clearly, under the above-quoted provision, even if the transfer of stocks is made in violation of the restrictions enumerated under

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[28] *Id.* at 173.

Section 99, such transfer is still valid if it has been consented to by all the stockholders of the close corporation and the corporation cannot refuse to register the transfer of stock in the name of the transferee. In this case, We find that the sale of Teresita's 3,464 Marsal shares had already been consented to by respondents as We have discussed, and may be registered in the name of petitioner Rogelio.

We find that there is indeed no violation of paragraph 7 of Marsal's Articles of Incorporation. We need not discuss the other issues raised in the petition.

**WHEREFORE,** premises considered, the petition for review is **GRANTED**. The Decision dated August 3, 2015 and the Resolution dated February 19, 2016 rendered by the Court of Appeals in CA-G.R. SP No. 07673 are hereby **REVERSED** and **SET ASIDE.**

**SO ORDERED.**

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

*Reyes, Jr., J.,* on wellness leave.

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**SECOND DIVISION**

[G.R. No. 232892. April 11, 2018]

**ALFREDO MALLARI MAGAT**, *petitioner, vs.* **INTERORIENT MARITIME ENTERPRISES, INC., INTERORIENT MARITIME ENTERPRISE LIBERIA FOR DROMON E.N.E. and JASMIN P. ARBOLEDA,** *respondents.*

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

## SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS.—** As a general rule, only questions of law raised via a petition for review under Rule 45 of the Rules of Court are reviewable by this Court. Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence. However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present: 1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures; 2. when the inference made is manifestly mistaken, absurd or impossible; 3. when there is grave abuse of discretion; 4. when the judgment is based on a misapprehension of facts; 5. when the findings of fact are conflicting; 6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; 7. when the findings are contrary to that of the trial court; 8. when the findings are conclusions without citation of specific evidence on which they are based; 9. when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent; 10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and] 11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

2. **LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA-STANDARD EMPLOYMENT CONTRACT; DISABILITY BENEFITS; DISABILITY, WHEN COMPENSABLE.—** For disability to be compensable under Section 20(B)(4) of the POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.

**3. ID.; ID.; ID.; ID.; ID.; WORK-RELATED INJURY, DEFINED; TO ESTABLISH COMPENSABILITY OF NON-OCCUPATIONAL DISEASE, REASONABLE PROOF OF WORK-CONNECTION IS SUFFICIENT.—** The POEA-SEC defines a work-related injury as "injury(ies) resulting in disability or death arising out of and in the course of employment," and a work-related illness as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." For illnesses not mentioned under Section 32, the POEA-SEC creates a disputable presumption in favor of the seafarer that these illnesses are work-related. Notwithstanding the presumption, We have held that on due process grounds, the claimant-seafarer must still prove by substantial evidence that his work conditions caused or at least increased the risk of contracting the disease. This is because awards of compensation cannot rest entirely on bare assertions and presumptions. In order to establish compensability of a non-occupational disease, reasonable proof of work-connection is sufficient – direct causal relation is not required. Thus, probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings.

**4. ID.; ID.; ID.; ID.; THREE-DAY MANDATORY POST-EMPLOYMENT MEDICAL EXAMINATION; THE SEAFARER HAS THE RIGHT TO SEEK A SECOND MEDICAL OPINION AND THE PREROGATIVE TO CONSULT A PHYSICIAN OF HIS CHOICE.—** "[W]hile 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." Thus, in view of such reciprocal obligation, between the positive assertion of the petitioner that he was able to comply with the 3-day obligation to report but it was the respondents who failed to refer him to a company-designated physician and the plain denial of the respondents, evidentiary rules provide that the former is generally entitled to more weight. Nevertheless, the absence of a medical assessment issued by the company physician within three days from the arrival of petitioner would result only to the forfeiture of his sickness allowance and nothing more. In fact, the law that requires the 3-day mandatory period recognizes the right of a seafarer to seek a second medical opinion and the prerogative to consult a physician of his choice. Therefore, the provision should not be construed that it is only the company-designated physician who could assess the condition

and declare the disability of seamen. The provision does not serve as a limitation but rather a guarantee of protection to overseas workers.

**APPEARANCES OF COUNSEL**

*Arthur L. Amansec* for petitioner.
*Carag Jamora Somera & Villareal Law Offices* for respondents.

**D E C I S I O N**

**PERALTA, *J.*:**

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated September 2, 2017 of petitioner Alfredo Mallari Magat that seeks to reverse and set aside the Decision[1] dated October 25, 2016 and the Resolution[2] dated July 5, 2017, both of the Court of Appeals (*CA*) in CA-G.R. SP No. 138327 and prays for the reinstatement of the Decision[3] dated August 14, 2014 of the National Labor Relations Commission (*NLRC*) granting petitioner disability benefits in the amount of US$60,000.00 and ten percent (10%) thereof as attorney's fees, in Philippine peso at the time of payment.

The facts follow.

Petitioner has started work with respondent Interorient Maritime Enterprises, Inc. (*respondent company*) as an Able Seaman on board different vessels since March 2007. Sometime in May 2011, respondent company once again employed the services of petitioner on board the vessel MT North Star for a period of nine (9) months. Petitioner underwent a Pre-Employment Medical Examination (*PEME*) as a requisite for his latest employment and was certified "fit to work," thus, he was deployed on July 1, 2011.

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[1] Penned by Associate Justice Zenaida T. Galapate-Laguilles with the concurrence of Associate Justices Florito S. Macalino and Leoncia R. Dimagiba, *rollo,* pp. 11-23.

[2] *Rollo,* pp. 71-72.

[3] *Id*. at 106-116.

Part of petitioner's job assignment was to paint the ship's pump room and due to the poor ventilation in the said room, petitioner claimed that he was able to inhale residues and vapors coming from the paint and thinner that he used. As such, petitioner suffered shortness of breath and chest pains which he claimed to have reported to the Chief Mate but was told by the latter to just rest. When his condition improved, petitioner continued to perform his duties until he was able to complete his contract on July 6, 2012.

Upon his repatriation, petitioner reported immediately to respondent company and asked for a referral to the company physician for a medical examination of his heart condition but the latter ignored petitioner's request. Petitioner was then asked to execute an Offsigner's Data Slip on July 9, 2012 indicating therein that he did not experience any illness or injury during his employment on board the vessel, and manifested his willingness to join the vessel again after three (3) months. However, due to episodes of chest pains, petitioner went to the Veterans Memorial Medical Center on the same date for consultation and was attended to by Dr. Liberato Casison, a specialist in Internal Medicine, advising him to rest and prescribing certain medications.

After resting and taking the prescribed medication, petitioner re-applied with respondent company and was recommended for PEME. The result of petitioner's tests revealed that he had the "*Hypertension controlled with maintenance medication; Dilated Cardiomyopathy; R/out ischemic etiology; Renal parenchymal calcification bilateral; Suggest coronaryangiogram.*" Petitioner was not deployed due to the said findings.

Thereafter, on March 1, 2013, petitioner again consulted Dr. Casison in order to find out the real status of his medical condition. After being examined, Dr. Casison issued his Medical Evaluation, which reads as follows:

Medical Evaluation March 1, 2013

History revealed that subject was Pump Room Worker aboard a tanker (MT North Star) was suddenly seized with severe chest pain associated

with dyspnea and body weakness. He was put to bed rest and just under observation. No medication was taken. He was eventually retired on July 6, 2012 and repatriated to the Philippines. At this time, he continued to have easy fatiguability and chest pains. On November 1, 2012, cardiology consultation was made. For a more definitive diagnosis, coronary angiogram was made at YGEIA Medical Center, and likewise 2-D Echo. He was found to have an Ejection Fraction of 85% (very low) with dilatation of left atrium and left ventricle with moderate mitral regurgitation and tricuspid regurgitation.

The above chronology and history indicates a disabling coronary artery disease. He is a potential candidate for myocardial infarction, congestive heart failure, & arrhythmia (ventricular and atrial), which may prove fatal with the above condition. Subject is considered disabled for work.[4]

Thus, petitioner filed a complaint for payment of permanent disability benefits and other money claims against respondent company on September 25, 2013 claiming that as certified by his own physician, he developed a cardiovascular disease, which is listed as an occupational disease under Section 32-A of the Philippine Overseas Employment Administration-Standard Employment Contract (*POEA-SEC*). Petitioner claimed that his illness was brought about by his poor diet, exposure to harmful chemicals and stressful work environment on board the vessel. He added that prior to his last employment, he underwent and passed his PEME without any indication that he was suffering from any heart disease. He also contended that considering his physician's assessment of Grade 1 disability, he should be declared totally and permanently incapacitated to resume his duties and thus entitled to total and permanent disability benefits.

Respondents, however, insisted that petitioner was repatriated not for medical reasons but because his contract has already ended. Respondent company also argued that petitioner's failure to submit himself to PEME to be conducted by the company-designated physician upon repatriation, resulted in the forfeiture of his right to claim for sickness allowance. Respondent company further contended that petitioner was not deployed by respondent

[4] *Id.* at 158-160.

company when he applied again because he failed to pass his PEME due to the findings of the company-designated physician that he was suffering from hypertension. Furthermore, respondent company claimed that Dr. Casison executed an affidavit stating that he does not remember having issued any prescription to petitioner on July 9, 2012 and that he had only seen him once on March 1, 2013 when he issued the Medical Certificate to him after having reviewed the latter's 2-D Echo Report.

The Labor Arbiter, in her Decision dated March 31, 2014, rendered a Decision in favor of petitioner, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, respondents INTERORIENT MARITIME ENTERPRISES, INC., INTERORIENT MARITIME ENTERPRISE-LIBERIA for DROMON E.N.E. and JASMIN P. ARBOLEDA are ordered to pay jointly and severally complainant Alfredo M. Magat, disability benefits of US$60,000.00 and ten percent (10%) thereof as attorney's fees, in Philippine Peso at the time of the payment. All other claims are denied.
>
> SO ORDERED.[5]

According to the Labor Arbiter, petitioner's job as able bodied seaman had contributed even in a small degree to the development of his cardiovascular disease. It was also ruled that the fact that petitioner signed-off from MT North Star due to "completion of contract" does not bar recovery of his disability claims considering that he aptly established reasonable causation of his cardiovascular disease and his work as able bodied seaman. The respondent, therefore, elevated the case to the NLRC.

The NLRC, in its Decision dated August 14, 2014, affirmed the Decision of the Labor Arbiter, thus:

> WHEREFORE, premises considered, the appeal is hereby DENIED. The assailed Decision of the Labor Arbiter is AFFIRMED.
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> SO ORDERED.[6]

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[5] *Id.* at 104.

[6] *Id.* at 113-114.

The Commission held that there is substantial basis to conclude that petitioner's heart disease is work-related. It also ruled that petitioner's heart disease could not have developed during that short period between his repatriation and medical examination, hence, petitioner acquired or developed his illness during the term of his contract.

Respondents' motion for reconsideration having been denied, they filed a petition under Rule 65 of the Rules of Court with the CA and in its Decision dated October 25, 2016, the latter granted the petition and reversed and set aside the decision of the NLRC, thus:

> WHEREFORE, the instant Petition is GRANTED. The assailed Decision dated August 14, 2014 and Resolution dated September 30, 2014 of the public respondent in NLRC LAC No. (OFW M) 06-000477-14, NLRC NCR Case No. (M) 09-13306-13 are hereby REVERSED and SET ASIDE. Accordingly, respondent Magat's Complaint is DISMISSED for lack of merit.
>
> Respondent Magat is hereby DIRECTED to restitute or reimburse any and all amounts that petitioner company has paid him, in the event [that] the aforesaid Decision and Resolution of the public respondent have already been executed.
>
> SO ORDERED.[7]

The CA ruled that petitioner's bare allegations do not suffice to discharge the required quantum of proof of compensability. It added that nowhere in the records can it find any documentation or medical report that petitioner contracted such heart illness aboard M/T North Star.

Petitioner filed a motion for reconsideration, but it was denied in the CA's Resolution dated July 5, 2017.

Hence, the present petition with the following ground:

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN ANNULLING AND SETTING ASIDE THE DECISION OF THE HONORABLE NATIONAL

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

LABOR RELATIONS COMMISSION WHICH AFFIRMED THE DECISION OF THE LABOR ARBITER GRANTING THE CLAIMS OF THE HEREIN PETITIONER FOR TOTAL AND PERMANENT DISABILITY BENEFITS.[8]

Petitioner contends that the adjudications of the NLRC, in accord with the findings of the Labor Arbiter, prove that both labor tribunals, in their respective jurisdiction, had meticulously scrutinized the pleadings submitted and the pieces of evidence adduced by the parties which led to the finding that he is entitled to the award of total and permanent disability benefits. Petitioner further argues that contrary to the CA's finding, petitioner had complied with the three (3)-day reporting requirement for post-employment medical examination with the company-designated physician but it was the respondents who failed to refer the petitioner to a company-designated physician for medical treatment. Petitioner also claims that the completion of contract is inconsequential to the entitlement of a seafarer to permanent disability benefits as long as a reasonable work connection exists.

In their Comment[9] dated January 3, 2018, respondents reiterated the decision of the CA.

As a general rule, only questions of law raised via a petition for review under Rule 45 of the Rules of Court[10] are reviewable by this Court.[11] Factual findings of administrative or quasi-

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

[9] *Id.* at 185-190.

[10] Section 1, Rule 45 of the Rules of Court, as amended, provides:

Section 1. *Filing of petition with Supreme Court.* A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[11] *Philippine Transmarine Carriers, Inc., et al. v. Cristino*, 755 Phil. 108, 121 (2015), citing *Heirs of Pacencia Racaza v. Abay-Abay*, 687 Phil. 584, 590 (2012).

judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[12] However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present:

1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures;
2. when the inference made is manifestly mistaken, absurd or impossible;
3. when there is grave abuse of discretion;
4. when the judgment is based on a misapprehension of facts;
5. when the findings of fact are conflicting;
6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
7. when the findings are contrary to that of the trial court;
8. when the findings are conclusions without citation of specific evidence on which they are based;
9. when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent;
10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and]
11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[13]

Whether or not petitioner's illness is compensable is essentially a factual issue. Yet this Court can and will be justified in looking into it, considering the conflicting views of the NLRC and the CA.[14]

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[12] *Merck Sharp and Dohme (Phils.), et al. v. Robles, et al.*, 620 Phil. 505, 512 (2009).

[13] *Co v. Vargas*, 676 Phil. 463, 471 (2011).

[14] *Bandila Shipping, Inc., et al. v. Abalos,* 627 Phil. 152, 156 (2010), citing *Masangcay v. Trans-Global Maritime Agency, Inc.*, 590 Phil. 611, 625 (2008).

For disability to be compensable under Section 20(B)(4) of the POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.[15]

The POEA-SEC defines a work-related injury as "injury(ies) resulting in disability or death arising out of and in the course of employment," and a work-related illness as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."[16] For illnesses not mentioned under Section 32, the POEA-SEC creates a disputable presumption in favor of the seafarer that these illnesses are work-related.[17] Notwithstanding the presumption, We have held that on due process grounds, the claimant-seafarer must still prove by substantial evidence that his work conditions caused or at least increased the risk of contracting the disease.[18] This is because awards of compensation cannot rest entirely on bare assertions and presumptions.[19] In order to establish compensability of a non-occupational disease, reasonable proof of work-connection is sufficient — direct causal relation is not required.[20]

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[15] *Leonis Navigation Co., Inc., et al. v. Obrero, et al.*, G.R. No. 192754, September 7, 2016, 802 SCRA 341, 348, citing *Tagle v. Anglo-Eastern Crew Management, Phils., Inc.*, 738 Phil. 871, 888 (2014).

[16] POEA-SEC (2000), Definition of Terms.

[17] POEA-SEC (2000), Sec. 20(B) (4).

[18] *Philippine Transmarine Carriers, Inc. v. Aligway*, 769 Phil. 793, 805 (2015); *Dohle-Philman Manning Agency, Inc. v. Heirs of Andres G. Gazzingan*, 760 Phil. 861, 878 (2015); *Magsaysay Maritime Corporation v. National Labor Relations Commission (Second Division)*, 630 Phil. 352, 365 (2010).

[19] *Casomo v. Career Philippines Shipmanagement, Inc.*, 692 Phil. 326, 334 (2012). The prevailing rule is analogous to the rule under the old Workmen's Compensation Act that a preliminary link between the illness and the employment must first be shown before the presumption of work-relation can attach.

[20] *Grace Marine Shipping Corporation v. Alarcon*, 769 Phil. 474, 493 (2015).

Thus, probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings.[21]

A careful review of the findings of the NLRC and the CA shows that petitioner was able to meet the required degree of proof that his illness is compensable as it is work-connected. The Labor Arbiter, as affirmed by the NLRC, correctly ruled that his work conditions caused or at least increased the risk of contracting the disease, thus:

> Indeed, as Able bodied Seaman at MT North Star, complainant was exposed to constant inhalation of hydrocarbons including residues and vapors of paints and paint thinners during their painting jobs especially when he painted the confined areas of the vessel. Paints contain toxic chemicals like lead and benzene which if inhaled would cause health problems including cardiovascular diseases. Added to that, complainant was also exposed to frequent consumption of foods rich in cholesterol and sodium that are known triggers of heart or blood vessel disease. Studies show that CVD or cardiovascular diseases or heart diseases are diseases that involve the heart or blood vessels (arteries and veins) and among its risk factors include high dietary salt intake, dietary saturated fat and cholesterol and stress. Further studies also show that heart blood vessel disease develop slowly, over several years. Undoubtedly, taking into consideration the time element from the date that complainant signed-off from his vessel MT North Star and the nature of heart disease there is reasonable ground to infer that the complainant's heart disease and his work are rationally connected. It has been ruled that the quantum of evidence required in labor cases to determine the liability of an employer for the illness suffered by an employee under the POEA-SEC is not proof beyond reasonable doubt but mere substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Moreover, complainant had been deployed successively by respondents in a span of five years since 2007, where he first worked as Able Seaman, a position which he held until his last contract with MT North Star in 2011. In Seagull Shipmanagement and Transport, Inc. v. NLRC (388 Phil. 906 [2000]), it was held that "the seafarer has served contract for a significantly long amount of

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[21] *Gabunas, Sr. v. Scanmar Maritime Services, Inc.*, 653 Phil. 457, 468 (2010); *NFD International Manning Agents, Inc. v. NLRC*, 336 Phil. 466, 474 (1997).

time, and that his employment has contributed, even to a small degree, to the development and exacerbation of his disease." Verily, complainant's job as able bodied seaman had contributed even in a small degree to the development of his cardiovascular disease.[22]

In affirming the findings of the Labor Arbiter, the NLRC aptly ruled as follows:

It is well-settled that in order for disability to be compensable under the POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.

As for the first element, we find substantial basis to conclude that complainant's heart disease is work-related. Complainant's case falls under Section 32-A, 11(c) of the 2010 POEA-SEC which states:

> If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim causal relationship.

In the absence of any supporting evidence for both parties, we resolve to give more credence to complainant's positive assertion that he suffered shortness of breath and chest pains following his work painting the ship's pump room. To note, respondents have not refuted having assigned to complainant such task. Adding in complainant's poor diet, advanced age (he was 52 at the time of the filing of the complaint), the stressful nature of his employment, and repeated hiring of his services by respondents, we find it reasonable to conclude that complainant's work as Able Seaman caused or contributed even to a small degree to the development or aggravation of complainant's heart disease.

As for the second element, we note that complainant was repatriated in July 2012. Only about four months thereafter, he was discovered to have heart disease in November 2012. Simply, complainant's heart disease could not have developed during that short period between his repatriation and medical examination. Complainant acquired or developed his illness during the term of his contract.

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[22] *Rollo,* pp. 99-100.

Curiously, both parties failed to present complainant's PEME results with respect to his last employment on board MT North Star. Nonetheless, since he was accepted and deployed by respondents, it is safe to say that he passed the PEME without any finding that he had a pre-existing heart ailment, or that respondents accepted him despite being aware of his condition. In any case, respondents, in hiring complainant despite his advanced age and pre-existing hypertension, assumed the risk of liability for his health. They cannot be allowed to subsequently evade such liability by claiming that complainant's illness was discovered only after his employment was terminated.[23]

The above findings of the Labor Arbiter and the NLRC clearly show how petitioner acquired or developed his illness during the term of his contract. The CA reversed the NLRC decision by ruling that nothing in the records, documentation or medical report, show that petitioner contracted his illness aboard M/T North Star, however, despite such, the fact that petitioner was able to pass his PEME without any finding that he had a pre-existing heart ailment before boarding the vessel and later on finding, after the termination of his contract that he has acquired the said heart ailment, one can conclude that such illness developed while he was on board the same vessel. The work assigned to the petitioner (*i.e.,* painting the ship's pump room), poor diet, advanced age, the stressful nature of his employment, and repeated hiring of his services by respondents, would all lead to the conclusion that the work of petitioner as Able Seaman caused or contributed even to a small degree to the development or aggravation of complainant's heart disease. In determining whether a disease is compensable, it is enough that there exists a reasonable work connection.[24] It is sufficient that the hypothesis on which the workmen's claim is based is probable since probability, not certainty is the touchstone.[25]

The CA also ruled that petitioner failed to submit himself to the mandatory post-employment medical examination within

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[23] *Id.* at 111-113.

[24] *Limbo v. ECC*, 434 Phil. 703, 708 (2002); *Sarmiento v. ECC*, 228 Phil. 400, 407 (1986).

[25] *Id.* at 707.

three (3) days from his arrival in the Philippines and neither was there any indication that he was physically incapacitated to do so. Petitioner, on the other hand, claims that it was the respondents who failed to refer him to a company-designated physician for medical treatment. It must be remembered, however, that "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."[26] Thus, in view of such reciprocal obligation, between the positive assertion of the petitioner that he was able to comply with the 3-day obligation to report but it was the respondents who failed to refer him to a company-designated physician and the plain denial of the respondents, evidentiary rules provide that the former is generally entitled to more weight.[27] Nevertheless, the absence of a medical assessment issued by the company physician within three days from the arrival of petitioner would result only to the forfeiture of his sickness allowance and nothing more.[28] In fact, the law[29]

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[26] *Career Philippines Shipmanagement, Inc., et al. v. Serna*, 700 Phil. 1, 15 (2012).

[27] See, *id.*

[28] See *Magsaysay Maritime Services, et al. v. Laurel,* 707 Phil. 210, 230 (2013).

[29] Sec. 20 (B), Paragraph (3) of the POEA-SEC which reads, in part:

"Section 20 (B) COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

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

x x x x x x x x x

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

that requires the 3-day mandatory period recognizes the right of a seafarer to seek a second medical opinion and the prerogative to consult a physician of his choice. Therefore, the provision should not be construed that it is only the company-designated physician who could assess the condition and declare the disability of seamen.[30] The provision does not serve as a limitation but rather a guarantee of protection to overseas workers.[31]

In view of the above disquisitions, this Court therefore affirms the compensability of petitioner's permanent disability. The US$60,000.00 (the equivalent of 120% of US$50,000.00) disability allowance is justified under Section 32 of the POEA Standard Employment Contract as petitioner suffered from permanent total disability. The grant of attorney's fees is likewise affirmed for being justified in accordance with Article 2208(2)[32] of the Civil Code since petitioner was compelled to litigate to satisfy his claim for disability benefits.[33]

**WHEREFORE,** the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated September 2, 2017 of petitioner Alfredo Mallari Magat is **GRANTED**. Consequently, the Decision dated October 25, 2016 and the Resolution dated

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days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

[30] See *Magsaysay Maritime Services, et al. v. Laurel*, *supra* note 28.

[31] *Id.*

[32] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x x x x x x

(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;

[33] *PHILASIA Shipping Agency Corporation v. Tomacruz*, 692 Phil. 633, 651 (2012).

July 5, 2017, both of the Court of Appeals in CA-G.R. SP No. 138327 are **REVERSED** and **SET ASIDE** and the Decision dated August 14, 2014 of the National Labor Relations Commission granting petitioner disability benefits in the amount of US$60,000.00 and ten percent (10%) thereof as attorney's fees, in Philippine peso at the time of payment, is **REINSTATED**.

**SO ORDERED.**

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

*Reyes, Jr., J.* on wellness leave.

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**SECOND DIVISION**

[A.M. No. 17-12-135-MeTC. April 16, 2018]

## RE: DROPPING FROM THE ROLLS OF MR. ARNO D. DEL ROSARIO, COURT STENOGRAPHER II, BRANCH 41, METROPOLITAN TRIAL COURT (METC), QUEZON CITY.

**SYLLABUS**

**POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE LAW; DROPPING FROM THE ROLLS; EMPLOYEES WHO ARE ABSENT WITHOUT APPROVED LEAVE FOR AN EXTENDED PERIOD OF TIME MAY BE DROPPED FROM THE ROLLS; CASE AT BAR.—** Section 107, Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) authorizes and provides the procedure for the dropping from the rolls of employees who, *inter alia*, are absent without approved leave for an extended period of time. x x x

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

> This provision is in consonance with Section 63, Rule XVI of the Omnibus Rules on Leave, as amended by Civil Service Commission Memorandum Circular No. 13, Series of 2007 x x x. In this case, it is undisputed that Del Rosario had been absent without official leave since February 3, 2017. Verily, his prolonged unauthorized absences caused inefficiency in the public service as it disrupted the normal functions of the court. It contravened the duty of a public servant to serve with the utmost degree of responsibility, integrity, loyalty, and efficiency. It should be reiterated and stressed that a court personnel's conduct is circumscribed with the heavy responsibility of upholding public accountability and maintaining the people's faith in the judiciary. By failing to report for work since February 3, 2017 up to the present, Del Rosario grossly disregarded and neglected the duties of his office. Undeniably, he failed to adhere to the high standards of public accountability imposed on all those in the government service.

## R E S O L U T I O N

**PERLAS-BERNABE, *J.*:**

This administrative matter stemmed from a letter[1] dated September 6, 2017 requesting that Mr. Arno Del Rosario (Del Rosario), Court Stenographer II of the Metropolitan Trial Court of Quezon City, Branch 41 (MeTC) be dropped from the rolls due to his absences without official leave.

### The Facts

The records of the Employees' Leave Division, Office of Administrative Services (OAS) of the Office of the Court Administrator (OCA) show that Del Rosario has not submitted either his daily time record from February 3, 2017 to the present or any application for leave covering such period, thus making him absent without approved leave since said date.[2] In addition, the records of Employees' Welfare and Benefits Division, OAS

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[1] *Rollo*, p. 8. Signed by Presiding Judge Analie B. Oga-Brual.

[2] See *id*. at 1.

of the OCA reveal that it received an application for retirement[3] from Del Rosario effective February 3, 2017; however, further verification showed that he has not submitted the documents necessary for its approval.[4]

In view of the foregoing, Del Rosario's name was excluded from the payroll starting April 2017. This notwithstanding, the Personnel Division stated that he is still in the plantilla of personnel and is therefore considered in active service.[5] Thus, in a letter[6] dated September 6, 2017, Presiding Judge Analie B. Oga-Brual requested to drop Del Rosario from the rolls or declare his position vacant considering his absences without official leave.

**The OCA's Report and Recommendation**

In a Memorandum[7] dated November 23, 2017, the OCA recommended that Del Rosario be: *(a)* dropped from the rolls due to his absences without official leave, and his position be declared vacant; and *(b)* informed about his separation from the service. The OCA, however, clarified, that Del Rosario is still qualified to receive the benefits that he may be entitled to under existing laws and may still be re-employed in the government service.[8]

**The Issue Before the Court**

The essential issue in this case is whether or not Del Rosario should be dropped from the rolls due to his absences without official leave.

**The Court's Ruling**

The Court adopts the findings and the recommendations of the OCA.

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[3] See Application for Retirement under RA 660, RA 1616, PD 1146 and RA 8291/Separation dated March 6, 2017; *id*. at 3.

[4] See *id*. at 1.

[5] *Id*.

[6] *Id*. at 8.

[7] *Id*. at 1-2. Signed by Court Administrator Jose Midas P. Marquez, Deputy Court Administrator Raul Bautista Villanueva, and OCA Chief of Office, Office of Administrative Services Caridad A. Pabello.

[8] *Id*. at 2.

Section 107, Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS)[9] authorizes and provides the procedure for the dropping from the rolls of employees who, *inter alia*, are absent without approved leave for an extended period of time. Pertinent portions of this provision read:

> Section 107. *Grounds and Procedure for Dropping from the Rolls*. Officers and employees who are absent without approved leave, x x x may be dropped from the rolls within thirty (30) days from the time a ground therefor arises subject to the following procedures:
>
> a. Absence Without Approved Leave
>
> 1. An official or employee who is continuously absent without official leave (AWOL) for at least thirty (30) working days may be dropped from the rolls without prior notice which shall take effect immediately.
>
> He/she shall, however, have the right to appeal his/her separation within fifteen (15) days from receipt of the notice of separation which must be sent to his/her last known address.
>
> x x x x x x x x x

This provision is in consonance with Section 63, Rule XVI of the Omnibus Rules on Leave, as amended by Civil Service Commission Memorandum Circular No. 13, Series of 2007,[10] which states:

> Section 63. *Effect of absences without approved leave*. — An official or employee who is continuously absent without approved leave for at least thirty (30) working days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. x x x.
>
> x x x x x x x x x

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[9] The 2017 RACCS took effect on August 17, 2017; the letter-request from MeTC Presiding Judge Analie B. Oga-Brual was dated September 6, 2017.

[10] Entitled "AMENDMENT TO SECTION 63, RULE XVI OF THE OMNIBUS RULES ON LEAVE, CIVIL SERVICE COMMISSION (CSC) MEMORANDUM CIRCULAR NOS. 41 AND 14, SERIES OF 1998 AND 1999, RESPECTIVELY," dated July 25, 2007.

In this case, it is undisputed that Del Rosario had been absent without official leave since February 3, 2017. Verily, his prolonged unauthorized absences caused inefficiency in the public service as it disrupted the normal functions of the court.[11] It contravened the duty of a public servant to serve with the utmost degree of responsibility, integrity, loyalty, and efficiency.[12] It should be reiterated and stressed that a court personnel's conduct is circumscribed with the heavy responsibility of upholding public accountability and maintaining the people's faith in the judiciary. By failing to report for work since February 3, 2017 up to the present, Del Rosario grossly disregarded and neglected the duties of his office. Undeniably, he failed to adhere to the high standards of public accountability imposed on all those in the government service.[13]

In view of the foregoing, the Court is constrained to drop Del Rosario from the rolls. At this point, the Court deems it worthy to stress that the instant case is non-disciplinary in nature. Thus, Del Rosario's separation from the service shall neither result in the forfeiture of any benefits which have accrued in his favor, nor in his disqualification from re-employment in the government service.[14]

**WHEREFORE,** the Court resolves to:

(a) **DROP FROM THE ROLLS** the name of Mr. Arno Del Rosario, Court Stenographer II of the Metropolitan Trial Court of Quezon City, Branch 41, effective February 3, 2017 for being on continuous absence without official

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[11] See *Re Dropping from the Rolls of Rowie A. Quimno*, A.M. No. 17-03-33-MCTC, April 17, 2017.

[12] See *id*., citing *Re: AWOL of Ms. Fernandita B. Borja*, 549 Phil. 533, 536 (2007).

[13] See *Re: Dropping from the Rolls of Lemuel H. Vendiola*, A.M. No. 17-11-272-RTC, January 31, 2018, citing minute resolutions in *Re: Absence without official leave (AWOL) of Michael P. Fajardo*, A.M. No. 2016-15(A)-SC, August 1, 2016; and *Dropping from the Rolls of Mary Grace Cadano Bouchard*, A.M. No. 15-11-349-RTC, January 11, 2016.

[14] See Section 110 of the 2017 RACCS.

leave since said date. However, he is still qualified to receive the benefits he may be entitled to under existing laws and may still be re-employed in the government;

(b) **DECLARE** as **VACANT** the position of Mr. Arno Del Rosario; and

(c) **INFORM** Mr. Arno Del Rosario of his separation from the service or dropping from the rolls at his last known address appearing in his 201 file, *i.e.*, No. 61 Vermillion Street, Barangay Tunkong Mangga, San Jose Del Monte City, Bulacan.

**SO ORDERED.**

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

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**SECOND DIVISION**

[A.M. No. P-18-3833. April 16, 2018]
(Formerly OCA IPI No. 14-4370-P)

**JULIUS E. PADUGA,** *complainant, vs.* **ROBERTO "BOBBY" R. DIMSON, SHERIFF IV, REGIONAL TRIAL COURT OF VALENZUELA CITY, BRANCH 171,** *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF SERVICE.—** Conduct Prejudicial to the Best Interest of the Service involves the demeanor of a public officer

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

which tends to tarnish the image and integrity of his/her public office.

2. **ID.; ID.; ID.; DISHONESTY; LESS SERIOUS DISHONESTY, WHEN PRESENT.—** On the other hand, Dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth. Under CSC Resolution No. 06-0538, dishonesty may be classified as serious, less serious or simple. Section 4 of said Resolution states that Less Serious Dishonesty necessarily entails the presence of any one of the following circumstances: (*a*) the dishonest act caused damage and prejudice to the government which is not so serious as to qualify under Serious Dishonesty; (*b*) the respondent did not take advantage of his/her position in committing the dishonest act; and (*c*) other analogous circumstances.

3. **ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY.—** Simple Neglect of Duty means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a disregard of a duty resulting from carelessness or indifference.

4. **ID.; ID.; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS); CONDUCT PREJUDICIAL TO THE BEST INTEREST OF SERVICE, LESS SERIOUS DISHONESTY AND SIMPLE NEGLECT OF DUTY; RESPECTIVE PENALTIES THEREOF.—** Under the Revised Rules on Administrative Cases in the Civil Service (RRACCS), Conduct Prejudicial to the Best Interest of Service and Less Serious Dishonesty are grave offenses punishable by suspension for a period of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from the service for the second offense; on the other hand, Simple Neglect of Duty is a less grave offense punishable by suspension for a period of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense. Applying Sections 49 (c) and 50 of the RRACCS to this case and it appearing that this is respondent's first offense for all the charges, the OCA correctly recommended that respondent be meted the penalty of suspension for a period of one (1) year, with a warning that a repetition of the same or similar act will merit the most severe penalty from the Court, *i.e.,* dismissal from the service.

## RESOLUTION

**PERLAS-BERNABE, *J.*:**

This administrative case stemmed from a letter-complaint[1] dated May 5, 2014 filed before the Office of the Court Administrator (OCA) by complainant Julius E. Paduga (complainant) against respondent Roberto "Bobby" R. Dimson (respondent), Sheriff IV of the Regional Trial Court of Valenzuela City, Branch 171, (RTC-Valenzuela Br. 171), accusing the latter of usurpation and abuse of authority.

### The Facts

In the letter-complaint, complainant alleged that respondent personally attended to the execution proceedings in connection with a decision rendered by the Regional Trial Court of Quezon City, Branch 221 (RTC-QC Br. 221), despite not having been deputized by said court to do so. He also claimed that respondent is a sheriff of an entirely different court, *i.e.*, RTC-Valenzuela Br. 171, averring further that: (*a*) on April 21, 2014, respondent personally went with the sheriff of RTC-QC Br. 221 to complainant's address for the purpose of enforcing the aforesaid RTC-QC Br. 221 ruling; (*b*) on April 24, 2014, respondent attended the conference between the parties-litigants in the case decided by RTC-QC Br. 221; (*c*) on April 28, 2014, respondent returned to complainant's address to check if the latter's group already complied with the notice to vacate issued by the sheriff of RTC-QC Br. 221, and even threatened them to call police authorities if they do not leave; (*d*) on April 29, 2014, respondent personally supervised the execution of the RTC-QC Br. 221 ruling and even handed financial assistance to those who voluntarily vacated the property subject of litigation; and (*e*) sometime in the first week of May 2014, respondent returned to the property and supervised its fencing.[2]

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

[2] *Id*. at 1. See also *id*. at 36-37.

Complying with the OCA's directive,[3] respondent submitted his Comment[4] dated February 26, 2015 denying the charges against him. He explained that as a brother-in-law of one of the counsels in the case ruled upon by the RTC-QC Br. 221, he only assisted in the implementation of the amicable settlement in order to prevent physical conflict between the parties.[5] Respondent further averred that he neither interfered nor participated in any of the processes relative to the execution of the RTC-QC Br. 221 ruling, and only went there on his brother-in-law's behest, to ensure the prompt delivery of financial assistance to the defendants.[6] Finally, respondent claimed that he never introduced himself as a sheriff of another court and that he did all these things in his personal capacity and never during official time.[7]

**The OCA's Report and Recommendation**

In a Memorandum[8] dated December 8, 2017, the OCA recommended, *inter alia*, that respondent be found guilty of Conduct Prejudicial to the Best Interest of the Service, Less Serious Dishonesty, and Simple Neglect of Duty, and accordingly, be meted the penalty of suspension for a period of one (1) year, with a warning that a repetition of the same or similar act will merit the most severe penalty from the Court.[9]

The OCA found respondent guilty of usurpation of authority and abuse of authority — which in turn, constitute Conduct Prejudicial to the Best Interest of the Service — as his mere

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[3] See 1st Indorsement dated January 7, 2015; *id*. at 14. Signed by Court Administrator Jose Midas P. Marquez, Deputy Court Administrator Raul Bautista Villanueva, and OCA Chief of Office, Legal Office Wilhelmina D. Geronga.

[4] *Id*. at 15-17.

[5] See *id*. at 15.

[6] See *id*. at 16.

[7] *Id*. See also *id*. at 37.

[8] *Id*. at 36-40. Signed by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Thelma C. Bahia.

[9] *Id*. at 40.

presence and manifest involvement with the parties absent a writ of execution and without being deputized to do so are unequivocal acts signifying his encroachment of the duties and functions of the actual person tasked to implement the ruling of the RTC-QC Br. 221, *i.e.*, the Sheriff of the same branch.[10] The OCA further pointed out that respondent is likewise guilty of Less Serious Dishonesty as the official records reveal that he was not on leave on those dates when he personally appeared at the property subject of litigation, thus, belying his claim that he committed said acts in his personal capacity.[11] Finally, the OCA pointed out that respondent's meddling with the affairs of RTC-QC Br. 221 rendered him guilty of Simple Neglect of Duty as he failed to perform his duties as Sheriff in RTC-Valenzuela Br. 171.[12]

**The Issue Before the Court**

The essential issue in this case is whether or not respondent should be held administratively liable for the acts complained of.

**The Court's Ruling**

The Court adopts the findings and the recommendations of the OCA.

Conduct Prejudicial to the Best Interest of the Service involves the demeanor of a public officer which tends to tarnish the image and integrity of his/her public office.[13]

On the other hand, Dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth. Under CSC Resolution No. 06-0538, dishonesty may be classified as serious, less serious or simple.[14]

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[10] See *id*. at 37-38.

[11] See *id*. at 38.

[12] See *id*.

[13] See *Fajardo v. Corral*, G.R. No. 212641, July 5, 2017, citing *Largo v. Court of Appeals*, 563 Phil. 293, 305 (2007).

[14] See *id*.; citation omitted.

Section 4 of said Resolution states that Less Serious Dishonesty necessarily entails the presence of any one of the following circumstances: (*a*) the dishonest act caused damage and prejudice to the government which is not so serious as to qualify under Serious Dishonesty; (*b*) the respondent did not take advantage of his/her position in committing the dishonest act; and (*c*) other analogous circumstances.

Finally, Simple Neglect of Duty means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a disregard of a duty resulting from carelessness or indifference.[15]

As correctly found by the OCA, respondent is guilty of all three (3) of these offenses, considering that: (*a*) as a Sheriff in RTC-Valenzuela Br. 171, he encroached on the authority, duties, and functions of the Sheriff of RTC-QC Br. 221 when he personally appeared at the property subject of a ruling in said court, without being deputized to do so; (*b*) respondent lied when he claimed to have done so during his personal time, when the truth of the matter is that he acted during official time, as evidenced by his accomplished Daily Time Record showing his presence in his station in RTC-Valenzuela Br. 171 on those instances; and (*c*) in attending to such matter extraneous to his duties as Sheriff of RTC-Valenzuela Br. 171, he neglected his own duties and functions in the same court. Clearly, respondent must be held administratively liable for the aforesaid offenses.

Under the Revised Rules on Administrative Cases in the Civil Service (RRACCS),[16] Conduct Prejudicial to the Best Interest of Service and Less Serious Dishonesty are grave offenses punishable by suspension for a period of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from the service for the second offense;[17] on the other hand,

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[15] *Office of the Ombudsman v. De Leon*, 705 Phil. 26, 38 (2013), citing *Republic v. Canastillo*, 551 Phil. 987, 996 (2007).

[16] While the 2017 Rules of Administrative Cases in the Civil Service already took effect on August 17, 2017, the acts complained of in this case happened sometime in 2014. Hence, the RRACCS finds application in this case.

[17] See Section 46 (B) (1) and (8) of the RRACCS.

Simple Neglect of Duty is a less grave offense punishable by suspension for a period of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense.[18] Applying Sections 49 (c)[19]and 50[20] of the RRACCS to this case and it appearing that this is respondent's first offense for all the charges, the OCA correctly recommended that respondent be meted the penalty of suspension for a period of one (1) year, with a warning that a repetition of the same or similar act will merit the most severe penalty from the Court, *i.e.*, dismissal from the service.

**WHEREFORE,** the judgment is hereby rendered finding respondent Roberto "Bobby" R. Dimson, Sheriff IV of the Regional Trial Court of Valenzuela City, Branch 171 **GUILTY** of Conduct Prejudicial to the Best Interest of the Service, Less Serious Dishonesty, and Simple Neglect of Duty. Accordingly, he is **SUSPENDED** for a period of one (1) year, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Decision be furnished the Office of the Court Administrator to be attached to respondent's records.

**SO ORDERED.**

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

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[18] See Section 46 (D) (1) of the RRACCS.

[19] Section 49 (c) of the RRACCS reads:

Section 49. *Manner of Imposition*. — When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

x x x x x x x x x

(c) The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

[20] Section 50 of the RRACCS reads:

Section 50. *Penalty for the Most Serious Offense*. — If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

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

**FIRST DIVISION**

[A.M. No. MTJ-18-1911. April 16, 2018]
(Formerly A.M. No. 17-08-98-MTC)

**OFFICE OF THE COURT ADMINISTRATOR,** *complainant, vs.* **WALTER INOCENCIO V. ARREZA, Judge, Municipal Trial Court, Pitogo, Quezon,** *respondent.*

**SYLLABUS**

**POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; GROSS INEFFICIENCY; DELAY IN THE DISPOSITION OF CASES; PENALTY.—** "[A] judge's foremost consideration is the administration of justice." Judges must "decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute." As "delay in the disposition of cases is tantamount to gross inefficiency on the part of a judge", the OCA correctly found Judge Arreza guilty of gross inefficiency for his undue delay in rendering decisions and failure to act on cases with dispatch. Under Section 11, Rule 140 of the Rules of Court, the same is punishable by (1) suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or (2) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. Considering that this is Judge Arreza's first offense, the imposition of fine in the amount of ₱15,000.00 is in order.

**R E S O L U T I O N**

**DEL CASTILLO, *J.*:**

From September 19, 2016 to October 1, 2016, a judicial audit was conducted in Branches 61 and 62, Regional Trial Court (RTC), Gumaca, Quezon, and all the Municipal Trial Courts (MTC)/Municipal Circuit Trial Courts (MCTC) under the said

RTC's jurisdiction. The results thereof,[1] particularly with respect to the MTC, Pitogo, Quezon presided by Judge Walter Inocencio V. Arreza (Judge Arreza), showed, that out of the 35 pending cases, there were numerous undecided cases which had been overdue for several years.[2]

In view of this, Deputy Court Administrator Raul B. Villanueva (DCA Villanueva) issued a Memorandum[3] dated October 28, 2016 to Judge Arreza which stated in part,*viz.*:

x x x x x x x x x

MTC Pitogo, Quezon, has six (6) court personnel headed by the Clerk of Court II, Ms. Mederlyn F. Orfanel. We note that the positions of Court Stenographer I and Clerk II are vacant. The court's latest monthly reports of cases for the last six (6) months show the clearance and disposition rates and average inflow and outflow of cases as follows:

| | **Pending Beginning** | **Inflow** | **Outflow** | **Pending Cases** | **Clearance Rate** (Outflow÷ Inflow) | **Disposition Rate** [Outflow÷ (Beg+Inflow)] |
|---|---|---|---|---|---|---|
| Mar-16 | 45 | 1 | 4 | 42 | | |
| Apr-16 | 42 | 0 | 1 | 41 | | |
| May-16 | 41 | 0 | 2 | 39 | | |
| Jun-16 | 39 | 4 | 2 | 41 | | |
| Jul-16 | 41 | 0 | 0 | 41 | | |
| Aug-16 | 41 | 1 | 2 | 40 | **183.33%** | **21.57%** |
| **Average** | | **1** | **2** | | | |

While the clearance rate may appear high at **183.33%**, the disposition rate is quite low at **21.57%**. The data also shows that the high clearance rate is only due to the fact that very few cases are being filed in court, or an average of 1 case per month. The disposal of the court leaves much to be desired. It was able to dispose of only 2 cases per month, on the average.

The audit team examined a total of **35 pending cases** (cutoff is 31 August 2016). Of these cases, **23** were already submitted for

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[1] See Judicial Audit Report dated October 28, 2016, *rollo*, pp. 53-56.

[2] *Id.* at 55.

[3] *Id.* at 47-52.

decision; all are already overdue for several months and even years, with the exception of 1 case. Thus, if we remove the **23** cases submitted for decision from the **35** pending cases, [Judge Arreza was] left with only **12** cases in active trial. With only 12 cases to handle, Judge Arreza clearly had more than enough time to render decisions. Further, we see no reason why there could still be any protracted proceedings. But surprisingly, there were **7** cases that have been pending trial for over 3 years. In fact, the oldest case has been pending trial for almost 9 years x x x.

In view of the above observations, Judge Arreza should be made to explain why no administrative sanction should be imposed against him for gross inefficiency and undue delay in deciding cases.[4]

Thus, Judge Arreza was ordered to:

x x x x x x x x x

a. IMMEDIATELY DECIDE the [twenty-three (23) cases submitted for decision x x x which are overdue;
b. TAKE APPROPRIATE ACTION on the one (1) case with no further action/setting for a considerable length of time x x x;[5]
c. EXPEDITE the disposition of the seven (7) cases aged three (3) years and above and SUBMIT a status report thereon as of 30 June 2017 on or before 5 July 2017;[6] and
d. SUBMIT copies of the pertinent decisions and orders, as proof of the action taken on Item Nos. 1(a) and 1(b) above, on or before 30 December 2016, together with a written explanation why no administrative sanction should be imposed against [Judge Arreza for] gross inefficiency and undue delay in deciding cases.

x x x x x x x x x

For strict compliance.[7]

In the Compliance[8] dated December 27, 2016, a table was presented indicating that: (1) all of the 23 cases submitted for

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

[5] Said case apparently forms part of the 12 cases supposedly in active trial.

[6] Said cases apparently form part of the 12 cases supposedly in active trial.

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

[8] *Id*. at 42-46.

decision had already been resolved/decided; (2) the one case with no further action/setting for a considerable length of time had already been acted upon;[9] and (3) two of the seven pending cases aged three years and above had already been resolved while the remaining five were undergoing hearings. Judge Arreza likewise submitted his written explanation[10] dated December 29, 2016 wherein he admitted his inefficiency. He, however, begged for understanding and narrated the circumstances which he claimed led to his failure to act on and decide cases. According to him, he and his wife were having marital problems in 2008 or just a year after his appointment as Judge. Things became worse in March 2010 when his wife finally left him and their children. In December 2012, he suffered a stroke, was hospitalized for two weeks, and almost became paralyzed. He has since then started taking maintenance medicine and was lucky enough to have now recovered. All these, according to Judge Arreza, took a toll in his performance as a judge. Be that as it may, he now undertakes to perform all his tasks, duties and responsibilities in line with the Court's mission and vision.

In the latest update[11] dated July 3, 2017, Judge Arreza reported the status/specific actions taken on the remaining five cases aged over three years and beyond which as of the said date were still in active trial.

***Recommendation of the Office of the Court Administrator (OCA)***

In its Memorandum[12] of July 20, 2017, the OCA made the following observations:

> Judge Arreza's explanation that he experienced marital problems and suffered a stroke in 2012 cannot justify the delay. While we commiserate with him for having been abandoned by his wife and having to take care of their children on his own, such is not a valid

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[9] An Order was issued causing the case to be archived. At the same time, an alias warrant for the arrest of the accused in the said case was issued.

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

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

[12] *Id.* at 57-61.

ground to excuse his failure to discharge his duties. We note that his stroke happened years ago in 2012. How he allowed his court to incur the 23 overdue cases for too long a time despite only around 12 active cases to hear at a once a month hearing schedule, is abhorrent. More than half of said cases were in fact submitted for decision even prior to his stroke. We note further that after said cases were discovered during the audit, he was able to dispose of all of them within a three (3) month period without a hitch. This only shows that he had the capability but chose not to act on said cases.

This Court has consistently impressed upon the members of the Bench the need to decide cases promptly and expeditiously, on the time-honored principle that justice delayed is justice denied.

As frontline officials of the Judiciary, trial court judges should at all times act with dedication, efficiency, and a high sense of duty and responsibility as the delay in the disposition of cases is a major culprit in the erosion of public faith and confidence in the judicial system.

This is embodied in Rule 3.05, Canon 3 of the Code of Judicial Conduct which states that a judge shall dispose of the court's business promptly and decide cases within the required periods; and in Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary which provides that judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly, and with reasonable promptness.

No less that the Constitution requires that cases at the trial court level be resolved within three (3) months from the date they are submitted for decision, that is, upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself. This three (3)-month or ninety (90)-day period is mandatory and failure to comply can subject the judge to disciplinary action.[13]

Accordingly, the OCA recommended that Judge Arreza be held liable for gross inefficiency and undue delay in deciding cases and fined in the amount of ₱40,000.00, with stern warning, it being his first offense.

## The Court's Ruling

The Court adopts the findings of the OCA with modification as regards the recommended penalty.

[13] *Id.* at 60-61.

The Court's policy on prompt resolution of disputes cannot be overemphasized.[14] In *Guerrero v. Judge Deray*,[15] it stated:

> As has been often said, delay in the disposition of cases undermines the people's faith in the judiciary. Hence, judges are enjoined to decide cases with dispatch. Their failure to do so constitutes gross inefficiency and warrants the imposition of administrative sanctions on them. Appellate magistrates and judges alike, being paradigms of justice, have been exhorted time and again to dispose of the court's business promptly and to decide cases within the required periods. Delay not only results in undermining the people's faith in the judiciary from whom the prompt hearing of their supplications is anticipated and expected; it also reinforces in the mind of the litigants the impression that the wheels of justice grind ever so slowly.

Here, Judge Arreza himself admitted his inefficiency. While he attributed this to domestic and health issues, suffice it to say that said reasons, even if found acceptable, cannot excuse him but, at most, can only mitigate his liability. Unfortunately for him, the Court shares the OCA's observation that the problems alluded to by Judge Arreza happened years before the judicial audit was conducted in 2016. If he was really inclined to dispose of the backlog caused by his domestic and health problems, he should have immediately done so. Note that his separation from his wife happened way back in 2010 and his stroke in 2012. To the mind of the Court, Judge Arreza had more than enough time to catch up before the conduct of the judicial audit in 2016 especially considering that his sala has a manageable case load due to the low average of case inflow which was only one case a month. Moreover, the Court notes that, with respect to the cases already submitted for decision but not decided within the prescribed period, Judge Arreza failed to ask for extension to decide the same. It has been previously held that "[i]n case of poor health, the Judge concerned needs only to ask this Court for an extension of time to decide cases, as soon as it becomes clear to him that there would be delay in the disposition of his

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[14] *Re: Report on the Judicial Audit Conducted in the Regional Trial Court-Branch 56, Mandaue City*, 658 Phil. 533, 540 (2011).

[15] 442 Phil. 85, 92-93 (2002).

cases."[16] To stress, Judge Arreza never bothered to ask the Court for an extension after he suffered a stroke. In fact, even before his stroke, there were already cases which were overdue for decision for which no motions for extension were made. Anent the cases with protracted proceedings, the Court shares the observation of the OCA that there was no reason for them to undergo a long-drawn-out trial considering that there were only 12 cases supposedly in active trial.

Given the foregoing, it is not difficult to see that the delay in Judge Arreza's disposition of cases was the product of his apathy. This becomes even more apparent in light of the fact that Judge Arreza was able to dispose of all the 23 cases overdue for decision within three (3) months and act on the other cases after his attention was called by the OCA. Indeed, and as correctly observed by the OCA, Judge Arreza has the capability but simply chose not to act on the subject cases.[17]

Again, it bears to stress that "[a] judge's foremost consideration is the administration of justice."[18] Judges must "decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute."[19]

As "delay in the disposition of cases is tantamount to gross inefficiency on the part of a judge,"[20] the OCA correctly found Judge Arreza guilty of gross inefficiency for his undue delay in rendering decisions and failure to act on cases with dispatch. Under Section 11, Rule 140 of the Rules of Court, the same is punishable by (1) suspension from office without salary and

[16] *Balajedeong v. Judge Del Rosario*, 551 Phil. 458, 467 (2007).

[17] *Rollo*, p. 60.

[18] *Salvador v. Judge Limsiaco, Jr.*, 574 Phil. 521, 524 (2008).

[19] *Re: Findings on the Judicial Audit Conducted in Regional Trial Court, Branch 8, La Trinidad, Benguet*, A.M. No. 14-10-339-RTC, March 7, 2017.

[20] *Arap v. Judge Mustafa*, 428 Phil. 778, 782 (2002).

other benefits for not less than one (1) nor more than three (3) months; or (2) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. Considering that this is Judge Arreza's first offense, the imposition of fine in the amount of ₱15,000.00 is in order.

**WHEREFORE**, Judge Walter Inocencio V. Arreza is hereby found **GUILTY** of Gross Inefficiency for his undue delay in rendering decisions and failure to act on cases with dispatch. He is ordered to pay a **FINE** of ₱15,000.00 and **STERNLY WARNED** that a repetition of the same or similar act or omission will be dealt with more severely.

**SO ORDERED.**

*Leonardo-de Castro,*[*] *Jardeleza*, and *Tijam, JJ.*, concur.

*Sereno, C.J.*,[**] on leave.

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**FIRST DIVISION**

[G.R. No. 209031. April 16, 2018]

**ABIGAEL AN ESPINA-DAN,** *petitioner, vs.* **MARCO DAN,** *respondent.*

**SYLLABUS**

**CIVIL LAW; FAMILY CODE; MARRIAGE; VOID AND VOIDABLE MARRIAGES; PSYCHOLOGICAL INCAPACITY; THE TOTALITY OF THE EVIDENCE MUST BE SUFFICIENT TO PROVE THE EXISTENCE OF PSYCHOLOGICAL INCAPACITY.—** "What is important is the presence of evidence that can adequately establish the party's psychological condition." "[T]he complete facts should

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[*] Acting Chairperson per Special Order No. 2540 dated February 28, 2018.

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

allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage" such that "[i]f the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to." 'Psychological incapacity,' as a ground to nullify a marriage under Article 36 of the Family Code, should refer to no less than a mental — not merely physical — incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as so expressed in Article 68 of the Family Code, among others, include their mutual obligations to live together, observe love, respect and fidelity and render help and support. There is hardly any doubt that the intendment of the law has been to confine the meaning of 'psychological incapacity' to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. x x x [P]sychological incapacity under Article 36 of the Family Code must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. "The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved." Finally, the burden of proving psychological incapacity is on the petitioner. x x x Indeed, the incapacity should be established by the totality of evidence presented during trial, making it incumbent upon the petitioner to sufficiently prove the existence of the psychological incapacity.

**APPEARANCES OF COUNSEL**

*Topacio Law Office* 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 December 14, 2012 Decision[2] and August 29, 2013 Resolution[3] of the Court of Appeals (CA) denying the Petition in CA-G.R. CV No. 95112 and herein petitioner's Motion for Reconsideration,[4] respectively, thus affirming the January 4, 2010 Decision[5] of the Regional Trial Court (RTC) of Las Piñas City, Branch 254, in Civil Case No. LP-07-0155.

***Factual Antecedents***

Petitioner Abigael An Espina-Dan and respondent Marco Dan — an Italian national — met "in a chatroom [o]n the internet"[6] sometime in May, 2005. They soon became "chatmates" and "began exchanging letters which further drew them emotionally closer to each other"[7] even though petitioner was in the Philippines while respondent lived in Italy.

In November, 2005, respondent proposed marriage. The following year, he flew in from Italy and tied the knot with petitioner on January 23, 2006.

Soon after the wedding, respondent returned to Italy. Petitioner followed thereafter, or on February 23, 2006. The couple lived together in Italy.

On April 18, 2007, petitioner left respondent and flew back into the country.

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[1] *Rollo*, pp. 9-26.

[2] *Id*. at 61-81; penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Isaias P. Dicdican and Michael P. Elbinias.

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

[4] *Id*. at 82-92.

[5] *Id*. at 36-42; penned by Presiding Judge Gloria ButayAglugub.

[6] *Id*. at 28.

[7] *Id*.

***Ruling of the Regional Trial Court***

On September 14, 2007, petitioner filed a Petition[8] for declaration of nullity of her marriage, docketed as Civil Case No. LP-07-0155 with the RTC of Las Piñas City, Branch 254. The Office of the Solicitor General representing the Republic of the Philippines opposed the petition.

On January 4, 2010, the RTC issued its Decision dismissing the petition on the ground mat petitioner's evidence failed to adequately prove respondent's alleged psychological incapacity. It held, thus:

> Testifying thru her *Judicial Affidavit* x x x petitioner stated that sometime in May 2005, she chanced upon the respondent, an Italian, in the internet x x x and they became regular chatmates. x x x In their exchanges of chat messages and letters, she found respondent to be sweet, kind and jolly. He made her feel that he really cared for her. He was romantic. x x x [A]lthough at times, respondent was impatient and easily got irritated, x x x.
>
> x x x x x x x x x
>
> On 9 January 2006, respondent flew in to the Philippines and x x x they got married on 23 January 2006 x x x. During their honeymoon, petitioner noticed that the respondent was not circumcised, x x x [Respondent [also] asked her where to find marijuana since he had to sniff some. This made petitioner angry and she quarrelled with him. Respondent apologized later.
>
> On 29 January 2006, x x x respondent flew back to Italy and on 26 February 2006, x x x petitioner left to join respondent in Italy, x x x After a few days, respondent started displaying traits, character and attitude different from that of Marco whom she had known thru the internet. He was immature, childish, irresponsible and dependent. He depended on his mother to do or to decide things for him. It was even his mother who decided where they lived and how the house should be arranged. When they transferred to a separate house, it was respondent's mother who managed the household.
>
> Respondent was also addicted to video games. During work days, playing video games was always the first thing he does when he

[8] *Id*. at 28-34.

wakes up and the last thing he does before retiring. During rest days, he would play video games the whole day. There was never a quality times he spent with her, the kind of time that a responsible husband would spend with his wife.

Respondent was extremely lazy that he never helped her in doing all the household chores. He also has extremely poor hygiene. He seldom takes a bath and brushes his teeth. For him to be able to take, a bath, petitioner would literally push him to the bathroom or hand him his toothbrush with toothpaste to brush his teeth. She had to put deodorant on his underarms for he would not do it himself. He refused circumcision.

Sometime in May 2006, she caught him in their house while using marijuana. When confronted, he got mad and pushed her [hard] and hit her in the arm, [and told] her to go back to the Philippines. x x x

In October 2006, x x x they transferred to another house. Living in a separate house from his mother did not improve their marital relationship. His addiction to video games worsened. They seldom talk to each other as he did not want to be disturbed while playing games. His addiction to drugs likewise worsened. He would often invite his friends to their house for pot sessions, x x x to her extreme fright and discomfort.

x x x x x x x x x

On 18 April 2007, she flew back to the Philippines. x x x Since then, there was no communication between them. x x x Petitioner took this as lack of interest on his part to save their marriage, reason why she decided to file this petition (TSR August 11, 2008, pp. 6-10).

x x x x x x x x x

She further stated that respondent x x x only gave her money for food. He spent most of his income for video games. If they ran out of food, it was her mother-in-law who supported them.

x x x x x x x x x

Next presented was NEDY TAYAG, a clinical psychologist, who testified x x x in her *direct-examination* that petitioner x x x was subjected to a series of psychological tests, written and oral form. She likewise subjected the mother of the petitioner to clarificatory analysis x x x.

In her evaluation, she found no sign or symptom of major psychological incapacity of the petitioner, while respondent is suffering from a x x x Dependent Personality Disorder with Underlying Anti-Social Trait, by his parasitic attitude, allowing other people to be the handler of his own personal sustenance, even hygienic wise, which somehow distorted the notion on how to handle marital obligations in terms of mutual understanding, communication and emotional intent. She was able to arrive at these findings on respondent although he did not submit himself for the same psychological tests, through the clinical assessments and information supplied by the petitioner, and the description of the petitioner's mother regarding how she perceived the respondent.

On *cross-examination,* x xx [s]he described respondent x x x as "Mama's Boy", which attitude can be narcissistic because of his attachment to the mother. He can do whatever he wants because the mother will always be at his back. She likewise stated that the respondent is an unhygienic person and the reason why he opted to lure herein petitioner to be his wife was because he wanted her to be an extension of his maternal needs to sustain his own desire.

On *clarificatory questions of the Court* x x x Ms. Tayag testified that she was able to describe the respondent x x x because of the description made by the petitioner and her mother. She however, admitted that as disclosed to her by the petitioner, she (petitioner) was not able to have a bonding or to know well the respondent because more often than not the respondent was always in the company of the mother that a pathological symbiotic relationship developed between the mother and son.

Last witness presented was MS. VIOLETA G. ESPINA, the mother of herein petitioner. Her Judicial Affidavit x x x was adopted as her *direct-testimony,* which was entirely in corroboration of the testimony of petitioner Abigael An Espina-Dan.

On *cross-examination* x x x. She testified that respondent had not assumed his responsibilities as a married man, his dependency on drugs, his dependency on his mother with regard to their finances were just told by her daughter, petitioner herein, during their conversations in the internet and therefore she has no personal knowledge to what happened to her daughter, petitioner herein.

x x x x x x x x x

Article 36 of the Family Code x x x provides:

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

The Supreme Court in the case of *Santos v. Court of Appeals,* (240 SCRA 20, 24) declared that psychological incapacity *must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.*

In the instant case, the clinical psychologist found respondent to be suffering from x x x ***Dependent Personality Disorder with underlying Anti-social traits,*** x x x which x x x is 'grave, severe, long lasting and incurable by any treatment'. x x x

x x x x x x x x x

The clinical psychologist['s] findings and conclusion were derived from her interviews of petitioner and her mother. However, from petitioner's Judicial Affidavit x x x, it was gathered that respondent's failure to establish a common life with her stems from his refusal, not incapacity to do so. It is downright incapacity, not refusal or neglect or difficulty, much less ill will, which renders a marriage void on the ground of psychological incapacity. How she arrived at the conclusion that respondent was totally dependent [on] his mother, his propensity [with] illegal substance, his instability to maintain even his personal hygiene, and his neglect to assume his responsibilities as a husband, Nedy Tayag failed to explain. It bears recalling that petitioner and respondent were chatmates in 2005 and contracted marriage in 2006 when respondent was already 35 years old, far removed from adolescent years.

Noteworthy is petitioner's admission that she and respondent met in a chat room in the internet. Respondent was very sweet, kind and jolly. He was romantic. He made her feel that he cared even if they were apart. He remembered important occasions and he would always send her sweet messages and funny jokes x x x which revealed the harmonious relationship of the couple before their marriage. From this, it can be inferred how responsible respondent was to faithfully

comply with his obligations as a boyfriend. During marriage, respondent was working and giving her money though not enough as she said (TSN, August, 11, 2008, p. 15). With this premise, it is therefore safe to conclude that no matter how hard respondent would try to show his best, to show his capability as husband to petitioner, she would always find reason to say otherwise.

As to her allegation that respondent was unhygienic; x x x it was admitted by no less than the psychologist, Nedy Tayag that in a country like Italy wherein the weather is different from the Philippines, the people there do not bathe regularly x x x. With respect to circumcision, we all know that circumcision is not common in European countries. You cannot compel respondent to undergo circumcision since it is against their culture. However, respondent expressed his willingness to be circumcised, but later on, changed his mind.

As to her allegation that respondent was a drug dependent, petitioner never showed, that she exerted effort to seek medical help for her husband. Undeniably, drug addiction is curable and therefore it can hardly be considered as a manifestation of the kind of psychological incapacity contemplated under Article 36 of the Family Code.

With regard to the dependency of respondent to his mother, it was not well established by the petitioner. x x x What is clear was that respondent's mother was all out in helping them since the salary of the respondent was not sufficient to sustain their needs.

All told, the Court cannot see how the personality disorder of respondent would render him unaware of the basic marital covenants that concomitantly must be assumed and discharged by him. At the most, the psychological evaluation of the parties proved only incompatibility and irreconcilable differences, considering also their culture differences, which cannot be equated with psychological incapacity. Along this line, the aforesaid psychological evaluation made by Ms. Tayag is unfortunately one sided [and] based only on the narrations made by petitioner who had known respondent only for a short period of time and too general to notice these specific facts thereby failing to serve its purpose in aiding the Court in arriving at a just resolution of this case.

In sum, inasmuch as the evidence adduced by petitioner in support of her petition is miserably wanting in force to convince this Court that her marriage with respondent comes and qualifies under the provision of Article 36 of the Family Code and hence unable to

discharge completely her burden of overcoming the legal presumption of validity and the continuance of her marriage with respondent, declaration of nullity of same marriage is not in order.

WHEREFORE, premises considered, the petition for declaration of nullity of marriage is hereby DENIED, for lack of merit and accordingly, the same petition is hereby DISMISSED.

Furnish the Office of the Solicitor General and the Office of the City Prosecutor, Las Piñas City, for their information and guidance.[9]

Petitioner moved to reconsider,[10] but in an April 28, 2010 Order,[11] the RTC held its ground.

***Ruling of the Court of Appeals***

Petitioner filed an appeal before the CA, docketed as CA-G.R. CV No. 95112. In its assailed December 14, 2012 Decision, however, the CA denied the appeal and affirmed the RTC Decision, declaring thus:

x x x There is no ground to declare the marriage x x x null and void on the ground of psychological incapacity under Article 36 of the Family Code. Thus, the court *a quo* correctly denied the petition for annulment of marriage x x x.

x x x x x x x x x

In *Toring v. Toring,* the Supreme Court held that psychological incapacity under Article 36 of the Family Code must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability, to be sufficient basis to annul a marriage. The psychological incapacity should refer to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage.

It further expounded on Article 36 x x x in *Republic v. Court of Appeals and Molina* and laid down definitive guidelines in the interpretation and application of this article. These guidelines

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[9] *Id*. at 37-42.

[10] *Id*. at 43-56.

[11] *Id*. at 57.

incorporate the basic requirements of gravity, juridical antecedence and incurability established in the *Santos* case, as follows:

x x x x x x x x x

Subsequent jurisprudence on psychological incapacity applied these basic guidelines to varying factual situations, thus confirming the continuing doctrinal validity of *Santos*. [Insofar] as the present factual situation is concerned, what should not be lost in reading and applying our established rulings is the intent of the law to confine the application of Article 36 of the Family Code to the most serious eases of personality disorders; these are the disorders that result in the utter insensitivity or inability of the afflicted party to give meaning and significance to the marriage he or she contracted. Furthermore, the psychological illness and its root cause must have been there from the inception of the marriage. From these requirements arise the concept that Article 36 x x x does not really dissolve a marriage; it simply recognizes that there never was any marriage in the first place because the affliction — already then existing—was so grave and permanent as to deprive the afflicted party of awareness of the duties and responsibilities of the matrimonial bond he or she was to assume or had assumed.

In the present case, We find the totality of the petitioner-appellant's evidence insufficient to prove respondent-appellee was psychologically incapacitated to perform his marital obligations. Petitioner-appellant's depiction of respondent-appellee as irresponsible, childish, overly dependent on his mother, addicted to video games, addicted to drugs, lazy, had poor hygiene, and his refusal or unwillingness to assume the essential obligations of marriage, are not enough. These traits do not equate to an inability to perform marital obligations due to a psychological illness present at the time the marriage was solemnized. Psychological incapacity must be more titan just a "difficulty," "refusal," or "neglect" in the performance, of some marital obligations. It is not enough the respondent-appellee, alleged to be psychologically incapacitated, had difficulty in complying with his marital obligations, or was unwilling to perform these obligations. Proof of a natal or supervening disabling factor — an adverse integral element in the respondent's personality structure that effectively incapacitated him from complying with his essential marital obligations — must be shown. Mere difficulty, refusal, or neglect in the performance of marital obligations, or ill will on the part of the spouse, is different from incapacity rooted in some debilitating psychological condition or illness; irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility and the like, do not by

themselves warrant a finding of psychological incapacity x x x, as the same may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage. It is essential that the spouse must be shown to be incapable of performing marital obligations, due to some psychological illness existing at the time of the celebration of the marriage. Respondent-appellee's condition or personality disorder has not been shown to be a malady rooted on some incapacitating psychological condition.

It will be noted [that] Ms. Tayag did not administer psychological tests on respondent-appellee. The conclusion in the psychological report of Ms. Tayag that respondent-appellee was suffering from Dependent Personality Disorder, with underlying Anti-Social traits, was based merely on information supplied by petitioner-appellant and Violeta (mother of the petitioner-appellant).

Generally, expert opinions are regarded, not as conclusive, but as purely advisory in character. The court must evaluate the evidentiary worth of the opinion with due care and with the application of the more rigid and stringent set of standards outlined above, *i.e.,* that there must be a thorough and in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a psychological incapacity that is grave, severe, and incurable. Thus, We cannot credit Ms. Tayag's findings as conclusive, as she did not conduct an actual psychological examination on respondent-appellee. The information relied upon by Ms. Tayag could not have secured a complete personality profile and could not have conclusively formed an objective opinion or diagnosis of respondent-appellee's psychological condition. The methodology employed (i.e., gathering information regarding respondent-appellee from petitioner-appellant and Violeta, without interviewing respondent-appellee himself), simply cannot satisfy the required depth and comprehensiveness of examination required to evaluate a party alleged to be suffering from a psychological disorder.

Plaintiff-appellant failed to prove the root cause of the alleged psychological incapacity, and to establish the requirements of gravity, juridical antecedence, and incurability. The psychological report, was based entirely on petitioner-appellant's assumed knowledge of respondent-appellee's family background and upbringing, Ms. Tayag was not able to establish with certainty that respondent-appellee's alleged psychological incapacity was grave enough to bring about the inability of the respondent-appellee to assume the essential obligations of marriage, so that the same was medically permanent or incurable. Also, it did not fully explain the details of respondent-

appellee's alleged disorder and its root cause; how Ms. Tayag came to the conclusion that respondent-appellee's condition was incurable; and how it related to the essential marital obligations that respondent-appellee failed to assume.

In this case, the only proof which bears on the claim that respondent-appellee is psychologically incapacitated, is his allegedly being irresponsible, childish, overly dependent on his mother, addicted to video games, addicted to drugs, lazy, had poor hygiene, and his refusal or unwillingness to assume the essential obligations of marriage. It is worthy to emphasize that Article 36 x x x contemplates downright incapacity or inability to take cognizance of and to assume the basic marital obligations; not a mere refusal, neglect or difficulty, much less, ill will, on the part of the errant spouse.

This Court finds the totality of evidence presented by petitioner-appellant failed to establish the alleged psychological incapacity of her husband x x x. Therefore, there is no basis to declare their marriage null and void x x x.

The Constitution sets out a policy of protecting and strengthening the family as the basic social institution and marriage as the foundation of the family. Marriage, as an inviolable institution protected by the State, cannot be dissolved at the whim of the parties. In petitions for the declaration of nullity of marriage, the burden of proof to show the nullity of marriage lies on the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity,

WHEREFORE, the appeal is DISMISSED. The Decision of the Regional Trial Court, Branch 254, Las Piñas City dated 4 January 2010, in Civil Case No. LP-07-0155, is AFFIRMED.

SO ORDERED.[12] (Citations omitted)

Petitioner moved for reconsideration, but in its assailed August 29, 2013 Resolution, the CA stood its ground. Hence, the instant Petition.

**Issue**

Petitioner mainly contends that —

[12] *Id.* at 69-80.

THE TOTALITY OF PETITIONER'S EVIDENCE ESTABLISHED THE PSYCHOLOGICAL INCAPACITY OF RESPONDENT AND SATISFIED THE STANDARDS OF *REPUBLIC VS. COURT OF APPEALS AND MOLINA* AND OTHER PREVAILING JURISPRUDENCE IN POINT.[13]

***Petitioner's Arguments***

Petitioner argues that the root cause of respondent's psychological incapacity was clinically identified, sufficiently alleged in the petition, and proved by adequate evidence; that respondent's psychological incapacity was shown to be existing at the time of the celebration of the marriage, and that the same is medically permanent, incurable, and grave enough as to bring about the inability of respondent to assume his obligations in marriage; and that as a consequence, respondent is incapable of fulfilling his duties as a husband under the obligation to live together, observe mutual love, respect and fidelity, and render mutual help and support to her.

Petitioner adds that her allegations in the petition for declaration of nullity are specifically linked to medical and clinical causes as diagnosed by Dr. Tayag, which diagnosis is contained in the latter's report which forms part of the evidence in the case; that such diagnosis is backed by scientific tests and expert determination, which sufficiently prove respondent's psychological incapacity; that Dr. Tayag has adequately determined that respondent's condition is grave, incurable, and existed prior to and at the time of his marriage to petitioner; that respondent has been suffering from Dependent Personality Disorder with Underlying Anti-Social Trait which deterred him from appropriately discharging his duties and responsibilities as a married man; that despite considerable efforts exerted by petitioner, respondent remained true to his propensities and even defiant, to the point of exhibiting violence; that no amount of therapy — no matter how intensive—can possibly change respondent, but rather he would always be in denial of his own condition and resist any form of treatment; and that respondent's

[13] *Id.* at 16.

condition is deep-rooted and stems from his formative years — a product of faulty child-rearing practices and unhealthy familial constellation that altered his emotional and moral development.

Finally, petitioner argues that it is not necessary that personal examination of respondent be conducted in order that he may be diagnosed or declared as psychologically incapacitated. She cites the cases of *Marcos v. Marcos*[14] and *Antonio v. Reyes,*[15] as well as the case of *Suazo v. Suazo,*[16] in which latter case it was held that a personal examination of the party alleged to be psychologically incapacitated is not necessarily mandatory, but merely desirable, as it may not be practical in all instances given the oftentimes estranged relations between the parties. She suggests instead that pursuant to the ruling in *Ngo Te v. Gutierrez Yu-Te,*[17] "each case must be judged, not on the basis of *a priori* presumptions, predilections or generalizations, but according to its own facts"[18] and that courts "should interpret the provision on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines x x x."[19]

***The State's Arguments***

In its Comment[20] praying for denial, the State calls for affirmance of the CA dispositions, arguing that no new issues that merit reversal have been raised in the Petition. It contends that petitioner failed to prove the elements of gravity, juridical antecedence, and incurability; that quite the contrary, petitioner even admitted that incipiently, respondent was romantic, funny,

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[14] 397 Phil. 840 (2000).

[15] 519 Phil. 337 (2006).

[16] 629 Phil. 157 (2010).

[17] 598 Phil. 666 (2009).

[18] *Id*. at 699.

[19] *Id*.

[20] *Rollo,* pp. 135-155.

responsible, working, and giving money to her; that petitioner's allegations of video game and drug addiction are uncorroborated, and her failure to seek medical treatment therefor in behalf of her husband must be considered against her; that such addictions are curable and could not be the basis for a declaration of psychological incapacity; that respondent's irresponsibility, immaturity, and over-dependence on his mother do not automatically justify a conclusion of psychological incapacity under Article 36 of the Family Code; that the intent of the law is to confine the meaning of psychological incapacity to the most serious cases of personality disorders — existing at the time of the marriage — clearly demonstrating an utter insensitivity or inability to give meaning and significance to the marriage, and depriving the spouse of awareness of the duties and responsibilities of the marital bond one is about to assume; that the psychological evaluation of respondent was based on one-sided information supplied by petitioner and her mother — which renders the same of doubtful credibility; and that while personal examination of respondent is indeed not mandatory, there are instances where it is required — such as in this case, where the information supplied to the psychologist unilaterally comes from the side of the petitioner, which renders such information biased and partial as would materially affect the psychologist's assessment.

**Our Ruling**

The Court denies the Petition.

Both the trial and appellate courts dismissed the petition in Civil Case No. LP-07-0155 on the ground that petitioner's evidence failed to sufficiently prove that respondent was psychologically incapacitated to enter marriage at the time. They held that while petitioner alleged such condition, she was unable to establish its existence, gravity, juridical antecedence, and incurability based solely on her testimony, which is insufficient, self-serving, unreliable, and uncorroborated, as she did not know respondent very well enough — having been with him only for a short period of time; Dr. Tayag's psychological report — which is practically one-sided for the latter's failure to include

respondent in the study; and the account of petitioner's mother, which is deemed biased and thus of doubtful credibility.

The Court agrees.

Petitioner's evidence consists mainly of her judicial affidavit and testimony; the judicial affidavits and testimonies of her mother and Dr. Tayag; and Dr. Tayag's psychological evaluation report on the psychological condition of both petitioner and respondent. The determination of respondent's alleged psychological incapacity was based solely on petitioner's account and that of her mother, since respondent was presumably in Italy and did not participate in the proceedings.

This is insufficient.

At some point in her accounts, petitioner admitted that before and during their marriage, respondent was working and giving money to her; that respondent was romantic, sweet, thoughtful, responsible, and caring; and that she and respondent enjoyed a harmonious relationship. This belies her claim that petitioner was psychologically unfit for marriage. As correctly observed by the trial and appellate courts, the couple simply drifted apart as a result of irreconcilable differences and basic incompatibility owing to differences in culture and upbringing, and the very short period that they spent together prior to their tying the knot. As for respondent's claimed addiction to video games and cannabis, the trial and appellate courts are correct in their ruling that these are not an incurable condition, and petitioner has not shown that she helped her husband overcome them — as part of her marital obligation to render support and aid to respondent.

"What is important is the presence of evidence that can adequately establish the party's psychological condition."[21] "[T]he complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage"[22] such that "[i]f the totality

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[21] *Marcos v. Marcos, supra* note 14 at 850.

[22] *Republic v. Galang,* 665 Phil. 658, 672 (2011).

of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to."[23]

'Psychological incapacity,' as a ground to nullify a marriage under Article 36 of the Family Code, should refer to no less than a mental – not merely physical – incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as so expressed in Article 68 of the Family Code, among others, include their mutual obligations to live together, observe love, respect and fidelity and render help and support. There is hardly any doubt that the intendment of the law has been to confine the meaning of 'psychological incapacity' to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.[24]

With the declared insufficiency of the testimonies of petitioner and her witness, the weight of proving psychological incapacity shifts to Dr. Tayag's expert findings. However, her determinations were not based on actual tests or interviews conducted on respondent himself — but on personal accounts of petitioner alone. This will not do as well.

x x x *Rumbaua* provides some guidelines on how the courts should evaluate the testimonies of psychologists or psychiatrists in petitions for the declaration of nullity of marriage, *viz:*

> We cannot help but note that Dr. Tayag's conclusions about the respondent's psychological incapacity were based on the information fed to her by only one side — the petitioner — whose bias in favor of her cause cannot be doubted. While this circumstance alone does not disqualify the psychologist for reasons of bias, her report, testimony and conclusions deserve the application of a more rigid and stringent set of standards in the manner we discussed above. For, effectively, Dr. Tayag only diagnosed the respondent from the prism of a third party account; she did not actually hear, see and evaluate the respondent and how he would have reacted and responded to the doctor's probes.

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[23] *Zamora v. Court of Appeals,* 543 Phil. 701, 708 (2007).

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

> Dr. Tayag, in her report, merely summarized the petitioner's narrations, and on this basis characterized the respondent to be a self-centered, egocentric, and unremorseful person who 'believes that the world revolves around him'; and who 'used love as a . . . deceptive tactic for exploiting the confidence [petitioner] extended towards him.' . . . .
>
> We find these observations and conclusions insufficiently in-depth and comprehensive to warrant the conclusion that a psychological incapacity existed that prevented the respondent from complying with the essential obligations of marriage. It failed to identify the root cause of the respondent's narcissistic personality disorder and to prove that it existed at the inception of the marriage. Neither did it explain the incapacitating nature of the alleged disorder, nor show that the respondent was realty incapable of fulfilling his duties due to some incapacity of a psychological, not physical, nature. Thus, we cannot avoid but conclude that Dr. Tayag's conclusion in her Report — *i.e.,* that the respondent suffered "Narcissistic Personality Disorder with traces of Antisocial Personality Disorder declared to be grave and incurable' — is an unfounded statement, not a necessary inference from her previous characterization and portrayal of the respondent. While the various tests administered on the petitioner could have been used as a fair gauge to assess her own psychological condition, this same statement cannot be made with respect to the respondent's condition. To make conclusions and generalizations on the respondent's psychological condition based on the information fed by only one side is, to our mind, not different from admitting hearsay evidence as proof of the truthfulness of the content of such evidence.[25]

Concomitantly, the rulings of the trial and appellate courts — identical in most respects — are entitled to respect and finality. The same being correct, this Court finds no need to disturb them.

The issue of whether or not psychological incapacity exists in a given case calling for annulment of marriage depends crucially, more than in any field of the law, on the facts of the case. Such factual issue, however, is beyond the province of this Court to review. It is not the function of the Court to analyze or weigh all over again the

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[25] *Viñas v. Parel-Viñas,* 751 Phil. 762, 775-776 (2015), citing *Rumbaua v. Rumbaua,* 612 Phil. 1061 (2009).

evidence or premises supportive of such factual determination. It is a well-established principle that factual findings of the trial court, when affirmed by the Court of Appeals, are binding on this Court, save for the most compelling and cogent reasons x x x.[26]

To reiterate, psychological incapacity under Article 36 of the Family Code must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. "The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved."[27] Finally, the burden of proving psychological incapacity is on the petitioner.

x x x Indeed, the incapacity should be established by the totality of evidence presented during trial, making it incumbent upon the petitioner to sufficiently prove the existence of the psychological incapacity.[28]

With petitioner's failure to prove her case, her petition for declaration of nullity of her marriage was correctly dismissed by the courts below.

**WHEREFORE,** the Petition is **DENIED.** The December 14, 2012 Decision and August 29, 2013 Resolution of the Court of Appeals in CA-G.R. CV No. 95112 are **AFFIRMED.**

**SO ORDERED.**

*Leonardo-de Castro,*[*] *Bersamin,*[**] and *Tijam, JJ.,* concur.

*Sereno, C.J.,* on leave.

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[26] *Perez-Ferraris v. Ferraris,* 527 Phil. 722, 727 (2006).

[27] *Santos v. Court of Appeals,* 310 Phil. 21, 39 (1995).

[28] *Republic v. Court of Appeals,* 698 Phil. 257, 267 (2012).

[*] Designated as Acting Chairperson per Special Order No. 2540 dated February 28, 2018.

[**] Designated as additional member per October 24, 2017 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

**FIRST DIVISION**

[G.R. No. 211187. April 16, 2018]

**SCANMAR MARITIME SERVICES, INC. and CROWN SHIPMANAGEMENT, INC.,** *petitioners, vs.* **CELESTINO M. HERNANDEZ, JR.,** *respondent.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; TOTAL AND PERMANENT DISABILITY; APPLICATION OF THE 240-DAY RULE.—** Upon respondent's repatriation on February 6, 2010, he received extensive medical attention from the company-designated physicians. x x x On August 24, 2010 or 197 days from repatriation, respondent was cleared to go back to work. After the lapse of 120 days from the date of repatriation, respondent's treatment still continued; thus, the 240-day extension period was justified. At the time respondent filed his complaint on July 20, 2010, or 162 days since repatriation and without a definite assessment from the company-designated physician, respondent's condition could not be considered permanent and total. "[T]emporary total disability only becomes permanent when the company-designated physician, within the 240-day period, declares it to be so, or when after the lapse of the said period, he fails to make such declaration." x x x [T]he case of *Kestrel Shipping Co., Inc. v. Munar* enunciated that, if the maritime complaint was filed prior to October 6, 2008, the 120-day rule applies; but if the complaint was filed from October 6, 2008 onwards, the 240-day rule applies. In this case, respondent filed his complaint on July 20, 2010, hence, it is the 240-day rule that applies. In this case, respondent filed his complaint for total and permanent disability benefits while he was still considered to be temporarily and totally disabled; while the company-designated physician was still in the process of assessing his condition and determining whether he was still capable of performing his usual sea duties; and when the 240-day period had not yet lapsed. From the foregoing, it is evident that respondent's complaint was prematurely filed. His cause of action for total and permanent disability benefits had not yet accrued.

**2. ID.; ID.; DENIAL OF CLAIM WARRANTED BY THE FAILURE TO COMPLY WITH THE PROCEDURE PRESCRIBED BY SECTION 20B(3) OF THE POEA-SEC.—** Section 20B(3) of the POEA-SEC provides that it is the company-designated physician who is entrusted with the task of assessing a seafarer's disability. The provision also provides for a procedure to contest the company-designated physician's findings. Respondent, however, failed to comply with the procedure when he filed his complaint on July 20, 2010 without a definite assessment yet being rendered by the company-designated physician. Worse, he sought an opinion from Dr. Pascual, an independent physician, on August 12, 2010 despite the absence of an assessment by the company-designated physician.

**APPEARANCES OF COUNSEL**

*Carag Jamora Somera & Villareal Law Offices* for petitioners.
*Rowena A. Martin* for respondent.

**D E C I S I O N**

**DEL CASTILLO, *J.*:**

This Petition for Review on *Certiorari*[1] assails the June 27, 2013 Decision[2] and February 5, 2014 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 124003, which dismissed the Petition for *Certiorari* filed therewith and thus affirmed the December 9, 2011 Decision[4] and February 2, 2012 Resolution[5] of the National Labor Relations Commission (NLRC) ordering

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[1] *Rollo,* pp. 11-30.

[2] *Id*. at 32-41; penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Rosmari D. Carandang and Leoncia Real-Dimagiba.

[3] *Id*. at 43.

[4] *Id*. at 256-264; penned by Presiding Commissioner Leonardo L. Leonida and concurred in by Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Lacap.

[5] *Id*. at 280-281.

petitioners Scanmar Maritime Services, Inc. and Crown Shipmanagement, Inc. (collectively petitioners) to pay respondent Celestino M. Hernandez, Jr. (respondent) US$66,000.00 as disability benefits and attorney's fees.

***Antecedent Facts***

On July 2, 2009, petitioner Scanmar Maritime Services, Inc., for and in behalf of its foreign principal, petitioner Crown Shipmanagement, Inc., entered into a Contract of Employment[6] with respondent for a period of nine months as Able Seaman for the vessel Timberland. Respondent underwent the pre-employment medical examination (PEME), where he was declared fit for work.[7] He was deployed on August 3, 2009 and boarded the vessel the next day.

During the course of his employment, respondent experienced pain in his inguinal area and pelvic bone. The pain continued for weeks radiating to his right scrotum and right medial thigh. He informed the Captain of the vessel and was brought to a hospital in Sweden on February 3, 2010 where he was found unfit to resume normal duties. Consequently, respondent was medically repatriated to the Philippines on February 6, 2010.[8]

On February 8, 2010, respondent was referred to the company-designated physician at Metropolitan Medical Center for medical evaluation. He was diagnosed to have *Epididymitis, right, Varicocoele, left*[9] and was recommended to undergo Varicocoelectomy, a surgical procedure for the management of his left Varicocoele.[10] On March 26, 2010, the company-designated Urological Surgeon, Dr. Ed R. Gatchalian (Dr. Gatchalian), performed Varicocoelectomy on him at the

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[6] *Id*. at 111.

[7] *Id*. at 112.

[8] See CA Decision, *id*. at 33.

[9] See Medical Report dated February 9, 2010 and March 4, 2010, *id.* at 64-65 and 68, respectively.

[10] See Medical Report dated February 18, 2010, *id*. at 67.

Metropolitan Medical Center[11] after obtaining clearance from a Cardiologist.[12] The procedure was a success and respondent was immediately discharged the following day.[13] Thereafter, he continuously reported to Dr. Gatchalian for medical treatment and evaluation. He was subjected to numerous laboratory examinations, medication, and was advised to refrain from engaging in strenuous activities, such as lifting, while recovering.

Despite continuing medical treatment and evaluation with the company-designated physician, respondent filed on July 20, 2010 a complaint with the NLRC for permanent disability benefits, damages, and attorney's fees against petitioners. On August 12, 2010, respondent consulted his own physician, Dr. Antonio C. Pascual (Dr. Pascual), a Cardiologist, who diagnosed him with *Essential Hypertension, Stage 2, Epididymitis, right, Varicocoele, left, S/P Varicocoelectomy* and certified him medically unfit to work as a seaman.[14]

Meanwhile, on August 24, 2010, Dr. Gatchalian pronounced respondent fit to resume sea duties.[15]

***Proceedings before the Labor Arbiter***

In his position paper, respondent averred that for almost a year since November 2009, when he first sought medical attention for his work-related illness on board the vessel, he failed to earn wages as a seafarer. Due to loss of his earning capacity as a result of his unfitness for further sea duties, as attested by the medical findings of his own physician, Dr. Pascual, respondent claimed that he was entitled to permanent total disability benefits amounting to US$60,000.00 pursuant to the

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[11] See Medical Report dated March 26, 2010 and Metropolitan Medical Center Operation Sheet dated March 26, 2010, *id*. at 71 and 123-124, respectively.

[12] See Medical Report dated March 18, 2010, *id*. at 69-70.

[13] Medical Report dated March 27, 2010 and Metropolitan Medical Center Discharge Summary/Hospital Abstract, *id*. at 72 and 125, respectively.

[14] See Medical Certificate dated August 12, 2010, *id*. at 131-132.

[15] See Medical Report dated August 24, 2010, *id*. at 85-87.

POEA-SEC as well as moral, exemplary and compensatory damages for ₱500,000.00 each and 10% attorney's fees.

Petitioners, on the other hand, disclaimed respondent's entitlement to any disability compensation or benefit since his illness was not an occupational disease listed as compensable under the POEA-SEC[16] and was not considered work-related. Petitioners maintained that respondent was never declared unfit to work nor was he rendered permanently, totally or partially, disabled, averring that Dr. Gatchalian, the urological surgeon who closely monitored respondent's condition, already declared him fit to resume sea duties. Petitioners insisted that Dr. Gatchalian's assessment should prevail over that rendered by Dr. Pascual, who examined respondent only once. Further, according to petitioners, respondent's failure to consult a third doctor who is tasked to settle the inconsistencies in the medical assessments in accordance with the provisions of the POEA-SEC was fatal to his cause.

In a Decision[17] dated April 1, 2011, the Labor Arbiter awarded respondent total and permanent disability compensation in the amount of US$60,000.00 and attorney's fees in the amount of US$6,000.00. The Labor Arbiter found that respondent's illness had a reasonable connection with his work condition as an Able Seaman, thus, was work-related and compensable. At any rate, his illness, although not listed as occupational disease, enjoyed the disputable presumption of work-connection or work-aggravation under the POEA-SEC. The Labor Arbiter then found credence in the assessment made by respondent's physician, Dr. Pascual, who certified respondent to be suffering not only from Varicocoele but also from Stage 2 Hypertension, an illness which was likewise work-related.

***Proceedings before the National Labor Relations Commission***

Petitioners appealed to the NLRC ascribing serious error on the findings of the Labor Arbiter. Petitioners maintained that

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[16] Philippine Overseas Employment Authority-Standard Employment Contract.

[17] *Id*. at 159-169; penned by Executive Labor Arbiter Fatima Jambaro-Franco.

respondent's Varicocoele was not work-related; that respondent was declared fit for sea duties by Dr. Gatchalian whose declaration correctly reflected respondent's condition as compared to Dr. Pascual who was not even a specialist in urological disorders; that no third doctor was sought to challenge Dr. Gatchalian's assessment in violation of the procedure laid down in the POEA-SEC; that respondent's alleged hypertension could not be made as basis for the payment of disability benefits as there was no proof that he acquired or suffered such illness during the term of his employment; and that respondent was not entitled to attorney's fees.

In a Decision[18] dated December 9, 2011, the NLRC dismissed the appeal and affirmed the Decision of the Labor Arbiter. The NLRC sustained the Labor Arbiter's finding that respondent was permanently and totally disabled; that there was causal connection between the work of respondent and his illnesses (Varicocoele and Stage 2 Hypertension); and that Dr. Pascual's certification deserves more weight than the certification of Dr. Gatchalian that was issued after 120 days which, by operation of law, transformed respondent's disability to total and permanent, as was pronounced in the case of *Quitoriano v. Jebsens Maritime, Inc.*[19]

Petitioners filed a Motion for Reconsideration[20] of the NLRC Decision but was denied in the NLRC Resolution[21] of February 2, 2012.

***Proceedings before the Court of Appeals***

Petitioners filed a Petition for *Certiorari* with Urgent Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Mandatory Injunction to enjoin the

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[18] *Id.* at 256-264; penned by Presiding Commissioner Leonardo L. Leonida and concurred in by Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Lacap.

[19] 624 Phil. 523 (2010).

[20] *Rollo,* pp. 265-277.

[21] *Id.* at 280-281.

enforcement and execution of the NLRC judgment. Petitioners attributed grave abuse of discretion on the NLRC in affirming the Labor Arbiter's award of US$60,000.00 as disability benefits and attorney's fees of US$6,000.00.

The CA, in a Decision[22] dated June 27, 2013, dismissed petitioners' Petition for *Certiorari* and held that the NLRC did not commit any grave abuse of discretion in rendering its assailed rulings. The CA found that there was no error in the NLRC's appreciation of the causal connection between respondent's work as a seaman and his illnesses; that the NLRC correctly upheld the assessment of Dr. Pascual based on its inherent merit; and that the NLRC properly considered respondent's disability as total and permanent based on the Court's ruling in the *Quitoriano* case. The CA likewise found justification in the award of attorney's fees since respondent was forced to litigate to protect his interest.

Petitioners sought reconsideration[23] of the CA Decision. In a Resolution[24] dated February 5, 2014, petitioners' motion was denied.

**Issues**

Hence, petitioners filed the present Petition for Review on *Certiorari,* arguing that:

I.

THE FILING OF THE COMPLAINT WAS PREMATURE AND SHOULD HAVE BEEN DISMISSED OUTRIGHT BECAUSE

A. THE COMPANY-DESIGNATED PHYSICIAN HAD NOT YET GIVEN A DISABILITY ASSESSMENT/FIT TO WORK ASSESSMENT WITHIN THE ALLOWABLE 240-DAY PERIOD WHEN RESPONDENT FILED THE CASE. THERE IS THEREFORE NO ASSESSMENT TO CONTEST OR TO HAVE A CAUSE OF ACTION AGAINST.

B. EVEN ASSUMING ARGUENDO THAT THE COMPLAINT WAS NOT PREMATURELY FILED ON THE ABOVE GROUND,

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[22] *Id.* at 32-41.

[23] *Id.* at 523-530.

[24] *Id.* at 43.

RESPONDENT'S FAILURE TO COMPLY WITH THE POEA SEC ON THE MATTER OF REFERRING THE MEDICAL ASSESSMENT TO AN INDEPENDENT AND THIRD PHYSICIAN RENDERED THE FILING OF THE COMPLAINT PREMATURE.

II.

ABSENT ANY SERIOUS DOUBTS AS TO THE LEGITIMACY AND FAIRNESS OF THE ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN, THE COURT OF APPEALS HAS NO AUTHORITY WHATSOEVER TO DISREGARD THE FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN IN FAVOR OF SEAFARER'S ONE-TIME PHYSICIAN OF CHOICE.

CREDENCE SHOULD BE THEREFORE ACCORDED TO THE ASSESSMENT OF THE COMPANY DESIGNATED PHYSICIAN ESPECIALLY SINCE THE LATTER IS A SPECIALIST AS COMPARED TO THE SEAFARER'S PHYSICIAN OF CHOICE WHO POSSESSES DIFFERENT MEDICAL SPECIALIZATION.

III.

RESPONDENT IS NOT ENTITLED TO ATTORNEY'S FEES.[25]

Petitioners contend that respondent's complaint was prematurely filed and lacked cause of action as there was no medical assessment yet by the company-designated physician and the 240-day allowable period within which the company-designated physician may assess respondent had not yet lapsed at the time it was filed. Petitioners assert that the mere lapse of the 120-day period does not automatically vest an award of full disability benefits, as it may be extended up to 240 days if the seafarer requires further medical attention, as in this case. Moreover, the lack of a third doctor opinion is fatal to respondent's cause.

Petitioners, thus, posit that the timely fit to work assessment of Dr. Gatchalian, which was rendered after close monitoring of respondent's condition, should have been accorded probative weight by the labor tribunals, rather than the pronouncement of Dr. Pascual, who examined respondent only once and who is not even a specialist in urological disorders.

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[25] *Id*. at 646-647.

**Our Ruling**

The Court finds merit in the Petition.

*The filing of respondent's complaint was premature. Respondent is not entitled to total and permanent disability compensation.*

We find serious error in both the rulings of the NLRC and CA that respondent's disability became permanent and total on the ground that the certification of the company-designated physician was issued more than 120 days after respondent's medical repatriation. As correctly argued by petitioners, the 120-day rule has already been clarified in the case of *Vergara v. Hammonia Maritime Services, Inc.*,[26] where it was declared that the 120-day rule cannot be simply applied as a general rule for all cases in all contexts.

Article 192(c)(1) of the Labor Code provides that:

> Art. 192. Permanent total disability. — x x x
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

The Rule referred to in this Labor Code provision is Section 2, Rule X of the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code, which states:

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

[26] 588 Phil. 895 (2008).

total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

Section 20B(3) of the POEA-SEC, meanwhile provides that:

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance, Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

In *Vergara,* this Court has ruled that the aforequoted provisions should be read in harmony with each other, thus: (a) the 120 days provided under Section 20B(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 disability assessment and the seafarer is still unable to resume his regular seafaring duties.[27]

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[27] *Island Overseas Transport Corporation v. Beja,*774 Phil. 332, 345-346 (2015).

Thus, in the case of *C.F. Sharp Crew Management, Inc. v. Taok,*[28] a seafarer may be allowed to pursue an action for total and permanent disability benefits in any of the following conditions:

(a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;

(b) 240 days had lapsed without any certification being issued by the company-designated physician;

(c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;

(d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;

(e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;

(f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;

(g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and

(h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.[29]

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[28] 691 Phil. 521 (2012).

[29] *Id.* at 538-539.

Upon respondent's repatriation on February 6, 2010, he received extensive medical attention from the company-designated physicians. He was endorsed to a urological surgeon, Dr. Gatchalian, who recommended and performed surgery on him on March 26, 2010 to address and treat his varicocoele. After surgery, his condition was continually monitored as he still complained of scrotal and groin pains.[30] He thereafter underwent Inguinoscrotal Ultrasound on May 28, 2010 and July 16, 2010.[31] He was subjected to further physical and laboratory exams and was recommended by Dr. Gatchalian to undergo CT Sonogram to further evaluate his condition and recovery, as shown in a Medical Report dated August 19, 2010.[32] On August 24, 2010 or 197 days from repatriation, respondent was cleared to go back to work.[33]

After the lapse of 120 days from the date of repatriation, respondent's treatment still continued; thus, the 240-day extension period was justified. At the time respondent filed his complaint on July 20, 2010, or 162 days since repatriation and without a definite assessment from the company-designated physician, respondent's condition could not be considered permanent and total. "[T]emporary total disability only becomes permanent when the company-designated physician, within the 240-day period, declares it to be so, or when after the lapse of the said period, he fails to make such declaration."[34]

Both the NLRC and the CA mistakenly relied on the case of *Quitoriano v. Jebsens Maritime, Inc.,*[35] which applied our ruling

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[30] See Medical Reports dated June 1, 17, 29 and July 13, 2010, *rollo,* pp. 79-82.

[31] See Medical Reports dated May 28, 2010 and July 20, 2010, *id*. at 78 and 83, respectively; also Metropolitan Medical Center Ultrasound Reports dated May 28, 2010 and July 16, 2010, *id*. at 129-130.

[32] *Id*. at 84.

[33] *Id*. at 85-87.

[34] *Santiago v. Pacbasin ShipManagement, Inc.,* 686 Phil. 255, 267 (2012).

[35] *Supra* at note 18.

in *Crystal Shipping, Inc. v. Natividad*[36] that total and permanent disability refers to the seafarer's incapacity to perform his customary sea duties for more than 120 days. In *Quitoriano,* the seafarer filed a claim for total and permanent disability benefits on February 26, 2002 or before October 6, 2008, the date of the promulgation of *Vergara,* and the prevailing rule then was that enunciated by this Court in *Crystal Shipping*. The Court already delineated the effectivity of the *Crystal Shipping* and *Vergara* rulings in the case of *Kestrel Shipping Co., Inc. v. Munar*[37] by enunciating that, if the maritime complaint was filed prior to October 6, 2008, the 120-day rule applies; but if the complaint was filed from October 6, 2008 onwards, the 240-day rule applies. In this case, respondent filed his complaint on July 20, 2010, hence, it is the 240-day rule that applies.

In this case, respondent filed his complaint for total and permanent disability benefits while he was still considered to be temporarily and totally disabled; while the company-designated physician was still in the process of assessing his condition and determining whether he was still capable of performing his usual sea duties; and when the 240-day period had not yet lapsed. From the foregoing, it is evident that respondent's complaint was prematurely filed. His cause of action for total and permanent disability benefits had not yet accrued.

Moreover, respondent's failure to comply with the procedure prescribed by the POEA-SEC, which is the law between the parties, provided a sufficient ground for the denial of his claim for total and permanent disability benefits.

Section 20B(3) of the POEA-SEC provides that it is the company-designated physician who is entrusted with the task of assessing a seafarer's disability. The provision also provides for a procedure to contest the company-designated physician's findings. Respondent, however, failed to comply with the procedure when he filed his complaint on July 20, 2010 without

[36] 510 Phil. 332 (2005).

[37] 702 Phil. 717 (2013).

a definite assessment yet being rendered by the company-designated physician. Worse, he sought an opinion from Dr. Pascual, an independent physician, on August 12, 2010 despite the absence of an assessment by the company-designated physician. The medical certificate of Dr. Pascual, nevertheless, was of no use and will not give respondent that cause of action that he lacked at the time he filed his complaint. Indeed, a seafarer has the right to seek the opinion of other doctors under Section 20-B(3) of the POEA-SEC but this is on the presumption that the company-designated physician had already issued a certification as to his fitness or disability and he finds this disagreeable.[38] The Court is thus unconvinced to put weight on the findings of Dr. Pascual given that respondent has breached his duty to comply with the procedure prescribed by the POEA-SEC.

**WHEREFORE,** the Petition is **GRANTED.** The June 27, 2013 Decision and February 5, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 124003 are **REVERSED**and **SET ASIDE.** Celestino M. Hernandez, Jr.'s complaint docketed as NLRC OFW Case No. (M) 07-09866-10 is **DISMISSED.**

**SO ORDERED.**

*Leonardo-de Castro,*[*] *Jardeleza,* and *Tijam, JJ.,* concur.

*Sereno, C.J.,* on leave.

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[38] *New Filipino Maritime Agencies Inc. v. Despabeladeras,* 747 Phil. 626, 642 (2014).

[*] Acting Chairperson per Special Order No. 2540 dated February 28, 2018.

**SECOND DIVISION**

[G.R. No. 222070. April 16, 2018]

**EMMANUEL M. LU, ROMMEL M. LU, CARMELA M. LU, KAREN GRACE P. LU and JAMES MICHAEL LU,** *petitioners*, *vs.* **MARISSA LU CHIONG and CRISTINA LU NG,** *respondents.*

**SYLLABUS**

**REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; COURTS DECLINE JURISDICTION OVER ACTIONS WITH MOOT AND ACADEMIC ISSUE.—** The promulgation on July 13, 2015 by the RTC, Branch 35 of Calamba City in SEC Case No. 99-2014-C and SEC Case No. 100-2014-C of the Consolidated Decision that finally disposed of the main issues in the two cases had rendered CA-G.R. SP No. 139683 moot and academic. x x x As the Court reiterated in *King vs. CA*, "an issue is said to have become moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value." As a rule, courts decline jurisdiction over such actions, or dismiss them on the ground of mootness.

**APPEARANCES OF COUNSEL**

*Rene Andrei Q. Saguisag* for petitioners.
*Melita D. Go* for respondents.

**R E S O L U T I O N**

**REYES, JR., *J.*:**

This resolves the petition for review on *certiorari* filed under Rule 45 of the Rules of Court by Emmanuel M. Lu, Rommel M. Lu, Carmela M. Lu, Karen Grace P. Lu and James Michael M. Lu (petitioners) to assail the Decision[1] dated September

[1] Penned by Associate Justice Danton Q. Bueser, with Associate Justices Apolinario D. Bruselas, Jr. and Victoria Isabel A. Paredes concurring; *rollo*, pp. 25-37.

11, 2015 and Resolution[2] dated December 14, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 139683.

**The Antecedents**

This case arose from two complaints for *Nullification of Stockholder's Meeting, Election of the Members of the Board of Directors, Officers, General Information Sheet and Minutes of Meeting, and Damages with Application for the Issuance of a Temporary Restraining Order, or Status Quo Ante Order and a Writ of Preliminary Injunction* filed by Marissa Lu Chiong and Cristina Lu Ng (respondents) against the petitioners with the Regional Trial Court (RTC) of Calamba City, Laguna, particularly: (1) SEC Case No. 99-2014-C in relation to Remcor Industrial and Manufacturing Corporation (Remcor)[3]; and (2) SEC Case No. 100-2014-C in relation to Soutech Development Corporation (Soutech).[4] Respondents questioned in their complaints the manner by which the stockholders' meetings and elections of directors and officers of the two companies were conducted on March 4, 2014. Both complaints were raffled-off to Branch 34 of the RTC of Calamba City, Laguna as a Special Commercial Court.

During the pendency of the actions, respondents filed a Motion for Inhibition[5] in each case, as they asked Presiding Judge Maria Florencia Formes-Baculo (Judge Formes-Baculo) to recuse herself from the cases. Among the grounds they cited to support their twin motions were as follows: (1) Judge Formes-Baculo granted the petitioners' applications for preliminary injunction on the basis of erroneous findings of fact, unfounded evidence and misapplication of law and jurisprudence, leading the respondents to believe that her order was made to favor the petitioners; (2) she appeared to have prejudged the pending cases and acted with bias and partiality; and (3) she was "not

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

[3] *Id*. at 40-60.

[4] *Id*. at 61-81.

[5] *Id*. at 186-199, 200-213.

as enthusiastic in resolving [petitioners'] urgent motions" and instead opted to raffle the cases for Judicial Dispute Resolution (JDR).[6]

On February 18, 2015, Judge Formes-Baculo issued in the two cases her twin Orders[7] that granted the motions to inhibit, and with the same dispositive portions that read:

> **WHEREFORE**, premises considered, the Motion for Inhibition is **GRANTED**. The Court is hereby voluntarily inhibiting and recusing itself from further hearing the instant case. And the resolution of the pending motions and pleadings of the parties are **HELD IN ABEYANCE** in order to give a free hand to the new Court where the instant case shall be transferred to resolve. Accordingly, let the records of this case be sent to the Office of the Clerk of Court for appropriate action.
>
> **SO ORDERED.**[8]

Judge Formes-Baculo explained that the inhibition would dispel the "notion[s] of prejudgment and [partiality]."[9] She nonetheless still denied the allegation of bias, and further explained that all incidents in the cases were resolved on the basis of submitted evidence. The referral of the cases for JDR was part of the mandatory mediation aspect of the pre-trial proceedings. As regards the pending motions that remained unresolved, Judge Formes-Baculo explained that these were to be resolved after hearing the respective sides of the parties. Given the court's decision to recuse from the cases, it withheld resolution of the pending incidents in order to allow the new court a free hand in resolving the issues.

The foregoing prompted the respondents to file with the CA a Consolidated Petition[10] for *certiorari* and prohibition docketed

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[6] *Id*. at 197, 211.

[7] *Id*. at 214-218, 219-222.

[8] *Id*. at 218, 222.

[9] *Id*. at 216, 221.

[10] *Id*. at 223-237.

as CA-G.R. SP No. 139683. On September 11, 2015, the CA rendered its Decision granting the petition. The RTC's order that granted the motion for inhibition was declared contrary to Section 1, Rule 137 of the Rules of Court and jurisprudence. The CA's decision ended with the following decretal portion:

> **WHEREFORE**, in view of the foregoing, the instant Petition is hereby **GRANTED**. The assailed twin Orders are **REVERSED** and **SET ASIDE**. Accordingly, SEC Case Nos. 99-2014-C and 100-[2014]-C are ordered **RETURNED** to Branch 34, the [RTC] of Calamba City, for speedy trial and disposition.
>
> Let Branch 35, the [RTC] of Calamba City, Laguna, be furnished a copy of this Decision.
>
> **IT IS SO ORDERED.**[11]

In reversing the trial court, the CA explained that a judge's voluntary inhibition from a case must be based on just or valid reasons. Mere imputations of bias or partiality are not enough grounds for inhibition. There should be concrete statements and proof of specific acts that could establish the charges, something which the petitioners failed to satisfy.

Dissatisfied with the CA's ruling, the petitioners filed a motion for reconsideration[12] (MR) by which they raised four main grounds. *First*, they claimed that the CA petition was fatally defective as it was unaccompanied by certified true copies of the assailed orders. *Second*, mandamus, not *certiorari*, was the proper remedy to assail Judge Formes-Baculo's voluntary inhibition. *Third*, the issue raised in the petition was rendered moot and academic by the RTC, Branch 35 of Calamba City's issuance in SEC Case No. 99-2014-C and SEC Case No. 100-2014-C of its Consolidated Decision[13] dated July 13, 2015, which already resolved the main issues in the actions. *Fourth*, Judge Formes-Baculo did not commit grave abuse of discretion in voluntarily inhibiting from the two cases.

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[11] *Id.* at 36.

[12] *Id.* at 248-257.

[13] *Id.* at 259-275.

On December 14, 2015, the CA rendered its Resolution[14] that denied the MR. The Resolution reads:

> This Court, after a meticulous study of the arguments set forth in the [MR] filed by [petitioner], finds no cogent reason to revise, amend, much less reverse, the Decision promulgated on September 11, 2015. The [MR] is thus **DENIED**.
>
> **IT IS SO ORDERED.**[15]

Hence, this petition for review by which petitioners raise substantially the same grounds that they raised in the MR they filed with the CA.

**The Court's Ruling**

The Court grants the petition. The promulgation on July 13, 2015 by the RTC, Branch 35 of Calamba City in SEC Case No. 99-2014-C and SEC Case No. 100-2014-C of the Consolidated Decision that finally disposed of the main issues in the two cases had rendered CA-G.R. SP No. 139683 moot and academic. Instead of issuing its Decision and Resolution on September 11, 2015 on December 14, 2015, respectively, the appellate court should have then dismissed the CA petition on the ground of mootness.

Based on records, the respondents' two complaints were already dismissed by the RTC, Branch 35 of Calamba City on the merits. The Consolidated Decision that resolved these main actions and upheld the validity of the contested stockholders' meetings and elections of board members and officers contained the following *fallo*:

> **WHEREFORE**, Judgment is hereby rendered:
>
> a) Dismissing the complaints for lack of merit;
> b) Upholding the validity of the stockholders' meeting and election held on 4 March 2014 of Remcor and Soutech;
> c) Likewise dismissing [petitioners'] counter-claims for damages for lack of merit; and

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

[15] *Id.* at 39.

d) Immediately recalling and setting-aside the Writs of Preliminary Injunction previously issued in these cases.

No pronouncement as to costs.

SO ORDERED.[16]

Branch 35 was with the authority to proceed with the main actions notwithstanding the pendency of the CA petition. It cited in its decision the circumstances that led to the case's assignment to it after Judge Formes-Baculo's inhibition from the cases and failed JDR, to wit:

> Still later, [petitioners] likewise filed separate motions praying for Judge Formes-Baculo to recuse herself from the cases. Without any ruling on the pending motions, the cases were raff1ed and sent to Branch 92 for compulsory Judicial Dispute Resolution (JDR). While the cases were pending JDR, Judge Formes-Baculo acted on and granted [petitioners'] motions for her voluntary inhibition. Thus, when the JDR failed, these cases were assigned, without need of raffle in accordance with the rules, to the undersigned as Presiding Judge of Branch 35, the pairing court to the regular special commercial court.[17]

Pertinent is the settled rule that "the mere pendency of a special civil action for *certiorari* commenced in relation to a case pending before a lower court does not automatically interrupt the proceedings in the lower court."[18] Moreover, jurisdiction over the main actions attached to the RTC of Calamba City, not in its branches or judges, to the exclusion of others; the RTC's different branches did not possess jurisdictions independent of and incompatible with each other.[19]

It likewise bears emphasis that Branch 35's Consolidated Decision was promulgated before the CA could have issued the Decision and Resolution that were subjects of this petition. The mootness that resulted from the issuance of the Consolidated

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[16] *Id*. at 275.

[17] *Id*. at 260.

[18] *Trajano v. Uniwide Sales Warehouse Club*, 736 Phil. 264, 276 (2014).

[19] *Id*. at 278.

Decision was evident from the fact that the CA's subsequent order was for the return of the records to Judge Formes-Baculo's Branch 34 *for speedy trial and disposition*, something that Branch 35 had apparently already accomplished. The main actions' resolution was still the ultimate end that should result from the CA's disposition of CA-G.R. SP No. 139683. Thus, the proceedings conducted by Branch 35 and its resulting decision in the main cases could not have been simply set aside by the appellate court when it resolved CA-G.R. SP No. 139683.

Branch 35's Consolidated decision had in fact been later brought on appeal to the CA by the respondents themselves, *via* the petition for review docketed as CA-G.R. SP No. 141318 and on grounds that were unrelated to Judge Formes-Baculo's inhibition from the cases. Although the CA subsequently ordered in CA-G.R. SP No. 141318 the remand of SEC Case Nos. 99-2014-C and 100-2014-C to Branch 35 for pre-trial and further proceedings, this circumstance did not invalidate the authority of Branch 35 to take over the two cases. Incidentally, the remand to Branch 35 was ordered by the CA in its Decision dated August 28, 2015, which was then still prior to the CA's Decision dated September 11, 2015 and Resolution dated December 14, 2015 in CA-G.R. SP No. 139683.

As the Court reiterated in *King vs. CA*,[20] "an issue is said to have become moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value."[21] As a rule, courts decline jurisdiction over such actions, or dismiss them on the ground of mootness.[22] In this case, this ground on mootness is sufficient to justify the grant of the present petition, rendering it unnecessary for the Court to rule on the merits of the other grounds that are invoked by the petitioners.

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[20] 514 Phil. 465 (2005).

[21] *Id*. at 470.

[22] *Renato Ma. R. Peralta v. Jose Roy Raval*, G.R. No. 188467, *Jose Roy B. Raval v. Renato Ma. R. Peralta*, G.R. No. 188764, March 29, 2017.

**WHEREFORE,** the petition is **GRANTED**. The Court of Appeals' Decision dated September 11, 2015 and Resolution dated December 14, 2015 in CA-G.R. SP No. 139683 are **REVERSED and SET ASIDE**, and a new one entered **DISMISSING** respondents Marissa Lu Chiong and Cristina Lu Ng's petition for *certiorari* and prohibition docketed as CA-G.R. SP No. 139683 on the ground of mootness.

**SO ORDERED.**

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

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**SECOND DIVISION**

[G.R. No. 229047. April 16, 2018]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **RAMONCITO CORNEL *y* ASUNCION,** *accused-appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; ILLEGAL SALE OF PROHIBITED DRUGS; REQUISITES.—** Under Article II, Section 5 of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur: (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. In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] object is properly presented as evidence in court and is shown to be the same drugs seized from the

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

accused." In illegal sale, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges. In *People v. Gatlabayan*, the Court held that it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect. Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."

**2. ID.; ID.; CHAIN OF CUSTODY AS AMENDED BY RA NO. 10640.—** To ensure an unbroken chain of custody, Section 21 (1) of R.A. No. 9165 specifies: (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 On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. x x x [T]he amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof.

**APPEARANCES OF COUNSEL**

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

## D E C I S I O N

**PERALTA, *J.*:**

This is an appeal of the Court of Appeals' (CA) Decision[1] dated June 9, 2016 dismissing appellant's appeal and affirming the Decision[2] dated October 29, 2014 of the Regional Trial Court (*RTC*), Branch 64, Makati City convicting appellant of Violation of Section 5, Article II, Republic Act (*R.A.*) No. 9165.

The facts follow.

On December 15, 2013, PO1 Mark Anthony Angulo reported for work and a-buy-bust operation was conducted against appellant Ramoncito Cornel. In preparation for the buy-bust operation, coordination was made with the District Anti-Illegal Drugs (*DAID*) and Philippine Drug Enforcement Agency (*PDEA*). Control No. PDEA-RO-NCR 12/13-00175 was issued by the PDEA as proof that they received the coordination form dated December 15, 2013. Led by PCI Gaylord Tamayo, a pre-operation plan was made where PO1 Angulo was designated a poseur-buyer. A one thousand peso bill was provided and marked for use in the operation. A petty cash voucher was prepared in relation to his receipt of the money from PCI Tamayo. The team then proceeded to the reported place of operation at *Barangay* East Rembo, Makati City and arrived therein at around 7:30 in the evening. A final briefing was conducted by PCI Tamayo. After the final briefing, PO1 Angulo proceeded on foot to 23rd Street together with the regular informant. Before they could reach their destination, they saw the subject appellant at a store. The informant introduced him to the subject as a "*tropa*." In the course of their conversation, he asked appellant "*kung meron ba*" to which appellant replied, "*meron naman.*" PO1 Angulo then asked appellant if he could see the item, but the latter asked for the payment first. Appellant took the buy-

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[1] Penned by Associate Justice Franchito N. Diamante, with the concurrence of Associate Justices Japar B. Dimaampao and Carmelita Salandanan Manahan.

[2] Penned by Judge Gina M. Bibat-Palamos.

bust money and placed it in his pocket. Appellant then brought out the item from the same pocket and handed it over to PO1 Angulo. The transaction having been consummated, PO1 Angulo gave the pre-arranged signal, by means of removing his cap, to the rest of the team. SPO1 Randy Obedoza arrived after PO1 Angulo grabbed appellant and introduced himself as a police officer. They then placed appellant under arrest. Initial body search was made where they were able to recover the marked money used in buying the item. SPO1 Obedoza informed the appellant of his constitutional rights. The inventory was conducted at the *barangay* hall. After the inventory, PO1 Angulo turned the seized items over to the duty investigator, PO2 Michelle Gimena, so that the necessary referrals could be made. A Request for Laboratory Examination was prepared and the seized items were submitted to the Scene of the Crime Operatives (SOCO) for examination. Photographs of the inventory and the marking were also taken at the barangay hall.[3]

Thus, an Information was filed against the appellant for violation of Section 5, Article II of R.A. No. 9165 that reads as follows:

> On the 15th day of December 2013, in the City of Makati, the Philippines, accused, without the necessary license or prescription and without being authorized by law, did then and there wilfully, unlawfully and feloniously sell, deliver, and give away Methamphetamine Hydrochloride weighing zero point zero three (0.03) gram, a dangerous drug, in consideration of Php1,000.00.
>
> CONTRARY TO LAW.[4]

Appellant used denial as a defense. According to him, he was on his way home when he was accosted by two men who introduced themselves as police officers.

The RTC of the City of Makati, Branch 64 found appellant guilty beyond reasonable doubt of the crime charged and sentenced him, thus:

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[3] See *Rollo*, pp. 3-4.

[4] *Rollo*, p. 3.

WHEREFORE, in view of the foregoing, judgement (sic) is hereby rendered finding the accused RAMONCITO CORNEL y ASUNCION, GUILTY of the charge for violation of Section 5, Article II of RA 9165 and sentencing him to life imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00) without subsidiary imprisonment in case of insolvency.

SO ORDERED.[5]

The RTC ruled that all the elements for violation of Section 5, Article II of R.A. No. 9165 have been proved beyond reasonable doubt by the prosecution. It also held that the integrity and the evidentiary value of the seized items were properly preserved by the buy-bust team under the chain of custody rule. It further ruled that the defense of denial by the appellant cannot surmount the positive and affirmative testimony offered by the prosecution.

The CA affirmed the decision of the RTC *in toto*. It ruled that the illegal sale of *shabu* has been established beyond reasonable doubt. It was also ruled that appellant was validly arrested during a legitimate buy-bust operation. It also ruled that the defense of denial should be looked with disfavor for they are easily concocted but difficult to prove, especially the claim that one has been the victim of frame-up. The appellate court also ruled that the integrity and evidentiary value of the *shabu* taken from appellant were clearly established by the prosecution.

Hence, the present appeal with the following assignment of errors:

I

THE COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT TO THE TESTIMONY OF PO1 ANGULO DESPITE ITS IRREGULARITIES, THUS, CASTING DOUBT UNTO HIS CREDIBILITY AND THE VERACITY OF DECLARATIONS.

II

THE COURT *A QUO* GRAVELY ERRED IN NOT FINDING THAT THE ACCUSED-APPELLANT'S WARRANTLESS ARREST WAS ILLEGAL.

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[5] *Id*. at 5.

III.

THE COURT *A QUO* GRAVELY ERRED IN NOT RENDERING INADMISSIBLE THE ALLEGEDLY CONFISCATED SHABU FOR BEING A FRUIT OF THE POISONOUS TREE.

IV

THE COURT *A QUO* GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE FAILURE OF THE OPERATIVES TO MARK THE ALLEGEDLY CONFISCATED PLASTIC SACHET IMMEDIATELY AFTER IT WAS SEIZED.

V

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE IRREGULARITIES IN THE CONDUCT OF THE INVENTORY OF THE CONFISCATED ITEM.

VI

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE BROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY CONFISCATED SHABU.

According to appellant, his guilt was not proven beyond reasonable doubt as the testimony of the witness had full of irregularities. He also claims that his warrantless arrest was illegal. He also questions the irregularities committed in the conduct of the inventory of the confiscated item. He also insists that there was a broken chain of custody of the confiscated dangerous drug.

The appeal is meritorious.

Under Article II, Section 5 of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

> (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.[6]

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[6] *People v. Ismael y Radang*, G.R. No. 208093, February 20, 2017.

In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] object is properly presented as evidence in court and is shown to be the same drugs seized from the accused."[7]

In illegal sale, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges.[8] In *People v. Gatlabayan*,[9] the Court held that it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect.[10] Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."[11]

To ensure an unbroken chain of custody, Section 21 (1) of R.A. No. 9165 specifies:

(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.

Supplementing the above-quoted provision, Section 21 (a) of the IRR of R.A. No. 9165 provides:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation,

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[7] *Id.*

[8] *Id.*

[9] 699 Phil. 240, 252 (2011).

[10] *People v. Mirondo*, 771 Phil. 345, 357 (2015).

[11] See *People v. Ismael y Radang*, G.R. No. 208093, February 20, 2017.

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[.]

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, thus:

(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.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe admitted that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence

acquired and prevent planting of evidence, the application of said section resulted in the ineffectiveness of the government's campaign to stop increasing drug addiction and also, in the conflicting decisions of the courts."[12] Specifically, she cited that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in more remote areas. For another, there were instances where elected *barangay* officials themselves were involved in the punishable acts apprehended."[13] In addition, "[t]he requirement that inventory is required to be done in police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended."[14]

Similarly, Senator Vicente C. Sotto III manifested that in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and "ensure [its] standard implementation."[15] In his Co-sponsorship Speech, he noted:

> Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of seized illegal drugs.
>
> x x x x x x x x x
>
> Section 21(a) of RA 9165 needs to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the

[12] Senate Journal. Session No. 80. 16th Congress, 1st Regular Session, June 4, 2014. p. 348.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 349.

inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.

It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances wherein there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.[16]

The foregoing legislative intent has been taken cognizance of in a number of cases. Just recently, We opined in *People v. Miranda*:[17]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of R.A. 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

[16] *Id.* at 349-350.

[17] G.R. No. 229671, January 31, 2018.

office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21 of R.A. 9165 under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of R.A. 9165 and the IRR does not ipso facto render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Also, in People v. De Guzman, it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[18]

Under the original provision of Section 21, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and photograph the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media and (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these three persons will guarantee "against planting of evidence and frame up," *i.e.*, they are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[19]

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[18] See also *People v. Paz*, G.R. No. 229512, January 31, 2018; *People v. Mamangon*, G.R. No. 229102, January 29, 2018; *People v. Jugo*, G.R. No. 231792, January 29, 2018; *People v. Calibod*, G.R. No. 230230, November 20, 2017; *People v. Ching*, G.R. No. 223556, October 9, 2017; *People v. Geronimo*, G.R. No. 225500, September 11, 2017; *People v. Ceralde*, G.R. No. 228894, August 7, 2017; and *People v. Macapundag*, G.R. No. 225965, March 13, 2017.

[19] *People v. Sagana*, G.R. No. 208471, August 2, 2017.

Now, the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof. In the present case, the old provisions of Section 21 and its IRR shall apply since the alleged crime was committed before the amendment.

According to the CA, there was no break or gap in the chain of custody, hence, the prosecution was able to establish with moral certainty that the specimen submitted to the crime laboratory and found positive for dangerous drugs, and finally introduced as evidence against appellant was the same dangerous drug that was confiscated from him, thus:

> In the case at bench, We find that the integrity and evidentiary value of the *shabu* taken from appellant were clearly established by the prosecution. There was no showing that PO1 Angulo lost possession of the said illegal drug from the time it was taken from the appellant until its turn over to the investigator at the police station. The sachet of *shabu* was immediately marked upon the arrival of the buy-bust team at the Barangay Hall of East Rembo, Makati in the presence of: (1) SPO1 Randy L. Obedoza who served as PO1 Angulo's back-up during the operation; (2) appellant; and (3) four *barangay tanods*. An inventory was conducted and a Chain of Custody and Inventory Receipt were then prepared on the same night. Thereafter, the evidence was turned over by PO1 Angulo to the investigator, PO2 Michelle V. Gimena (PO2 Gimena). After the pertinent papers were drawn-up by 10:15 P.M., the illegal drug was returned by PO2 Gimena to PO1 Angulo. PO1 Angulo was the one who turned over the confiscated item to PSI Rendielyn L. Sahagun (PSI Sahagun), the Forensic Chemist for laboratory examination. To safeguard the integrity of their office, PSI Sahagun marked the plastic sachet containing the confiscated item with D-941-13A RLS. The original copy of Chemistry Report No. D-941-13 and the evidence submitted was retained by the Southern Police District Crime Laboratory until presentation before the trial.[20]

[20] *Rollo*, pp. 14-15. (Citations omitted)

This Court rules otherwise. In this case, PO1 Angulo testified that the inventory was not conducted at the place of the arrest but at the *Barangay* Hall of East Rembo, thus:

> PROS. BARREDO-GO
> After reading to the accused the Miranda rights, what happened next?
>
> WITNESS
> We were supposed to make an inventory at the place, but since there were many persons already at the place that time, so we decided to proceed to the barangay hall to conduct the inventory, ma'am.[21]

The CA also ruled that the prosecution was able to sufficiently explain why the item seized was not immediately marked, thus:

> Here, it has been explained by the prosecution that the reason why the item seized from appellant was not immediately marked at the target place was because a commotion ensued after appellant's arrest. For security purposes and to prevent any damage, the arresting team decided to make the markings at the Barangay Hall of East Rembo, Makati.[22]

This Court, however, finds the said explanation as insufficient and unjustifiable considering that the team who arrested the appellant was composed of eight (8) police officers, and only one of them was unarmed. Such number of armed police operatives could have easily contained a commotion and proceed with the immediate inventory of the seized item so as to comply with the law. As testified by PO1 Angulo:

> ATTY. PUZON:
> How many immediate back up assisted you?
> WITNESS:
> SPO1 Obedoza was the first to arrive, ma'am.
>
> ATTY. PUZON:
> Since they were back up operatives, Mr. Witness, they are armed?
> WITNESS:
> Yes, ma'am.

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[21] TSN, February 25, 2014, p. 15.

[22] *Rollo*, p. 15.

ATTY. PUZON
All of them, Mr. Witness?
WITNESS
Yes, ma'am.

ATTY. PUZON:
How about you, were you armed at that time?
WITNESS
No, ma'am.

ATTY. PUZON:
But the rest of your companions, the rest of the team were armed at that time?
WITNESS:
Yes, ma'am.

ATTY. PUZON
How many were they, Mr. Witness?
WITNESS:
Seven, ma'am.

ATTY. PUZON
Where did the marking take place, Mr. Witness?
WITNESS:
At the barangay hall of East Rembo, ma'am.

ATTY. PUZON:
Why in the barangay hall and not in the place of operation?
WITNESS:
For security purposes, ma'am.

ATTY. PUZON:
When you say security purposes, what do you mean by that, Mr. Witness?
WITNESS:
Because when we were able to arrest Pukol, there was a commotion, ma'am.

ATTY. PUZON
Did you report the commotion or the incident that happened?
WITNESS
I cannot recall if we had reported that, ma'am.

ATTY. PUZON
And, despite the fact that your back up operatives were armed, most of them were armed, and according to you they were

seven, they cannot constrain these people causing commotion?
WITNESS:
We just prevented damage to occur in the area, ma'am.[23]

Absent therefore any justifiable reason, the apprehending. team should have immediately conducted the inventory upon seizure and confiscation of the item.

Furthermore, no explanation nor a valid reason was also given for the absence of a representative from the media and the Department of Justice during the inventory of the item seized.

The identity of the seized item, not having been established beyond reasonable doubt, this Court, therefore, finds it apt to acquit the appellant.

**WHEREFORE,** premises considered, the Decision dated June 9, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07533, which affirmed the Decision dated October 29, 2014 of the Regional Trial Court, Branch 64, Makati City, is **REVERSED AND SET ASIDE**. Appellant Ramoncito Cornel y Asuncion 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 an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, New Bilibid Prison, Muntinlupa City, for immediate implementation. Said Director is **ORDERED** to **REPORT** to this Court within five (5) working days from receipt of this Decision the action he has taken.

**SO ORDERED.**

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

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[23] TSN, February 25, 2014, pp. 40-42.

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

**FIRST DIVISION**

[G.R. Nos. 232197-98. April 16, 2018]

**PEOPLE OF THE PHILIPPINES,** *petitioner, vs.* **HONORABLE SANDIGANBAYAN (FOURTH DIVISION), ALEJANDRO E. GAMOS, and ROSALYN G. GILE,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; VIOLATION; APPLICABLE IS THE BALANCING TEST, WHICH WEIGHS THE CONDUCT OF BOTH THE PROSECUTION AND THE DEFENDANT.—** This right to speedy disposition of cases is enshrined in Section 16, Article III of the 1987 Constitution, x x x [A]lthough the Constitution guarantees the right to the speedy disposition of cases, it is a flexible concept. A mere mathematical reckoning of the time involved is not sufficient. Particular and due regard must be given to the facts and circumstances peculiar to each case. Further, the right to speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. The petitioner correctly argues that in the determination of whether such right is violated or not, equally applicable is the balancing test, which weighs the conduct of both the prosecution and the defendant. x x x Thus, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reason/s for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay. x x x It is relevant to note that while procedural periods to act upon complaints and motions are set by the rules, these may not be absolute. The law and jurisprudence allow certain exceptions thereto, as this Court and the law recognizes the fact that judicial, as well as investigatory,

proceedings do not exist in a vacuum and must contend with the realities of everyday life.

**2. REMEDIAL LAW; CIVIL PROCEDURE; DOUBLE JEOPARDY; A DECISION RENDERED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IS A VOID JUDGMENT.—** [A]n order, decision, or resolution rendered with grave abuse of discretion amounting to lack or excess of jurisdiction is a void judgment. x x x Hence, a void judgment is no judgment at all in legal contemplation, it can never become final. x x x [D]ouble jeopardy attaches only when the following elements concur: (1) the accused is charged under a complaint or information sufficient in form and substance to sustain their conviction; (2) the court has jurisdiction; (3) the accused has been arraigned and has pleaded; and (4) he/she is convicted or acquitted, or the case is dismissed without his/her consent.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for petitioner.

*Barroga Salindong Fontanilla & Associates Law Offices* for private respondents.

**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, assailing the Resolutions dated February 1, 2017[2] and April 26, 2017[3] of the Sandiganbayan (Fourth Division) in SB-15-CRM-0090 and SB-15-CRM-0091.

**The Factual Antecedents**

Two separate complaints were filed against former Sta. Magdalena, Sorsogon Mayor Alejandro E. Gamos (Gamos),

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[1] Penned by Associate Justice Alex L. Quiroz and concurred in by Associate Justices Reynaldo P. Cruz and Geraldine Faith Econg, *Rollo*, pp. 26-43.

[2] *Id*. at 49-53.

[3] *Id*. at 55-59.

Municipal Accountant Rosalyn E. Gile (Gile), and Municipal Treasurer Virginia E. Laco (Laco) for violation of Section 3(e) of Republic Act No. 3019 (First Complaint) and of Article 217 of the Revised Penal Code (Second Complaint), arising from alleged illegal cash advances made in the years 2004 to 2007.

The First Complaint was filed on February 18, 2008 before the Deputy Ombudsman (OMB) for Luzon by Jocelyn B. Gallanosa (Gallanosa) and Joselito G. Robillos (Robillos), then Sangguniang Bayan Members, alleging that Gamos, in conspiracy with Gile and Laco, made illegal cash advances in the total amount of ₱6,380,725.84 in 2004 and 2006 as per Commission on Audit (COA) Audit Observation Memorandum (AOM) No. 2007-01 to 2007-06 dated September 18, 2007.[4]

On March 31, 2008 Gamos, Gile, and Laco were directed to submit their counter-affidavits in response to the said complaint.[5] On April 28, 2008, Gamos, Gile, and Laco filed a motion for extension of time to file the required counter-affidavit.[6] On May 12, 2008, Gamos, Gile, and Laco filed the said counter-affidavits, wherein they prayed for the dismissal of the cases against them for being malicious, baseless, and premature.[7] On June 26, 2008, Gallanosa and Robillos filed their Reply[8] thereto. Gamos and Gile then filed a Joint Rejoinder-Affidavit[9] dated July 14, 2008. On August 20, 2009, Gallanosa filed a Manifestation and Urgent Motion for Preventive Suspension.[10]

On December 3, 2009, Gallanosa, becoming then elected-mayor, filed a Second Complaint against Gamos, Gile, and Laco, alleging that Gamos, in conspiracy with Gile and Laco, made

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[4] *Id*. at 74-87.

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

[6] *Id*. at 90-93.

[7] *Id*. at 94-129.

[8] *Id*. at 130-158.

[9] *Id*. at 159-166.

[10] *Id*. at 167-172.

illegal cash advances in the total amount of ₱2,226,500 made in January to May 2007 per COA's Report on the Special Audit/ Investigation on Selected Transactions of the Municipality of Sta. Magdalena, Sorsogon.[11]

On February 23, 2010, Gamos, Gile, and Laco were directed to file their counter-affidavits to the Second Complaint.[12] On March 26, 2010, Gamos, Gile, and Laco filed a motion for extension of time to file counter-affidavits.[13] On April 23, 2010, they filed a second motion for extension to file the counter-affidavits.[14] Gamos, Gile, and Laco asked for the dismissal of the Second Complaint in a Joint Counter-Affidavit (with Motion to Dismiss)[15] dated May 7, 2010. On June 1, 2010, Gallanosa filed a Reply[16] thereto.

On September 1, 2010, Gamos filed a Comment/Opposition[17] to the earlier motion praying for his preventive suspension.

On October 7, 2010, Gamos, Gile, and Laco filed an Ex-Parte Manifestation and Motion to Admit Letter to COA Chairman dated June 21, 2010,[18] requesting for the review of the audit reports on which the complaints were based.

Thus, in a Consolidated Resolution[19] dated October 19, 2010, the OMB investigating officer found that it is premature to determine criminal and administrative liabilities considering that the COA audit reports, upon which the complaints were based, were not yet final. Thus, the dismissal of the complaints

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[11] *Id*. at 173-185.

[12] *Id*. at 186.

[13] *Id*. at 187.

[14] *Id*. at 188-189.

[15] *Id*. at 190-209.

[16] *Id*. at 210-221.

[17] *Id*. at 222-225.

[18] *Id*. at 226-227.

[19] *Id*. at 228-240.

was recommended without prejudice to the outcome of the review requested by Gamos, Gile, and Laco to the COA and to the refiling of the complainants if circumstances warrant.

In view of the resignation of then Deputy OMB for Luzon, Mark E. Jalandoni, on April 7, 2011 and the resignation of then OMB Ma. Merceditas N. Gutierrez on May 6, 2011, the said October 19, 2010 Consolidated Resolution was approved on May 17, 2011 by the then Acting OMB Orlando C. Casimiro.[20]

Gallanosa and Robillos moved for the reconsideration of the said October 19, 2010 Consolidated Resolution in a Motion for Reconsideration[21] dated June 26, 2011, which was received by the OMB-Luzon on July 7, 2011. On October 11, 2011, Gamos, Gile, and Laco were required to file a comment to the motion for reconsideration.[22] On November 17, 2011, Gamos, Gile, and Laco filed a motion for extension of time to file comment.[23] Their Comment-Opposition (to the Motion for Reconsideration)[24] was filed on December 5, 2011.

On January 9, 2012, OMB-Luzon received Gallanosa and Robillos' Verified Position Paper,[25] wherein COA Chairman's Letter dated September 8, 2010 effectively denying the request for the review of the audit reports, was attached, among others. On March 9, 2012, the OMB received the Supplemental to the Position Paper.[26]

Thus, on June 13, 2013, Gallanosa and Robillos' June 26, 2011 motion for reconsideration was finally resolved, granting the same, finding probable cause to indict Gamos, Gile, and Laco for malversation of public funds.[27]

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[20] *Id*. at 240.

[21] *Id*. at 241-257.

[22] *Id*. at 258.

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

[24] *Id*. at 265-270.

[25] *Id*. at 271-284.

[26] *Id*. at 285-291.

[27] *Id*. at 292-309.

On February 13, 2014, the OMB-Luzon received Gamos' Motion for Reconsideration[28] followed by a Supplement to the Motion for Reconsideration[29] received on April 3, 2014.

In an Order[30] dated June 20, 2014, Gamos' motion for reconsideration was denied. The said Order was approved by the OMB on February 20, 2015.[31]

Thus, on March 30, 2015, two Informations for malversation of public funds were filed against Gamos, Gile, and Laco before the Sandiganbayan.[32]

For several times, however, Gamos failed to appear before the said court for his arraignment despite notice. Thus, Sandiganbayan issued a Resolution dated May 19, 2016, directing Gamos to show cause why he should not be cited in contempt.[33]

On November 22, 2016, Gamos and Giles filed a Motion to Dismiss on the ground of capricious and vexatious delay in the OMB's conduct of preliminary investigation to the damage and prejudice of the accused. On December 7, 2016, the petitioner filed a Comment/Opposition [to the Motion to Dismiss].[34]

**The Resolutions of the Sandiganbayan**

On February 1, 2017, the Sandiganbayan issued its assailed Resolution,[35] dismissing the cases, on the ground of delay, depriving the respondents-accused Gamos, Gile and Laco of their right to a speedy disposition of their cases.

The Sandiganbayan found that seven years had passed since the filing of the First Complaint in 2008 until the filing of the

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[28] *Id*. at 310-316.

[29] *Id*. at 317-323.

[30] *Id*. at 324-330.

[31] *Id*. at 329.

[32] *Id*. at 13.

[33] *Id*.

[34] *Id*. at 14.

[35] *Id*. at 49-53.

Informations before it. According to the said court, while the accused may have contributed to the delay for filing several motions for extension to file their pleadings, it took the OMB two years to act upon the complaints. The said court cited that the OMB investigating officer issued the Consolidated Resolution only on October 19, 2010, which was approved much later on May 17, 2011 by then Acting OMB. The court *a quo* did not accept petitioner's justification of the interval between the October 19, 2010 Consolidated Resolution to its approval, *i.e.*, the resignations of the Deputy OMB for Luzon and the OMB. According to the court *a quo*, it took another two years before the OMB investigating officer resolved to grant the motion for reconsideration of Gallanosa and Robillos, a delay which has not been satisfactorily explained by the prosecution.[36]

Sandiganbayan disposed, thus:

**WHEREFORE**, in view of the foregoing, the Court **GRANTS** the "Motion to Dismiss" filed by [respondents], and the cases against them are accordingly **DISMISSED**.

**SO ORDERED.**[37]

The People then filed a motion for reconsideration, which was denied by the court *a quo* in its assailed Resolution[38] dated April 26, 2017, thus:

**WHEREFORE**, in light of the foregoing, this Court **DENIES** the Motion for Reconsideration filed by the prosecution. The assailed Resolution promulgated on February 1, 2017 **STANDS**.

**SO ORDERED.**[39]

Hence, this Petition, wherein petitioner imputes grave abuse of discretion against the Sandiganbayan when it dismissed the cases before it on the ground of delay.

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

[37] *Id.* at 52.

[38] *Id.* at 55-59.

[39] *Id.* at 58-59.

**The Issue**

Was there a violation of respondents Gamos and Gile's right to speedy disposition of their cases to warrant the dismissal thereof?

**The Court's Ruling**

This right to speedy disposition of cases is enshrined in Section 16, Article III of the 1987 Constitution, which declares:

> Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies.

Time and again, this Court has held that although the Constitution guarantees the right to the speedy disposition of cases, it is a flexible concept.[40] A mere mathematical reckoning of the time involved is not sufficient. Particular and due regard must be given to the facts and circumstances peculiar to each case.[41] Further, the right to speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.[42]

The petitioner correctly argues that in the determination of whether such right is violated or not, equally applicable is the balancing test, which weighs the conduct of both the prosecution and the defendant.[43] In the case of *Remulla v. Sandiganbayan and Maliksi*,[44] this Court explained:

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[40] *The Ombudsman v. Jurado*, 583 Phil. 132, 138 (2008).

[41] *People v. Sandiganbayan, Fifth Division*, G.R. Nos. 199151-56, July 25, 2016, 798 SCRA 35.

[42] *Remulla v. Sandiganbayan and Maliksi*, G.R. No. 218040, April 17, 2017.

[43] *Id*.

[44] *Id*.

More than a decade after the 1972 leading U.S. case of *Barker v. Wingo* was promulgated, this Court, in *Martin v. Ver*, began adopting the "balancing test" to determine whether a defendant's right to a speedy trial and a speedy disposition of cases has been violated. As this test necessarily compels the courts to approach such cases on an *ad hoc* basis, the conduct of both the prosecution and defendant are weighed apropos the four-fold factors, to wit: (1) length of the delay; (2) reason for the delay; (3) defendant's assertion or non-assertion of his right; and (4) prejudice to defendant resulting from the delay. None of these elements, however, is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. These factors have no talismanic qualities as courts must still engage in a difficult and sensitive balancing process. (citations omitted)

Thus, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reason/s for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[45]

In this case, the court *a quo*'s sweeping conclusion that it took the OMB seven years from the filing of the First Complaint in 2008 before the complaints were filed with the court and that as such, respondents Gamos and Gile were subjected to uncertainty with regard to their cases, was not well-taken.

A careful review of the series of events and the circumstances surrounding the proceedings before the OMB would show that there was, in fact, no delay contemplated under the Constitution to support respondent Gamos and Gile's assertion that their right to speedy disposition of the cases against them were violated.

Consider:

The First Complaint was filed on February 18, 2008. Contrary to the court *a quo*'s conclusion, by March 1, 2008, the OMB already acted upon the said complaint by directing the respondents to respond thereto. In the next proceeding months

[45] *People v. Sandiganbayan, Fifth Division, supra* at 52.

from April to June of the same year, pleadings from both the complainants and the respondents were filed. Pending the investigation of the First Complaint, the Second Complaint was filed on December 30, 2009. Again, several exchanges of pleadings were filed by both parties thereafter from February to October of 2010, until the investigating officer issued the October 19, 2010 Consolidated Resolution, recommending for the dismissal of the cases on the ground of prematurity, considering the request lodged by the respondents before the COA to review its audit reports upon which the complaints were based. In view of the consecutive resignations of the Deputy OMB for Luzon and the OMB on April 7, 2011 and May 6, 2011, the Consolidated Resolution was approved by the then Acting OMB only 11 days after the former OMB's resignation or on May 17, 2011.

GaiJanosa and Robillos' motion for reconsideration of the said Consolidated Resolution was received by the OMB on July 7, 2011. Respondents' required comment thereto was filed on December 5, 2011, after respondents moved for an extension of time to file the same. The following month, or on January 9, 2012 Gallanos and Robillos, in their Verified Position Paper, submitted COA Chairman's letter-response to respondents' request for review of COA's audit reports, informing the latter of the denial of such request. Yet again, a Supplemental Position Paper was filed on March 9, 2012.

With such developments to the cases after the dismissal thereof, which dismissal was notably without prejudice to the refiling if warranted considering the outcome of the COA's review of the pertinent audit reports as requested by the respondents, We do not find it unreasonable for the investigating officer to embark into the detailed investigation of the cases. As alleged, there were 63 cash advance transactions in the two complaints to investigated upon, covering the period of 2004 to 2007. Notably, it took the investigating officer only a year and three months from the receipt of the last pleading on March 9, 2012 to conclude the investigation and find probable cause against respondents as reflected in the grant of Gallanosa and Robillos' motion for reconsideration on June 13, 2013.

Respondent Gamos' motion for reconsideration was filed only on February 13, 2014 while a supplement thereto was filed on April 3, 2014. The said motion was already denied on June 20, 2014, which was approved eight months thereafter or on February 20, 2015. After only a month from such approval, or on March 30, 2015, the Informations were formally filed before the court *a quo*.

At this juncture, this Court takes judicial notice of the fact that these cases are not the only ones pending before the OMB. As can be gleaned from the assailed resolutions, these circumstances were not considered by the court *a quo* as it, evidently, merely ventured into a mathematical computation of the period from the filing of the First Complaint to the filing of the Informations before it.

It is relevant to note that while procedural periods to act upon complaints and motions are set by the rules, these may not be absolute. The law and jurisprudence allow certain exceptions thereto, as this Court and the law recognizes the fact that judicial, as well as investigatory, proceedings do not exist in a vacuum and must contend with the realities of everyday life.[46] It bears stressing that in spite of the prescribed periods, jurisprudence continues to adopt the view that the fundamentally recognized principle is that the concept of speedy trial, or speedy disposition of cases for that matter, is a relative term and must necessarily be a flexible concept.[47]

Another essential matter disregarded by the court *a quo* is the fact that there is nothing on record that would show that respondents asserted this right to speedy disposition during the OMB proceedings when they alleged that the delay occurred. In fact, it took respondents one year and eight months after the Informations were filed before the court *a quo* on March 30, 2015 before they finally asserted such right in their Motion to Dismiss filed on November 22, 2016.

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[46] *Tan v. People*, 604 Phil. 68, 84 (2009).

[47] *Id*.

Neither was there a considerable prejudice caused by a delay upon the respondents. Respondents were practically not made to undergo any investigative proceeding prior to the COA's response to respondents' request for the review of the audit reports upon which the complaints were anchored. Hence, the investigating officer recommended the dismissal of the complaints while such request was pending as it was premature to base a determination of administrative and criminal liability upon reports which were then considered to have not yet attained finality. Precisely, the investigating officer started the investigation upon the submission of the COA's denial of such request in 2012. This also bolsters Our conclusion that the determination of whether or not there was delay in the investigation proceedings cannot be indiscriminately reckoned from the mere filing of the First Complaint.

In the case of *Atty. Dimayacyac v. Court of Appeals*,[48] We explained:

> In the Tatad case, there was a hiatus in the proceedings between the termination of the proceedings before the investigating fiscal on October 25, 1982 and its resolution on April 17, 1985. The Court found that political motivations played a vital role in activating and propelling the prosecutorial process against then Secretary Francisco S. Tatad. In the Angchangco case, the criminal complaints remained pending in the Office of the Ombudsman for more than six years despite the respondents numerous motions for early resolution and the respondent, who had been retired, was being unreasonably deprived of the fruits of his retirement because of the still unresolved criminal complaints against him. In both cases, we ruled that the period of time that elapsed for the resolution of the cases against the petitioners therein was deemed a violation of the accused's right to a speedy disposition of cases against them.

In the present case, **no proof was presented to show any persecution of the accused, political or otherwise**, unlike in the Tatad case. There is **no showing that petitioner was made to endure any vexatious process during the two-year period before the filing of the proper informations**, unlike in the Angchangco case where

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[48] 474 Phil. 139 (2004).

petitioner therein was deprived of his retirement benefits for an unreasonably long time. Thus, the circumstances present in the Tatad and Angchangco cases justifying the radical relief granted by us in said cases are not existent in the present case.[49] (emphasis ours)

Likewise in this case, there is no allegation, much less proof, that respondents were persecuted, oppressed, or made to undergo any vexatious process such as in the above-cited cases, during investigation period before the filing of the Informations.

To reiterate, it is important to emphasize that what the Constitution prohibits are unreasonable, arbitrary, and oppressive delays which render rights nugatory.[50] Considering the foregoing disquisition, there is no such delay in this case amounting to a violation of respondents' constitutional rights. Hence, We find grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Sandiganbayan when it dismissed the cases on the ground of violation of the right to speedy disposition of cases.

This Court shall now address the matters raised by respondents in their Comment/Opposition (to the Petition for *Certiorari*)[51] dated September 25, 2017.

In the said Comment/Opposition, Gamos and Gile argue that the instant petition should be dismissed as it effectively put them twice in jeopardy and also for being filed out of time. It is their theory that the motion for reconsideration filed by the prosecution was unnecessary and a prohibited pleading because the nature of an acquittal is final, immediately executory, and unappealable. Hence, the instant petition was filed out of time as the 60-day prescriptive period for the filing of a petition for *certiorari* should have been reckoned from the Sandiganbayan Resolution dismissing the cases, which is equivalent to their acquittal, and not from the receipt of the denial of the motion for reconsideration. Further Gamos and Giles argue that the

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[49] *Id.* at 149-150.

[50] *The Omhudsman v. Jurado, supra*, at 145.

[51] *Rollo*, pp. 340-360.

filing of the motion, as well as this petition, placed them in double jeopardy.

These arguments deserve scant consideration.

Foremost, an order, decision, or resolution rendered with grave abuse or discretion amounting to lack or excess of jurisdiction is a void judgment.[52] In *Guevarra v. 4th Division of the Sandiganbayan*,[53] We held:

> x x x However, if the Sandiganbayan acts in excess or lack of jurisdiction, or with grave abuse of discretion amounting to excess or lack of jurisdiction in dismissing a criminal case, the dismissal is null and void. A tribunal acts without jurisdiction if it does not have the legal power to determine the case; there is excess of jurisdiction where a tribunal, being clothed with the power to determine the case, oversteps its authority as determined by law. A void judgment or order has no legal and binding effect, force or efficacy for any purpose. In contemplation of law, it is nonexistent. Such judgment or order may be resisted in any action or proceeding whenever it is involved. x x x[54]

Hence, a void judgment is no judgment at all in legal contemplation,[55] it can never become final,[56] contrary to respondents' contention.

Corollarily, it is well-established that a petition for *certiorari* under Rule 65 is the proper remedy to annul the resolutions of Sandiganbayan for having been issued with grave abuse of discretion which granted respondents' motion to dismiss premised on the ground of inordinate delay in the conduct of the preliminary investigation amounting to a violation of their right to speedy disposition of their cases.

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[52] *Imperial, et al. v. Judge Armes and Cruz, Jr.*, G.R. No. 178842, January 30, 2017.

[53] 494 Phil. 378 (2005).

[54] *Id*. at 388.

[55] *Imperial, et al. v. Judge Armes and Cruz, Jr., supra.*

[56] *Galicia v. Manliquez vda. de Mindo*, 549 Phil. 595, 607 (2007).

Inasmuch as the court *a quo*'s dismissal of the cases was void for having been done with grave abuse of discretion amounting to lack or excess of jurisdiction, it is as if there was no acquittal or dismissal of the cases at all. Hence, double jeopardy does not exist in this case. Besides, it is basic that double jeopardy attaches only when the following elements concur: (1) the accused is charged under a complaint or information sufficient in form and substance to sustain their conviction; (2) the court has jurisdiction; (3) the accused has been arraigned and has pleaded; and (4) he/she is convicted or acquitted, or the case is dismissed without his/her consent.[57] In this case, the order of dismissal was rendered by a court who acted with grave abuse of discretion amounting to lack or excess of jurisdiction; respondents have not yet been arraigned for their refusal to appear therein, instead they filed a motion to dismiss; and the cases were dismissed at respondents' instance and thus, with their express consent.

To be sure, in the resolution of this case, the Court is being circumspect of the rights of the respondents as accused in the proceedings before the Sandiganbayan. In the same vein, however, We also take into consideration the equally important right of the State to due process and/or to prosecute offenses. Indeed, the Sandiganbayan's indiscriminate and erroneous dismissal of the cases deprived the People of a day in court. It must always be borne in mind that rights are shields against abuses, not weapons, which may be wielded at any time according to the holder's whims and caprices. Thus, while no less than the Constitution guarantees the right of the accused to speedy disposition of cases, such right does not preclude the rights of public justice,[58] especially when wrongfully asserted.

All told, We find grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Sandiganbayan in dismissing the cases against respondents.

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[57] *David v. Marquez*, G.R. No. 209859, June 5, 2017.

[58] *People v. Hernandez*, 531 Phil. 289, 309 (2006); *Caballes v. Court of Appeals*, 492 Phil. 410, 429 (2005).

**WHEREFORE**, the petition is **GRANTED**. The assailed Resolutions dated February 1, 2017 and April 26, 2017 of the Sandiganbayan in SB-15-CRM-0090 and SB-15-CRM-0091 are hereby **REVERSED and SET ASIDE**. Accordingly, SB-15-CRM-0090 and SB-15-CRM-0091 are **REINSTATED** and the Sandiganbayan should proceed with reasonable dispatch.

**SO ORDERED.**

*Leonardo-de Castro,*[*] *del Castillo*, and *Jardeleza, JJ.*, concur.

*Sereno, C.J. (Chairperson),* on leave.

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**SECOND DIVISION**

[G.R. No. 233325. April 16, 2018]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **PASTORLITO V. DELA VICTORIA,** *accused-appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; AN APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW.—** [A]n appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

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[*] Designated as Acting Chairperson pursuant to Special Order No. 2540 dated February 28, 2018.

**2. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** [I]n 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. Case law states that the identity of the prohibited drug must be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.

**3. ID.; ID.; CHAIN OF CUSTODY RULE; NON-COMPLIANCE, UNDER JUSTIFIABLE GROUNDS, WILL NOT RENDER VOID THE SEIZURE AND CUSTODY OVER THE SEIZED ITEMS SO LONG AS THEIR INTEGRITY AND EVIDENTIARY VALUE ARE PROPERLY PRESERVED. —** 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 <u>in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official</u>** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination. x x x 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 — provides that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that

**non-compliance with the requirements of Section 21, Article II of RA 9165 — under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**. x x x In *People v. Almorfe*, **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved**. Also, in *People v. De Guzman*, it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist**. x x x While non-compliance is allowed, the same ought to be justified. Case law states that the prosecution must show that earnest efforts were exerted by the PDEA operatives to comply with the mandated procedure as to convince the Court that the attempt to comply was reasonable under the given circumstances.

4. **ID.; ID.; ID.; PROSECUTORS ARE STRONGLY REMINDED OF THEIR DUTY TO PROVE COMPLIANCE WITH THE PROCEDURE OR JUSTIFY ANY DEVIATIONS THEREFROM.—** [P]rosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21[, Article II] of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court**. Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction."

**APPEARANCES OF COUNSEL**

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

**D E C I S I O N**

**PERLAS-BERNABE, *J.*:**

Before the Court is an ordinary appeal[1] filed by accused-appellant Pastorlito V. Dela Victoria (Dela Victoria) assailing the Decision[2] dated April 7, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01428-MIN, which affirmed the Decision[3] dated March 25, 2014 of the Regional Trial Court of Butuan City, Branch 4 (RTC) in Crim. Case No. 13139, finding Dela Victoria guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

**The Facts**

This case stemmed from an Information[5] filed before the RTC charging Dela Victoria with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165, the accusatory portion of which state:

**Crim. Case No. 13139**

That on or about 10:35 o'clock [sic] in the morning of October 9, 2008 at Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority

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[1] See Notice of Appeal dated April 20, 2017; *rollo*, pp. 19-20.

[2] *Id*. at 3-18. Penned by Associate Justice Perpetua Atal-Paño with Associate Justices Edgardo T. Lloren and Oscar V. Badelles, concurring.

[3] CA *rollo*, pp. 29-42. Penned by Judge Godofredo B. Abul, Jr.

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

[5] Dated October 22, 2008. See records, p. 1.

of law, did then and there willfully, unlawfully[,] and feloniously sell and deliver to a [poseur-buyer] for a consideration of ₱500.00 marked money[,] one (1) small sachet of white crystalline [*methamphetamine hydrochloride*] otherwise known as ["*shabu*"] weighing zero point zero one zero six (0.0106) gram, which is a dangerous drug.

CONTRARY TO LAW.[6]

The prosecution alleged that on October 8, 2008, a police asset informed the Philippine Drug Enforcement Agency (PDEA) Regional Office that Dela Victoria, who is on the PDEA's watchlist of drug personalities, was selling drugs at Langihan Road corner Ong Yiu Road, Brgy. San Ignacio, Butuan City.[7] After conducting surveillance, a buy-bust team was formed, which was composed of PDEA Operatives Investigation Officer (IO) I Sotero B. Ibarra, Jr. (IO1 Ibarra), as the designated poseur-buyer,[8] and IO1 Rodelio M. Daguman, Jr. (IO1 Daguman), as the arresting officer,[9] among others. On October 9, 2008, the buy-bust team, together with the asset, proceeded to the target area. As soon as Dela Victoria saw them, he approached the asset and the latter introduced IO1 Ibarra as a cousin interested in buying *shabu*. Dela Victoria asked if he had money and IO1 Ibarra replied, "*aw-matic*," giving the marked ₱500.00 bill, while Dela Victoria simultaneously handed over one (1) plastic sachet of suspected *shabu*. After inspecting the same, IO1 Ibarra made a "missed call" to IO1 Daguman, the pre-arranged signal, by which time, Dela Victoria started to walk away. However, the operatives caught up and arrested Dela Victoria in front of a tinsmith's shop.[10] They then brought Dela Victoria inside the PDEA vehicle where an initial search was conducted, and the marked money was recovered. Thereafter, they went to the PDEA — Regional Office XIII (Libertad, Butuan City) where IO1

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[6] See *id*.

[7] See *rollo*, p. 4 and CA *rollo*, p. 30. See also records, p. 19.

[8] See Affidavit of Poseur-Buyer; records, pp. 7-8.

[9] See Affidavit of Arresting Officer; *id.* at 5-6.

[10] See *rollo*, p. 5 and CA *rollo*, pp. 30-31.

Ibarra marked the confiscated sachet, prepared the inventory,[11] and took pictures,[12] while Dela Victoria remained inside the car until Barangay Captain Florencio M. Cañete arrived.[13] After securing the necessary letter-request,[14] IO1 Ibarra delivered the sachet to the PNP Crime Laboratory where it was received by Police Chief Inspector Cramwell T. Banogon, who confirmed that the substance inside the seized sachet tested positive for the presence of *methamphetamine hydrochloride*, a dangerous drug.[15]

For his part, Dela Victoria denied the charges against him, claiming that at 10:30 in the morning of October 9, 2008, he was making a "*taho*" container in their family-owned tin shop, when a person approached, pointed a gun, and arrested him for allegedly selling drugs. He averred that he was forced to board a PDEA motor vehicle, where he was repeatedly asked questions. When they arrived at the PDEA Office, he was shown a ₱500.00 bill and a small cellophane, both of which, he claimed were merely planted by the PDEA operatives in order to charge him with the said crime.[16]

**The RTC Ruling**

In a Decision[17] dated March 25, 2014, the RTC found Dela Victoria guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165 and accordingly, sentenced him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 without subsidiary imprisonment in case of insolvency.[18]

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[11] See Certificate of Inventory; records, p. 17.

[12] See TSN, December 12, 2013, p. 10.

[13] See TSN, June 3, 2010, pp. 29-30 and TSN, December 12, 2013, p. 29.

[14] See records, p. 18.

[15] See Chemistry Report No. DT-077-2008 dated October 9, 2008; records, p. 14. See also *rollo*, p. 5.

[16] See *rollo*, pp. 7-9.

[17] CA *rollo*, pp. 29-42.

[18] *Id.* at 41.

The RTC held that the prosecution sufficiently established all the elements of illegal sale of dangerous drugs as it was able to prove that: *(a)* one (1) sachet of *shabu* was sold during the buy-bust operation; *(b)* Dela Victoria was positively identified as the seller of the said dangerous drug; and *(c)* the dangerous drug was in the custody of IO1 Ibarra from the time of the sale until it was marked by him.[19] Moreover, the RTC ruled that there was substantial compliance with the procedure under Section 21, Article II of RA 9165 even if the marking and inventory were done at the PDEA Office.[20]

Aggrieved, Dela Victoria appealed[21] to the CA.

**The CA Ruling**

In a Decision[22] dated April 7, 2017, the CA affirmed Dela Victoria's conviction for the crime charged.[23] It found the presence of all the elements of illegal sale of dangerous drugs through IO1 Ibarra's testimony. On the other hand, it did not find Dela Victoria's defense of planting of evidence substantiated. Further, the CA held that while the requirements under Section 21, Article II of RA 9165 were not perfectly adhered to by the PDEA operatives, since the marking of the sachet was done at the PDEA Office and not in the presence of Dela Victoria, the integrity and evidentiary value of the same were shown to have been duly preserved. It noted that IO1 Ibarra's marking on the confiscated sachet was clearly indicated on the Certificate of Inventory, Letter-Request for Examinations, and Chemistry Report submitted.[24]

Hence, this appeal.

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[19] See *id*. at 36-38.

[20] See *id*. at 39-41.

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

[22] *Rollo*, pp. 3-18.

[23] See *id*. at 17.

[24] See *id*. at 14-17.

**The Issue Before the Court**

The issue for the Court's resolution is whether or not the CA correctly upheld Dela Victoria's conviction for illegal sale of dangerous drugs.

**The Court's Ruling**

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[25] "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."[26]

In this case, Dela Victoria was charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, 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.[27]

Case law states that the identity of the prohibited drug must be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[28]

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[25] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

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

[27] *People v. Sumili*, 753 Phil. 342, 348 (2015).

[28] 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.[29] Under the said section, prior to its amendment by RA 10640,[30] the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.[31] In the case of *People v. Mendoza*,[32] the Court stressed that "**[w]ithout the insulating presence of the representative from the media [and] the [DOJ], [and] any elected public official during the seizure and marking of the [seized drugs), the evils of switching, 'planting' or contamination of the evidence** that had tainted the buy-busts conducted under the regime of [RA] 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugs) that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused**. Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."[33]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II

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[29] *People v. Sumili*, *supra* note 27, at 349-350.

[30] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,"' approved on July 15, 2014.

[31] See Section 21 (1) and (2), Article II of RA 9165.

[32] 736 Phil. 749 (2014).

[33] *Id*. at 764; emphases and underscoring supplied.

of RA 9165 may not always be possible.[34] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640[35] — provides that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 — under justifiable grounds — will not render void and invalid the seizure and custody over the seized items**

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[34] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[35] 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"

**so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**.[36] 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.[37] In *People v. Almorfe*,[38] **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved**.[39] Also, in *People v. De Guzman*,[40] it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist**.[41]

In this case, the Court finds that the PDEA operatives committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items purportedly seized from Dela Victoria.

***First***, records show that IO1 Ibarra failed to mark the confiscated sachet in the presence of the accused, Dela Victoria. During trial, IO1 Ibarra testified that:

> [Prosecutor Felixberto L. Guiritan] Q: How about that sachet of *shabu* you brought on buy-bust? What did you do to it?

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[36] See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

[37] See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252.

[38] 631 Phil. 51 (2010).

[39] *Id*. at 60.

[40] 630 Phil. 637 (2010).

[41] *Id*. at 649.

[IO1 Ibarra] A: It was in my possession, sir.

Q: What did you do to it?

x x x x x x x x x

A: **I just got hold of it and when we arrived in the office I placed marking on it**.[42]

x x x x x x x x x

[Defense Counsel Atty. Jesus A. Tantay] Q: It seemed that the barangay captain arrived first in your office before the accused was photographed? **Or that Mr. Witness the accused arrived first but he was not taken out of the vehicle not unless the barangay captain would arrive**, correct?

[IO1 Ibarra] A: **We did not let the accused disembark from the vehicle until the arrival of the barangay captain because we immediately fetched the barangay captain** x x x.

Q: So it means that you really had enough time to do anything to the accused while he was confined and away from the public inside the vehicle?

A: We were just talking to him inside the vehicle, sir.

x x x x x x x x x

Q: So everything from photographing of the alleged evidence; marked money, *shabu* and the making of the certificate of inventory, making of the request for laboratory examination, *etc.* were done in the office?

A: **Yes, sir.**

x x x x x x x x x[43]

(Emphases and underscoring supplied)

As may be gleaned above, IO1 Ibarra marked the seized sachet and prepared the certificate of inventory at the PDEA Office. Notably, these were not done in the presence of Dela Victoria since at that time, he was being held inside the PDEA vehicle while waiting for the barangay captain to arrive.

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[42] TSN, June 3, 2010, p. 13.

[43] TSN, June 3, 2010, pp. 29-31.

In this relation, it deserves pointing out that the said marking and preparation of inventory were not even done at the place of arrest or at the nearest police station. While Section 21, Article II of RA 9165 allows the same to be conducted at the nearest office of the apprehending team, if practicable, the prosecution in this case, did not even claim that the PDEA Office was the nearest office from the tinsmith's shop where the drugs were seized. When cross-examined on this point, IO1 Ibarra stated that:

> [Defense Counsel Atty. Jesus A. Tantay] Q: I noticed that, and this is a public knowledge, that the tinsmith's shop that we are referring to is just very near the **Langihan Police Station** than your office which is just around six kilometers from the scene, is not that correct?
>
> [SO2 Ibarra] A: Yes, sir, that is true.
>
> Q: But you did not bother to refer first, out of some respect to that office which has jurisdiction over the place, to report the incident and where you could properly or conveniently mark the *shabu* or other evidence, Mr. Witness?
>
> A: We no longer stopped by their office, sir.
>
> Q: But if you chose to do it you could have done it Mr. Witness?
>
> A: It is not our practice to stop by the police station, sir.
>
> Q: But it could have been the practice of your office to go to the barangay hall, which has jurisdiction over the crime scene Mr. Witness, where you could make the inventory or perhaps photographing of the evidence and where you could summon or request the barangay officials to sign the inventory, is that correct?
>
> A: We just called up the barangay captain and requested him to proceed to our office because he was already in his house, sir.
>
> x x x x x x x x x[44]
>
> (Emphasis and underscoring supplied)

As mentioned above, the Langihan Police Station and the San Ignacio Barangay Hall have a closer proximity to the place of arrest than the PDEA Office. IO1 Ibarra's explanation that

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[44] TSN, June 3, 2010, pp. 30-32.

it is "not [their] practice to pass by the police station" hardly justifies a deviation from the rule. In fact, contrary to IO1 Ibarra's claim, the barangay captain admitted that he was actually at the barangay hall when he was summoned by the PDEA operatives on the date of the incident.[45] Thus, transporting the seized items all the way to the PDEA Office for marking and inventory, when the same could have been immediately done at the Langihan Police Station or at the San Ignacio Barangay Hall, casts serious doubts on the integrity of the confiscated drug. In *People v. Dahil*,[46] the Court explained that:

> Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens 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, thus, preventing switching, planting or contamination of evidence.
>
> It must be noted that marking is not found in R.A. No. 9165 and is different from the inventory-taking and photography under Section 21 of the said law. Long before Congress passed R.A. No. 9165, however, **this Court had consistently held that failure of the authorities to immediately mark the seized drugs would cast reasonable doubt on the authenticity of the *corpus delicti***.[47]

***Second***, there was no DOJ representative during the conduct of the inventory and no justification given for the absence.[48] Records show that it was only the barangay captain and the media representative who signed the inventory when they separately arrived and were shown the confiscated items and the inventory only after affixing their signatures:

> [Defense Counsel Atty. Jesus A. Tantay] Q: The only one who was able to sign the inventory Mr. Witness was the barangay captain?

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[45] TSN, May 27, 2013, p. 9.

[46] *Supra* note 25.

[47] *Id.* at 232; emphasis and underscoring supplied.

[48] See TSN, June 3, 2010, p. 32.

[SO2 Ibarra] A: There was also one member of the press who was able to sign the inventory.

Q: Of course the barangay captain and the media man did not go together to your office, they arrived alternately?

A: Yes, sir.

Q: There was no representative from the DOJ at that time, correct?

A: **Yes, sir, there was none.**[49] (Emphasis and underscoring supplied)

The mere marking of the seized drugs, as well as the conduct of an inventory, in violation of the strict procedure requiring the presence of the accused, the media, and responsible government functionaries, fails to approximate compliance with Section 21, Article II of RA 9165.[50] The presence of these personalities and the immediate marking and conduct of physical inventory after seizure and confiscation in **full view of the accused and the required witnesses** cannot be brushed aside as a simple procedural technicality.[51] While non-compliance is allowed, the same ought to be justified. Case law states that the prosecution must show that earnest efforts were exerted by the PDEA operatives to comply with the mandated procedure as to convince the Court that the attempt to comply was reasonable under the given circumstances. Since this was not the case here, the Court is impelled to conclude that there has been an unjustified breach of procedure and hence, the integrity and evidentiary value of the *corpus delicti* had been compromised.[52] Consequently, Dela Victoria's acquittal is in order.

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

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[49] TSN, June 3, 2010, p. 32.

[50] See *Lescano v. People*, G.R. No. 214490, January 13, 2016, 781 SCRA 73, 88.

[51] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

[52] See *People v. Miranda*, G.R. No. 229671, January 31, 2018.

The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.

Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. [For indeed,] order is too high a price for the loss of liberty. x x x.[53]

"In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21[, Article II] of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court**. Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction."[54]

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated April 7, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 01428-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Pastorlito V. Dela Victoria is

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[53] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

[54] See *People v. Miranda*, G.R. No. 229671, January 31, 2018.

**ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

**SO ORDERED.**

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

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**EN BANC**

[G.R. No. 197930. April 17, 2018]

**EFRAIM C. GENUINO, ERWIN F. GENUINO and SHERYL G. SEE,** *petitioners, vs.* **HON. LEILA M. DE LIMA, in her capacity as Secretary of Justice, and RICARDO V. PARAS III, in his capacity as Chief State Counsel, CRISTINO L. NAGUIAT, JR. and the BUREAU OF IMMIGRATION,** *respondents.*

[G.R. No. 199034. April 17, 2018]

**MA. GLORIA MACAPAGAL-ARROYO,** *petitioner, vs.* **HON. LEILA M. DE LIMA, as Secretary of the Department of Justice and RICARDO A. DAVID, JR., as Commissioner of the Bureau of Immigration,** *respondents.*

[G.R. No. 199046. April 17, 2018]

**JOSE MIGUEL T. ARROYO,** *petitioner, vs.* **HON. LEILA M. DE LIMA, as Secretary of the Department of Justice and RICARDO V. PARAS III, as Chief State Counsel, Department of Justice and RICARDO A. DAVID, JR.,**

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

**in his capacity as Commissioner, Bureau of Immigration,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; 1987 CONSTITUTION; JUDICIARY; POWER OF JUDICIAL REVIEW; REQUISITES.—** The power of judicial review is articulated in Section 1, Article VIII of the 1987 Constitution x x x [T]he power of judicial review is subject to limitations, to wit: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.

**2. ID.; ID.; ID.; ID.; ID.; ACTUAL CONTROVERSY; THE COURT MAY RULE ON A MOOT CASE CONSIDERING ITS IMPORTANCE.—** "[A]n actual case or controversy involves a conflict of legal right, an opposite legal claims susceptible of judicial resolution. It is definite and concrete, touching the legal relations of parties having adverse legal interest; a real and substantial controversy admitting of specific relief." When the issues have been resolved or when the circumstances from which the legal controversy arose no longer exist, the case is rendered moot and academic. "A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value." x x x In the instant case, x x x [t]he petitioners impute the respondents of violating their constitutional right to travel through the enforcement of DOJ Circular No. 41. x x x [I]t is in the interest of the public, as well as for the education of the members of the bench and the bar, that this Court takes up the instant petitions and resolves the question on the constitutionality of DOJ Circular No. 41.

**3. ID.; ID.; BILL OF RIGHTS; RIGHT TO TRAVEL AND ITS LIMITATIONS.—** The right to travel is part of the "liberty" of which a citizen cannot be deprived without due process of

law. It is part and parcel of the guarantee of freedom of movement that the Constitution affords its citizen. x x x [H]owever, the right to travel is not absolute. There are constitutional, statutory and inherent limitations regulating the right to travel. Section 6 itself provides that the right to travel may be impaired only in the interest of national security, public safety or public health, as may be provided by law. x x x As a further requirement, there must be an explicit provision of statutory law or the Rules of Court providing for the impairment.

4. **ID.; ID.; ID.; ID.; DOJ CIRCULAR NO. 41 AS ONE OF THE LIMITATIONS ON THE RIGHT TO TRAVEL HAS NO LEGAL BASIS.—** One of the limitations on the right to travel is DOJ Circular No. 41, which was issued pursuant to the rule-making powers of the DOJ in order to keep individuals under preliminary investigation within the jurisdiction of the Philippine criminal justice system. x x x To be clear, DOJ Circular No. 41 is not a law x x x [but] a mere administrative issuance apparently designed to carry out the provisions of an enabling law which the former DOJ Secretary believed to be Executive Order (E.O.) No. 292, otherwise known as the "Administrative Code of 1987." x x x It is, however, important to stress that before there can even be a valid administrative issuance, there must first be a showing that the delegation of legislative power is itself valid. It is valid only if there is a law that (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard the limits of which are sufficiently determinate and determinable to which the delegate must conform in the performance of his functions. A painstaking examination of the provisions being relied upon by the former DOJ Secretary will disclose that they do not particularly vest the DOJ the authority to issue DOJ Circular No. 41 which effectively restricts the right to travel through the issuance of Watchlist Orders (WLOs) and Hold-Departure Orders (HDOs).

5. **ID.; ID.; ID.; ID.; ID.; PRESENCE AND ATTENDANCE IN THE PRELIMINARY INVESTIGATION OF THE COMPLAINTS CANNOT JUSTIFY THE RESTRAINT IN THE LIBERTY OF MOVEMENT.—** It bears emphasizing that the conduct of a preliminary investigation is an implement of due process which essentially benefits the accused as it accords an opportunity for the presentation of his side with regard to

the accusation. The accused may, however, opt to waive his presence in the preliminary investigation. In any case, whether the accused responds to a subpoena, the investigating prosecutor shall resolve the complaint within 10 days after the filing of the same. x x x The DOJ therefore cannot justify the restraint in the liberty of movement imposed by DOJ Circular No. 41 on the ground that it is necessary to ensure presence and attendance in the preliminary investigation of the complaints. There is also no authority of law granting it the power to compel the attendance of the subjects of a preliminary investigation, pursuant to its investigatory powers under E.O. No. 292. Its investigatory power is simply inquisitorial and, unfortunately, not broad enough to embrace the imposition of restraint on the liberty of movement.

**6. ID.; ID.; ID.; ID.; ID.; THE DOJ CANNOT ISSUE DOJ CIRCULAR NO. 41 UNDER THE GUISE OF POLICE POWER.—** Police power pertains to the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare." x x x [T]he exercise of this power is primarily lodged with the legislature but may be wielded by the President and administrative boards, as well as the lawmaking bodies on all municipal levels, including the *barangay*, by virtue of a valid delegation of power. It bears noting, however, that police power may only be validly exercised if (a) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State, and (b) the means employed are reasonably necessary to the attainment of the object sought to be accomplished and not unduly oppressive upon individuals. On its own, the DOJ cannot wield police power since the authority pertains to Congress. Even if it claims to be exercising the same as the alter ego of the President, it must first establish the presence of a definite legislative enactment evidencing the delegation of power from its principal. This, the DOJ failed to do. There is likewise no showing that the curtailment of the right to travel imposed by DOJ Circular No. 41 was reasonably necessary in order for it to perform its investigatory duties. In any case, the exercise of police power, to be valid, must be reasonable and not repugnant to the Constitution.

**7. ID.; ID.; ID.; ID.; ID.; DOJ CIRCULAR NO. 41 ALSO SUFFERS FROM OTHER SERIOUS INFIRMITIES THAT**

**RENDER IT INVALID.—** Apart from lack of legal basis, DOJ Circular No. 41 also suffers from other serious infirmities that render it invalid. The apparent vagueness of the circular as to the distinction between a HDO and WLO is violative of the due process clause. x x x Here, the distinction is significant as it will inform the respondents of the grounds, effects and the measures they may take to contest the issuance against them. Verily, there must be a standard by which a HDO or WLO may be issued, particularly against those whose cases are still under preliminary investigation, since at that stage there is yet no criminal information against them which could have warranted the restraint. x x x Apparently, the DOJ's predicament which led to the issuance of DOJ Circular No. 41 was the supposed inadequacy of the issuances of this Court pertaining to HDOs, the more pertinent of which is SC Circular No. 39-97. It is the DOJ's impression that with the silence of the circular with regard to the issuance of HDOs in cases falling within the jurisdiction of the MTC and those still pending investigation, it can take the initiative in filling in the deficiency. It is doubtful, however, that the DOJ Secretary may undertake such action since the issuance of HDOs is an exercise of this Court's inherent power "to preserve and to maintain the effectiveness of its jurisdiction over the case and the person of the accused." It is an exercise of judicial power which belongs to the Court alone, and which the DOJ, even as the principal law agency of the government, does not have the authority to wield.

**CARPIO, *Acting C.J., concurring opinion*:**

**1. POLITICAL LAW; 1987 CONSTITUTION; JUDICIARY; POWER OF JUDICIAL REVIEW; THE CONSTITUTIONALITY OF THE ASSAILED ADMINISTRATIVE CIRCULAR REMAINS JUSTICIABLE.—** A case becomes moot when it ceases to present a justiciable controversy such that its adjudication would not yield any practical value or use. Where the petition is one for *certiorari* seeking the nullification of an administrative issuance for having been issued with grave abuse of discretion, obtaining the other reliefs prayed for in the course of the proceedings will **not** render the entire petition moot altogether. x x x [Here], whether the watchlist and hold-departure orders issued by respondent against petitioners subsequently expired or were lifted is not

determinative of the constitutionality of the circular. Hence, the Court is duty-bound to pass upon the constitutionality of DOJ Circular No. 041-10, being a justiciable issue rather than an exception to the doctrine of mootness.

**2. ID.; ID.; BILL OF RIGHTS; RIGHT TO TRAVEL; THE CONSTITUTION REQUIRES A LEGISLATIVE ENACTMENT FOR A VALID IMPAIRMENT OF THE RIGHT TO TRAVEL; EXCEPTIONS.—** [As provided in] Section 6, Article III of the Constitution x x x the right to travel is not absolute. However, while it can be restricted, the only permissible grounds for restriction are national security, public safety, and public health, which grounds must at least be prescribed by an act of Congress. In only two instances can the right to travel be validly impaired even without a statutory authorization. The first is when a court forbids the accused from leaving Philippine jurisdiction in connection with a pending criminal case. The second is when Congress, pursuant to its power of legislative inquiry, issues a subpoena or arrest order against a person. The necessity for a legislative enactment expressly providing for a valid impairment of the right to travel finds basis in no less than the fundamental law of the land. Under Section 1, Article VI of the Constitution, the legislative power is vested in Congress. Hence, only Congress, and no other entity or office, may wield the power to make, amend, or repeal laws.

**VELASCO, JR., *J., separate concurring opinion*:**

**POLITICAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHT TO TRAVEL AND ITS LIMITATIONS; DOJ CIRCULAR NO. 41 IS UNCONSTITUTIONAL.—** As mandated by Section 6 of the Bill of Rights, any curtailment of the people's freedom of movement must indispensably be grounded on an intrinsically valid law, and only whenever necessary to protect national security, public safety, or public health, x x x The Department of Justice (DOJ) Circular No. 41cannot be the law pertained to in the provision. As pointed out in the *ponencia*, it is but an administrative issuance that requires an enabling law to be valid. Jurisprudence dictates that the validity of an administrative issuance is hinged on compliance with the following requirements: 1) its promulgation is authorized by the legislature; 2) it is promulgated in accordance

with the prescribed procedure; 3) *it is within the scope of the authority given by the legislature*; and 4) it is reasonable. The DOJ, thus, exceeded its jurisdiction when it assumed to wield the power to issue hold departure orders (HDOs) and watchlist orders (WLOs), and allow department orders which unduly infringe on the people's right to travel absent any *specific* legislation expressly vesting it with authority to do so. I, therefore, concur that DOJ Circular No. 41 is without basis in law and is, accordingly, unconstitutional.

**LEONEN, *J., separate opinion*:**

**POLITICAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHT TO TRAVEL; THE DEPARTMENT OF JUSTICE (DOJ) HAS NO POWER TO ISSUE HOLD DEPARTURE ORDERS, WATCHLIST ORDERS AND ALLOW DEPARTURE ORDERS AGAINST PERSONS UNDER PRELIMINARY INVESTIGATION (DOJ CIRCULAR NO. 41).—** The Department of Justice is neither empowered by a specific law nor does it possess the inherent power to restrict the right to travel of persons under criminal investigation through the issuance of hold departure orders, watchlist orders, and allow departure orders. Its mandate under the Administrative Code of 1987 to "[i]nvestigate the commission of crimes [and] prosecute offenders" cannot be interpreted so broadly as to include the power to curtail a person's right to travel. Furthermore, Department Order No. 41, series of 2010 cannot be likened to the power of the courts to restrict the travel of persons on bail as the latter presupposes that the accused was arrested by virtue of a valid warrant and placed under the court's jurisdiction. For these reasons, Department of Justice Circular No. 41, series of 2010, is unconstitutional. Parenthetically, I agree that the right to travel is part and parcel of an individual's right to liberty, which cannot be impaired without due process of law.

**APPEARANCES OF COUNSEL**

*Ramon S. Esguerra* and *Benjamin C. Santos* for petitioners in G.R. No. 197930.

*Estelito P. Mendoza, et al.* for petitioner in G.R. No. 199034.

*Anacleto M. Diaz, Maria Rosario Z. Del Rosario, Christian B. Diaz* and *Analene V. Balisong,* co-counsels for petitioner in G.R. No. 199034.

*Ferdinand S. Topacio* and *Joselito O. Lomangaya* for petitioner in G.R. No. 199046.

*The Solicitor General* for public respondents.

## D E C I S I O N

**REYES, JR., *J.*:**

These consolidated Petitions for *Certiorari* and Prohibition with Prayer for the Issuance of Temporary Restraining Orders (TRO) and/or Writs of Preliminary Injunction Under Rule 65 of the Rules of Court assail the constitutionality of Department of Justice (DOJ) Circular No. 41, series of 2010, otherwise known as the "*Consolidated Rules and Regulations Governing Issuance and Implementation of Hold Departure Orders, Watchlist Orders and Allow Departure Orders*," on the ground that it infringes on the constitutional right to travel.

Also, in G.R. Nos. 199034 and 199046, the petitioners therein seek to annul and set aside the following orders issued by the former DOJ Secretary Leila De Lima (De Lima), pursuant to DOJ Circular No. 41, thus:

1. Watchlist Order No. ASM-11-237 dated August 9, 2011;[1]
2. Amended Watchlist Order No. 2011-422 dated September 6, 2011;[2] *and*
3. Watchlist Order No. 2011-573 dated October 27, 2011.[3]

In a Supplemental Petition, petitioner Gloria Macapagal-Arroyo (GMA) further seeks the invalidation of the Order[4] dated November 8, 2011, denying her application for an Allow-Departure Order (ADO).

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[1] *Rollo* (G.R. No. 199034), Volume I, pp. 45-46.

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

[3] *Id*. at 49-58.

[4] *Id*. at 106-116.

Similarly, in G.R. No. 197930, petitioners Efraim C. Genuino (Efraim), Erwin F. Genuino (Erwin) and Sheryl Genuino-See (Genuinos) pray for the nullification of the Hold-Departure Order[5] (HDO) No. 2011-64 dated July 22, 2011 issued against them.

**Antecedent Facts**

On March 19, 1998, then DOJ Secretary Silvestre H. Bello III issued DOJ Circular No. 17, prescribing rules and regulations governing the issuance of HDOs. The said issuance was intended to restrain the indiscriminate issuance of HDOs which impinge on the people's right to travel.

On April 23, 2007, former DOJ Secretary Raul M. Gonzalez issued DOJ Circular No. 18, prescribing rules and regulations governing the issuance and implementation of watchlist orders. In particular, it provides for the power of the DOJ Secretary to issue a Watchlist Order (WLO) against persons with criminal cases pending preliminary investigation or petition for review before the DOJ. Further, it states that the DOJ Secretary may issue an ADO to a person subject of a WLO who intends to leave the country for some exceptional reasons.[6] Even with the promulgation of DOJ Circular No. 18, however, DOJ Circular No. 17 remained the governing rule on the issuance of HDOs by the DOJ.

On May 25, 2010, then Acting DOJ Secretary Alberto C. Agra issued the assailed DOJ Circular No. 41, consolidating DOJ Circular Nos. 17 and 18, which will govern the issuance and implementation of HDOs, WLOs, and ADOs. Section 10 of DOJ Circular No. 41 expressly repealed all rules and regulations contained in DOJ Circular Nos. 17 and 18, as well as all instructions, issuances or orders or parts thereof which are inconsistent with its provisions.

After the expiration of GMA's term as President of the Republic of the Philippines and her subsequent election as

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[5] *Rollo* (G.R. No. 197930), pp. 30-35.

[6] *Rollo* (G.R. No. 199034), Volume III, pp. 901-902.

Pampanga representative, criminal complaints were filed against her before the DOJ, particularly:

(a) XVI-INV-10H-00251, entitled *Danilo A. Lihaylihay v. Gloria Macapagal-Arroyo, et al.,* for plunder;[7]

(b) XVI-INV-11D-00170, entitled *Francisco I. Chavez vs. Gloria Macapagal-Arroyo, et al.*, for plunder, malversation and/or illegal use of OWWA funds, graft and corruption, violation of the Omnibus Election Code (OEC), violation of the Code of Conduct and Ethical Standards for Public Officials, and qualified theft;[8] and

(c) XVI-INV-11F-00238, entitled *Francisco I. Chavez vs. Gloria Macapagal-Arroyo, et al.*, for plunder, malversation, and/or illegal use of public funds, graft and corruption, violation of the OEC, violation of the Code of Conduct and Ethical Standards for Public Officials and qualified theft.[9]

In view of the foregoing criminal complaints, De Lima issued DOJ WLO No. 2011-422 dated August 9, 2011 against GMA pursuant to her authority under DOJ Circular No. 41. She also ordered for the inclusion of GMA's name in the Bureau of Immigration (BI) watchlist.[10] Thereafter, the BI issued WLO No. ASM-11-237,[11] implementing De Lima's order.

On September 6, 2011, De Lima issued DOJ Amended WLO No. 2011-422 against GMA to reflect her full name "Ma. Gloria M. Macapagal-Arroyo" in the BI Watchlist.[12] WLO No. 2011-422, as amended, is valid for a period of 60 days, or until November 5, 2011, unless sooner terminated or otherwise extended. This was lifted in due course by De Lima, in an Order

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[7] *Id*. at 902.

[8] *Id*.

[9] *Id*. at 903.

[10] *Id*.

[11] *Rollo* (G.R. No. 199034), Volume I, pp. 45-46.

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

dated November 14, 2011, following the expiration of its validity.[13]

Meanwhile, on October 20, 2011, two criminal complaints for Electoral Sabotage and Violation of the OEC were filed against GMA and her husband, Jose Miguel Arroyo (Miguel Arroyo), among others, with the DOJ-Commission on Elections (DOJ-COMELEC) Joint Investigation Committee on 2004 and 2007 Election Fraud,[14] specifically:

(a) DOJ-COMELEC Case No. 001-2011, entitled *DOJ-COMELEC Fact Finding Team vs. Gloria Macapagal-Arroyo et al., (for the Province of Maguindanao)*, for electoral sabotage/violation of the OEC and COMELEC Rules and Regulations;[15] and

(b) DOJ-COMELEC Case No. 002-2011, entitled *Aquilino Pimentel III vs. Gloria Macapagal-Arroyo, et al.*, for electoral sabotage.[16]

Following the filing of criminal complaints, De Lima issued DOJ WLO No. 2011-573 against GMA and Miguel Arroyo on October 27, 2011, with a validity period of 60 days, or until December 26, 2011, unless sooner terminated or otherwise extended.[17]

In three separate letters dated October 20, 2011, October 21, 2011, and October 24, 2011, GMA requested for the issuance of an ADO, pursuant to Section 7 of DOJ Circular No. 41, so that she may be able to seek medical attention from medical specialists abroad for her *hypoparathyroidism* and metabolic bone mineral disorder. She mentioned six different countries where she intends to undergo consultations and treatments: United States of America, Germany, Singapore, Italy, Spain

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[13] *Rollo* (G.R. No. 199034), Volume III, p. 904.

[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*. at 905.

and Austria.[18] She likewise undertook to return to the Philippines, once her treatment abroad is completed, and participate in the proceedings before the DOJ.[19] In support of her application for ADO, she submitted the following documents, *viz.*:

1. Second Endorsement dated September 16, 2011 of Speaker Feliciano Belmonte, Jr. to the Secretary of Foreign Affairs, of her Travel Authority;

2. First Endorsement dated October 19, 2011[20] of Artemio A. Adasa, OIC Secretary General of the House of Representatives, to the Secretary of Foreign Affairs, amending her Travel Authority to include travel to Singapore, Spain and Italy;

3. Affidavit dated October 21, 2011,[21] stating the purpose of travel to Singapore, Germany and Austria;

4. Medical Abstract dated October 22, 2011,[22] signed by Dr. Roberto Mirasol (Dr. Mirasol);

5. Medical Abstract dated October 24, 2011,[23] signed by Dr. Mario Ver;

6. Itinerary submitted by the Law Firm of Diaz, Del Rosario and Associates, detailing the schedule of consultations with doctors in Singapore.

To determine whether GMA's condition necessitates medical attention abroad, the Medical Abstract prepared by Dr. Mirasol was referred to then Secretary of the Department of Health, Dr. Enrique Ona (Dr. Ona) for his expert opinion as the chief government physician. On October 28, 2011, Dr. Ona, accompanied by then Chairperson of the Civil Service Commission, Francisco

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[18] *Id*. at 905-906.

[19] *Id*. at 1028.

[20] *Rollo* (G.R. No. 199034), Volume I, p. 76.

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

[22] *Id*. at 86.

[23] *Id*. at 68-75.

Duque, visited GMA at her residence in La Vista Subdivision, Quezon City. Also present at the time of the visit were GMA's attending doctors who explained her medical condition and the surgical operations conducted on her. After the visit, Dr. Ona noted that "*Mrs. Arroyo is recuperating reasonably well after having undergone a series of three major operations*."[24]

On November 8, 2011, before the resolution of her application for ADO, GMA filed the present Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court with Prayer for the Issuance of a TRO and/or Writ of Preliminary Injunction, docketed as G.R. No. 199034, to annul and set aside DOJ Circular No. 41 and WLOs issued against her for allegedly being unconstitutional.[25]

A few hours thereafter, Miguel Arroyo filed a separate Petition for *Certiorari* and Prohibition under the same rule, with Prayer for the Issuance of a TRO and/or a Writ of Preliminary Injunction, likewise assailing the constitutionality of DOJ Circular No. 41 and WLO No. 2011-573. His petition was docketed as G.R. No. 199046.[26]

Also, on November 8, 2011, De Lima issued an Order,[27] denying GMA's application for an ADO, based on the following grounds:

> ***First***, there appears to be discrepancy on the medical condition of the applicant as stated in her affidavit, on the other hand, and the medical abstract of the physicians as well as her physician's statements to Secretary Ona during the latter's October 28, 2011 visit to the Applicant, on the other.
>
> x x x x x x x x x
>
> ***Second***, based on the medical condition of Secretary Ona, there appears to be no urgent and immediate medical emergency situation for Applicant to seek medical treatment abroad. x x x.

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[24] *Rollo* (G.R. No. 199034), Volume III, p. 908.

[25] *Id*. at 909.

[26] *Id*.

[27] *Rollo* (G.R. No. 199034), Volume I, pp. 122-132.

x x x x x x x x x

***Third***, Applicant lists several countries as her destination, some of which were not for purposes of medical consultation, but for attending conferences. x x x.

x x x x x x x x x

***Fourth***, while the Applicant's undertaking is to return to the Philippines upon the completion of her medical treatment, this means that her return will always depend on said treatment, which, based on her presentation of her condition, could last indefinitely. x x x.

x x x x x x

***Fifth***, x x x x. Applicant has chosen for her destination five (5) countries, namely, Singapore, Germany, Austria, Spain and Italy, with which the Philippines has no existing extradition treaty. x x x.

x x x x x x x x x

**IN VIEW OF THE FOREGOING**, the application for an Allow Departure Order (ADO) of **Congresswoman MA. GLORIA M. MACAPAGAL-ARROYO** is hereby **DENIED** for lack of merit.

**SO ORDERED**.[28]

On November 9, 2011, De Lima, together with her co-respondents, Ricardo V. Paras, III, Chief State Counsel of the DOJ and Ricardo A. David, Jr., who was then BI Commissioner, (respondents) filed a Very Urgent Manifestation and Motion[29] in G.R. Nos. 199034 and 199046, praying (1) that they be given a reasonable time to comment on the petitions and the applications for a TRO and/or writ of preliminary injunction before any action on the same is undertaken by the Court; (2) that the applications for TRO and/or writ of preliminary injunction be denied for lack of merit, and; (3) that the petitions be set for oral arguments after the filing of comments thereto.[30]

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[28] *Id*. at 110, 112, 113-114, 116.

[29] *Id*. at 89-104; *Rollo* (G.R. No. 199046), pp. 59-70.

[30] *Id*. at 102-103; *id*. at 68.

On November 13, 2011, GMA filed a Supplemental Petition[31] which included a prayer to annul and set aside the Order dated November 8, 2011, denying her application for ADO. On the following day, GMA filed her Comment/Opposition[32] to the respondents' Very Urgent Manifestation and Motion dated November 9, 2011, in G.R. No. 199034.

On November 15, 2011, the Court issued a Resolution,[33] ordering the consolidation of G.R. Nos. 199034 and 199046, and requiring the respondents to file their comment thereto not later than November 18, 2011. The Court likewise resolved to issue a TRO in the consolidated petitions, enjoining the respondents from enforcing or implementing DOJ Circular No. 41 and WLO Nos. ASM-11-237 dated August 9, 2011, 2011-422 dated September 6, 2011, and 2011-573 dated October 27, 2011, subject to the following conditions, to wit:

(i) The petitioners shall post a cash bond of Two Million Pesos (₱2,000,000.00) payable to this Court within five (5) days from notice hereof. Failure to post the bond within the aforesaid period will result in the automatic lifting of the temporary restraining order;

(ii) The petitioners shall appoint a legal representative common to both of them who will receive subpoena, orders and other legal processes on their behalf during their absence. The petitioners shall submit the name of the legal representative, also within five (5) days from notice hereof; and

(iii) If there is a Philippine embassy or consulate in the place where they will be traveling, the petitioners shall inform said embassy or consulate by personal appearance or by phone of their whereabouts at all times;[34]

On the very day of the issuance of the TRO, the petitioners tendered their compliance[35] with the conditions set forth in the

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[31] *Rollo* (G.R. No. 199034), Volume I, pp. 133-174.

[32] *Id*. at 189-206.

[33] *Id*. at 208-210.

[34] *Id*. at 208-209.

[35] *Id*. at 337-339; 344-345.

Resolution dated November 15, 2011 of the Court and submitted the following: (1) a copy of Official Receipt No. 0030227-SC-EP, showing the payment of the required cash bond of Two Million Pesos (₱2,000,000.00);[36] (2) certification from the Fiscal and Management and Budget Office of the Supreme Court, showing that the cash bond is already on file with the office;[37] (3) special powers of attorney executed by the petitioners, appointing their respective lawyers as their legal representatives;[38] and (4) an undertaking to report to the nearest consular office in the countries where they will travel.[39]

At around 8:00 p.m. on the same day, the petitioners proceeded to the Ninoy Aquino International Airport (NAIA), with an *aide-de-camp* and a private nurse, to take their flights to Singapore. However, the BI officials at NAIA refused to process their travel documents which ultimately resulted to them not being able to join their flights.[40]

On November 17, 2011, GMA, through counsel, filed an Urgent Motion[41] for Respondents to Cease and Desist from Preventing Petitioner GMA from Leaving the Country. She strongly emphasized that the TRO issued by the Court was immediately executory and that openly defying the same is tantamount to gross disobedience and resistance to a lawful order of the Court.[42] Not long after, Miguel Arroyo followed through with an Urgent Manifestation,[43] adopting and repleading all the allegations in GMA's motion.

On November 16, 2011, the respondents filed a Consolidated Urgent Motion for Reconsideration and/or to Lift TRO,[44] praying

[36] *Id*. at 347.

[37] *Id.* at 348.

[38] *Id*. at 349-350.

[39] *Id*. at 342.

[40] *Id*. at 367.

[41] *Id*. at 364-375.

[42] *Id*. at 369.

[43] *Id*. at 382-384.

[44] *Id*. at 288-323.

that the Court reconsider and set aside the TRO issued in the consolidated petitions until they are duly heard on the merits. In support thereof, they argue that the requisites for the issuance of a TRO and writ of preliminary injunction were not established by the petitioners. To begin with, the petitioners failed to present a clear and mistakable right which needs to be protected by the issuance of a TRO. While the petitioners anchor their right *in esse* on the right to travel under Section 6, Article III of the 1987 Constitution, the said right is not absolute. One of the limitations on the right to travel is DOJ Circular No. 41, which was issued pursuant to the rule-making powers of the DOJ in order to keep individuals under preliminary investigation within the jurisdiction of the Philippine criminal justice system. With the presumptive constitutionality of DOJ Circular No. 41, the petitioners cannot claim that they have a clear and unmistakable right to leave the country as they are the very subject of the mentioned issuance.[45] Moreover, the issuance of a TRO will effectively render any judgment on the consolidated petitions moot and academic. No amount of judgment can recompense the irreparable injury that the state is bound to suffer if the petitioners are permitted to leave the Philippine jurisdiction.[46]

On November 18, 2011, the Court issued a Resolution,[47] requiring De Lima to show cause why she should not be disciplinarily dealt with or held in contempt of court for failure to comply with the TRO. She was likewise ordered to immediately comply with the TRO by allowing the petitioners to leave the country. At the same time, the Court denied the Consolidated Urgent Motion for Reconsideration and/or to Lift TRO dated November 16, 2011 filed by the Office of the Solicitor General.[48]

On even date, the COMELEC, upon the recommendation of the Joint DOJ-COMELEC Preliminary Investigation Committee, filed an information for the crime of electoral sabotage under

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[45] *Id*. at 311.

[46] *Id*. at 318-319.

[47] *Id*. at 394-398.

[48] *Id*. at 394-395.

Section 43(b) of Republic Act (R.A.) No. 9369 against GMA, among others, before the Regional Trial Court (RTC) of Pasay City, which was docketed as R-PSY-11-04432-CR[49] and raffled to Branch 112. A warrant of arrest for GMA was forthwith issued.

Following the formal filing of an Information in court against GMA, the respondents filed an Urgent Manifestation with Motion to Lift TRO.[50] They argue that the filing of the information for electoral sabotage against GMA is a supervening event which warrants the lifting of the TRO issued by this Court. They asseverate that the filing of the case vests the trial court the jurisdiction to rule on the disposition of the case. The issue therefore on the validity of the assailed WLOs should properly be raised and threshed out before the RTC of Pasay City where the criminal case against GMA is pending, to the exclusion of all other courts.[51]

Also, on November 18, 2011, the COMELEC issued a Resolution, dismissing the complaint for violation of OEC and electoral sabotage against Miguel Arroyo, among others, which stood as the basis for the issuance of WLO No. 2011-573. Conformably, the DOJ issued an Order dated November 21, 2011,[52] lifting WLO No. 2011-573 against Miguel Arroyo and ordering for the removal of his name in the BI watchlist.

Thereafter, the oral arguments on the consolidated petitions proceeded as scheduled on November 22, 2011, despite requests from the petitioners' counsels for an earlier date. Upon the conclusion of the oral arguments on December 1, 2011, the parties were required to submit their respective memoranda.[53]

Meanwhile, in G.R. No. 197930, HDO No. 2011-64 dated July 22, 2011[54] was issued against Genuinos, among others, after

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[49] *Rollo* (G.R. No. 199034), Volume II, pp. 525-527.

[50] *Id*. at 518-524.

[51] *Id*. at 519-521.

[52] *Rollo*, (G.R. No. 199034), Volume III, pp. 1017-1018.

[53] *Id*. at 914.

[54] *Rollo* (G.R. No. 197930), pp. 30-35.

criminal complaints for Malversation, as defined under Article 217 of the Revised Penal Code (RPC), and Violation of Sections 3(e), (g), (h) and (i) of R.A. No. 3019 were filed against them by the Philippine Amusement and Gaming Corporation (PAGCOR), through its Director, Eugene Manalastas, with the DOJ on June 14, 2011, for the supposed diversion of funds for the film "Baler." This was followed by the filing of another complaint for Plunder under R.A. No. 7080, Malversation under Article 217 of the RPC and Violation of Section 3 of R.A. No. 3019, against the same petitioners, as well as members and incorporators of BIDA Production, Inc. Wildformat, Inc. and Pencil First, Inc., for allegedly siphoning off PAGCOR funds into the coffers of BIDA entities. Another complaint was thereafter filed against Efraim and Erwin was filed before the Office of the Ombudsman for violation of R.A. No. 3019 for allegedly releasing PAGCOR funds intended for the Philippine Sports Commission directly to the Philippine Amateur Swimming Association, Inc.[55] In a Letter[56] dated July 29, 2011 addressed to Chief State Counsel Ricardo Paras, the Genuinos, through counsel, requested that the HDO against them be lifted. This plea was however denied in a Letter[57] dated August 1, 2011 which prompted the institution of the present petition by the Genuinos. In a Resolution[58] dated April 21, 2015, the Court consolidated the said petition with G.R. Nos. 199034 and 199046.

The Court, after going through the respective memoranda of the parties and their pleadings, sums up the issues for consideration as follows:

I

WHETHER THE COURT MAY EXERCISE ITS POWER OF JUDICIAL REVIEW;

II

WHETHER THE DOJ HAS THE AUTHORITY TO ISSUE DOJ CIRCULAR NO. 41; *and*

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

[56] *Id*. at 36-42.

[57] *Id*. at 43-45.

[58] *Id*. at 417.

III
WHETHER THERE IS GROUND TO HOLD THE FORMER DOJ SECRETARY GUILTY OF CONTEMPT OF COURT.

**Ruling of the Court**

***The Court may exercise its power of judicial review despite the filing of information for electoral sabotage against GMA***

It is the respondents' contention that the present petitions should be dismissed for lack of a justiciable controversy. They argue that the instant petitions had been rendered moot and academic by (1) the expiration of the WLO No. 422 dated August 9, 2011, as amended by the Order dated September 6, 2011;[59] (2) the filing of an information for electoral sabotage against GMA,[60] and; (3) the lifting of the WLO No. 2011-573 dated November 14, 2011 against Miguel Arroyo and the subsequent deletion of his name from the BI watchlist after the COMELEC *en banc* dismissed the case for electoral sabotage against him.[61]

The power of judicial review is articulated in Section 1, Article VIII of the 1987 Constitution which reads:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[62]

Like almost all powers conferred by the Constitution, the power of judicial review is subject to limitations, to wit: (1) there

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[59] *Rollo* (G.R. No. 199034), Volume III, p. 921.

[60] *Id*. at 923.

[61] *Id*.

[62] THE 1987 CONSTITUTION, Article VIII, Sec. 1.

must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[63]

Except for the first requisite, there is no question with respect to the existence of the three (3) other requisites. Petitioners have the *locus standi* to initiate the petition as they claimed to have been unlawfully subjected to restraint on their right to travel owing to the issuance of WLOs against them by authority of DOJ Circular No. 41. Also, they have contested the constitutionality of the questioned issuances at the most opportune time.

The respondents, however, claim that the instant petitions have become moot and academic since there is no longer any actual case or controversy to resolve following the subsequent filing of an information for election sabotage against GMA on November 18, 2011 and the lifting of WLO No. 2011-573 against Miguel Arroyo and the deletion of his name from the BI watchlist after the dismissal of the complaint for electoral sabotage against him.

To be clear, "an actual case or controversy involves a conflict of legal right, an opposite legal claims susceptible of judicial resolution. It is definite and concrete, touching the legal relations of parties having adverse legal interest; a real and substantial controversy admitting of specific relief."[64] When the issues have been resolved or when the circumstances from which the legal controversy arose no longer exist, the case is rendered moot and academic. "A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening

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[63] *Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management*, 686 Phil. 357, 369 (2012).

[64] *Prof. David v. Pres. Macapagal-Arroyo*, 522 Phil. 705, 753 (2006).

events, so that a declaration thereon would be of no practical use or value."[65]

The Court believes that the supervening events following the filing of the instant petitions, while may have seemed to moot the instant petitions, will not preclude it from ruling on the constitutional issues raised by the petitioners. The Court, after assessing the necessity and the invaluable gain that the members of the bar, as well as the public may realize from the academic discussion of the constitutional issues raised in the petition, resolves to put to rest the lingering constitutional questions that abound the assailed issuance. This is not a novel occurrence as the Court, in a number of occasions, took up cases up to its conclusion notwithstanding claim of mootness.

In *Evelio Javier vs. The Commission on Elections*,[66] the Court so emphatically stated, thus:

> The Supreme Court is not only the highest arbiter of legal questions but also the conscience of the government. The citizen comes to us in quest of law but we must also give him justice. The two are not always the same. There are times when we cannot grant the latter because the issue has been settled and decision is no longer possible according to the law. But there are also times when although the dispute has disappeared, as in this case, it nevertheless cries out to be resolved. Justice demands that we act then, not only for the vindication of the outraged right, though gone, but also for the guidance of and as a restraint upon the future.[67]

In *Prof. David vs. Pres. Macapagal-Arroyo*,[68] the Court proceeded in ruling on the constitutionality of Presidential Proclamation (PP) No. 1017 in which GMA declared a state of national emergency, and General Order No. 5 (G.O. No. 5), which ordered the members of the Armed Forces of the Philippines and the Philippine National Police to carry all

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[65] *Id*.

[66] 228 Phil. 193, 211 (1986).

[67] *Id*. at 199.

[68] *Supra* note 64, at 809.

necessary actions to suppress acts of terrorism and lawless violence, notwithstanding the issuance of PP 1021 lifting both issuances. The Court articulated, thus:

> The Court holds that President Arroyo's issuance of PP 1021 did not render the present petitions moot and academic. During the eight (8) days that PP 1017 was operative, the police officers, according to petitioners, committed illegal acts in implementing it. **Are PP 1017 and G.O. No. 5 constitutional or valid? Do they justify these alleged illegal acts?** These are the vital issues that must be resolved in the present petitions. It must be stressed that **unconstitutional act is not a law, it confers no rights, it imposes no duties, it affords no protection; it is in legal contemplation, inoperative**.
>
> The "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: *first,* there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third,* when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth,* the case is capable of repetition yet evading review.[69] (Citations omitted and emphasis supplied)

In the instant case, there are exceptional circumstances that warrant the Court's exercise of its power of judicial review. The petitioners impute the respondents of violating their constitutional right to travel through the enforcement of DOJ Circular No. 41. They claim that the issuance unnecessarily places a restraint on the right to travel even in the absence of the grounds provided in the Constitution.

There is also no question that the instant petitions involved a matter of public interest as the petitioners are not alone in this predicament and there can be several more in the future who may be similarly situated. It is not far fetched that a similar challenge to the constitutionality of DOJ Circular No. 41 will recur considering the thousands of names listed in the watch list of the DOJ, who may brave to question the supposed illegality of the issuance. Thus, it is in the interest of the public, as well

[69] *Id*. at 754.

as for the education of the members of the bench and the bar, that this Court takes up the instant petitions and resolves the question on the constitutionality of DOJ Circular No. 41.

***The Constitution is inviolable and supreme of all laws***

We begin by emphasizing that the Constitution is the fundamental, paramount and supreme law of the nation; it is deemed written in every statute and contract.[70] If a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect.

The Constitution is a testament to the living democracy in this jurisdiction. It contains the compendium of the guaranteed rights of individuals, as well as the powers granted to and restrictions imposed on government officials and instrumentalities. It is that lone unifying code, an inviolable authority that demands utmost respect and obedience.

The more precious gifts of democracy that the Constitution affords us are enumerated in the Bill of Rights contained in Article III. In particular, Section 1 thereof provides:

> **Section 1.** No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

The guaranty of liberty does not, however, imply unbridled license for an individual to do whatever he pleases, for each is given an equal right to enjoy his liberties, with no one superior over another. Hence, the enjoyment of one's liberties must not infringe on anyone else's equal entitlement.

Surely, the Bill of Rights operates as a protective cloak under which the individual may assert his liberties. Nonetheless, "the Bill of Rights itself does not purport to be an absolute guaranty of individual rights and liberties. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's

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[70] *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, 661 Phil. 390, 403 (2011).

will. It is subject to the far more overriding demands and requirements of the greater number."[71]

It is therefore reasonable that in order to achieve communal peace and public welfare, calculated limitations in the exercise of individual freedoms are necessary. Thus, in many significant provisions, the Constitution itself has provided for exceptions and restrictions to balance the free exercise of rights with the equally important ends of promoting common good, public order and public safety.

The state's exercise of police power is also well-recognized in this jurisdiction as an acceptable limitation to the exercise of individual rights. In *Philippine Association of Service Exporters, Inc. vs. Drilon*,[72] it was defined as the inherent and plenary power in the State which enables it to prohibit all things hurtful to the comfort, safety, and welfare of society. It is rooted in the conception that men in organizing the state and imposing upon its government limitations to safeguard constitutional rights did not intend thereby to enable an individual citizen or a group of citizens to obstruct unreasonably the enactment of such salutary measures calculated to ensure communal peace, safety, good order, and welfare.[73]

Still, it must be underscored that in a constitutional government like ours, liberty is the rule and restraint the exception.[74] Thus, restrictions in the exercise of fundamental liberties are heavily guarded against so that they may not unreasonably interfere with the free exercise of constitutional guarantees.

***The right to travel and its limitations***

The right to travel is part of the "liberty" of which a citizen cannot be deprived without due process of law.[75] It is part and

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[71] *Philippine Association of Service Exporters, Inc. v. Hon. Drilon*, 246 Phil. 393, 399 (1988).

[72] *Supra*.

[73] *Id*. at 399.

[74] *Jesus P. Morfe v. Amelito R. Mutuc*, 130 Phil. 415, 430 (1968).

[75] *Kent v. Dulles*, 357 U.S. 116.

parcel of the guarantee of freedom of movement that the Constitution affords its citizen. Pertinently, Section 6, Article III of the Constitution provides:

> Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety or public health, as maybe provided by law.

Liberty under the foregoing clause includes the right to choose one's residence, to leave it whenever he pleases and to travel wherever he wills.[76] Thus, in *Zacarias Villavicencio v. Justo Lucban*,[77] the Court held illegal the action of the Mayor of Manila in expelling women who were known prostitutes and sending them to Davao in order to eradicate vices and immoral activities proliferated by the said subjects. It was held that regardless of the mayor's laudable intentions, no person may compel another to change his residence without being expressly authorized by law or regulation.

It is apparent, however, that the right to travel is not absolute. There are constitutional, statutory and inherent limitations regulating the right to travel. Section 6 itself provides that the right to travel may be impaired only in the interest of national security, public safety or public health, as may be provided by law. In *Silverio vs. Court of Appeals*,[78] the Court elucidated, thus:

> Article III, Section 6 of the 1987 Constitution should be interpreted to mean that while the liberty of travel may be impaired even without Court Order, the appropriate executive officers or administrative authorities are not armed with arbitrary discretion to impose limitations. They can impose limits only on the basis of "**national security, public safety, or public health**" **and** "**as may be provided by law**," a limitive phrase which did not appear in the 1973 text (The Constitution, Bernas, Joaquin G.,S.J., Vol. I, First Edition, 1987, p. 263). Apparently, the

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[76] Isagani A. Cruz, *Constitutional Law*, 2000 Edition, p. 168.

[77] 39 Phil. 778, 812 (1919).

[78] 273 Phil. 128, 135 (1991).

phraseology in the 1987 Constitution was a reaction to the ban on international travel imposed under the previous regime when there was a Travel Processing Center, which issued certificates of eligibility to travel upon application of an interested party.[79] (Emphasis ours)

Clearly, under the provision, there are only three considerations that may permit a restriction on the right to travel: national security, public safety or public health. As a further requirement, there must be an explicit provision of statutory law or the Rules of Court[80] providing for the impairment. The requirement for a legislative enactment was purposely added to prevent inordinate restraints on the person's right to travel by administrative officials who may be tempted to wield authority under the guise of national security, public safety or public health. This is in keeping with the principle that ours is a government of laws and not of men and also with the canon that provisions of law limiting the enjoyment of liberty should be construed against the government and in favor of the individual.[81]

The necessity of a law before a curtailment in the freedom of movement may be permitted is apparent in the deliberations of the members of the Constitutional Commission. In particular, Fr. Joaquin Bernas, in his sponsorship speech, stated thus:

> On Section 5, in the explanation on page 6 of the annotated provisions, it says that the phrase "and changing the same" is taken from the 1935 version; that is, changing the abode. The addition of the phrase WITHIN THE LIMITS PRESCRIBED BY LAW ensures that, whether the rights be impaired on order of a court or without the order of a court, the impairment must be in accordance with the prescriptions of law; that is, it is not left to the discretion of any public officer.[82]

It is well to remember that under the 1973 Constitution, the right to travel is compounded with the liberty of abode in Section 5 thereof, which reads:

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[79] *Id.* at 133-134.

[80] Joaquin G. Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2003 Edition, pp. 367-368.

[81] Isagani A. Cruz, *Constitutional Law,* 2000 Edition, p. 172.

[82] Records of the Constitutional Commission, Volume 1, p. 674.

Section 5, 1973 Constitution: The **liberty of abode and of travel** shall not, be impaired except upon lawful order of the court, or when necessary in the interest of national security, public safety, or public health. (Emphasis ours)

The provision, however, proved inadequate to afford protection to ordinary citizens who were subjected to "hamletting" under the Marcos regime.[83] Realizing the loophole in the provision, the members of the Constitutional Commission agreed that a safeguard must be incorporated in the provision in order to avoid this unwanted consequence. Thus, the Commission meticulously framed the subject provision in such a manner that the right cannot be subjected to the whims of any administrative officer. In addressing the loophole, they found that requiring the authority of a law most viable in preventing unnecessary intrusion in the freedom of movement, *viz.*:

MR. NOLLEDO. x x x

My next question is with respect to Section 5, lines 8 to 12 of page 2. It says here that the liberty of abode shall not be impaired except upon lawful order of the court or — underscoring the word "or" — when necessary in the interest of national security, public safety or public health. So, in the first part, there is the word "court"; in the second part, it seems that the question rises as to who determines whether it is in the interest of national security, public safety, or public health. May it be determined merely by administrative authorities?

FR. BERNAS. The understanding we have of this is that, yes, it may be determined by administrative authorities provided that they act, according to line 9, ***within the limits prescribed by law***. For instance when this thing came up; what was in mind were passport officers. If they want to deny a passport on the first instance, do they have to go to court? The position is, they may deny a passport provided that the denial is based on the limits prescribed by law. The phrase ***"within the limits prescribed by law"*** is something which is added here. That did not exist in the old provision.[84]

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[83] *Id*. at 715.

[84] *Id*. at 677.

During the discussions, however, the Commission realized the necessity of separating the concept of liberty of abode and the right to travel in order to avoid untoward results. Ultimately, distinct safeguards were laid down which will protect the liberty of abode and the right to travel separately, *viz.*:

MR. TADEO. Mr. Presiding Officer, anterior amendment on Section 5, page 2, line 11. Iminumungkahi kong alisin iyong mga salitang nagmumula sa "or" upang maiwasan natin ang walang pakundangang paglabag sa liberty of abode sa ngalan ng national security at pagsasagawa ng "hamletting" ng kung sinu-sino na lamang. Kapag inalis ito, maisasagawa lamang ang "hamletting" upon lawful order of the court. x x x.

x x x x x x x x x

MR. RODRIGO. Aside from that, this includes the right to travel?

FR. BERNAS. Yes.

MR. RODRIGO. And there are cases when passports may not be granted or passports already granted may be cancelled. If the amendment is approved, then passports may not be cancelled unless it is ordered by the court. Is that the intention? x x x

FR. BERNAS. Yes

MR. RODRIGO. But another right is involved here and that is to travel.

SUSPENSION OF SESSION

FR. BERNAS. Mr. Presiding Officer, may I request a suspension so that we can separate the liberty of abode and or changing the same from the right to travel, because they may necessitate different provisions.

THE PRESIDING OFFICER (Mr. Bengzon). The session is suspended.

x x x x x x x x x

RESUMPTION OF SESSION

x x x x x x x x x

THE PRESIDING OFFICER (Mr. Bengzon). The session is resumed. Commissioner Bernas is recognized

FR. BERNAS. The proposal is amended to read:
"The liberty of abode and of changing the same within the limits prescribed by law, shall not be impaired except upon lawful order of the court. NEITHER SHALL THE RIGHT TO TRAVEL BE IMPAIRED EXCEPT IN THE INTEREST OF NATIONAL SECURITY, PUBLIC SAFETY, OR PUBLIC HEALTH AS MAYBE PROVIDED BY LAW.

THE PRESIDING OFFICER (Mr. Bengzon). The Committee has accepted the amendment, as amended. Is there any objection? (Silence) The Chair hears none; the amendment, as amended, is approved.[85]

It is clear from the foregoing that the liberty of abode may only be impaired by a lawful order of the court and, on the one hand, the right to travel may only be impaired by a law that concerns national security, public safety or public health. Therefore, when the exigencies of times call for a limitation on the right to travel, the Congress must respond to the need by explicitly providing for the restriction in a law. This is in deference to the primacy of the right to travel, being a constitutionally-protected right and not simply a statutory right, that it can only be curtailed by a legislative enactment.

Thus, in *Philippine Association of Service Exporters, Inc. vs. Hon. Franklin M. Drilon*,[86] the Court upheld the validity of the Department Order No. 1, Series of 1988, issued by the Department of Labor and Employment, which temporarily suspended the deployment of domestic and household workers abroad. The measure was taken in response to escalating number of female workers abroad who were subjected to exploitative working conditions, with some even reported physical and personal abuse. The Court held that Department Order No. 1 is a valid implementation of the Labor Code, particularly, the policy to "afford protection to labor." Public safety considerations justified the restraint on the right to travel.

Further, in *Leave Division, Office of the Administrative Services (OAS) – Office of the Court Administrator (OCA) vs.*

[85] *Id*. at 764-765.

[86] *Supra* note 71, at 405.

*Wilma Salvacion P. Heusdens*,[87] the Court enumerated the statutes which specifically provide for the impairment of the right to travel, *viz.*:

> Some of these statutory limitations [to the right to travel] are the following:
>
> 1] *The Human Security Act of 2010 or [R.A.] No. 9372*. The law restricts the right to travel of an individual charged with the crime of terrorism even though such person is out on bail.
>
> 2] *The Philippine Passport Act of 1996 or R.A. No. 8239*. Pursuant to said law, the Secretary of Foreign Affairs or his authorized consular officer may refuse the issuance of, restrict the use of, or withdraw, a passport of a Filipino citizen.
>
> 3] *The "Anti- Trafficking in Persons Act of 2003" or R.A. No. 9208*. Pursuant to the provisions thereof, the [BI], in order to manage migration and curb trafficking in persons, issued Memorandum Order Radir No. 2011-011, allowing its Travel Control and Enforcement Unit to "offload passengers with fraudulent travel documents, doubtful purpose of travel, including possible victims of human trafficking" from our ports.
>
> 4] *The Migrant Workers and Overseas Filipinos Act of 1995 or R. A. No. 8042, as amended by R.A. No. 10022*. In enforcement of said law, the Philippine Overseas Employment Administration (POEA) may refuse to issue deployment permit to a specific country that effectively prevents our migrant workers to enter such country.
>
> 5] *The Act on Violence against Women and Children or R.A. No. 9262*. The law restricts movement of an individual against whom the protection order is intended.
>
> 6] *Inter-Country Adoption Act of 1995 or R.A. No. 8043*. Pursuant thereto, the Inter-Country Adoption Board may issue rules restrictive of an adoptee's right to travel "to protect the Filipino child from abuse, exploitation, trafficking and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child."[88]

In any case, when there is a dilemma between an individual claiming the exercise of a constitutional right *vis-à-vis* the

[87] 678 Phil. 328 (2011).

[88] *Id*. at 339-340.

state's assertion of authority to restrict the same, any doubt must, at all times, be resolved in favor of the free exercise of the right, absent any explicit provision of law to the contrary.

***The issuance of DOJ Circular No. 41 has no legal basis***

Guided by the foregoing disquisition, the Court is in quandary of identifying the authority from which the DOJ believed its power to restrain the right to travel emanates. To begin with, there is no law particularly providing for the authority of the secretary of justice to curtail the exercise of the right to travel, in the interest of national security, public safety or public health. As it is, the only ground of the former DOJ Secretary in restraining the petitioners, at that time, was the pendency of the preliminary investigation of the Joint DOJ-COMELEC Preliminary Investigation Committee on the complaint for electoral sabotage against them.[89]

To be clear, DOJ Circular No. 41 is not a law. It is not a legislative enactment which underwent the scrutiny and concurrence of lawmakers, and submitted to the President for approval. It is a mere administrative issuance apparently designed to carry out the provisions of an enabling law which the former DOJ Secretary believed to be Executive Order (E.O.) No. 292, otherwise known as the "Administrative Code of 1987." She opined that DOJ Circular No. 41 was validly issued pursuant to the agency's rule-making powers provided in Sections 1 and 3, Book IV, Title III, Chapter 1 of E.O. No. 292 and Section 50, Chapter 11, Book IV of the mentioned Code.

Indeed, administrative agencies possess quasi-legislative or rule-making powers, among others. It is the "power to make rules and regulations which results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers."[90] In the exercise

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[89] *Rollo* (G.R. No. 199034), Volume III, p. 922.

[90] *Holy Spirit Homeowners Association, Inc. v. Secretary Michael Defensor*, 529 Phil. 573, 585 (2006).

of this power, the rules and regulations that administrative agencies promulgate should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law. They must conform to and be consistent with the provisions of the enabling statute in order for such rule or regulation to be valid.[91]

It is, however, important to stress that before there can even be a valid administrative issuance, there must first be a showing that the delegation of legislative power is itself valid. It is valid only if there is a law that (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard the limits of which are sufficiently determinate and determinable to which the delegate must conform in the performance of his functions.[92]

A painstaking examination of the provisions being relied upon by the former DOJ Secretary will disclose that they do not particularly vest the DOJ the authority to issue DOJ Circular No. 41 which effectively restricts the right to travel through the issuance of WLOs and HDOs. Sections 1 and 3, Book IV, Title III, Chapter 1 of E.O. No. 292 reads:

> Section 1. Declaration of Policy.— It is the declared policy of the State to provide the government with a principal law agency which shall be both its legal counsel and prosecution arm; **administer the criminal justice system in accordance with the accepted processes thereof consisting in the investigation of the crimes, prosecution of offenders** and administration of the correctional system; implement the laws on the admission and stay of aliens, citizenship, land titling system, and settlement of land problems involving small landowners and member of indigenous cultural minorities; and provide free legal services to indigent members of the society.

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[91] *SMART Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 156 (2003).

[92] *William C. Dagan v. Philippine Racing Commission*, 598 Phil. 406, 417 (2009).

x x x x x x x x x

Section 3. Powers and Functions.— to accomplish its mandate, the Department shall have the following powers and functions:

(1) Act as principal law agency of the government and as legal counsel and representative thereof, whenever so required;

(2) **Investigate the commission of crimes, prosecute offenders and administer the probation and correction system**;

x x x x x x x x x

(6) **Provide immigration and naturalization regulatory services** and implement the laws governing citizenship and the admission and stay of aliens;

(7) Provide legal services to the national government and its functionaries, including government-owned and controlled corporations and their subsidiaries;

(8) **Such other functions as may be provided by law**. (Emphasis supplied)

A plain reading of the foregoing provisions shows that they are mere general provisions designed to lay down the purposes of the enactment and the broad enumeration of the powers and functions of the DOJ. In no way can they be interpreted as a grant of power to curtail a fundamental right as the language of the provision itself does not lend to that stretched construction. To be specific, Section 1 is simply a declaration of policy, the essence of the law, which provides for the statement of the guiding principle, the purpose and the necessity for the enactment. The declaration of policy is most useful in statutory construction as an aid in the interpretation of the meaning of the substantive provisions of the law. It is preliminary to the substantive portions of the law and certainly not the part in which the more significant and particular mandates are contained. The suggestion of the former DOJ Secretary that the basis of the issuance of DOJ Circular No. 41 is contained in the declaration of policy of E.O. No. 292 not only defeats logic but also the basic style of drafting a decent piece of legislation because it supposes that the authors of the law included the operative and substantive provisions in the declaration of policy when its objective is merely to introduce and highlight the purpose of the law.

Succinctly, "a declaration of policy contained in a statute is, like a preamble, not a part of the substantive portions of the act. Such provisions are available for clarification of ambiguous substantive portions of the act, but may not be used to create ambiguity in other substantive provisions."[93]

In the same way, Section 3 does not authorize the DOJ to issue WLOs and HDOs to restrict the constitutional right to travel. There is even no mention of the exigencies stated in the Constitution that will justify the impairment. The provision simply grants the DOJ the power to investigate the commission of crimes and prosecute offenders, which are basically the functions of the agency. However, it does not carry with it the power to indiscriminately devise all means it deems proper in performing its functions without regard to constitutionally-protected rights. The curtailment of a fundamental right, which is what DOJ Circular No. 41 does, cannot be read into the mentioned provision of the law. Any impairment or restriction in the exercise of a constitutional right must be clear, categorical and unambiguous. For the rule is that:

> Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by an administrative body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute.[94]

The DOJ cannot also rely on Section 50, Chapter 11, Book IV of E.O. No. 292, which simply provides for the types of issuances that administrative agencies, in general, may issue. It does not speak of any authority or power but rather a mere clarification on the nature of the issuances that may be issued

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[93] *100 Lake, LLC v. Novak,* 2012 IL App (2d) 110708, 971 N.E.2d 1195, 2012 Ill. App. LEXIS 506, 361 Ill. Dec. 673, 2012 WL 2371249 (Ill. App. Ct. 2d Dist. 2012)

[94] *SMART Communications, Inc. v. National Telecommunications Commission*, *supra* note 91, at 156.

by a secretary or head of agency. The innocuous provision reads as follows:

Section 50. General Classification of Issuances.— The administrative issuances of Secretaries and heads of bureaus, offices and agencies shall be in the form of circulars or orders.

**(1) Circulars** shall refer to issuance prescribing policies, rules and regulations, and procedures promulgated pursuant to law, applicable to individuals and organizations outside the Government and designed to supplement provisions of the law or to provide means for carrying them out, including information relating thereto; and

**(2) Orders** shall refer to issuances directed to particular offices, officials, or employees, concerning specific matters including assignments, detail and transfer of personnel, for observance or compliance by all concerned. (Emphasis Ours)

In the same manner, Section 7, Chapter 2, Title III, Book IV of E.O. 292 cited in the memorandum of the former DOJ Secretary cannot justify the restriction on the right to travel in DOJ Circular No. 41. The memorandum particularly made reference to Subsections 3, 4 and 9 which state:

**Section 7.** *Powers and Functions of the Secretary.* — The Secretary shall:

(1) Advise the President in issuing executive orders, regulations, proclamations and other issuances, the promulgation of which is expressly vested by law in the President relative to matters under the jurisdiction of the Department;

(2) Establish the policies and standards for the operation of the Department pursuant to the approved programs of governments;

**(3) Promulgate rules and regulations necessary to carry out department objectives, policies, functions, plans, programs and projects**;

**(4) Promulgate administrative issuances necessary for the efficient administration of the offices under the Secretary and for proper execution of the laws relative thereto. These issuances shall not prescribe penalties for their violation, except when expressly authorized by law**;

x x x x x x x x x

(9) Perform such other functions **as may be provided by law**. (Emphasis Ours)

It is indisputable that the secretaries of government agencies have the power to promulgate rules and regulations that will aid in the performance of their functions. This is adjunct to the power of administrative agencies to execute laws and does not require the authority of a law. This is, however, different from the delegated legislative power to promulgate rules of government agencies.

The considered opinion of Mr. Justice Carpio in *Abakada Guro Party List (formerly AASJS) et al. vs. Hon. Purisima, et al.*[95] is illuminating:

The inherent power of the Executive to adopt rules and regulations to execute or implement the law is different from the delegated legislative power to prescribe rules. The inherent power of the Executive to adopt rules to execute the law does not require any legislative standards for its exercise while the delegated legislative power requires sufficient legislative standards for its exercise.

x x x x x x x x x

Whether the rule-making power by the Executive is a delegated legislative power or an inherent Executive power depends on the nature of the rule-making power involved. If the rule-making power is inherently a legislative power, such as the power to fix tariff rates, the rule-making power of the Executive is a delegated legislative power. In such event, the delegated power can be exercised only if sufficient standards are prescribed in the law delegating the power.

If the rules are issued by the President in implementation or execution of self-executory constitutional powers vested in the President, the rule-making power of the President is not a delegated legislative power. x x x. The rule is that the President can execute the law without any delegation of power from the legislature. Otherwise, the President becomes a mere figure-head and not the sole Executive of the Government.[96]

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[95] 584 Phil. 246 (2008) [Carpio, *J.*, Separate Concurring Opinion].

[96] *Id*. at 296-297.

The questioned circular does not come under the inherent power of the executive department to adopt rules and regulations as clearly the issuance of HDO and WLO is not the DOJ's business. As such, it is a compulsory requirement that there be an existing law, complete and sufficient in itself, conferring the expressed authority to the concerned agency to promulgate rules. On its own, the DOJ cannot make rules, its authority being confined to execution of laws. This is the import of the terms "when expressly provided by law" or "as may be provided by law" stated in Sections 7(4) and 7(9), Chapter 2, Title III, Book IV of E.O. 292. The DOJ is confined to filling in the gaps and the necessary details in carrying into effect the law as enacted.[97] Without a clear mandate of an existing law, an administrative issuance is *ultra vires*.

Consistent with the foregoing, there must be an enabling law from which DOJ Circular No. 41 must derive its life. Unfortunately, all of the supposed statutory authorities relied upon by the DOJ did not pass the completeness test and sufficient standard test. The DOJ miserably failed to establish the existence of the enabling law that will justify the issuance of the questioned circular.

That DOJ Circular No. 41 was intended to aid the department in realizing its mandate only begs the question. The purpose, no matter how commendable, will not obliterate the lack of authority of the DOJ to issue the said issuance. Surely, the DOJ must have the best intentions in promulgating DOJ Circular No. 41, but the end will not justify the means. To sacrifice individual liberties because of a perceived good is disastrous to democracy. In *Association of Small Landowners in the Philippines, Inc. vs. Secretary of Agrarian Reform*,[98] the Court emphasized:

One of the basic principles of the democratic system is that where the rights of the individual are concerned, the end does not justify

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[97] *Manila Electric Company v. Spouses Edito and Felicidad Chua*, 637 Phil. 80, 98 (2010).

[98] 256 Phil. 777 (1989).

the means. It is not enough that there be a valid objective; it is also necessary that the means employed to pursue it be in keeping with the Constitution. Mere expediency will not excuse constitutional shortcuts. There is no question that not even the strongest moral conviction or the most urgent public need, subject only to a few notable exceptions, will excuse the bypassing of an individual's rights. It is no exaggeration to say that a person invoking a right guaranteed under Article III of the Constitution is a majority of one even as against the rest of the nation who would deny him that right.[99]

The DOJ would however insist that the resulting infringement of liberty is merely incidental, together with the consequent inconvenience, hardship or loss to the person being subjected to the restriction and that the ultimate objective is to preserve the investigative powers of the DOJ and public order.[100] It posits that the issuance ensures the presence within the country of the respondents during the preliminary investigation.[101] Be that as it may, no objective will ever suffice to legitimize desecration of a fundamental right. To relegate the intrusion as negligible in view of the supposed gains is to undermine the inviolable nature of the protection that the Constitution affords.

Indeed, the DOJ has the power to investigate the commission of crimes and prosecute offenders. Its zealousness in pursuing its mandate is laudable but more admirable when tempered by fairness and justice. It must constantly be reminded that in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former.[102] Thus, in *Allado vs. Diokno*,[103] the Court declared, *viz.*:

The sovereign power has the inherent right to protect itself and its people from vicious acts which endanger the proper administration

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[99] *Id*. at 809.

[100] *Rollo* (G.R. No. 199034), Volume III, p. 942.

[101] *Id*. at 939.

[102] *Allado v. Diokno*, 302 Phil. 213, 238 (1994).

[103] *Supra*.

of justice; hence, the State has every right to prosecute and punish violators of the law. This is essential for its self-preservation, nay, its very existence. But this does not confer a license for pointless assaults on its citizens. The right of the State to prosecute is not a *carte blanche* for government agents to defy and disregard the rights of its citizens under the Constitution.[104]

The DOJ stresses the necessity of the restraint imposed in DOJ Circular No. 41 in that to allow the petitioners, who are under preliminary investigation, to exercise an untrammelled right to travel, especially when the risk of flight is distinctly high will surely impede the efficient and effective operation of the justice system. The absence of the petitioners, it asseverates, would mean that the farthest criminal proceeding they could go would be the filing of the criminal information since they cannot be arraigned *in absentia*.[105]

The predicament of the DOJ is understandable yet untenable for relying on grounds other what is permitted within the confines of its own power and the nature of preliminary investigation itself. The Court, in *Paderanga vs. Drilon*,[106] made a clarification on the nature of a preliminary investigation, thus:

> A preliminary investigation is x x x an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well founded belief that a crime cognizable by the Regional Trial Court has been committed and that the respondent is probably guilty thereof, and should be held for trial. x x x A preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well grounded belief that an offense has been committed and that the accused is probably guilty thereof.[107]

It bears emphasizing that the conduct of a preliminary investigation is an implement of due process which essentially

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[104] *Id*. at 238.

[105] *Rollo* (G.R. No. 199034), Volume III, p. 943.

[106] 273 Phil. 290 (1991).

[107] *Id*. at 299.

benefits the accused as it accords an opportunity for the presentation of his side with regard to the accusation.[108] The accused may, however, opt to waive his presence in the preliminary investigation. In any case, whether the accused responds to a subpoena, the investigating prosecutor shall resolve the complaint within 10 days after the filing of the same.

The point is that in the conduct of a preliminary investigation, the presence of the accused is not necessary for the prosecutor to discharge his investigatory duties. If the accused chooses to waive his presence or fails to submit countervailing evidence, that is his own lookout. Ultimately, he shall be bound by the determination of the prosecutor on the presence of probable cause and he cannot claim denial of due process.

The DOJ therefore cannot justify the restraint in the liberty of movement imposed by DOJ Circular No. 41 on the ground that it is necessary to ensure presence and attendance in the preliminary investigation of the complaints. There is also no authority of law granting it the power to compel the attendance of the subjects of a preliminary investigation, pursuant to its investigatory powers under E.O. No. 292. Its investigatory power is simply inquisitorial and, unfortunately, not broad enough to embrace the imposition of restraint on the liberty of movement.

That there is a risk of flight does not authorize the DOJ to take the situation upon itself and draft an administrative issuance to keep the individual within the Philippine jurisdiction so that he may not be able to evade criminal prosecution and consequent liability. It is an arrogation of power it does not have; it is a usurpation of function that properly belongs to the legislature.

Without a law to justify its action, the issuance of DOJ Circular No. 41 is an unauthorized act of the DOJ of empowering itself under the pretext of dire exigency or urgent necessity. This action runs afoul the separation of powers between the three branches of the government and cannot be upheld. Even the Supreme Court, in the exercise of its power to promulgate rules

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[108] *Ocampo v. Judge Abando, et al.*, 726 Phil. 441, 459 (2014).

is limited in that the same shall not diminish, increase, or modify substantive rights.[109] This should have cautioned the DOJ, which is only one of the many agencies of the executive branch, to be more scrutinizing in its actions especially when they affect substantive rights, like the right to travel.

The DOJ attempts to persuade this Court by citing cases wherein the restrictions on the right to travel were found reasonable, *i.e. New York v. O'Neill*,[110] *Kwong vs. Presidential Commission on Good Government*[111] and *PASEI*.

It should be clear at this point that the DOJ cannot rely on *PASEI* to support its position for the reasons stated earlier in this disquisition. In the same manner, *Kant Kwong* is not an appropriate authority since the Court never ruled on the constitutionality of the authority of the PCGG to issue HDOs in the said case. On the contrary, there was an implied recognition of the validity of the PCGG's Rules and Regulations as the petitioners therein even referred to its provisions to challenge the PCGG's refusal to lift the HDOs issued against them despite the lapse of the period of its effectivity. The petitioners never raised any issue as to the constitutionality of Section 2 of the PCGG Rules and Regulations but only questioned the agency's non-observance of the rules particularly on the lifting of HDOs. This is strikingly different from the instant case where the main issue is the constitutionality of the authority of the DOJ Secretary to issue HDOs under DOJ Circular No. 41.

Similarly, the pronouncement is *New York* does not lend support to the respondents' case. In the said case, the respondent therein questioned the constitutionality of a Florida statute entitled "Uniform Law to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings," under which authority a judge of the Court of General Sessions, New York County requested the Circuit Court of Dade County, Florida, where he was at that time, that he be given into the custody of

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[109] 1987 CONSTITUTION, Article VIII, Section 5(5).

[110] 359 U.S. 1 (1959).

[111] 240 Phil. 219 (1987).

New York authorities and be transported to New York to testify in a grand jury proceeding. The US Supreme Court upheld the constitutionality of the law, ruling that every citizen, when properly summoned, has the obligation to give testimony and the same will not amount to violation of the freedom to travel but, at most, a mere temporary interference. The clear deviation of the instant case from *New York* is that in the latter case there is a law specifically enacted to require the attendance of the respondent to court proceedings to give his testimony, whenever it is needed. Also, after the respondent fulfils his obligation to give testimony, he is absolutely free to return in the state where he was found or to his state of residence, at the expense of the requesting state. In contrast, DOJ Circular No. 41 does not have an enabling law where it could have derived its authority to interfere with the exercise of the right to travel. Further, the respondent is subjected to continuing restraint in his right to travel as he is not allowed to go until he is given, if he will ever be given, an ADO by the secretary of justice.

***The DOJ cannot issue DOJ Circular No. 41 under the guise of police power***

The DOJ's reliance on the police power of the state cannot also be countenanced. Police power pertains to the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare."[112] "It may be said to be that inherent and plenary power in the State which enables it to prohibit all things hurtful to the comfort, safety, and welfare of society."[113] Verily, the exercise of this power is primarily lodged with the legislature but may be wielded by the President and administrative boards, as well as the lawmaking bodies on all municipal levels, including the *barangay*, by virtue of a valid delegation of power. [114]

[112] *Philippine Association of Service Exporters, Inc. v. Hon. Franklin M. Drilon*, *supra* note 73, at 398.

[113] *Id.* at 399.

[114] *Executive Secretary v. Southwing Heavy Industries, Inc.*, 518 Phil. 103, 117 (2006).

It bears noting, however, that police power may only be validly exercised if (a) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State, and (b) the means employed are reasonably necessary to the attainment of the object sought to be accomplished and not unduly oppressive upon individuals.[115]

On its own, the DOJ cannot wield police power since the authority pertains to Congress. Even if it claims to be exercising the same as the alter ego of the President, it must first establish the presence of a definite legislative enactment evidencing the delegation of power from its principal. This, the DOJ failed to do. There is likewise no showing that the curtailment of the right to travel imposed by DOJ Circular No. 41 was reasonably necessary in order for it to perform its investigatory duties.

In any case, the exercise of police power, to be valid, must be reasonable and not repugnant to the Constitution.[116] It must never be utilized to espouse actions that violate the Constitution. Any act, however noble its intentions, is void if it violates the Constitution. [117] In the clear language of the Constitution, it is only in the interest of national security, public safety and public health that the right to travel may be impaired. None one of the mentioned circumstances was invoked by the DOJ as its premise for the promulgation of DOJ Circular No. 41.

***DOJ Circular No. 41 transcends constitutional limitations***

Apart from lack of legal basis, DOJ Circular No. 41 also suffers from other serious infirmities that render it invalid. The apparent vagueness of the circular as to the distinction between a HDO and WLO is violative of the due process clause. An act

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[115] *Department of Education, Culture and Sports v. Roberto Rey Sandiego*, 259 Phil. 1016, 1021 (1989).

[116] *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, 557 Phil. 121, 140 (2007).

[117] *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, *supra* note 70, at 406.

that is vague "violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid and leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle."[118] Here, the distinction is significant as it will inform the respondents of the grounds, effects and the measures they may take to contest the issuance against them. Verily, there must be a standard by which a HDO or WLO may be issued, particularly against those whose cases are still under preliminary investigation, since at that stage there is yet no criminal information against them which could have warranted the restraint.

Further, a reading of the introductory provisions of DOJ Circular No. 41 shows that it emanates from the DOJ's assumption of powers that is not actually conferred to it. In one of the whereas clauses of the issuance, it was stated, thus:

> **WHEREAS,** while several Supreme Court circulars, issued through the Office of the Court Administrator, clearly state that "[HDO] shall be issued only in criminal cases within the exclusive jurisdiction of the [RTCs]," said circulars are, however, silent with respect to cases falling within the jurisdiction of courts below the RTC as well as those pending determination by government prosecution offices;

Apparently, the DOJ's predicament which led to the issuance of DOJ Circular No. 41 was the supposed inadequacy of the issuances of this Court pertaining to HDOs, the more pertinent of which is SC Circular No. 39-97.[119] It is the DOJ's impression that with the silence of the circular with regard to the issuance of HDOs in cases falling within the jurisdiction of the MTC and those still pending investigation, it can take the initiative in filling in the deficiency. It is doubtful, however, that the DOJ Secretary may undertake such action since the issuance of HDOs is an exercise of this Court's inherent power "to preserve and to maintain the effectiveness of its jurisdiction over the

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[118] *James M. Imbong v. Hon. Paquito N. Ochoa*, 732 Phil. 1, 108-109 (2014).

[119] Guidelines in the Issuance of Hold-Departure Orders.

case and the person of the accused."[120] It is an exercise of judicial power which belongs to the Court alone, and which the DOJ, even as the principal law agency of the government, does not have the authority to wield.

Moreover, the silence of the circular on the matters which are being addressed by DOJ Circular No. 41 is not without good reasons. Circular No. 39-97 was specifically issued to avoid indiscriminate issuance of HDOs resulting to the inconvenience of the parties affected as the same could amount to an infringement on the right and liberty of an individual to travel. Contrary to the understanding of the DOJ, the Court intentionally held that the issuance of HDOs shall pertain only to criminal cases within the exclusive jurisdiction of the RTC, to the exclusion of criminal cases falling within the jurisdiction of the MTC and all other cases. The intention was made clear with the use of the term "only." The reason lies in seeking equilibrium between the state's interest over the prosecution of the case considering the gravity of the offense involved and the individual's exercise of his right to travel. Thus, the circular permits the intrusion on the right to travel only when the criminal case filed against the individual is within the exclusive jurisdiction of the RTC, or those that pertains to more serious crimes or offenses that are punishable with imprisonment of more than six years. The exclusion of criminal cases within the jurisdiction of the MTC is justified by the fact that they pertain to less serious offenses which is not commensurate with the curtailment of a fundamental right. Much less is the reason to impose restraint on the right to travel of respondents of criminal cases still pending investigation since at that stage no information has yet been filed in court against them. It is for these reasons that Circular No. 39-97 mandated that HDO may only be issued in criminal cases filed with the RTC and withheld the same power from the MTC.

Remarkably, in DOJ Circular No. 41, the DOJ Secretary went overboard by assuming powers which have been withheld from

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[120] *Miriam Defensor Santiago v. Conrado M. Vasquez*, 291 Phil. 664, 680 (1993).

the lower courts in Circular No. 39-97. In the questioned circular, the DOJ Secretary may issue HDO against the accused in criminal cases within the jurisdiction of the MTC[121] and against defendants, respondents and witnesses in labor or administrative cases,[122] no matter how unwilling they may be. He may also issue WLO against accused in criminal cases pending before the RTC,[123] therefore making himself in equal footing with the RTC, which is authorized by law to issue HDO in the same instance. The DOJ Secretary may likewise issue WLO against respondents in criminal cases pending preliminary investigation, petition for review or motion for reconsideration before the DOJ.[124] More striking is the authority of the DOJ Secretary to issue a HDO or WLO *motu proprio*, even in the absence of the grounds stated in the issuance if he deems necessary in the interest of national security, public safety or public health.[125]

It bears noting as well that the effect of the HDO and WLO in DOJ Circular No. 41 is too obtrusive as it remains effective even after the lapse of its validity period as long as the DOJ Secretary does not approve the lifting or cancellation of the same. Thus, the respondent continually suffers the restraint in his mobility as he awaits a favorable indorsement of the government agency that requested for the issuance of the HDO or WLO and the affirmation of the DOJ Secretary even as the HDO or WLO against him had become *functus officio* with its expiration.

It did not also escape the attention of the Court that the DOJ Secretary has authorized himself to permit a person subject of HDO or WLO to travel through the issuance of an ADO upon showing of "exceptional reasons" to grant the same. The grant, however, is entirely dependent on the sole discretion of the

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[121] Section 1(a). DOJ Circular No. 41.

[122] Section 1(b). DOJ Circular No. 41.

[123] Section 2(a). DOJ Circular No. 41.

[124] Section 2(b). DOJ Circular No. 41.

[125] Sections 1(c) and 2(c), DOJ Circular No. 41.

DOJ Secretary based on his assessment of the grounds stated in the application.

The constitutional violations of DOJ Circular No. 41 are too gross to brush aside particularly its assumption that the DOJ Secretary's determination of the necessity of the issuance of HDO or WLO can take the place of a law that authorizes the restraint in the right to travel only in the interest of national security, public safety or public health. The DOJ Secretary has recognized himself as the sole authority in the issuance and cancellation of HDO or WLO and in the determination of the sufficiency of the grounds for an ADO. The consequence is that the exercise of the right to travel of persons subject of preliminary investigation or criminal cases in court is indiscriminately subjected to the discretion of the DOJ Secretary.

This is precisely the situation that the 1987 Constitution seeks to avoid— for an executive officer to impose restriction or exercise discretion that unreasonably impair an individual's right to travel— thus, the addition of the phrase, "as maybe provided by law" in Section 6, Article III thereof. In *Silverio*, the Court underscored that this phraseology in the 1987 Constitution was a reaction to the ban on international travel imposed under the previous regime when there was a Travel Processing Center, which issued certificates of eligibility to travel upon application of an interested party.[126] The qualifying phrase is not a mere innocuous appendage. It secures the individual the absolute and free exercise of his right to travel at all times unless the more paramount considerations of national security, public safety and public health call for a temporary interference, but always under the authority of a law.

***The subject WLOs and the restraint on the right to travel.***

In the subject WLOs, the illegal restraint on the right to travel was subtly incorporated in the wordings thereof. For better illustration, the said WLOs are hereby reproduced as follows:

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[126] *Supra* note 78, at 133-134 (1991).

WLO No. ASM-11-237[127]
(Watchlist)

In re: **GLORIA M. MACAPAGAL-ARROYO**
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**ORDER**

On 09 August 2011, Hon. Leila M. De Lima, Secretary of the Department of Justice issued an order docketed as Watchlist Order No. 2011-422 directing the Bureau of Immigration to include the name **GLORIA M. MACAPAGAL-ARROYO** in the Bureau's Watchlist.

It appears that **GLORIA M. MACAPAGAL-ARROYO** is the subject of an investigation by the Department of Justice in connection with the following cases:

| Docket No. | Title of the Case | Offense/s Charged |
|---|---|---|
| XVI-INV-10H-00251 | Danilo A. Lihaylihay vs. Gloria Macapagal-Arroyo | Plunder |
| XVIX-INV-11D-00170 | Francisco I. Chavez vs. Gloria Macapagal-Arroyo | Plunder, Malversation and/or Illegal use of OWWA Funds, Graft and Corruption, Violation of The Omnibus Election Code, Violation of the Code of Ethical Standards for Public Officials, and Qualified Theft |
| XVI-INV-11F-00238 | Francisco I. Chavez vs. Gloria Macapagal-Arroyo, Jocelyn "Joc-Joc" Bolante, Ibarra Poliquit et al. | Plunder, Malversation and/or Illegal use of Public Funds, Graft and Corruption, Violation of The Omnibus Election Code, Violation of the Code of Ethical Standards for Public Officials, and Qualified Theft |

[127] *Rollo* (G.R. No. 199034), Volume I, pp. 45-46.

Based on the foregoing and *pursuant to Department of Justice Circular No. 41 (Consolidated Rules and Regulations Governing the Issuance and Implementation of Hold Departure Orders, Watchlist Orders, and Allow Departure Orders) dated 25 May 2010*, we order the inclusion of the name **GLORIA M. MACAPAGAL-ARROYO** in the Watchlist.

This watchlist shall be valid for sixty (60) days unless sooner revoked or extended.

The Airport Operation Division and Immigration Regulation Division Chiefs shall implement this Order.

Notify the Computer Section.

SO ORDERED.

09 August 2011 (Emphasis ours)

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Watchlist Order No. 2011-422[128]

In re: Issuance of Watchlist
Order against **MA. GLORIA M. MACAPAGAL-ARROYO**
x----------x

**AMENDED ORDER**

Whereas, **Ma. Gloria M. Macapagal-Arroyo** is the subject of an investigation by this Department in connection with the following cases:

| Docket No. | Title of the Case | Offense/s Charged |
|---|---|---|
| XVI-INV-10H-00251 | Danilo A. Lihaylihay versus Gloria Macapagal-Arroyo | Plunder |
| XVIX-INV-11D-00170 | Francisco I. Chavez versus Gloria Macapagal-Arroyo | Plunder, Malversation and/or Illegal Use of OWWA Funds, Graft and Corruption, Violation of the Omnibus Election |

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

| | | |
|---|---|---|
| | | Code, Violation of the Code of Ethical Standards for Public Officials, and Qualified Theft |
| XVI-INV-11F-00238 | Francisco I. Chavez versus Gloria Macapagal-Arroyo Jocelyn"Joc-Joc" Bolante, Ibarra Poliquit et al. | Plunder, Malversation and/or Illegal Use of Public Funds, Graft and Corruption, Violation of the Omnibus Election Code, Violation of the Code of Ethical Standards for Public Officials, and Qualified Theft |

*Pursuant to Section 2(c) of Department Circular (D.C.) No. 41 dated May 25, 2010 (Consolidated Rules and Regulations Governing the Issuance and Implementation of Hold Departure Orders, Watchlist Orders, and Allow Departure Orders)*, the undersigned hereby *motu proprio* issues a Watchlist Order against **Ma. Gloria M. Macapagal-Arroyo**.

Accordingly, the Commissioner of Immigration, Manila, is hereby ordered to INCLUDE in the Bureau of Immigration's Watchlist the name of Ma. Gloria M. Macapagal-Arroyo.

Pursuant to Section 4 of D.C. No. 41, this Order is valid for a period of sixty (60) days from issuance unless sooner terminated or extended.

SO ORDERED.

City of Manila, September 6, 2011. (Emphasis ours)

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Watchlist Order (WLO)
No. 2011- 573[129]

IN RE: Issuance of WLO against
BENJAMIN ABALOS, SR. et al.
x----------x

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[129] *Id*. at 49-59.

ORDER

*Pursuant to Section 2(c) of Department Circular No. 41 dated May 25, 2010 (Consolidated Rules and Regulations Governing the Issuance and Implementation of Hold Departure Orders, Watchlist Orders, and Allow Departure Orders)*, after careful evaluation, finds the Application for the Issuance of WLO against the following meritorious;

x x x x x x x x x

12. MA. GLORIA M. MACAPAGAL-ARROYO
Address: Room MB-2, House of Representatives
Quezon City

x x x x x x x x x

Ground for WLO Issuance: Pendency of the case, entitled "*DOJ-COMELEC Fact Finding Committee v. Benjamin Abalos Sr., et al.*," for Electoral Sabotage/Omnibus Election Code docketed as DOJ-COMELEC Case No. 001-2011

1. MA. GLORIA M. MACAPAGAL-ARROYO
Address: Room MB-2, House of Representatives
Quezon City

2. JOSE MIGUEL TUASON ARROYO
Address: L.T.A. Bldg. 118 Perea St.
Makati City

x x x x x x x x x

Ground for WLO Issuance: Pendency of the case, entitled "*Aquilino Pimentel III v. Gloria Macapagal-Arroyo, et Al.*," for Electoral Sabotage docketed as DOJ-COMELEC Case No. 002-2011.

Accordingly, the Commissioner of Immigration, Manila, is hereby ordered to INCLUDE in the Bureau of Immigration's Watchlist, the names of the above-named persons.

This Order is valid for a period of sixty (60) days from the date of its issuance unless sooner terminated or otherwise extended.

SO ORDERED.

On the other hand, HDO No. 2011-64 issued against the petitioners in G. R. No. 197930 pertinently states:

Hold Departure Order (HDO)
No. 2011- 64[130]

In re: Issuance of HDO against
EFRAIM C. GENUINO, ET AL.
x----------x

ORDER

After a careful evaluation of the application, including the documents attached thereto, for the issuance of Hold Departure Order (HDO) against the above-named persons filed pursuant to this *Department's Circular (D.C.) No. 41 (Consolidated Rules and Regulations Governing the Issuance and Implementation of Hold Departure Orders, Watchlist Orders, and Allow Departure Orders) dated May 25, 2010*, we find the application meritorious.

Accordingly, the Commissioner of Immigration, Manila, is hereby ordered to INCLUDE in the Bureau of Immigration's Watchlist the names of EFRAIM C. GENUINO, SHERYLL F. GENUINO-SEE, ERWIN F. GENUINO, RAFAEL "BUTCH" A. FRANCISCO, EDWARD "DODIE" F. KING, RENE C. FIGUEROA, ATTY, CARLOS R. BAUTISTA, JR., EMILIO "BOYET" B. MARCELO, RODOLFO SORIANO, JR., AND JOHNNY G. TAN.

| | |
|---|---|
| Name: | EFRAIM C. GENUINO |
| Nationality: | Filipino |
| Last known address: | No. 42 Lapu Lapu Street, Magallanes Village, Makati City |
| Ground for HDO Issuance: | Malversation, Violation of the Anti-Graft and Corrupt Practices Act, Plunder |
| Details of the Case: | Pending before the National Prosecution Service, Department of Justice (NPS Docket No. XV-INV-11F-00229<br>Pending before the Office of the Ombudsman<br>(Case No. CPL-C-11-1297) |

[130] *Rollo* (G.R. No. 197930), pp. 30-35.

| | |
|---|---|
| | Pending before the National Prosecution Service, Department of Justice (I.S. No. XVI-INV-11G-00248) |
| Name: | SHERYLL F. GENUINO-SEE |
| Nationality: | Filipino |
| Last known address: | No. 32-a Paseo Parkview, Makati City |
| Ground for HDO Issuance: | Malversation, Violation of the Anti-Graft and Corrupt Practices Act, Plunder |
| Details of the Case: | Pending before the National Prosecution Service, Department of Justice (I.S. No. XVI-INV-11G-00248) |
| Name: | ERWIN F. GENUINO |
| Nationality: | Filipino |
| Last known address: | No. 5 J.P. Rizal Extension, COMEMBO, Makati City |
| Ground for HDO Issuance: | Malversation, Violation of the Anti-Graft and Corrupt Practices Act, Plunder |
| Details of the Case: | Pending before the National Prosecution Service, Department of Justice (NPS Docket No. XV-INV-11F-00229<br>Pending before the National Prosecution Service, Department of Justice (I.S. No. XVI-INV-11G-00248) |

x x x x x x x x x

Pursuant to Section 1 of D.C. No. 41, this Order is valid for a period of five (5) years unless sooner terminated.

SO ORDERED. (Emphasis ours)

On its face, the language of the foregoing issuances does not contain an explicit restraint on the right to travel. The issuances seemed to be a mere directive from to the BI officials to include the named individuals in the watchlist of the agency.

Noticeably, however, all of the WLOs contained a common reference to DOJ Circular No. 41, where the authority to issue the same apparently emanates, and from which the restriction on the right to travel can be traced. Section 5 thereof provides, thus:

**Section 5. HDO/WLO Lifting or Cancellation—** In the lifting or cancellation of the HDO/WLO issued pursuant to this Circular, the following shall apply:

(a) The HDO may be lifted or cancelled under any of the following grounds:

1. When the validity period of the HDO as provided for in the preceding section has already expired;
2. **When the accused subject of the HDO has been allowed to leave the country during the pendency of the case,** or has been acquitted of the charge, or the case in which the warrant/order of arrest was issued has been dismissed or the warrant/order of arrest has been recalled;
3. When the civil or labor case or case before an administrative agency of the government wherein the presence of the alien subject of the HDO/WLO has been dismissed by the court or by appropriate government agency, or the alien has been discharged as a witness therein, or the alien has been allowed to leave the country;

(b) The WLO may be lifted or cancelled under any of the following grounds:

1. When the validity period of the WLO as provided for in the preceding section has already expired;
2. **When the accused subject of the WLO has been allowed by the court to leave the country during the pendency of the case,** or has been acquitted of the charge; and
3. **When the preliminary investigation is terminated, or when the petition for review, or motion for reconsideration has been denied and/or dismissed**.

x x x x x x x x x

That the subject of a HDO or WLO suffers restriction in the right to travel is implied in the fact that under Sections 5(a) (2) and 5(b) (2), the concerned individual had to seek permission to leave the country from the court during the pendency of the

case against him. Further, in 5 (b) (3), he may not leave unless the preliminary investigation of the case in which he is involved has been terminated.

In the same manner, it is apparent in Section 7 of the same circular that the subject of a HDO or WLO cannot leave the country unless he obtains an ADO. The said section reads as follows:

**Section 7. Allow Departure Order (ADO)— Any person subject of HDO/WLO issued pursuant to this Circular who intends, for some exceptional reasons, to leave the country** may, upon application under oath with the Secretary of Justice, be issued an ADO.

The ADO may be issued upon submission of the following requirements:

(a) Affidavit stating clearly the purpose, inclusive period of the date of travel, and containing an undertaking to immediately report to the DOJ upon return; and

(b) Authority to travel or travel clearance from the court or appropriate government office where the case upon which the issued HDO/WLO was based is pending, or from the investigating prosecutor in charge of the subject case.

By requiring an ADO before the subject of a HDO or WLO is allowed to leave the country, the only plausible conclusion that can be made is that its mere issuance operates as a restraint on the right to travel. To make it even more difficult, the individual will need to cite an exceptional reason to justify the granting of an ADO.

The WLO also does not bear a significant distinction from a HDO, thereby giving the impression that they are one and the same or, at the very least, complementary such that whatever is not covered in Section 1,[131] which pertains to the issuance of

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[131] **Section 1.** *Hold Departure Order.* — The Secretary of Justice may issue an HDO, under any of the following instances:

(a) Against the accused, irrespective of nationality, in criminal cases falling within the jurisdiction of courts below the Regional Trial Courts (RTCs). If the case against the accused is pending trial, the application under oath

HDO, can conveniently fall under Section 2,[132] which calls for the issuance of WLO. In any case, there is an identical provision in DOJ Circular No. 41 which authorizes the Secretary of Justice to issue a HDO or WLO against anyone, *motu proprio*, in the interest of national security, public safety or public health. With

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of an interested party must be supported by (a) a certified true copy of the complaint or information and (b) a Certification from the Clerk of Court concerned that criminal case is still pending.

(b) Against the alien whose presence is required either as a defendant, respondent, or witness in a civil or labor case pending litigation, or any case before an administrative agency of the government.

The application under oath of an interested party must be supported by (a) a certified true copy of the subpoena or summons issued against the alien and (b) a certified true copy complaint in civil, labor or administrative case where the presence of the alien is required.

(c) The Secretary of Justice may likewise issue an HDO against any person, either *motu proprio*, or upon the request by the Head of a Department of the Government; the head of a constitutional body or commission; the Chief Justice of the Supreme Court for the Judiciary; the Senate President or the House Speaker for the Legislature, when the adverse party is the Government or any of its agencies or instrumentalities, or in the interest of national security, public safety or public health.

[132] **Section 2.** *Watchlist Order.* — The Secretary of Justice may issue a WLO, under any of the following instances:

(a) Against the accused, irrespective of nationality, in criminal cases pending trial before the Regional Trial Court.

The application under oath of an interested party must be supported by (a) certified true copy of an Information filed with the court, (b) a certified true copy of the Prosecutor's Resolution; and (c) a Certification from the Clerk of Court concerned that criminal case is still pending.

(b) Against the respondent, irrespective of nationality, in criminal cases pending preliminary investigation, petition for review, or motion for reconsideration before the Department of Justice or any of its provincial or city prosecution offices.

The application under oath of an interested party must be supported by (a) certified true copy of the complaint filed, and (b) a Certification from the appropriate prosecution office concerned that the case is pending preliminary investigation, petition for review, or motion for reconsideration, as the case may be.

(c) The Secretary of Justice may likewise issue a WLO against any person, either *motu proprio*, or upon the request of any government agency, including commissions, task forces or similar entities created by the Office of the President, pursuant to the "Anti-Trafficking in Persons Act of 2003" (R.A. No. 9208) and/or in connection with any investigation being conducted by it, or in the interest of national security, public safety or public health.

this all-encompassing provision, there is nothing that can prevent the Secretary of Justice to prevent anyone from leaving the country under the guise of national security, public safety or public health.

***The exceptions to the right to travel are limited to those stated in Section 6, Article III of the Constitution***

The DOJ argues that Section 6, Article III of the Constitution is not an exclusive enumeration of the instances wherein the right to travel may be validly impaired.[133] It cites that this Court has its own administrative issuances restricting travel of its employees and that even lower courts may issue HDO even on grounds outside of what is stated in the Constitution.[134]

The argument fails to persuade.

It bears reiterating that the power to issue HDO is inherent to the courts. The courts may issue a HDO against an accused in a criminal case so that he may be dealt with in accordance with law.[135] It does not require legislative conferment or constitutional recognition; it co-exists with the grant of judicial power. In *Defensor-Santiago vs. Vasquez*,[136] the Court declared, thus:

> Courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or essential to the existence, dignity and functions of the court, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.[137]

The inherent powers of the courts are essential in upholding its integrity and largely beneficial in keeping the people's faith

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[133] *Rollo* (G.R. No. 199034), Volume III, p. 971.

[134] *Id*. at 975.

[135] *Silverio v. Court of Appeals*, *supra* note 78, at 133-134.

[136] *Miriam Defensor Santiago v. Conrado M. Vasquez*, *supra* note 120.

[137] *Id*. at 679.

in the institution by ensuring that it has the power and the means to enforce its jurisdiction.

As regards the power of the courts to regulate foreign travels, the Court, in *Leave Division,* explained:

> With respect to the power of the Court, Section 5 (6), Article VIII of the 1987 Constitution provides that the ***Supreme Court shall have administrative supervision over all courts and the personnel thereof.*** This provision empowers the Court to oversee all matters relating to the effective supervision and management of all courts and personnel under it. Recognizing this mandate, Memorandum Circular No. 26 of the Office of the President, dated July 31, 1986, considers the Supreme Court exempt and with authority to promulgate its own rules and regulations on foreign travels. Thus, the Court came out with OCA Circular No. 49-2003 (B).
>
> Where a person joins the Judiciary or the government in general, he or she swears to faithfully adhere to, and abide with, the law and the corresponding office rules and regulations. These rules and regulations, to which one submits himself or herself, have been issued to guide the government officers and employees in the efficient performance of their obligations. When one becomes a public servant, he or she assumes certain duties with their concomitant responsibilities and gives up some rights like the absolute right to travel so that public service would not be prejudiced.[138]

It is therefore by virtue of its administrative supervision over all courts and personnel that this Court came out with OCA Circular No. 49-2003, which provided for the guidelines that must be observed by employees of the judiciary seeking to travel abroad. Specifically, they are required to secure a leave of absence for the purpose of foreign travel from this Court through the Chief Justice and the Chairmen of the Divisions, or from the Office of the Court Administrator, as the case maybe. This is "to ensure management of court dockets and to avoid disruption in the administration of justice."[139]

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[138] *Leave Division-Office of Administrative Services-Office of the Court Administrator v. Wilma Salvacion Heusdens*, *supra* note 87, at 341-342.

[139] *Office of the Administrative Services-Office of the Court Administrator v. Judge Ignacio B. Macarine*, 691 Phil. 217, 222 (2012).

OCA Circular No. 49-2003 is therefore not a restriction, but more properly, a regulation of the employee's leave for purpose of foreign travel which is necessary for the orderly administration of justice. To "restrict" is to restrain or prohibit a person from doing something; to "regulate" is to govern or direct according to rule.[140] This regulation comes as a necessary consequence of the individual's employment in the judiciary, as part and parcel of his contract in joining the institution. For, if the members of the judiciary are at liberty to go on leave any time, the dispensation of justice will be seriously hampered. Short of key personnel, the courts cannot properly function in the midst of the intricacies in the administration of justice. At any rate, the concerned employee is not prevented from pursuing his travel plans without complying with OCA Circular No. 49-2003 but he must be ready to suffer the consequences of his non-compliance.

The same ratiocination can be said of the regulations of the Civil Service Commission with respect to the requirement for leave application of employees in the government service seeking to travel abroad. The Omnibus Rules Implementing Book V of E.O. No. 292 states the leave privileges and availment guidelines for all government employees, except those who are covered by special laws. The filing of application for leave is required for purposes of orderly personnel administration. In pursuing foreign travel plans, a government employee must secure an approved leave of absence from the head of his agency before leaving for abroad.

To be particular, E.O. No. 6 dated March 12, 1986, as amended by Memorandum Order (MO) No. 26 dated July 31, 1986, provided the procedure in the disposition of requests of government officials and employees for authority to travel abroad. The provisions of this issuance were later clarified in the Memorandum Circular No. 18 issued on October 27, 1992. Thereafter, on September 1, 2005, E.O. No. 459 was issued, streamlining the procedure in the disposition of requests of

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[140] *Id*.

government officials and employees for authority to travel abroad. Section 2 thereof states:

> **Section 2.** Subject to Section 5 hereof**, all other government officials and employees seeking authority to travel abroad shall henceforth seek approval from their respective heads of agencies**, regardless of the length of their travel and the number of delegates concerned. For the purpose of this paragraph, heads of agencies refer to the Department Secretaries or their equivalents. (Emphasis ours)

The regulation of the foreign travels of government employees was deemed necessary "to promote efficiency and economy in the government service."[141] The objective was clearly administrative efficiency so that government employees will continue to render public services unless they are given approval to take a leave of absence in which case they can freely exercise their right to travel. It should never be interpreted as an exception to the right to travel since the government employee during his approved leave of absence can travel wherever he wants, locally or abroad. This is no different from the leave application requirements for employees in private companies.

The point is that the DOJ may not justify its imposition of restriction on the right to travel of the subjects of DOJ Circular No. 41 by resorting to an analogy. Contrary to its claim, it does not have inherent power to issue HDO, unlike the courts, or to restrict the right to travel in anyway. It is limited to the powers expressly granted to it by law and may not extend the same on its own accord or by any skewed interpretation of its authority.

***The key is legislative enactment***

The Court recognizes the predicament which compelled the DOJ to issue the questioned circular but the solution does not lie in taking constitutional shortcuts. Remember that the Constitution "is the fundamental and paramount law of the nation

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[141] Executive Order No. 6 dated March 12, 1986 as amended by Memorandum Order (MO) No. 26 dated July 31, 1986.

to which all other laws must conform and in accordance with which all private rights are determined and all public authority administered."[142] Any law or issuance, therefore, must not contradict the language of the fundamental law of the land; otherwise, it shall be struck down for being unconstitutional.

Consistent with the foregoing, the DOJ may not promulgate rules that have a negative impact on constitutionally-protected rights without the authority of a valid law. Even with the predicament of preventing the proliferation of crimes and evasion of criminal responsibility, it may not overstep constitutional boundaries and skirt the prescribed legal processes.

That the subjects of DOJ Circular No. 41 are individuals who may have committed a wrong against the state does not warrant the intrusion in the enjoyment of their basic rights. They are nonetheless innocent individuals and suspicions on their guilt do not confer them lesser privileges to enjoy. As emphatically pronounced in *Secretary of National Defense vs. Manalo, et al.*,[143] "the constitution is an overarching sky that covers all in its protection. It affords protection to citizens without distinction. Even the most despicable person deserves the same respect in the enjoyment of his rights as the upright and abiding.

Let it also be emphasized that this Court fully realizes the dilemma of the DOJ. The resolution of the issues in the instant petitions was partly aimed at encouraging the legislature to do its part and enact the necessary law so that the DOJ may be able to pursue its prosecutorial duties without trampling on constitutionally-protected rights. Without a valid legislation, the DOJ's actions will perpetually be met with legal hurdles to the detriment of the due administration of justice. The challenge therefore is for the legislature to address this problem in the form of a legislation that will identify permissible intrusions in the right to travel. Unless this is done, the government will continuously be confronted with questions on the legality of

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[142] *Biraogo v. The Philippine Truth Commission of 2010*, 651 Phil. 374, 464 (2010).

[143] 589 Phil. 1, 10 (2008).

their actions to the detriment of the implementation of government processes and realization of its objectives.

In the meantime, the DOJ may remedy its quandary by exercising more vigilance and efficiency in the performance of its duties. This can be accomplished by expediency in the assessment of complaints filed before its office and in the prompt filing of information in court should there be an affirmative finding of probable cause so that it may legally request for the issuance of HDO and hold the accused for trial. Clearly, the solution lies not in resorting to constitutional shortcuts but in an efficient and effective performance of its prosecutorial duties.

The Court understands the dilemma of the government on the effect of the declaration of unconstitutionality of DOJ Circular No. 41, considering the real possibility that it may be utilized by suspected criminals, especially the affluent ones, to take the opportunity to immediately leave the country. While this is a legitimate concern, it bears stressing that the government is not completely powerless or incapable of preventing their departure or having them answer charges that may be subsequently filed against them. In his Separate Concurring Opinion, Mr. Justice Carpio, pointed out that Republic Act No. (R.A.) 8239, otherwise known as the *Philippine Passport Act of 1996*, explicitly grants the Secretary of Foreign Affairs or any of the authorized consular officers the authority to issue verify, restrict, cancel or refuse the issuance of a passport to a citizen under the circumstances mentioned in Section 4[144]

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[144] SEC. 4. *Authority to Issue, Deny, Restrict or Cancel.* — Upon the application of any qualified Filipino citizen, the Secretary of Foreign Affairs or any of his authorized consular officer may issue passports in accordance with this Act.

Philippine consular officers in a foreign country shall be authorized by the Secretary to issue, verify, restrict, cancel or refuse a passport in the area of jurisdiction of the Post in accordance with the provisions of this Act.

In the interest of national security, public safety and public health, the Secretary or any of the authorized consular officers may, after due hearing and in their proper discretion, refuse to issue a passport, or restrict its use or withdraw or cancel a passport: *Provided, however*, That such act shall not mean a loss or doubt on the person's citizenship: *Provided, further*, That

thereof. Mr. Justice Tijam, on the other hand, mentioned Memorandum Circular No. 036, which was issued pursuant to R.A. No. 9208 or the *Anti-Trafficking in Persons Act of 2003*, as amended by R.A. No. 10364 or the *Expanded Anti-Trafficking in Persons Acts of 2012*, which authorizes the BI to hold the departure of suspected traffickers or trafficked individuals. He also noted that the Commissioner of BI has the authority to issue a HDO against a foreigner subject of deportation proceedings in order to ensure his appearance therein. Similarly, the proposal of Mr. Justice Velasco for the adoption of new set of rules which will allow the issuance of a precautionary warrant of arrest offers a promising solution to this quandary. This, the Court can do in recognition of the fact that laws and rules of procedure should evolve as the present circumstances require.

***Contempt charge against respondent De Lima***

It is well to remember that on November 18, 2011, a Resolution[145] was issued requiring De Lima to show cause why she should not be disciplinarily dealt or be held in contempt for failure to comply with the TRO issued by this Court.

In view, however, of the complexity of the facts and corresponding full discussion that it rightfully deserves, the Court finds it more fitting to address the same in a separate proceeding. It is in the interest of fairness that there be a complete and exhaustive discussion on the matter since it entails the imposition of penalty that bears upon the fitness of the respondent as a member of the legal profession. The Court, therefore, finds it proper to deliberate and resolve the charge of contempt against De Lima in a separate proceeding that could accommodate a full opportunity for her to present her case and provide a better occasion for the Court to deliberate on her alleged disobedience to a lawful order.

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the issuance of a passport may not be denied if the safety and interest of the Filipino citizen is at stake: *Provided, finally*, That refusal or cancellation of a passport would not prevent the issuance of a Travel Document to allow for a safe return journey by a Filipino to the Philippines.

[145] *Rollo* (G.R. No. 199034), Volume I, pp. 394-397.

**WHEREFORE,** in view of the foregoing disquisition, Department of Justice Circular No. 41 is hereby declared **UNCONSTITUTIONAL**. All issuances which were released pursuant thereto are hereby declared **NULL and VOID**.

The Clerk of Court is hereby **DIRECTED to REDOCKET** the Resolution of the Court dated November 18, 2011, which required respondent Leila De Lima to show cause why she should not be cited in contempt, as a separate petition.

**SO ORDERED**.

*Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Jardeleza, Martires, Tijam,* and *Gesmundo, JJ.,* concur.

*Carpio, (Acting C.J.), Velasco, Jr.,* and *Leonen, JJ.,* see separate concurring opinions.

*Caguioa, J.*, no part.

*Sereno, C.J.*, on indefinite leave.

## CONCURRING OPINION

**CARPIO*, Acting C.J.*:**

I concur.

***The constitutionality of the assailed administrative circular remains justiciable.***

Preliminarily, the consolidated petitions continue to present a justiciable controversy. Neither the expiration of the watchlist orders issued by Leila M. De Lima (respondent) as former Secretary of Justice nor the filing of Information for electoral sabotage against petitioner Gloria Macapagal-Arroyo (GMA) rendered the cases moot.

A case becomes moot when it ceases to present a justiciable controversy such that its adjudication would not yield any practical value or use.[1] Where the petition is one for *certiorari*

[1] *Osmeña III v. Social Security System of the Philippines*, 559 Phil. 723, 735 (2007), citing *Governor Mandanas v. Honorable Romulo*, 473 Phil.

seeking the nullification of an administrative issuance for having been issued with grave abuse of discretion, obtaining the other reliefs prayed for in the course of the proceedings will **not** render the entire petition moot altogether. In *COCOFED-Philippine Coconut Producers Federation, Inc. v. Commission on Elections (COMELEC),*[2] the Court thus explained:

> A moot and academic case is one that ceases to present a justiciable controversy because of supervening events so that a declaration thereon would be of no practical use or value.
>
> In the present case, while the COMELEC counted and tallied the votes in favor of COCOFED showing that it failed to obtain the required number of votes, participation in the 2013 elections was merely one of the reliefs COCOFED prayed for. The validity of the COMELEC's resolution, cancelling COCOFED's registration, remains a very live issue that is not dependent on the outcome of the elections.[3] (Citations omitted)

Similarly, where an accused assails via *certiorari* the judgment of conviction rendered by the trial court, his subsequent release on parole will **not** render the petition academic.[4] Precisely, if the sentence imposed upon him is void for lack of jurisdiction, the accused should not have been paroled, but unconditionally released since his detention was illegal.[5] In the same vein, even when the certification election sought to be enjoined went on as scheduled, a petition for *certiorari* does not become moot considering that the petition raises jurisdictional errors that strike at the very heart of the validity of the certification election itself.[6] Indeed, an allegation of a jurisdictional error is a justiciable

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806, 827-828 (2004); *Olanolan v. Comelec*, 494 Phil. 749, 759 (2005); *Paloma v. Court of Appeals*, 461 Phil. 269, 276-277 (2003).

[2] 716 Phil. 19 (2013).

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

[4] *Castrodes v. Cubelo*, 173 Phil. 86 (1978).

[5] *Id*. at 91.

[6] *Cooperative Rural Bank of Davao City, Inc. v. Ferrer-Calleja*, 248 Phil. 169 (1988).

controversy that would prevent the mootness of a special civil action for *certiorari*.[7]

Here, the consolidated petitions for *certiorari* and prohibition assail the constitutionality of Department of Justice (DOJ) Circular No. 041-10,[8] on which respondent based her issuance of watchlist and hold-departure orders against petitioners. Notably, DOJ Circular No. 041-10 was not issued by respondent herself, but by Alberto C. Agra as then Acting Secretary of Justice during the Arroyo Administration. It became effective on 2 July 2010.[9] In fact, the assailed issuance **remains in effect**. To be sure, whether the watchlist and hold-departure orders issued by respondent against petitioners subsequently expired or were lifted is not determinative of the constitutionality of the circular. Hence, the Court is duty-bound to pass upon the constitutionality of DOJ Circular No. 041-10, being a justiciable issue rather than an exception to the doctrine of mootness.

***DOJ Circular No. 041-10 is an invalid impairment of the right to travel, and therefore, unconstitutional.***

Proceeding now to the substantive issue, I agree that DOJ Circular No. 041-10 violates the constitutional right to travel.

Section 6, Article III of the Constitution reads:

> SEC. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired **except in the interest of national security, public safety, or public health, as may be provided by law.** (Emphasis supplied)

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[7] *Regulus Development, Inc. v. Dela Cruz,* G.R. No. 198172, 25 January 2016, 781 SCRA 607, 619.

[8] Otherwise known as Consolidated Rules and Regulations Governing the Issuances and Implementing of Hold Departure Orders, Watchlist Orders and Allow Departure Orders.

[9] DOJ Circular No. 041-10 was published in The Philippine Star on 17 June 2010. Under Art. 2 of the Civil Code, as interpreted by the Court in *Tañada v. Tuvera*, 230 Phil. 528, 533-534 (1986), DOJ Circular No. 041-10 shall take effect after 15 days from the date of its publication.

As above-quoted, the right to travel is not absolute. However, while it can be restricted, the only permissible grounds for restriction are national security, public safety, and public health, which grounds must at least be prescribed by an act of Congress. In only two instances can the right to travel be validly impaired even without a statutory authorization. The first is when a court forbids the accused from leaving Philippine jurisdiction in connection with a pending criminal case.[10] The second is when Congress, pursuant to its power of legislative inquiry, issues a subpoena or arrest order against a person.[11]

The necessity for a legislative enactment expressly providing for a valid impairment of the right to travel finds basis in no less than the fundamental law of the land. Under Section 1, Article VI of the Constitution, the legislative power is vested in Congress. Hence, only Congress, and no other entity or office, may wield the power to make, amend, or repeal laws.[12]

Accordingly, whenever confronted with provisions interspersed with phrases like "in accordance with law" or "as may be provided by law," the Court turns to acts of Congress for a holistic constitutional construction. To illustrate, in interpreting the clause "subject to such limitations as may be provided by law" in relation to the right to information, the Court held in *Gonzales v. Narvasa*[13] that it is Congress that will prescribe these reasonable conditions upon the access to information:

> The right to information is enshrined in Section 7 of the Bill of Rights which provides that —
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> > The right of the people to information on matters of public concern shall be recognized. Access to official records, and to

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[10] *Dr. Cruz v. Judge Iturralde*, 450 Phil. 77, 86 (2003); *Hold-Departure Order issued by Judge Occiano*, 431 Phil. 408, 411-412 (2002); *Silverio v. Court of Appeals*, 273 Phil. 128, 134-135 (1991).

[11] See *Arnault v. Nazareno*, 87 Phil. 29, 45 (1950). See also my dissenting opinion in *Leave Division, Office of Administrative Services-OCA v. Heusdens*, 678 Phil. 328, 355 (2011).

[12] See *Belgica v. Ochoa,* 721 Phil. 416, 546 (2013).

[13] 392 Phil. 518 (2000).

> documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, **subject to such limitations as may be provided by law**.

Under both the 1973 and 1987 Constitution, this is a self-executory provision which can be invoked by any citizen before the courts. This was our ruling in *Legaspi v. Civil Service Commission*, wherein the Court classified the right to information as a public right and "when a mandamus proceeding involves the assertion of a public right, the requirement of personal interest is satisfied by the mere fact that the petitioner is a citizen, and therefore, part of the general 'public' which possesses the right." However, **Congress may provide for reasonable conditions upon the access to information**. Such limitations were embodied in Republic Act No. 6713, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees," which took effect on March 25, 1989. This law provides that, in the performance of their duties, all public officials and employees are obliged to respond to letters sent by the public within fifteen (15) working days from receipt thereof and to ensure the accessibility of all public documents for inspection by the public within reasonable working hours, subject to the reasonable claims of confidentiality.[14] (Emphasis supplied; Citations omitted)

In *Tondo Medical Center Employees Association v. Court of Appeals,*[15] the Court made a jurisprudential survey on the interpretation of constitutional provisions that are not self-executory and held that it is Congress that will breathe life into these provisions:

As a general rule, the provisions of the Constitution are considered self-executing, and do not require future legislation for their enforcement. For if they are not treated as self-executing, the mandate of the fundamental law can be easily nullified by the inaction of Congress. However, some provisions have already been categorically declared by this Court as non self-executing.

In *Tañada v. Angara*, the Court specifically set apart the sections found under Article II of the 1987 Constitution as non self-executing

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[14] *Id.* at 529-530.

[15] 554 Phil. 609 (2007).

and ruled that such broad principles need legislative enactments before they can be implemented:

> By its very title, Article II of the Constitution is a "declaration of principles and state policies." x x x These **principles in Article II are not intended to be self-executing** principles ready for enforcement through the courts. They are **used** by the judiciary as aids or as guides in the exercise of its power of judicial review, and **by the legislature in its enactment of laws**.

In *Basco v. Philippine Amusement and Gaming Corporation*, this Court declared that Sections 11, 12, and 13 of Article II; Section 13 of Article XIII; and Section 2 of Article XIV of the 1987 Constitution are not self-executing provisions. In *Tolentino v. Secretary of Finance*, the Court referred to Section 1 of Article XIII and Section 2 of Article XIV of the Constitution as **moral incentives to legislation**, not as judicially enforceable rights. These provisions, which merely lay down a general principle, are distinguished from other constitutional provisions as non self-executing and, therefore, cannot give rise to a cause of action in the courts; they do not embody judicially enforceable constitutional rights.

Some of the constitutional provisions invoked in the present case were taken from Article II of the Constitution — specifically, Sections 5, 9, 10, 11, 13, 15 and 18 — the provisions of which the Court categorically ruled to be non self-executing in the aforecited case of *Tañada v. Angara*.[16] (Emphasis supplied; citations omitted)

In *Ang Bagong Bayani-OFW Labor Party v. COMELEC,*[17] the Court construed the constitutional provisions on the party-list system and held that the phrases "in accordance with law" and "as may be provided by law" authorized Congress "to sculpt in granite the lofty objective of the Constitution," to wit:

That political parties may participate in the party-list elections does not mean, however, that any political party — or any organization or group for that matter — may do so. The requisite character of these parties or organizations must be consistent with the purpose

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[16] *Id.* at 625-626.

[17] 412 Phil. 308 (2001).

of the party-list system, as laid down in the Constitution and RA 7941. Section 5, Article VI of the Constitution, provides as follows:

> "(1) The House of Representatives shall be composed of not more than two hundred and fifty members, *unless otherwise fixed by law*, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, *as provided by law*, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.
>
> (2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, *as provided by law*, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors *as may be provided by law*, except the religious sector."
>
> x x x x x x x x x

The foregoing provision on the party-list system is **not self-executory**. **It is, in fact, interspersed with phrases like "in accordance with law" or "as may be provided by law"; it was thus up to Congress to sculpt in granite the lofty objective of the Constitution.** x x x.[18] (Italicization in the original; boldfacing supplied)

Unable to cite any specific law on which DOJ Circular No. 041-10 is based, respondent invokes Executive Order No. 292, otherwise known as the Revised Administrative Code of 1987. In particular, respondent cites the DOJ's mandate to "investigate the commission of crimes" and "provide immigration x x x regulatory services," as well as the DOJ Secretary's rule-making power.[19]

I disagree.

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[18] *Id.* at 331-332.

[19] Consolidated Comment, p. 36.

In the landmark case of *Ople v. Torres*,[20] an administrative order was promulgated restricting the right to privacy without a specific law authorizing the restriction. The Office of the President justified its legality by invoking the Revised Administrative Code of 1987. The Court rejected the argument and nullified the assailed issuance for being unconstitutional as the Revised Administrative Code of 1987 was too general a law to serve as basis for the curtailment of the right to privacy, thus:

> We now come to the core issues. Petitioner claims that A.O. No. 308 is not a mere administrative order but a law and hence, beyond the power of the President to issue. He alleges that A.O. No. 308 establishes a system of identification that is all-encompassing in scope, affects the life and liberty of every Filipino citizen and foreign resident, and more particularly, violates their right to privacy.
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> Petitioner's sedulous concern for the Executive not to trespass on the lawmaking domain of Congress is understandable. The blurring of the demarcation line between the power of the Legislature to make laws and the power of the Executive to execute laws will disturb their delicate balance of power and cannot be allowed. Hence, the exercise by one branch of government of power belonging to another will be given a stricter scrutiny by this Court.
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> x x x x x x x x x
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> Prescinding from these precepts, we hold that A.O. No. 308 involves a subject that is not appropriate to be covered by an administrative order. An administrative order is:
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> > "Sec. 3. *Administrative Orders*. — Acts of the President which relate to particular aspects of governmental operation in pursuance of his duties as administrative head shall be promulgated in administrative orders."
>
> An administrative order is an ordinance issued by the President which relates to specific aspects in the administrative operation of government. It must be in harmony with the law and should be for the sole purpose of implementing the law and carrying out the legislative policy. **We reject the argument that A.O. No. 308 implements the legislative policy of the Administrative Code of**

[20] 354 Phil. 948 (1998).

**1987. The Code is a general law and "incorporates in a unified document the major structural, functional and procedural principles of governance" and "embodies changes in administrative structures and procedures designed to serve the people."** The Code is divided into seven (7) Books: Book I deals with Sovereignty and General Administration, Book II with the Distribution of Powers of the three branches of Government, Book III on the Office of the President, Book IV on the Executive Branch, Book V on the Constitutional Commissions, Book VI on National Government Budgeting, and Book VII on Administrative Procedure. These Books contain provisions on the organization, powers and general administration of the executive, legislative and judicial branches of government, the organization and administration of departments, bureaus and offices under the executive branch, the organization and functions of the Constitutional Commissions and other constitutional bodies, the rules on the national government budget, as well as guidelines for the exercise by administrative agencies of quasi-legislative and quasi-judicial powers. The Code covers both the internal administration of government, *i.e.*, internal organization, personnel and recruitment, supervision and discipline, and the effects of the functions performed by administrative officials on private individuals or parties outside government.[21] (Citations omitted)

Indeed, EO 292 is a law of general application.[22] Pushed to the hilt, the argument of respondent will grant carte blanche to the Executive in promulgating rules that curtail the enjoyment of constitutional rights even without the sanction of Congress. To repeat, the Executive is limited to executing the law. It cannot make, amend or repeal a law, much less a constitutional provision.

For the same reason, in the Court's jurisprudence concerning the overseas travel of court personnel during their approved leaves of absence and with no pending criminal case before any court, I have consistently maintained that only a law, not administrative rules, can authorize the Court to impose

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[21] *Id*. at 966, 968-969.

[22] *Office of the Solicitor General v. Court of Appeals*, 735 Phil. 622, 630 (2014); *Calingin v. Court of Appeals*, 478 Phil. 231, 236-237 (2004); *Government Service Insurance System v. Civil Service Commission*, 307 Phil. 836, 846 (1994).

administrative sanctions for the employee's failure to obtain a travel permit:

> Although the constitutional right to travel is not absolute, it can only be restricted in the interest of national security, public safety, or public health, as may be provided by law. As held in *Silverio v. Court of Appeals*:
>
> > Article III, Section 6 of the 1987 Constitution should be interpreted to mean that while the liberty of travel may be impaired even without court order, the appropriate executive officers or administrative authorities are not armed with arbitrary discretion to impose limitations. They can impose limits only on the basis of "national security, public safety, or public health" and "as may be provided by law," a limitive phrase which did not appear in the 1973 text x x x. Apparently, the phraseology in the 1987 Constitution was a reaction to the ban on international travel imposed under the previous regime when there was a Travel Processing Center, which issued certificates of eligibility to travel upon application of an interested party x x x.
>
> The constitutional right to travel cannot be impaired without due process of law. Here, due process of law requires the existence of a law regulating travel abroad, in the interest of national security, public safety or public health. There is no such law applicable to the travel abroad of respondent. Neither the OCA nor the majority can point to the existence of such a law. In the absence of such a law, the denial of respondent's right to travel abroad is a gross violation of a fundamental constitutional right.
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> x x x x x x x x x
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> Furthermore, respondent's travel abroad, during her approved leave, did not require approval from anyone because respondent, like any other citizen, enjoys the constitutional right to travel within the Philippines or abroad. Respondent's right to travel abroad, during her approved leave, cannot be impaired "except in the interest of national security, public safety, or public health, as may be provided by law." Not one of these grounds is present in this case.[23] (Citations omitted)

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[23] See my dissenting opinion in *Leave Division, Office of Administrative Services-OCA v. Heusdens*, *supra* note 11, at 354-356.

While the Revised Administrative Code of 1987 cannot lend credence to a valid impairment of the right to travel, Republic Act No. (RA) 8239, otherwise known as the Philippine Passport Act of 1996, expressly allows the **Secretary of Foreign Affairs or any of the authorized consular officers** to cancel the passport of a citizen. Section 4 of RA 8239 reads:

> SEC. 4. *Authority to Issue, Deny, Restrict or Cancel.* — Upon the application of any qualified Filipino citizen, the Secretary of Foreign Affairs or any of his authorized consular officer may issue passports in accordance with this Act.
>
> Philippine consular officers in a foreign country shall be authorized by the Secretary to issue, verify, restrict, cancel or refuse a passport in the area of jurisdiction of the Post in accordance with the provisions of this Act.
>
> In the interest of national security, public safety and public health, the Secretary or any of the authorized consular officers may, after due hearing and in their proper discretion, refuse to issue a passport, or restrict its use or withdraw or cancel a passport: *Provided, however,* That such act shall not mean a loss or doubt on the person's citizenship: *Provided, further,* That the issuance of a passport may not be denied if the safety and interest of the Filipino citizen is at stake: *Provided, finally,* That refusal or cancellation of a passport would not prevent the issuance of a Travel Document to allow for a safe return journey by a Filipino to the Philippines.

The identical language between the grounds to cancel passports under the above-quoted provision and the grounds to impair the right to travel under Section 6, Article III of the Constitution is **not** by accident cognizant of the fact that passport cancellations necessarily entail an impairment of the right. Congress intentionally copied the latter to obviate expanding the grounds for restricting the right to travel.

Can the DFA Secretary, under Section 4 of RA 8239, cancel the passports of persons under preliminary investigation? The answer depends on the nature of the crime for which the passport holders are being investigated on. If the crime affects national security and public safety, the cancellation squarely falls within the ambit of Section 4. Thus, passport holders facing preliminary

investigation for the following crimes are subject to the DFA Secretary's power under Section 4:

1) Title One, (Crimes Against National Security and the Law of Nations), Title Three (Crimes Against Public Order), Title Eight (Crimes Against Persons), Title Nine (Crimes Against Liberty), Title Ten (Crimes Against Property) and Title Eleven (Crimes Against Chastity), Book II of the Revised Penal Code;

(2) Section 261 (Prohibited Acts), paragraphs (e),[24] (f),[25] (p),[26] (q),[27] (s),[28] and (u)[29] of the Omnibus Election Code;[30] and

(3) Other related election laws such as Section 27(b) of RA 7874, as amended by RA 9369.[31]

Indeed, the phrases "national security" and "public safety," which recur in the text of the Constitution as grounds for the exercise of powers or curtailment of rights,[32] are intentionally

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[24] "Threats, intimidation, terrorism, use of fraudulent device or other forms of coercion."

[25] "Coercion of election officials and employees."

[26] "[Carrying of] deadly weapons in prohibited areas."

[27] "Carrying of firearms outside residence or place of business."

[28] "Wearing of uniforms and bearing arms."

[29] "Organization or maintenance of reaction forces, strike forces, or other similar forces."

[30] Batas Pambansa Blg. 881, as amended.

[31] Defining the offense of Electoral Sabotage.

[32] *E.g.*, (1) Art. III, Sec. 3(1) ["The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when ***public safety*** or order requires otherwise, as prescribed by law."]; Sec. 6 ["The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of ***national security***, ***public safety***, or public health, as may be provided by law."]; Sec. 15 ["The privilege of the writ of *habeas corpus* shall not be suspended except in cases of invasion or rebellion, when the ***public safety*** requires it."]); and (2) Art. VII, Sec. 15 ["Two months immediately before the next presidential elections and up to the end of his term, a President or

broad to allow interpretative flexibility, but circumscribed at the same time to prevent limitless application. At their core, these concepts embrace acts undermining the State's existence or public security. At their fringes, they cover acts disrupting individual or communal tranquility. Either way, violence or potential of violence features prominently.

Thus understood, the "public safety" ground under Section 4 of RA 8239 unquestionably includes violation of election-related offenses carrying the potential of disrupting the peace, such as electoral sabotage which involves massive tampering of votes (in excess of 10,000 votes). Not only does electoral sabotage desecrate electoral processes, but it also arouses heated passion among the citizenry, driving some to engage in mass actions and others to commit acts of violence. The cancellation of passports of individuals investigated for this crime undoubtedly serves the interest of public safety, much like individuals under investigation for robbery, kidnapping, and homicide, among others.[33]

As to whether respondent must be cited in contempt for allegedly defying the Temporary Restraining Order issued by the Court, I agree that it cannot be resolved simultaneously with these consolidated petitions. Until the contempt charge is

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Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger ***public safety***."]; Sec. 18, par. 2 ["In case of invasion or rebellion, when the ***public safety*** requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. x x x. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and ***public safety*** requires it."] (Emphasis supplied)

[33] It is not farfetched to link election laws with public safety. The European Court of Human Rights considers the forced abolition of a political party espousing violent and extreme views as permissible in the interest of public safety, even though this impairs the party members' right to association. See *Refah Partisi v. Turkey*, 13 February 2003, Application Nos. 41340/98, 41342/98, 41343/98 and 41344/9837. (www.echr.coe.int/Documents/Reports_Recueil_2003-II.pdf, accessed on 18 January 2018)

thresed out in a separate and proper proceeding, I defer expressing my view on this issue.

Accordingly, I vote to **GRANT** the petitions and to declare DOJ Circular No. 041-10, and the assailed Watchlist Orders issued pursuant to the circular, **UNCONSTITUTIONAL** for being contrary to Section 6, Article III of the Constitution. As regards the contempt charge against respondent, I **DEFER** any opinion on this issue until it is raised in a separate and proper proceeding.

## SEPARATE CONCURRING OPINION

**VELASCO, JR., *J.*:**

I concur with the *ponencia* of my esteemed colleague, Justice Andres B. Reyes, Jr.

That the right to travel and to freedom of movement are guaranteed protection by no less than the fundamental law of our land brooks no argument. While these rights are not absolute, the delimitation thereof must rest on specific circumstances that would warrant the intrusion of the State. As mandated by Section 6 of the Bill of Rights, any curtailment of the people's freedom of movement must indispensably be grounded on an intrinsically valid law, and only whenever necessary to protect national security, public safety, or public health, thus:

> SEC. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, **as may be provided by law**. (Emphasis and underscoring supplied)

The Department of Justice (DOJ) Circular No. 41cannot be the law pertained to in the provision. As pointed out in the *ponencia*, it is but an administrative issuance that requires an enabling law to be valid.[1]

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[1] Page 22 of the Decision.

Jurisprudence dictates that the validity of an administrative issuance is hinged on compliance with the following requirements: 1) its promulgation is authorized by the legislature; 2) it is promulgated in accordance with the prescribed procedure; 3) *it is within the scope of the authority given by the legislature*; and 4) it is reasonable.[2] The DOJ, thus, exceeded its jurisdiction when it assumed to wield the power to issue hold departure orders (HDOs) and watchlist orders (WLOs), and allow department orders which unduly infringe on the people's right to travel absent any *specific* legislation expressly vesting it with authority to do so.

I, therefore, concur that DOJ Circular No. 41 is without basis in law and is, accordingly, unconstitutional.

With the declaration of nullity of DOJ Circular No. 41, our law enforcers are left in a quandary and without prompt recourse for preventing persons strongly suspected of committing criminal activities from evading the reach of our justice system by fleeing to other countries.

Justice Antonio T. Carpio, in his Separate Concurring Opinion, makes mention of Republic Act No. 8239, otherwise known as the Philippine Passport Act of 1996, which expressly allows the Secretary of Foreign Affairs or any of the authorized consular officers to cancel the passport of a citizen, even those of persons under preliminary investigations, for crimes affecting national security and public safety. This course of action, while undoubtedly a legally viable solution to the DOJ's dilemma, would nevertheless require the conduct of a hearing, pursuant to Section 4[3] of the law. This would inevitably alert the said

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[2] *Hon. Executive Secretary, et al. v. Southwing Heavy Industries, Inc.*, G.R. No. 164171, February 20, 2006, 482 SCRA 673, 686.

[3] SEC. 4. *Authority to Issue, Deny, Restrict or Cancel.* — Upon the application of any qualified Filipino citizen, the Secretary of Foreign Affairs or any of his authorized consular officer may issue passports in accordance with this Act.

Philippine consular officers in a foreign country shall be authorized by the Secretary to issue, verify, restrict, cancel or refuse a passport in the area of jurisdiction of the Post in accordance with the provisions of this Act.

persons of interest of the cause and purpose of the cancellation of their passports that could, in turn, facilitate, rather than avert, their disappearance to avoid the processes of the court.

As an alternative solution, it is my humble submission that the above predicament can be effectively addressed through the *ex-parte* issuance of precautionary warrants of arrest (PWAs) and/or precautionary hold departure orders (PHDOs) prior to the filing of formal charges and information against suspected criminal personalities.

The issuance of PWAs or PHDOs is moored on Section 2, Article III of the Bill of Rights of the Constitution, to wit:

> Section 2. x x x no search warrant or warrant of arrest shall issue except upon **probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce**, and particularly describing the place to be searched and the persons or things to be seized. (Emphasis supplied)

It bears noting that the warrant clause permits the issuance of warrants, whether it be a search warrant or a warrant of arrest, **even prior to the filing of a criminal complaint or information in court**. This interpretation finds support in the crafting of the provisions in our Rules of Criminal Procedure that govern the issuance of search warrants. As stated in Sections 4 to 6[4]

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In the interest of national security, public safety and public health, the Secretary or any of the authorized consular officers may, **after due hearing** and in their proper discretion, refuse to issue a passport, or restrict its use or withdraw or cancel a passport: *Provided, however*, That such act shall not mean a loss or doubt on the person's citizenship: *Provided, further*, That the issuance of a passport may not be denied if the safety and interest of the Filipino citizen is at stake: *Provided, finally*, That refusal or cancellation of a passport would not prevent the issuance of a Travel Document to allow for a safe return journey by a Filipino to the Philippines. (Emphasis supplied)

[4] Section 4. *Requisites for issuing search warrant*. — A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

of Rule 126, a search warrant may be issued by the courts if, after personally examining the complainants/applicants and the witnesses produced, they are convinced that probable cause exists for the issuance thereof. The rules do not require that 1) a criminal action or even a complaint must have already been filed against an accused; and that 2) persons of interest are notified of such application before law enforcement may avail of this remedy. The application for and issuance of a search warrant are not conditioned on the existence of a criminal action or even a complaint before an investigating prosecutor against any person.

Anchored on Section 2, Article III of the Constitution, a rule on precautionary warrant of arrest, akin to a search warrant, may be crafted by the Court. The application will be done *ex-parte*, by a public prosecutor upon the initiative of our law enforcement agencies, *before* an information is filed in court, and only in certain serious crimes and offenses. Before filing the application, the public prosecutor shall ensure that probable cause exists that the crime has been committed and that the person sought to be arrested committed it. The law enforcement agencies may also opt to ask for a PWA with PHDO or simply a PHDO.

The judge's determination of probable cause shall be done in accordance with the requirements in Section 2, Article III of the Constitution. He shall set a hearing on the application to personally examine under oath or affirmation, in form of searching questions and answers, the applicant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements. If satisfied of the existence of probable cause based on the application and its attachments,

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Section 5. *Examination of complainant*; *record*. — The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted. (4a)

Section 6. *Issuance and form of search warrant*. — If the judge is satisfied of the existence of facts upon which the application is based or that there is probable cause to believe that they exist, he shall issue the warrant, which must be substantially in the form prescribed by these Rules. (5a)

the testimonies of the witnesses, and other evidence presented during the hearing, the judge may issue the warrant and direct the Philippine National Police or the National Bureau of Investigation to effect the arrest.

The suggested revision in the Rules, to my mind, will help solve the problem caused by the declaration of nullity of the HDOs and WLOs issued by the DOJ. The law enforcement agencies can apply for a PWA or PHDO to prevent suspects from fleeing the country and to detain and arrest them at the airport. This may also solve the problem of extrajudicial killings as the law enforcement agency is now provided with an adequate remedy for the arrest of the criminals.

I vote to **GRANT** the petition.

## SEPARATE CONCURRING OPINION

**LEONEN, *J.*:**

I concur that Department of Justice Circular No. 41, series of 2010, is unconstitutional. The Department of Justice is neither authorized by law nor does it possess the inherent power to issue hold departure orders, watchlist orders, and allow departure orders against persons under preliminary investigation.

However, I have reservations regarding the proposed doctrine that the right of persons to travel can only be impaired by a legislative enactment as it can likewise be burdened by other constitutional provisions.

The pertinent Constitutional provision on the right to travel is Article III, Section 6, which states:

> Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. *Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.* (Emphasis supplied)

The right to travel, as a concept, was directly tackled in *Marcos v. Manglapus*,[1] an early case decided under the 1987 Constitution. It dealt specifically with the right of former President Marcos to return to the Philippines. In resolving the case, this Court distinguished between the right to return to one's country and the general right to travel. The right to return to one's country was treated separately and deemed excluded from the constitutionally protected right to travel.[2]

In my view, the right to travel should not be given such a restrictive interpretation. In the broad sense, the right to travel refers to the "right to move from one place to another."[3] The delimitation set in *Marcos* effectively excludes instances that may involve a curtailment on the right to *travel within* the Philippines and the right to *travel to* the Philippines. This case presents us with an opportunity to revisit *Marcos* and abandon its narrow and restrictive interpretation. In this regard, the constitutional provision should be read to include travel within the Philippines and travel to and from the Philippines.

Undeniably, the right to travel is not absolute. Article III, Section 6 of the Constitution states that any curtailment must be based on "national security, public safety, or public health, as may be provided by law."

In interpreting this constitutional provision, the *ponencia* proposes that only a statute or a legislative enactment may impair the right to travel.

Respectfully, I disagree. In my view, the phrase "as may be provided by law" should not be literally interpreted to mean statutory law. Its usage should depend upon the context in which it is written. As used in the Constitution, the word "law" does not only refer to statutes but embraces the Constitution itself.

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[1] 258 Phil. 489 (1989) [Per *J.* Cortes, *En Banc*].

[2] *Id.* at 497-498.

[3] *Mirasol v. Department of Public Works and Highways*, 523 Phil. 713, 752 (2006) [Per *J.* Carpio, *En Banc*].

The Bill of Rights is replete with provisions that provide a similar phraseology. For instance, both the due process clause and the equal protection clause under Article III, Section 1 of the Constitution contain the word "law," thus:

> Article III
> BILL OF RIGHTS
>
> Section 1. No person shall be deprived of life, liberty or property without *due process of law*, nor shall any person be denied the *equal protection of the laws*. (Emphasis supplied)

However, the application of the due process and the equal protection clauses has not been limited to statutory law. These two (2) principles have been tested even against executive issuances.

In *Ynot v. Intermediate Appellate Court,*[4] the due process clause was deemed to have been violated by an executive order which directed the outright confiscation of carabaos transported from one province to another. In declaring the executive order unconstitutional, this Court held:

> [T]he challenged measure is an invalid exercise of the police power because the method employed to conserve the carabaos is not reasonably necessary to the purpose of the law and, worse, is unduly oppressive. Due process is violated because the owner of the property confiscated is denied the right to be heard in his defense and is immediately condemned and punished. The conferment on the administrative authorities of the power to adjudge the guilt of the supposed offender is a clear encroachment on judicial functions and militates against the doctrine of separation of powers. There is, finally, also an invalid delegation of legislative powers to the officers mentioned therein who are granted unlimited discretion in the distribution of the properties arbitrarily taken. For these reasons, we hereby declare Executive Order No. 626-A unconstitutional.[5]

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[4] 232 Phil. 615, 631 (1987) [Per *J.* Cruz, *En Banc*].

[5] *Id*. at 631.

In the same manner, this Court in *Corona v. United Harbor Pilots Association of the Philippines*[6] invalidated an administrative order that restricted harbor pilots from exercising their profession. The administrative order, which required harbor pilots to undergo an annual performance evaluation as a condition for the continued exercise of their profession, was considered a "deprivation of property without due process of law."[7]

In *Biraogo v. Truth Commission*,[8] the creation of the Philippine Truth Commission by virtue of an executive order was deemed unconstitutional for violating the equal protection clause. The classification under the executive order, according to this Court, was unreasonable, thus:

> Executive Order No. 1 should be struck down as violative of the equal protection clause. The clear mandate of the envisioned truth commission is to investigate and find out the truth "concerning the reported cases of graft and corruption during the *previous administration*" only. The intent to single out the previous administration is plain, patent and manifest. Mention of it has been made in at least three portions of the questioned executive order. Specifically, these are:
>
> > WHEREAS, there is a need for a separate body dedicated solely to investigating and finding out the truth concerning the reported cases of graft and corruption during the **previous administration**, and which will recommend the prosecution of the offenders and secure justice for all;
> >
> > SECTION 1. *Creation of a Commission.* — There is hereby created the PHILIPPINE TRUTH COMMISSION, hereinafter referred to as the "COMMISSION," which shall primarily seek and find the truth on, and toward this end, investigate reports of graft and corruption of such scale and magnitude that shock and offend the moral and ethical sensibilities of the people, committed by public officers and employees, their co-principals, accomplices and accessories from the private sector, if any, during the **previous administration**; and thereafter recommend

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[6] 347 Phil. 333 (1997) [Per *J.* Romero, *En Banc*].

[7] *Id*. at 344.

[8] 651 Phil. 374 (2010) [Per *J.* Mendoza, *En Banc*].

> the appropriate action or measure to be taken thereon to ensure that the full measure of justice shall be served without fear or favor.
>
> SECTION 2. *Powers and Functions.* — The Commission, which shall have all the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987, is primarily tasked to conduct a thorough fact-finding investigation of reported cases of graft and corruption referred to in Section 1, involving third level public officers and higher, their co-principals, accomplices and accessories from the private sector, if any, during the **previous administration** and thereafter submit its finding and recommendations to the President, Congress and the Ombudsman. [Emphases supplied]

In this regard, it must be borne in mind that the Arroyo administration is but just a member of a class, that is, a class of past administrations. It is not a class of its own. Not to include past administrations similarly situated constitutes arbitrariness which the equal protection clause cannot sanction. Such discriminating differentiation clearly reverberates to label the commission as a vehicle for vindictiveness and selective retribution.[9] (Citations omitted)

In this regard, it is inaccurate to say that the right of persons to travel to and from the Philippines can only be impaired by statutory law. It is also inaccurate to say that the impairment should only be limited to national security, public safety, or public health considerations for it to be valid.

For instance, the assailed department order in *Philippine Association of Service Exporters, Inc. v. Drilon*[10] was not founded upon national security, public safety, or public health but on the state's policy of affording protection to labor.[11] The department order was deemed a valid restriction on the right to travel.[12]

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[9] *Id*. at 461-462.

[10] 246 Phil. 393 (1988) [Per *J.* Sarmiento, *En Banc*].

[11] *Id*. at 404-405.

[12] *Id*.

The term "law" in Article III, Section 6 can refer to the Constitution itself. This can be understood by examining this Court's power to regulate foreign travel of court personnel and the nature and functions of bail.

The power of this Court to regulate the foreign travel of court personnel does not emanate from statutory law, nor is it based on national security, public safety, or public health considerations. Rather, it is an inherent power flowing from Article III, Section 5(6) of the Constitution, which grants this Court the power of administrative supervision over all courts and court personnel.[13]

The nature and object of this Court's power to control the foreign travel of court personnel were further explained in *Leave Division, Office of Administrative Services – Office of the Court Administrator v. Heusdens*,[14] thus:

> *With respect to the power of the Court, Section 5 (6), Article VIII of the 1987 Constitution provides that the "Supreme Court shall have administrative supervision over all courts and the personnel thereof." This provision empowers the Court to oversee all matters relating to the effective supervision and management of all courts and personnel under it.* Recognizing this mandate, Memorandum Circular No. 26 of the Office of the President, dated July 31, 1986, considers the Supreme Court exempt and with authority to promulgate its own rules and regulations on foreign travels. Thus, the Court came out with OCA Circular No. 49-2003 (B).
>
> Where a person joins the Judiciary or the government in general, he or she swears to faithfully adhere to, and abide with, the law and the corresponding office rules and regulations. These rules and regulations, to which one submits himself or herself, have been issued to guide the government officers and employees in the efficient performance of their obligations. When one becomes a public servant, he or she assumes certain duties with their concomitant responsibilities

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[13] CONST., Art. VIII, Sec. 5(6) provides:

Section 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

[14] 678 Phil. 328 (2011) [Per *J*. Mendoza, *En Banc*].

and gives up some rights like the absolute right to travel so that public service would not be prejudiced.

As earlier stated, with respect to members and employees of the Judiciary, the Court issued OCA Circular No. 49-2003 to regulate their foreign travel in an unofficial capacity. *Such regulation is necessary for the orderly administration of justice. If judges and court personnel can go on leave and travel abroad at will and without restrictions or regulations, there could be a disruption in the administration of justice. A situation where the employees go on mass leave and travel together, despite the fact that their invaluable services are urgently needed, could possibly arise. For said reason, members and employees of the Judiciary cannot just invoke and demand their right to travel.*

*To permit such unrestricted freedom can result in disorder, if not chaos, in the Judiciary and the society as well. In a situation where there is a delay in the dispensation of justice, litigants can get disappointed and disheartened. If their expectations are frustrated, they may take the law into their own hands which results in public disorder undermining public safety. In this limited sense, it can even be considered that the restriction or regulation of a court personnel's right to travel is a concern for public safety, one of the exceptions to the non-impairment of one's constitutional right to travel.*[15] (Citations omitted, emphasis supplied)

A person's right to bail before conviction is both guaranteed and limited under the Constitution. Article III, Section 13 states:

Section 13. All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

Courts have the jurisdiction to determine whether a person should be admitted to bail. This jurisdiction springs from the Constitution itself, which imposes limitations on the right to bail. However, the discretion of courts is not restricted to the

[15] *Id.* at 341-342.

question of whether bail should be granted to an accused as Courts have the inherent power "to prohibit a person admitted to bail from leaving the Philippines."[16] Regional Trial Courts, in particular, are empowered to issue hold departure orders in criminal cases falling within their exclusive jurisdiction.[17]

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[16] *Manotoc v. Court of Appeals*, 226 Phil. 75, 82 (1986) [Per *J*. Fernan, *En Banc*].

[17] OCA Circular No. 39-97, Guidelines in the Issuance of Hold-Departure Orders (1997):

In order to avoid the indiscriminate issuance of Hold-Departure Orders resulting in inconvenience to the parties affected the same being tantamount to an infringement on the right and liberty of an individual to travel and to ensure that the Hold-Departure Orders which are issued contain complete and accurate information, the following guidelines are hereby promulgated:

1. Hold-Departure Orders shall be issued only in criminal cases within the exclusive jurisdiction of the Regional Trial Courts;

2. The Regional Trial Courts issuing the Hold-Departure Order shall furnish the Department of Foreign Affairs (DFA) and the Bureau of Immigration (BI) of the Department of Justice with a copy each of the Hold-Departure Order issued within twenty-four (24) hours from the time of issuance and through the fastest available means of transmittal;

3. The Hold-Departure Order shall contain the following information:

   a. The complete name (including the middle name), the date and place of birth and the place of last residence of the person against whom a Hold-Departure Order has been issued or whose departure from the country has been enjoined;

   b. The complete title and the docket number of the case in which the Hold-Departure Order was issued;

   c. The specific nature of the case; and

   d. The date of the Hold-Departure Order.

If available a recent photograph of the person against whom a Hold-Departure Order has been issued or whose departure from the country has been enjoined should also be included.

4. Whenever (a) the accused has been acquitted; or (b) the case has been dismissed, the judgment of acquittal or the order of dismissal shall include therein the cancellation of the Hold-Departure Order issued. The courts concerned shall furnish the Department of Foreign Affairs and the Bureau of Immigration with a copy each of the judgment of acquittal promulgated or the order of dismissal issued within twenty-four (24) hours from the

Persons admitted to bail are required to seek permission before travelling abroad.[18]

Similar to the power of this Court to control foreign travel of court personnel, the power to restrict the travel of persons admitted to bail is neither based on a legislative enactment nor founded upon national security, public safety, or public health considerations. The power of courts to restrict the travel of persons on bail is deemed a necessary consequence of the conditions imposed in a bail bond.[19] In *Manotoc v. Court of Appeals*[20] this Court explained:

> Rule 114, Section 1 of the Rules of Court defines bail as the security required and given for the release of a person who is in the custody of the law, that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance.
>
> "Its object is to relieve the accused of imprisonment and the state of the burden of keeping him, pending the trial, and at the same time, to put the accused as much under the power of the court as if he were in custody of the proper officer, and to secure the appearance of the accused so as to answer the call of the court and do what the law may require of him."
>
> The condition imposed upon petitioner to make himself available at all times whenever the court requires his presence operates as a valid restriction on his right to travel. As we have held in People v. Uy Tuising[:]

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time of promulgation/issuance and likewise through the fastest available means of transmittal.

All Regional Trial Courts which have furnished the Department of Foreign Affairs with their respective lists of active Hold-Departure Orders are hereby directed to conduct an inventory of the Hold-Departure Orders included in the said lists and inform the government agencies concerned of the status of the Orders involved.

[18] *Leave Division, Office of Administrative Services – Office of the Court Administrator v. Heusdens*, 678 Phil. 328 (2011) [Per *J*. Mendoza, *En Banc*].

[19] *Manotoc v. Court of Appeals*, 226 Phil. 75, 82 (1986) [Per *J*. Fernan, *En Banc*].

[20] 226 Phil. 75 (1986) [Per *J*. Fernan, *En Banc*].

> ". . . the result of the obligation assumed by appellee (surety) to hold the accused amenable at all times to the orders and processes of the lower court, was to prohibit said accused from leaving the jurisdiction of the Philippines, because, otherwise, said orders and processes will be nugatory, and inasmuch as the jurisdiction of the courts from which they issued does not extend beyond that of the Philippines they would have no binding force outside of said jurisdiction."

Indeed, if the accused were allowed to leave the Philippines without sufficient reason, he may be placed beyond the reach of the courts.

"The effect of a recognizance or bail bond, when fully executed or filed of record, and the prisoner released thereunder, is to transfer the custody of the accused from the public officials who have him in their charge to keepers of his own selection. Such custody has been regarded merely as a continuation of the original imprisonment. The sureties become invested with full authority over the person of the principal and have the right to prevent the principal from leaving the state."[21] (Citations omitted)

Although *Manotoc* was decided under the 1973 Constitution, the nature and functions of bail remain essentially the same under the 1987 Constitution.[22] Hence, the principle laid down in *Manotoc* was reiterated in *Silverio v. Court of Appeals*[23] where this Court further explained that:

> Article III, Section 6 of the 1987 Constitution should by no means be construed as delimiting the inherent power of the Courts to use all means necessary to carry their orders into effect in criminal cases pending before them. When by law jurisdiction is conferred on a Court or judicial officer, all auxiliary writs, process and other means necessary to carry it into effect may be employed by such Court or officer.
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> . . . . . .

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

[22] *Silverio v. Court of Appeals*, 273 Phil. 128, 134 (1991) [Per *J.* Melencio-Herrera, Second Division].

[23] 273 Phil. 128 (1991) [Per *J.* Melencio-Herrera, Second Division].

. . . Holding an accused in a criminal case within the reach of the Courts by preventing his departure from the Philippines must be considered as a valid restriction on his right to travel so that he may be dealt with in accordance with law.[24] (Citation omitted)

Moreover, the power of courts to restrict the travel of persons out on bail is an incident of its power to grant or deny bail. As explained in *Santiago v. Vasquez*:[25]

Courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.

Therefore, while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has the power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction. Hence, demands, matters, or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.

Furthermore, a court has the inherent power to make interlocutory orders necessary to protect its jurisdiction. Such being the case, with more reason may a party litigant be subjected to proper coercive measures where he disobeys a proper order, or commits a fraud on the court or the opposing party, the result of which is that the

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[24] *Id*. at 134.

[25] 291 Phil. 664 (1993) [Per *J*. Regalado, *En Banc*].

jurisdiction of the court would be ineffectual. What ought to be done depends upon the particular circumstances.

Turning now to the case at bar, petitioner does not deny and, as a matter of fact, even made a public statement that she had every intention of leaving the country allegedly to pursue higher studies abroad. We uphold the course of action adopted by the Sandiganbayan in taking judicial notice of such fact of petitioner's plan to go abroad and in thereafter issuing *sua sponte* the hold departure order, in justified consonance with our preceding disquisition. To reiterate, the hold departure order is but an exercise of respondent court's inherent power to preserve and to maintain the effectiveness of its jurisdiction over the case and the person of the accused.[26]

The Department of Justice is neither empowered by a specific law nor does it possess the inherent power to restrict the right to travel of persons under criminal investigation through the issuance of hold departure orders, watchlist orders, and allow departure orders. Its mandate under the Administrative Code of 1987 to "[i]nvestigate the commission of crimes [and] prosecute offenders"[27] cannot be interpreted so broadly as to include the power to curtail a person's right to travel. Furthermore, Department Order No. 41, series of 2010 cannot be likened to the power of the courts to restrict the travel of persons on bail as the latter presupposes that the accused was arrested by virtue of a valid warrant and placed under the court's jurisdiction. For these reasons, Department of Justice Circular No. 41, series of 2010, is unconstitutional.

Parenthetically, I agree that the right to travel is part and parcel of an individual's right to liberty, which cannot be impaired without due process of law.[28]

The *ponencia* mentions *Rubi v. Provincial Board of Mindoro*.[29] In my view, *Rubi* should always be cited with caution. In *Rubi*,

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[26] *Id.* at 679-680.

[27] 1987 ADM. CODE, Title III, Sec. 3(2).

[28] *Ponencia*, pp. 16-17.

[29] 39 Phil. 660 (1919) [Per *J.* Malcolm, *En Banc*].

the Mangyans of Mindoro were forcibly removed from their habitat and were compelled to settle in a reservation under pain of imprisonment for non-compliance.[30] Although the concepts of civil liberty and due process were extensively discussed in the case,[31] this Court nevertheless justified the government act on a perceived necessity to "begin the process of civilization" of the Mangyans who were considered to have a "low degree of intelligence" and as "a drag upon the progress of the State."[32]

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[30] *Id*. at 666-669.

[31] *Id*. at 703-707.

[32] *Id*. at 718-720.

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findings are contrary to the admissions of both the appellant and the appellee; 7. when the findings are contrary to that of the trial court; 8. when the findings are conclusions without citation of specific evidence on which they are based; 9. when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; 10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and 11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (Magat *vs*. Interorient Maritime Enterprises, Inc., G.R. No. 232892, April 11, 2018) p. 570

—— Contrary to the petitioner's claim, the question of whether the Court's ruling in the case of Villaflor is applicable to the present case is not a question of fact; given an undisputed set of facts, an appellate court may resolve the issue on what law or ruling is applicable without examining the probative value of the evidence before it; the CA did not err in dismissing the appeal filed by the petitioner for being an improper appeal; the proper mode of appeal is an appeal by certiorari before this Court in accordance with Rule 45. (Valderama *vs*. Arguelles, G.R. No. 223660, April 2, 2018) p. 29

—— In order to determine the veracity of the petitioner's main contention that it has established a prima facie case against respondents through its documentary and testimonial evidence, a reassessment and reexamination of the evidence is necessary; unfortunately, the limited and discretionary judicial review allowed under Rule 45 does not envision a re-evaluation of the sufficiency of the evidence upon which respondent court's action was predicated. (Rep. of the Phils. *vs*. Cuenca, G.R. No. 198393, April 4, 2018) p. 139

—— It is elementary that the scope of this Court's judicial review under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of

money and executions issued in pursuance of such judgment, rendered in the case where his services had been retained by the client, for the payment of his compensation. (*Id.*)

*Code of Professional Responsibility* — The attorney's defiant attitude ultimately caused his client to lose its trust in him; he intentionally denied his client's requests on how to proceed with the case and insisted on doing it his own way; he could not possibly use the supposed blanket authority given to him as a valid justification, especially on non-procedural matters, if he would be contradicting his client's trust and confidence in the process; he clearly disregarded the express commands of the CPR, specifically Canon 17. (Atty. Villonco *vs.* Atty. Roxas, A.C. No. 9186, April 11, 2018) p. 373

*Conduct of* — The attorney violated the prohibition against lawyers lending money to their clients; pertinent to this case is Rule 16.04, Canon 16 of the Code of Professional Responsibility; there is hardly any doubt or dispute that the attorney did lend money to his client, this fact being evidenced by a real estate mortgage which the latter signed and executed in favor of the former. (Tangcay *vs.* Atty. Cabarroguis, A.C. No. 11821 [Formerly CBD Case No. 15-4477], April 2, 2018) p. 8

*Notarization* — The Court finds nothing irregular with respondent's act of notarizing the Deed of Partition on the basis of the affiants' CTCs; when the Deed was notarized, the applicable law was the notarial law under Title IV, Chapter 11, Art. VII of the Revised Administrative Code, Sec. 251; Commonwealth Act No. 465 also reiterated the need to present a residence certificate when acknowledging documents before a notary public; it was incorrect for the IBP to have applied the 2004 Rules on Notarial Practice. (In Re: Decision Dated Sept. 26, 2012 in OMB-M-A-10-023-A, *etc.* Against Atty. Robelito B. Diuyan, A.C. No. 9676, April 2, 2018) p. 1

waived; to be valid, the consent must be voluntary such that it is unequivocal, specific, and intelligently given, uncontaminated by any duress or coercion; relevant to this determination of voluntariness are the following characteristics of the person giving consent and the environment in which consent is given: (a) the age of the consenting party; (b) whether he or she was in a public or secluded location; (c) whether he or she objected to the search or passively looked on; (d) his or her education and intelligence; (e) the presence of coercive police procedures; (f) the belief that no incriminating evidence will be found; (g) the nature of the police questioning; (h) the environment in which the questioning took place; and (i) the possibly vulnerable subjective state of the person consenting. (*Id*.)

*Right to speedy disposition of cases* –– Enshrined in Sec. 16, Art. III of the 1987 Constitution; the right to speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried; the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reason/s for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay. (People *vs*. Sandiganbayan, G.R. Nos. 232197-98, April 16, 2018) p. 660

*Right to travel* –– One of the limitations on the right to travel is DOJ Circular No. 41, which was issued pursuant to the rule-making powers of the DOJ in order to keep individuals under preliminary investigation within the jurisdiction of the Philippine criminal justice system; this Circular is not a law but a mere administrative issuance apparently designed to carry out the provisions of an enabling law which the former DOJ Secretary

the deadline compelling; the rationale for the amendments under A.M. No. 07-7-12-SC is essentially to prevent the use (or abuse) of the petition for certiorari under Rule 65 to delay a case or even defeat the ends of justice; here, we cannot simply reward the lack of foresight on the part of Gabriel and his lawyer. (Gabriel *vs*. Petron Corp., G.R. No. 194575, April 11, 2018) p. 454

*Requisites* –– *Certiorari* proceedings are limited in scope and narrow in character because they only correct acts rendered without jurisdiction, in excess of jurisdiction, or with grave abuse of discretion; relief in a special civil action for certiorari is available only when the following essential requisites concur: (a) the petition must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (b) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or in excess of jurisdiction; and (c) there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law; it will issue to correct errors of jurisdiction and not mere errors of judgment, particularly in the findings or conclusions of the quasi-judicial tribunals (such as the NLRC); accordingly, when a petition for certiorari is filed, the judicial inquiry should be limited to the issue of whether the NLRC acted with grave abuse of discretion amounting to lack or in excess of jurisdiction. (Gabriel *vs*. Petron Corp., G.R. No. 194575, April 11, 2018) p. 454

**CIVIL SERVICE LAW**

*Dropping from the rolls* –– Sec. 107, Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service authorizes and provides the procedure for the dropping from the rolls of employees who, inter alia, are absent without approved leave for an extended period of time; this provision is in consonance with Sec. 63, Rule XVI of the Omnibus Rules on Leave, as amended by Civil Service Commission Memorandum Circular No. 13, Series of 2007; in this case, the court stenographer's prolonged unauthorized absences caused inefficiency in the public

of the justification accented the gaps in the chain of custody, and should result in the negation of the evidence of the *corpus delicti* right from the outset; with the failure of the Prosecution to establish her guilt beyond reasonable doubt, the acquittal of the accused should follow. (People *vs*. Calates *y* Dela Cruz, G.R. No. 214759, April 4, 2018) p. 262

–– Sec. 21, Art. II of R.A. No. 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 varied field conditions, strict compliance with the requirements thereof may not always be possible; the IRR of R.A. No. 9165 – which is now crystallized into statutory law with the passage of R.A. No. 10640 – provides that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Sec. 21, Art. II of R.A. No. 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team; *People v. Almorfe* and *People v. De Guzman*, cited. (People *vs*. Dela Victoria, G.R. No. 233325, April 16, 2018) p. 675

–– Stated in Sec. 21 (1) of R.A. No. 9165; on July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165; the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of: (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) with an elected public official; and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof. (People *vs*. Cornel *y* Asuncion, G.R. No. 229047, April 16, 2018) p. 645

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; case law states that the identity of the prohibited drug must be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. (People *vs*. Dela Victoria, G.R. No. 233325, April 16, 2018) p. 675

*Illegal sale of prohibited drugs* — Under Art. II, Sec. 5 of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur: (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; it is necessary that the sale transaction actually happened and that "the procured object is properly presented as evidence in court and is shown to be the same drugs seized from the accused"; *People v. Gatlabayan*, cited. (People *vs*. Cornel *y* Asuncion, G.R. No. 229047, April 16, 2018) p. 645

*Section 21* — The saving clause in the IRR, which is now incorporated in Sec. 21 of R.A. No. 9165, as amended by R.A. No. 10640, may operate because non-compliance with the prescribed procedural requirements would not automatically render the seizure and custody of the illegal drug invalid; however, this is true only when: (1) there is a justifiable ground for such noncompliance; and (2) the integrity and evidentiary value of the seized item/s are preserved; the prosecution failed to satisfy both conditions. (People *vs*. Bintaib *y* Florencio, G.R. No. 217805, April 2, 2018) p. 13

— Under paragraph (1) of Sec. 21, the apprehending team shall, immediately after confiscation, conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice, and any elected public official; the Implementing Rules and

use of a deadly weapon in the assault; (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (3) none of the qualifying circumstance for murder under Art. 248 of the Revised Penal Code, as amended, is present. (People *vs*. Aquino, G.R. No. 203435, April 11, 2018) p. 477

**2002 INTERNAL RULES OF THE COURT OF APPEALS**

*Motion for reconsideration* — The Internal Rules of the Court of Appeals clearly provide that a subsequent motion for reconsideration shall be deemed abandoned if the movant filed a petition for review or motion for extension of time to file a petition for review before this Court; while the Office of the Solicitor General can be faulted for filing a motion instead of a mere manifestation, it cannot be faulted for presuming that the Court of Appeals would follow its Internal Rules as a matter of course; Rule VI, Sec. 15 of the Internal Rules of the Court of Appeals is provided for precisely to prevent forum shopping. (Eversley Childs Sanitarium *vs*. Sps. Barbarona, G.R. No. 195814, April 4, 2018) p. 111

**JUDGES**

*Duties* — Respondent Judge's explanation of having done so only out of pity for the complainant did not diminish his liability, but instead highlighted his dismissive and cavalier attitude towards express statutory requirements instituted to secure the solemnization of marriages from abuse; by agreeing to solemnize the marriage outside of his territorial jurisdiction and at a place that had nothing to do with the performance of his duties as a Municipal Trial Judge, he demeaned and cheapened the inviolable social institution of marriage; Art. 8 of the Family Code, explained. (Keuppers *vs*. Judge Murcia, A.M. No. MTJ-15-1860 [Formerly OCA I.P.I. No. 09-2224-MTJ], April 3, 2018) p. 53

— The only exceptions to the limitation are when the marriage was to be contracted on the point of death of one or both of the complainant and her husband, or in

calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case. (*Id*.)

**JUSTIFYING CIRCUMSTANCES**

*Defense of a relative* –– An accused who pleads a justifying circumstance under Art. 11 of the Revised Penal Code admits to the commission of acts, which would otherwise engender criminal liability; if the accused admits the killing, the burden of evidence, as distinguished from burden of proof, is shifted on him to prove with clear and convincing evidence the essential elements of the justifying circumstance of defense of a relative, *viz*: (1) unlawful aggression by the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) in case the provocation was given by the person attacked, that the person making the defense took no part in the provocation; justification for the shift in the assumption of the burden. (People *vs*. Advincula *y* Mondano, G.R. No. 218108, April 11, 2018) p. 516

–– Unlawful aggression, as defined in the RPC, contemplates assault or at least threatened assault of an immediate and imminent kind; the test therefore for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be imagined or an imaginary threat. (*Id*.)

*Self-defense* — Jurisprudence dictates that a person making a defense has no more right to attack an aggressor when the unlawful aggression has ceased, as is true in this case; aggression, if not continuous, does not constitute aggression warranting defense of one's self; retaliation,

contract. (Magat *vs*. Interorient Maritime Enterprises, Inc., G.R. No. 232892, April 11, 2018) p. 570

*Post-Employment Medical Examination* — 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; the law that requires the 3-day mandatory period recognizes the right of a seafarer to seek a second medical opinion and the prerogative to consult a physician of his choice. (Magat *vs*. Interorient Maritime Enterprises, Inc., G.R. No. 232892, April 11, 2018) p. 570

*Work-related injury or illness* –– The POEA-SEC defines a work-related injury as "injury(ies) resulting in disability or death arising out of and in the course of employment," and a work-related illness as "any sickness resulting to disability or death as a result of an occupational disease listed under Sec. 32-A of this Contract with the conditions set therein satisfied"; for illnesses not mentioned thereunder, the POEA-SEC creates a disputable presumption in favor of the seafarer that these illnesses are work-related; on due process grounds, the claimant-seafarer must still prove by substantial evidence that his work conditions caused or at least increased the risk of contracting the disease. (Magat *vs*. Interorient Maritime Enterprises, Inc., G.R. No. 232892, April 11, 2018) p. 570

**PLEADINGS**

*Reliefs* –– The pleading shall specify the relief sought, but it may add a general prayer for such further or other relief as may be deemed just or equitable; a general prayer for "other reliefs just and equitable" appearing on a complaint or pleading (a petition in this case) normally enables the court to award reliefs supported by the complaint or other pleadings, by the facts admitted at the trial, and by the evidence adduced by the parties, even if these reliefs are not specifically prayed for in the complaint.

**PRESUMPTIONS**

*Regular performance of official duty* — Since the apprehending team failed to comply with Sec. 21 of R.A. No. 9165, the presumption of regularity cannot work in their favor; this presumption arises only upon compliance with Sec. 21 of R.A. No. 9165, or by clearly or convincingly explaining the justifiable grounds for noncompliance; judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. (People *vs*. Bintaib *y* Florencio, G.R. No. 217805, April 2, 2018) p. 13

**PROPERTY**

*Remedies for dispossession* — There are three (3) remedies available to one who has been dispossessed of property: (1) an action for ejectment to recover possession, whether for unlawful detainer or forcible entry; (2) *accion publiciana* or *accion plenaria de posesion*, or a plenary action to recover the right of possession; and (3) *accion reivindicatoria*, or an action to recover ownership; ejectment and *accion publiciana* have two (2) distinguishing differences; discussed. (Eversley Childs Sanitarium *vs*. Sps. Barbarona, G.R. No. 195814, April 4, 2018) p. 111

— Respondents failed to state when petitioner's possession was initially lawful, and how and when their dispossession started; all that appears from the Complaint is that petitioner's occupation "is illegal and not anchored upon any contractual relations with respondents"; they allege that petitioner's occupation was illegal from the start; the proper remedy, therefore, should have been to file an *accion publiciana* or *accion reivindicatoria* to assert their right of possession or their right of ownership. (*Id*.)

original registration of land to prove by clear, positive and convincing evidence that his possession and that of his predecessors-in-interest was of the nature and duration required by law; the Court is unconvinced by the pieces of evidence submitted by respondent to prove compliance with the requirement of possession under Sec. 14(2) of P.D. No. 1529 in relation to Arts. 1137 and 1118 of the Civil Code for original registration of land. (*Id*.)

*Adverse claim* –– Upholding the right of an opposing party to the outright cancellation of adverse claim on the sole basis of a subsequent notice of *lis pendens* on the same title would not achieve any sound purpose; it may even encourage a party to not avail the remedy of annotation of a notice of *lis pendens* if an adverse claim was already registered and annotated in the same party's favor; such ruling would result to a situation where the subject case of the notice of *lis pendens* may be dismissed on grounds not attributable to the adverse claimant. (Valderama *vs*. Arguelles, G.R. No. 223660, April 2, 2018) p. 29

*Adverse claim and notice of lis pendens* –– An adverse claim and a notice of lis pendens are both involuntary dealings expressly recognized under P.D. No. 1529, otherwise known as the Property Registration Decree; as distinguished from an adverse claim, the notice of *lis pendens* is ordinarily recorded without the intervention of the court where the action is pending; distinctions between an annotation of an adverse claim and an annotation of a notice of *lis pendens*; the main differences between the two are as follows: (1) an adverse claim protects the right of a claimant during the pendency of a controversy while a notice of *lis pendens* protects the right of the claimant during the pendency of the action or litigation; and (2) an adverse claim may only be cancelled upon filing of a petition before the court which shall conduct a hearing on its validity while a notice of *lis pendens* may be cancelled without a court hearing. (Valderama *vs*. Arguelles, G.R. No. 223660, April 2, 2018) p. 29

**PROSECUTORS**

*Functions* –– Prosecutors are strongly reminded that they have the positive duty to prove compliance with the procedure set forth in Sec. 21, Art. II of R.A. No. 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. (People *vs*. Dela Victoria, G.R. No. 233325, April 16, 2018) p. 675

**PUBLIC OFFICERS AND EMPLOYEES**

*Conduct Prejudicial to the Best Interest of the Service* –– Conduct Prejudicial to the Best Interest of the Service involves the demeanor of a public officer which tends to tarnish the image and integrity of his/her public office. (Paduga *vs*. Dimson, A.M. No. P-18-3833 [Formerly OCA IPI No. 14-4370-P], April 16, 2018) p. 591

*Dishonesty* –– Dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth; under CSC Resolution No. 06-0538, dishonesty may be classified as serious, less serious or simple; Section 4 of said Resolution states that Less Serious Dishonesty necessarily entails the presence of any one of the following circumstances: (a) the dishonest act caused damage and prejudice to the government which is not so serious as to qualify under Serious Dishonesty; (b) the respondent did not take advantage of his/her position in committing the dishonest act; and (c) other analogous circumstances. (Paduga *vs*. Dimson, A.M. No. P-18-3833 [Formerly OCA IPI No. 14-4370-P], April 16, 2018) p. 591

*Simple Neglect of Duty* –– Means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a disregard of a duty resulting from carelessness or indifference. (Paduga *vs*. Dimson, A.M. No. P-18-3833 [Formerly OCA IPI No. 14-4370-P], April 16, 2018) p. 591

Par. 1(b): when the offended party is deprived of reason; 2. Par. 1(d): when the offended party is x x x demented; it was alleged in the Amended Information that the victim is a demented person (deaf-mute); the tapestry of this case, however, depicts a victim who is suffering from mental retardation, not dementia; mental retardation and dementia are not synonymous and thus should not be loosely interchanged; *People v. Caoile* and *People v. Ventura* laid down a technical definition of the term "demented"; the phrase deprived of reason under par. 1(b) has been interpreted to include those suffering from mental abnormality, deficiency, or retardation; the victim, who was clinically diagnosed to be a mental retardate, can be properly classified as a person who is "deprived of reason," not one who is "demented." (People *vs*. Urmaza *y* Torres, G.R. No. 219957, April 4, 2018) p. 324

—— Knowledge of the offender of the victim's mental disability at the time of the commission of rape qualifies the crime and makes it punishable by death under Art. 266-B, par. 10 of the RPC, as amended by R.A. No. 8353; it appears that the tribunals a quo lost sight of the precondition that an allegation in the Information of such knowledge of the offender is necessary, as a crime can only be qualified by circumstances pleaded in the indictment; here, the offender's knowledge of the mental disability of the victim was not properly alleged; Secs. 8 and 9 of Rule 110 of the Rules of Court require that the qualifying circumstances be specifically alleged in the Information to be appreciated as such; elucidated in *People v. Tagud*. (*Id*.)

—— It has been long settled that lust is no respecter of time and place; the presence of the victim's siblings does not necessarily contradict her allegations of rape especially since she had categorically, consistently, and positively identified the accused as his abuser. (People *vs*. Bugna *y* Britanico, G.R. No. 218255, April 11, 2018) p. 536

—— It is beyond cavil that the prosecution was able to prove the victim's mental retardation; in our jurisdiction, carnal

of said certificate of arrival; an application to become a naturalized Philippine citizen involves requirements different and separate from that for permanent residency here; the Declaration of Intention is entirely different from the Certificate of Arrival; explained. (Rep. of the Phils. *vs*. Go Pei Hung, G.R. No. 212785, April 4, 2018) p. 211

–– On the issue of petitioner's alleged failure to attach the required annexes to the copy of the instant Petition that was sent to respondent, this is rendered insignificant and moot by the fact that respondent's application for naturalization - which is patently defective for failure to attach the required certificate of arrival - involves the national interest, as well as the security and safety of the country and its citizens; technicalities take a backseat against substantive rights, and not the other way around. (*Id*.)

–– Sec. 7 of the Revised Naturalization Law or C.A. No. 473 requires, among others, that an applicant for naturalization must attach a Certificate of Arrival to the Petition for Naturalization; respondent who came to the country should have attached a Certificate of Arrival to his Petition for Naturalization; this is mandatory to prove that he entered the country legally and not by unlawful means or any other manner that is not sanctioned by law; *Republic v. Judge De la Rosa*, cited. (*Id*.)

**REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS)**

*Conduct prejudicial to the best interest of service, less serious dishonesty and simple neglect of duty* –– Under the RRACCS, Conduct Prejudicial to the Best Interest of Service and Less Serious Dishonesty are grave offenses punishable by suspension for a period of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from the service for the second offense; on the other hand, Simple Neglect of Duty is a less grave offense punishable by suspension for a period of one (1) month and one (1) day to six (6) months for the first offense,

are hired by only one or a group of passengers such that the vehicle can no longer be flagged down by any other person until the passengers on board alight from the vehicle. (*Id.*)

*Reasonable search and warrantless search* — A reasonable search, on the one hand, and a warrantless search, on the other, are mutually exclusive; while both State intrusions are valid even without a warrant, the underlying reasons for the absence of a warrant are different; explained with examples. (Saluday *vs.* People, G.R. No. 215305, April 3, 2018) p. 65

*Search of a moving vehicle* — The search in this case could not be classified as a search of a moving vehicle; in this particular type of search, the vehicle is the target and not a specific person; in search of a moving vehicle, the vehicle was intentionally used as a means to transport illegal items; in this case, it just so happened that the alleged drug courier was a bus passenger; to extend to such breadth the scope of searches on moving vehicles would open the floodgates to unbridled warrantless searches which can be conducted by the mere expedient of waiting for the target person to ride a motor vehicle, setting up a checkpoint along the route of that vehicle, and then stopping such vehicle when it arrives at the checkpoint in order to search the target person. (People *vs.* Comprado *y* Bronola, G.R. No. 213225, April 4, 2018) p. 229

*Stop-and-frisk search* — The Court finds that the totality of the circumstances in this case is not sufficient to incite a genuine reason that would justify a stop-and-frisk search on accused-appellant; an examination of the records reveals that no overt physical act could be properly attributed to accused-appellant as to rouse suspicion in the minds of the arresting officers that he had just committed, was committing, or was about to commit a crime. (People *vs.* Comprado *y* Bronola, G.R. No. 213225, April 4, 2018) p. 229

**STATE, POWERS OF THE**

*Police power* –– Police power pertains to the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare"; the exercise of this power is primarily lodged with the legislature but may be wielded by the President and administrative boards, as well as the law-making bodies on all municipal levels, including the barangay, by virtue of a valid delegation of power; it may only be validly exercised if (a) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State, and (b) the means employed are reasonably necessary to the attainment of the object sought to be accomplished and not unduly oppressive upon individuals; on its own, the DOJ cannot wield police power since the authority pertains to Congress; there is likewise no showing that the curtailment of the right to travel imposed by DOJ Circular No. 41 was reasonably necessary in order for it to perform its investigatory duties. (Genuino *vs*. Hon. De Lima, G.R. No. 197930, April 17, 2018) p. 691

**STATUTORY CONSTRUCTION**

*General law and special law* –– It is a basic tenet in statutory construction that between a general law and a special law, the special law prevails; *Generalia specialibus non derogant*; the provisions of the Civil Code, a general law, should therefore give way to the Condominium Act, a special law, with regard to properties recorded in accordance with Sec. 4 of said Act; special laws cover distinct situations, such as the necessary co-ownership between unit owners in condominiums and the need to preserve the structural integrity of condominium buildings; and these special situations deserve, for practicality, a separate set of rules. (Leviste Mgm't. System, Inc. *vs*. Legaspi Towers 200, Inc., G.R. No. 199353, April 4, 2018) p. 176

—— Inaccuracies and inconsistencies in a rape victim's testimony are generally expected; moreover, since human memory is fickle and prone to the stresses of emotions, accuracy in a testimonial account has never been used as a standard in testing the credibility of a witness; what is essential is that the victim's testimony meets the test of credibility notwithstanding the gruelling cross-examination by the defense, and that it persuasively conformed to the evidence on record. (*Id*.)

—— Jurisprudence has emphatically maintained that the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, especially after the CA, as the intermediate reviewing tribunal, has affirmed the findings; unless there is a clear showing that the findings were reached arbitrarily, or that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated that, if properly considered, would alter the result of the case. (*Id*.)

—— The competence and credibility of mentally deficient rape victims as witnesses have been upheld by this Court where it was shown that they could communicate their ordeal capably and consistently; rather than undermine the gravity of the complainant's accusations, it lends even greater credence to her testimony, as someone feeble-minded and guileless could speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered such crime at the hands of the accused. (People *vs*. Urmaza *y* Torres, G.R. No. 219957, April 4, 2018) p. 324

—— The evaluation of the RTC judge of the credibility of the witness, coupled by the fact that the CA affirmed the trial court's findings, is binding upon the Court, unless it can be established that facts and circumstances have been overlooked or misinterpreted, which could materially affect the disposition of the case in a different manner.

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