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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 185530. April 18, 2018]

MAKATI TUSCANY CONDOMINIUM CORPORATION, *petitioner, vs.* **MULTI-REALTY DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; REFORMATION OF INSTRUMENT; A REMEDY IN EQUITY WHERE A VALID EXISTING CONTRACT IS ALLOWED BY LAW TO BE REVISED TO EXPRESS THE TRUE INTENTIONS OF THE CONTRACTING PARTIES; REQUISITES.— Reformation of an instrument is a remedy in equity where a valid existing contract is allowed by law to be revised to express the true intentions of the contracting parties. The rationale is that it would be unjust to enforce a written instrument which does not truly reflect the real agreement of the parties. In reforming an instrument, no new contract is created for the parties, rather, the reformed instrument establishes the real agreement between the parties as intended, but for some reason, was not embodied in the original instrument. An action for reformation of an instrument finds its basis in Article 1359 of the Civil Code. x x x *The National Irrigation Administration v. Gamit* stated that there must be a concurrence of the following requisites for an action for reformation of instrument to prosper: (1) there must have been a meeting of the minds of the parties

to the contract; (2) the instrument does not express the true intention of the parties; and (3) the failure of the instrument to express the true intention of the parties is due to mistake, fraud, inequitable conduct or accident. The burden of proof then rests upon the party asking for the reformation of the instrument to overturn the presumption that a written instrument already sets out the true intentions of the contracting parties. x x x [I]ntentions [however,] involve a state of mind, making them difficult to decipher; therefore, the subsequent and contemporaneous acts of the parties must be presented into evidence to reflect the parties' intentions.

2. ID.; ID.; ID.; BAD FAITH AND CONFUSION ARE STATES OF MIND NOT EXTENDED TO A CORPORATION; CASE AT BAR.— Petitioner argues its lack of bad faith in claiming ownership over the 98 parking slots. Whether or not it acted in bad faith was never in issue. Instead, the issue to be resolved was whether or not respondent committed a mistake in drafting and executing the Master Deed and Deed of Transfer, thereby leading to the inadvertent inclusion of the 98 parking slots among the common areas transferred to petitioner. Further, it is difficult to impute confusion and bad faith, which are states of mind appropriate for a natural individual person, to an entire corporation. The fiction where corporations are granted both legal personality separate from its owners and a capacity to act should not be read as endowing corporations with a single mind. In truth, a corporation is a hierarchical community of groups of persons both in the governing board and in management. Corporations have different minds working together including its lawyers, auditors, and, in some cases, their compliance officers.

3. ID.; ID.; ID.; ESTOPPEL, NOT PRESENT; EXCEPT FOR THE WORDS IN THE CONTRACT, ALL OF RESPONDENT'S ACTS WERE CONSISTENT WITH ITS POSITION; CASE AT BAR.— Petitioner asserts that respondent's admission of committing a mistake in drafting the Master Deed and Deed of Transfer makes it liable to suffer the consequences of its mistake and should be bound by the plain meaning and import of the instruments. It contends that respondent should be estopped from claiming that the Master Deed and Deed of Transfer failed to show the parties' true

intentions. Again, petitioner fails to convince. In *Philippine National Bank v. Court of Appeals*, this Court held: "The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. The doctrine of estoppel springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where without its aid injustice might result." It has been applied by this Court wherever and whenever special circumstances of a case so demand. In this case, except for the words in the contract, all of respondent's acts were consistent with its position in the case. Petitioner does not deny that it stayed silent when respondent sold the parking slots on several occasions or that it offered to buy the parking slots from respondent on at least two (2) occasions. x x x Both parties recognized respondent's ownership of the parking slots. Petitioner initially respected respondent's ownership despite the Master Deed's and Deed of Transfer's stipulations. It was petitioner that changed its position decades after it acted as if it accepted respondent's ownership. Petitioner cannot claim the benefits of estoppel.

4. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; ELEMENTS; FINAL FORMER JUDGMENT; NOT PRESENT WHERE MERITS OF THE CASE NOT TACKLED .— There is *res judicata* when the following concur: a) the former judgment must be final; b) the court which rendered judgment had jurisdiction over the parties and the subject matter; *c) it must be a judgment on the merits*; *d)* and there must be between the first and second actions identity of parties, subject matter, and cause of action. *Multi-Realty Development Corporation* did not take on the merits of the case but only tackled the issue of prescription raised to this Court on appeal. x x x Clearly, *res judicata* had not yet set in and this Court was not precluded from evaluating all of the evidence vis-a-vis the issues raised by both parties.

APPEARANCES OF COUNSEL

Agcaoili and Associates for petitioner.
Teng & Cruz Law Offices collaborating counsel for petitioner.
Herrera Teehankee & Cabrera for respondent.

D E C I S I O N

LEONEN, *J.*:

Reformation of an instrument may be allowed if subsequent and contemporaneous acts of the parties show that their true intention was not accurately reflected in the written instrument.

This resolves the Petition for Review on Certiorari[1] filed by Makati Tuscany Condominium Corporation (Makati Tuscany), assailing the April 28, 2008 Amended Decision[2] and December 4, 2008 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 44696.

In 1974, Multi-Realty Development Corporation (Multi-Realty) built Makati Tuscany, a 26-storey condominium building located at the corner of Ayala Avenue and Fonda Street, Makati City.[4]

Makati Tuscany had a total of 160 units, with 156 ordinary units from the 2nd to the 25th floors and four (4) penthouse units on the 26th floor.[5] It also had 270 parking slots which were

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[1] *Rollo*, pp. 59-97.

[2] *Id.* at 98-111. The Decision was penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Rodrigo V. Cosico and Martin S. Villarama, Jr. of the Special Former Special Eighth Division, Court of Appeals, Manila.

[3] *Id.* at 112-113. The Resolution was penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Martin S. Villarama, Jr. and Noel G. Tijam of the Special Former Special Eighth Division, Court of Appeals, Manila.

[4] *Id.* at 200, RTC Decision.

[5] *Multi-Realty Development Corporation v. The Makati Tuscany Condominium Corporation*, 524 Phil. 318, 325 (2006) [Per *J.* Callejo, Sr., First Division].

apportioned as follows: one (1) parking slot for each ordinary unit; two (2) parking slots for each penthouse unit; and the balance of 106 parking slots were allocated as common areas.[6]

On July 30, 1975, Multi-Realty, through its president Henry Sy, Sr., executed and signed Makati Tuscany's Master Deed and Declaration of Restrictions (Master Deed),[7] which was registered with the Register of Deeds of Makati in 1977.[8]

Sometime in 1977, pursuant to Republic Act No. 4726, or the Condominium Act, Multi-Realty created and incorporated Makati Tuscany Condominium Corporation (MATUSCO) to hold title over and manage Makati Tuscany's common areas. That same year, Multi-Realty executed a Deed of Transfer of ownership of Makati Tuscany's common areas to MATUSCO.[9]

On April 26, 1990, Multi-Realty filed a complaint for damages and/or reformation of instrument with prayer for temporary restraining order and/or preliminary injunction against MATUSCO. This complaint was docketed as Civil Case No. 90-1110 and raffled to Branch 59 of Makati Regional Trial Court.[10]

Multi-Realty alleged in its complaint that of the 106 parking slots designated in the Master Deed as part of the common areas, only eight (8) slots were actually intended to be guest parking slots; thus, it retained ownership of the remaining 98 parking slots.[11]

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[6] *Rollo*, p. 200, RTC Decision.

[7] *Id*. at 131-146.

[8] *Multi-Realty Development Corporation v. The Makati Tuscany Condominium Corporation*, 524 Phil. 318, 326 (2006) [Per *J*. Callejo, Sr., First Division].

[9] *Rollo*, p. 200, RTC Decision.

[10] *Multi-Realty Development Corporation v. The Makati Tuscany Condominium Corporation*, 524 Phil. 318, 327 (2006) [Per *J*. Callejo, Sr., First Division].

[11] *Id*. at 325 and 327.

Multi-Realty claimed that its ownership over the 98 parking slots was mistakenly not reflected in the Master Deed "since the documentation and the terms and conditions therein were all of first impression,"[12] considering that Makati Tuscany was one of the first condominium developments in the Philippines.[13]

On October 29, 1993, the Regional Trial Court[14] dismissed Multi-Realty's complaint. It noted that Multi-Realty itself prepared the Master Deed and Deed of Transfer; therefore, it was unlikely that it had mistakenly included the 98 parking slots among the common areas transferred to MATUSCO. It also emphasized that Multi-Realty's prayer for the reformation of the Master Deed could not be granted absent proof that MATUSCO acted fraudulently or inequitably towards Multi-Realty. Finally, it ruled that Multi-Realty was guilty of estoppel by deed.[15] The *fallo* of its Decision read:

> Premises considered, this case is dismissed. [MATUSCO's] counterclaim is likewise dismissed the same not being compulsory and no filing fee having been paid. [Multi-Realty] is however ordered to pay [MATUSCO's] attorney's fees in the amount of ₱50,000.00
>
> Cost against plaintiff.
>
> SO ORDERED.[16]

Both parties appealed the Regional Trial Court Decision to the Court of Appeals. On August 21, 2000, the Court of Appeals[17] dismissed both appeals on the ground of prescription.

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[12] *Id*. at 327.

[13] *Id*. at 324.

[14] *Rollo*, pp. 200-202. The Decision was penned by Judge Salvador S. Abad Santos of Branch 65, Regional Trial Court, Makati City.

[15] *Id*. at 201-202.

[16] *Id*. at 202.

[17] *Id*. at 293-300. The Decision, docketed as CA-G.R. CV No. 44696, was penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Ramon Mabutas, Jr. and Martin S. Villarama, Jr. of the Special Eighth Division, Court of Appeals, Manila.

In dismissing Multi-Realty's appeal, the Court of Appeals held that an action for reformation of an instrument must be brought within 10 years from the execution of the contract. As to the dismissal of MATUSCO's appeal, the Court of Appeals ruled that its claim was based on a personal right to collect a sum of money, which had a prescriptive period of four (4) years, and not based on a real right, with a prescriptive period of 30 years.[18]

The *fallo* of the Court of Appeals August 21, 2000 Decision read:

> WHEREFORE, foregoing premises considered, the appeal having no merit in fact and in law is hereby ORDERED DISMISSED, and the judgment of the trial court is MODIFIED by deleting the award of attorney's fees not having been justified but AFFIRMED as to its Order dismissing both the main complaint of [Multi-Realty] and the counterclaim of [MATUSCO]. With costs against both parties.
>
> SO ORDERED.[19]

Multi-Realty moved for reconsideration,[20] but its motion was denied in the Court of Appeals January 18, 2001 Resolution.[21] It then filed a petition for review[22] before this Court.

On June 16, 2006, this Court in *Multi-Realty Development Corporation v. The Makati Tuscany Condominium Corporation*[23] granted Multi-Realty's petition, set aside the assailed Court of Appeals August 21, 2000 Decision, and directed the Court of Appeals to resolve Multi-Realty's appeal.

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[18] *Id*. at 297-298.

[19] *Id*. at 299.

[20] *Id*. at 301-320.

[21] *Id*. at 353-356. The Resolution was penned by Associate Justice Jose L. Sabio., Jr. and concurred in by Associate Justices Ramon Mabutas, Jr. and Martin S. Villarama, Jr. of the Special Former Eighth Division of the Court of Appeals, Manila.

[22] *Id*. at 357-401. The case was docketed as G.R. No. 146726.

[23] 524 Phil. 318 (2006) [Per *J*. Callejo, Sr., First Division].

Multi-Realty Development Corporation ruled that the Court of Appeals should have resolved the appeal on the merits instead of *motu proprio* resolving the issue of whether or not the action had already prescribed, as the issue of prescription was never raised by the parties before the lower courts.[24]

Nonetheless, *Multi-Realty Development Corporation* held that even if prescription was raised as an issue, the Court of Appeals still erred in dismissing the case because Multi-Realty's right to file an action only accrued in 1989 when MATUSCO denied Multi-Realty's ownership of the 98 parking slots. The Court of Appeals ruled that it was only then that Multi-Realty became aware of the error in the Master Deed, thereafter seeking its reformation to reflect the true agreement of the parties. Thus, prescription had not yet set in when Multi-Realty filed its complaint for reformation of instrument in 1990.[25]

The *fallo* in *Multi-Realty Development Corporation* read:

IN LIGHT OF ALL THE FOREGOING, the petition is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. CV No. 44696 is *SET ASIDE*. The Court of Appeals is directed to resolve [Multi-Realty's] appeal with reasonable dispatch. No costs.

ORDERED.[26] (Emphasis in the original)

On November 5, 2007, the Court of Appeals[27] denied both appeals.

Regarding Multi-Realty's appeal, the Court of Appeals held that the Master Deed could only be read to mean that the 98 parking slots being claimed by Multi-Realty belonged to

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[24] *Id*. at 336-337.

[25] *Id*. at 343-344.

[26] *Id*. at 346.

[27] *Rollo*, pp. 460-480. The Decision was penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Rodrigo V. Cosico and Martin S. Villarama, Jr. of the Special Former Special Eighth Division of the Court of Appeals, Manila.

MATUSCO. It highlighted that the language of the Master Deed, as prepared by Multi-Realty, was clear and not susceptible to any other interpretation.[28]

The Court of Appeals upheld the Regional Trial Court's finding that Multi-Realty was guilty of estoppel by deed and likewise declared that MATUSCO was not estopped from questioning Multi-Realty's claimed ownership over and sales of the disputed parking slots.[29]

The *fallo* of the Court of Appeals November 5, 2007 Decision read:

> **WHEREFORE**, the instant appeals are hereby **DENIED**. The assailed Decision dated October 29, 1993 of the Regional Trial Court (Branch 65), Makati, Metro Manila (now Makati City), in Civil Case No. 90-1110 is **MODIFIED**—in that: (1) the counterclaim of The Makati Tuscany Condominium Corporation is **DISMISSED**—not on the ground of non-payment of docket fees but on ground of prescription; and, (2) the award of attorney's fees in favor of The Makati Tuscany Condominium Corporation is **DELETED** for not having been justified. We however **AFFIRM** in all other aspects. Costs against both parties.
>
> **SO ORDERED.**[30] (Emphasis in the original)

Multi-Realty moved for the reconsideration of the Court of Appeals November 5, 2007 Decision and on April 28, 2008, the Court of Appeals promulgated an Amended Decision,[31] reversing its November 5, 2007 Decision and directing the reformation of the Master Deed and Deed of Transfer.

In reversing its November 5, 2007 Decision, the Court of Appeals ruled that the Master Deed and Deed of Transfer did not reflect the true intention of the parties on the ownership of the 98 parking slots.[32]

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[28] *Id*. at 470.

[29] *Id*. at 475-478.

[30] *Id.* at 478-479.

[31] *Id*. at 98-111.

[32] *Id*. at 103.

The Court of Appeals stated that in reformation cases, the party asking for reformation had the burden to overturn the presumption of validity accorded to a written contract. It held that Multi-Realty was able to discharge this burden.[33]

The *fallo* of the Court of Appeals April 28, 2008 Amended Decision read:

> **WHEREFORE**, premises considered, the present Motion for Reconsideration is **PARTLY GRANTED**. Our Decision dated November 05, 2007 is hereby **MODIFIED**—in that We **ORDER** the reformation of the **Master Deed and Declaration of Restrictions of the Makati Tuscany Condominium Project** and the **Deed of Transfer**—to clearly provide that the ownership over the ninety[-]eight (98) extra parking lots be retained by Multi-Realty Development Corporation. We however **DENY** the damages and attorney's fees prayed for by Multi-Realty Development Corporation. We **AFFIRM** in all other respects. No costs.
>
> **SO ORDERED.**[34] (Emphasis in the original)

MATUSCO moved for the reconsideration[35] of the Amended Decision, but its motion was denied in the Court of Appeals December 4, 2008 Resolution.[36]

On February 5, 2009, MATUSCO filed its Petition for Review[37] on Certiorari before this Court.

In its Petition, petitioner claims that the Court of Appeals erred in granting Multi-Realty's appeal because there was no basis to reform the Master Deed and Deed of Transfer. It asserts that there was no mistake, fraud, inequitable conduct, or accident which led to the execution of an instrument that did not express the true intentions of the parties. It avers that the instruments clearly expressed what the parties agreed upon.[38]

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[33] *Id*. at 106-107.

[34] *Id*. at 110.

[35] *Id*. at 530-538.

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

[37] *Id*. at 59-97.

[38] *Id*. at 75-80.

Petitioner also assails the Court of Appeals' ruling that it was estopped from questioning respondent's sales of 26 out of the 98 contested parking slots and from claiming ownership of the remaining unsold parking slots because it was supposedly fully aware of respondent's ownership of them and did not oppose its sales for 9 years.[39]

Petitioner maintains that estoppel cannot apply because the sales made by respondent were patently illegal as they went against the stipulations in the Master Deed. Furthemore, petitioner contends that it never misled respondent regarding ownership of the 98 parking slots since it was respondent itself which drafted the Master Deed and Deed of Transfer that turned over ownership of the common areas, including the 98 parking slots, to MATUSCO.[40]

In its Comment,[41] respondent insists that it never intended to include the 98 parking slots among the common areas transferred to MATUSCO. It avers that due to its then inexperience with the condominium business, with Makati Tuscany being one of the Philippines' first condominium projects, the Master Deed and Deed of Transfer failed to reflect the original intention to exclude the 98 parking slots from Makati Tuscany's common areas.[42]

Respondent points to the parties' subsequent acts that led to the only conclusion that it was always the intention to exclude the 98 parking slots from the common areas, and that this was known and accepted by petitioner from the beginning.[43]

Respondent maintains that the Petition raises factual findings and prays that this Court take a second look at the evidence presented and come up with its own factual findings, in derogation

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[39] *Id*. at 86-87.

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

[41] *Id*. at 560-594.

[42] *Id*. at 561 and 563.

[43] *Id*. at 563-566.

of the purpose of an appeal under Rule 45 of the Rules of Court, which generally limits itself to questions of law.[44]

Respondent also points out that in *Multi-Realty Development Corporation*, this Court, in its recital of material facts, acknowledged that it retained ownership over the 98 parking slots, but that its ownership over them was not reflected in the Master Deed and Deed of Transfer. Thus, respondent asserts that the issue of ownership can no longer be threshed out on appeal on the ground of *res judicata*.[45]

In its Reply,[46] petitioner claims that just like respondent, it also committed a mistake in good faith and "also labored under a mistaken appreciation of the nature and ownership of the ninety[-]eight (98) parking slots"[47] when it failed to object to respondent's sales of some of the parking slots from 1977 to 1986 and when it issued Certificates of Management over the sold parking slots. It was only later that petitioner realized the extent of its legal right over the 98 parking slots; consequently, it exerted effort to exercise its dominion over them. Petitioner argues that this cannot be characterized as bad faith on its part.[48]

Petitioner adds that the Master Deed and Deed of Transfer are public documents, being duly registered with the Register of Deeds of Makati City, ergo, their terms, conditions, and restrictions are valid and binding *in rem*. It opines that for the Court of Appeals to change the clear and categorical wordings of the Master Deed more than 30 years after its registration goes against public policy and the Condominium Act.[49]

Petitioner insists that if respondent merely made a mistake in including the 98 parking slots among the common areas

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[44] *Id*. at 573-574.

[45] *Id*. at 577-579.

[46] *Id*. at 630-648.

[47] *Id*. at 635.

[48] *Id*. at 635-636.

[49] *Id*. at 638.

transferred to petitioner, this mistake must be construed in petitioner's favor as respondent is owned by one of the wealthiest family corporations in the country while petitioner is merely an association of innocent purchasers for value.[50]

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

First, whether or not there is a need to reform the Master Deed and the Deed of Transfer; and

Second, whether or not this Court is bound by the factual findings in *Multi-Realty Development Corporation v. The Makati Tuscany Condominium Corporation* on the ground of conclusiveness of judgment.

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Reformation of an instrument is a remedy in equity where a valid existing contract is allowed by law to be revised to express the true intentions of the contracting parties.[51] The rationale is that it would be unjust to enforce a written instrument which does not truly reflect the real agreement of the parties.[52] In reforming an instrument, no new contract is created for the parties, rather, the reformed instrument establishes the real agreement between the parties as intended, but for some reason, was not embodied in the original instrument.[53]

An action for reformation of an instrument finds its basis in Article 1359 of the Civil Code which provides:

Article 1359. When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the

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[50] *Id.* at 639.

[51] *Rosello-Bentir v. Leanda*, 386 Phil. 802, 811 (2000) [Per *J.* Kapunan, First Division].

[52] *Spouses Rosario v. Alvar*, G.R. No. 212731, September 6, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/september2017/212731.pdf> [Per *J.* Del Castillo, First Division].

[53] *Multi-Ventures Capital and Management Corp. v. Stalwart Management Services Corp.*, 553 Phil. 385, 391 (2007) [Per *J.* Austria-Martinez, Third Division], citing *Quiros v. Arjona*, 468 Phil. 1000, 1010 (2004) [Per *J.* Ynares-Santiago, First Division].

instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed.

If mistake, fraud, inequitable conduct, or accident has prevented a meeting of the minds of the parties, the proper remedy is not reformation of the instrument but annulment of the contract.

The National Irrigation Administration v. Gamit[54] stated that there must be a concurrence of the following requisites for an action for reformation of instrument to prosper:

(1) there must have been a meeting of the minds of the parties to the contract; (2) the instrument does not express the true intention of the parties; and (3) the failure of the instrument to express the true intention of the parties is due to mistake, fraud, inequitable conduct or accident.[55]

The burden of proof then rests upon the party asking for the reformation of the instrument to overturn the presumption that a written instrument already sets out the true intentions of the contracting parties.[56]

It is not disputed that the parties entered into a contract regarding the management of Makati Tuscany's common areas. A Master Deed and a Deed of Transfer were executed to contain all the terms and conditions on the individual ownership of Makati Tuscany's units and the co-ownership over the common areas. The question to be resolved is whether the provisions in the Master Deed and Deed of Transfer over the 98 parking slots, as part of the common areas, expressed the true intentions

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[54] 289 Phil. 914 (1992) [Per *J*. Padilla, First Division].

[55] *Id*. at 931.

[56] *Multi-Ventures Capital and Management Corp. v. Stalwart Management Services Corp.*, 553 Phil. 385, 392 (2007) [Per *J*. Austria-Martinez, Third Division], citing *Huibonhoa v. Court of Appeals*, 378 Phil. 386, 407 (1999) [Per *J*. Purisima, Third Division] and *BA Finance Corporation v. Intermediate Appellate Court*, 291 Phil. 265, 283 (1993) [Per *J*. Gutierrez, Jr., Third Division].

of the parties, and if not, whether it was due to mistake, fraud, inequitable conduct, or accident.

Sections 5 and 7(d) of the Master Deed provide as follows:

> SEC. 5. Accessories to Units. — To be considered as part of each unit and reserved for the exclusive use of its owner are the balconies adjacent thereto and the parking lot or lots which are to be assigned to each unit.
>
> . . . . . .
>
> SEC. 7. The Common Areas. — The common elements or areas of The Makati Tuscany shall comprise all the parts of the project other than the units, including without limitation the following:
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> . . . . . .
>
> (d) All driveways, playgrounds, garden areas and parking areas other than those assigned to each unit under Sec. 5 above[.][57]

A plain and literal reading of Section 7(d) in relation to Section 5 shows that all parking areas which are not assigned to units come under petitioner's authority because they are part of the common areas.

Respondent argues that what was written in the Master Deed and Deed of Transfer failed to fully capture what was actually intended by the parties. However, intentions involve a state of mind, making them difficult to decipher; therefore, the subsequent and contemporaneous acts of the parties must be presented into evidence to reflect the parties' intentions.[58]

To substantiate its claim that there was a difference between the written terms in the Master Deed and Deed of Transfer and the parties' intentions, respondent refers to their prior and subsequent acts.

First, respondent points out that in the color-coded floor plans for the ground floor, upper basement, and lower basement, only

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[57] *Rollo*, p. 134.

[58] *Sarming v. Dy*, 432 Phil. 685, 699 (2002) [Per *J*. Quisumbing, Second Division].

eight (8) guest parking slots were indicated as part of the common areas. However, respondent alleges that due to its inexperience with documenting condominium developments, it failed to reflect the correct number of guest parking slots in the Master Deed and Deed of Transfer.[59]

Second, acting under the honest belief that it continued to own the 98 parking slots, respondent sold 26 of them to Makati Tuscany's unit owners from 1977 to 1986, without any hint of a complaint or opposition from petitioner. Respondent also states that petitioner repeatedly cooperated and supported its sales by issuing Certificates of Management for the condominium units and parking slots sold by respondent.[60]

Third, petitioner's Board of Directors made repeated offers to purchase the parking slots from respondent, signifying petitioner's recognition of respondent's retained ownership over the disputed parking slots. This was made evident in an excerpt from the minutes of the June 14, 1979 meeting of MATUSCO's Board of Directors:

UNASSIGNED PARKING SLOTS

Mr. Jovencio Cinco informed the Board of the final proposal of Multi-Realty Development Corp. to sell the condominium corp. all of the unassigned parking lots at a discounted price of ₱15,000.00 per lot, or some 50% lower than their regular present price of ₱33,000.00 each.

After discussion, it was agreed to hold in abeyance any decision on the matter for all the members of the Board in attendance to pass upon.[61]

Finally, respondent highlights that it was only in September 1989, when the value of the 72 remaining unallocated parking slots had risen to approximately ₱250,000.00 each or approximately ₱18,000,000.00 for the 72 parking slots, that

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[59] *Rollo*, p. 563.

[60] *Id*. at 563-564.

[61] *Id*. at 565.

petitioner first claimed ownership of the remaining parking slots.[62]

At this juncture, it must be pointed out that petitioner never rebutted any of respondent's statements regarding the subsequent acts of the parties after the execution and registration of the Master Deed and Deed of Transfer. Petitioner even adopted the narration of facts in *Multi-Realty Development Corporation* and declared in its Reply that:

> 1. *The Petition does not raise questions of fact because no doubt or difference exists between the parties' appreciation of the truth or falsehood of alleged facts*, nor does it require the Honorable Court to evaluate the credibility of witnesses or their testimonies. The resolution of the instant controversy rests solely upon the correct application of principles of law and pertinent jurisprudence, as well as hallowed ideals of fairness and public policy which are specific or germane to the undisputed facts. These facts have already been framed by this Honorable Court in a related case brought before it by the same parties, albeit limited to the sole issue of prescription of the action for reformation of instruments initiated by [Multi-Realty]. For the avoidance of doubt, these facts are reproduced hereunder as follows:
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> 1.3 Makati Tuscany consisted of 160 condominium units, with 156 units from the 2nd to the 25th floors, and 4 penthouse units in the 26th floor. Two hundred seventy (270) parking slots were built therein for appointment among its unit owners. One hundred sixty-four (164) of the parking slots were so allotted, with each unit at the 2nd to the 25th floors being allotted one (1) parking slot each, and each penthouse unit with two slots. Eight (8) other parking slots, found on the ground floor of the Makati Tuscany were designated as guest parking slots, *while the remaining ninety[-]eight (98) were to be retained by Multi-Realty for sale to unit owners who would want to have additional slots*.
>
> . . . . . .
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> 1.7. The Master Deed was filed with the Register of Deeds in 1977. Multi-Realty executed a Deed of Transfer in favor of Makati

[62] *Id.* at 565-566.

Tuscany over these common areas. However, the Master Deed and the Deed of Transfer did not reflect or specify the ownership of the 98 parking slots. Nevertheless, *Multi-Realty sold 26 of them in 1977 to 1986 to condominium unit buyers who needed additional parking slots. Makati Tuscany did not object*, and certificates of title were later issued by the Register of Deeds in favor of the buyers. *Makati Tuscany issued Certificates of Management covering the condominium units and parking slots which Multi-Realty has sold.*

1.8 At a meeting of Makati Tuscany's Board of Directors on 13 March 1979, a resolution was approved, authorizing its President, Jovencio Cinco, *to negotiate terms under which Makati Tuscany would buy 36 of the unallocated parking slots from Multi-Realty*. During another meeting of the Board of Directors on 14 June 1979, Cinco informed the Board members of *Multi-Realty's proposal to sell all of the unassigned parking lots* at a discounted price of ₱15,000.00 per lot, or some 50% lower than the then prevailing price of ₱33,000.00 each. The Board agreed to hold in abeyance any decision on the matter to enable all its members to ponder upon the matter.[63] (Emphasis supplied, citations omitted)

Just like respondent, petitioner invokes mistake in good faith to explain its seeming recognition of respondent's ownership of the 72 remaining parking slots, showing its acquiescence to respondent's sale of the 26 parking slots and its issuance of the Certificates of Management for the sold condominium units and parking slots.[64]

Petitioner fails to convince.

The totality of the undisputed evidence proving the parties' acts is consistent with the conclusion that the parties never meant to include the 98 parking slots among the common areas to be transferred to petitioner. The evidence is consistent to support the view that petitioner was aware of this fact.

From 1977 to 1986, respondent sold 26 of the 98 parking lots now under contention without protest from petitioner.

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[63] *Id*. at 630-634.

[64] *Id*. at 635-636.

Petitioner recognized respondent's ownership of the disputed parking lots on at least two (2) occasions when its Board of Directors made known its intention to purchase them from respondent.

In its Manifestation *Ad Cautelam*,[65] petitioner asked to be allowed to file a reply to respondent's comment to rectify the "erroneous statements of fact and conclusions of law"[66] contained in it. However, petitioner in its Reply[67] did not contradict any of the subsequent acts of the parties narrated by respondent, showing petitioner's repeated acquiescence to respondent's acts of dominion over the parking slots. Petitioner even adopted this Court's narration of facts in *Multi-Realty Development Corporation* where this Court stated that "[e]ight (8) other parking slots, found on the ground floor of the Makati Tuscany were designated as guest parking slots, while the remaining 98 were to be retained by Multi-Realty for sale to unit owners who would want to have additional slots."[68]

Petitioner claims that it was confusion and not bad faith that caused its belated assertion of ownership over the parking slots.[69] However, the facts show that it was the intention of the parties all along for Multi-Realty to retain ownership of the 98 parking slots and then sell them to unit owners who wanted additional parking slots.

Petitioner argues its lack of bad faith in claiming ownership over the 98 parking slots. Whether or not it acted in bad faith was never in issue. Instead, the issue to be resolved was whether or not respondent committed a mistake in drafting and executing the Master Deed and Deed of Transfer, thereby leading to the

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[65] *Id*. at 608-612.

[66] *Id*. at 608.

[67] *Id*. at 630-648.

[68] *Multi-Realty Development Corporation v. The Makati Tuscany Condominium Corporation*, 524 Phil. 318, 325 (2006) [Per *J*. Callejo, Sr., First Division].

[69] *Rollo*, pp. 635-636.

inadvertent inclusion of the 98 parking slots among the common areas transferred to petitioner.

Further, it is difficult to impute confusion and bad faith, which are states of mind appropriate for a natural individual person, to an entire corporation. The fiction where corporations are granted both legal personality separate from its owners and a capacity to act should not be read as endowing corporations with a single mind. In truth, a corporation is a hierarchical community of groups of persons both in the governing board and in management. Corporations have different minds working together including its lawyers, auditors, and, in some cases, their compliance officers.

To grant the argument that a corporation, like a natural person, was confused or not in bad faith is to extend to it too much analogy and to endow it more of the human characteristics beyond its legal fiction. This Court is not endowed with such god-like qualities of a creator or should allow illicit extensions of legal fiction to cause injustice.

Respondent, through a preponderance of evidence, was able to prove its claim that the Master Deed and Deed of Transfer failed to capture the true intentions of the parties; hence, it is but right that the instruments be reformed to accurately reflect the agreement of the parties.

Petitioner asserts that respondent's admission of committing a mistake in drafting the Master Deed and Deed of Transfer makes it liable to suffer the consequences of its mistake and should be bound by the plain meaning and import of the instruments. It contends that respondent should be estopped from claiming that the Master Deed and Deed of Transfer failed to show the parties' true intentions.

Again, petitioner fails to convince.

In *Philippine National Bank v. Court of Appeals*,[70] this Court held:

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[70] 183 Phil. 54 (1979) [Per *J*. Melencio-Herrera, First Division].

"The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. The doctrine of estoppel springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where without its aid injustice might result." It has been applied by this Court wherever and whenever special circumstances of a case so demand.[71]

In this case, except for the words in the contract, all of respondent's acts were consistent with its position in the case.

Petitioner does not deny that it stayed silent when respondent sold the parking slots on several occasions or that it offered to buy the parking slots from respondent on at least two (2) occasions. It excuses itself by saying that just like respondent, it "also labored under a mistaken appreciation of the nature and ownership of the ninety[-]eight (98) parking slots in question."[72]

Both parties recognized respondent's ownership of the parking slots. Petitioner initially respected respondent's ownership despite the Master Deed's and Deed of Transfer's stipulations. It was petitioner that changed its position decades after it acted as if it accepted respondent's ownership.

Petitioner cannot claim the benefits of estoppel. It was never made to rely on any false representations. It knew from its inception as a corporation that ownership of the parking slots remained with respondent. Its dealings with respondent and the actuations of its Board of Directors convincingly show that it was aware of and respected respondent's ownership. The Court of Appeals ruled as follows:

Not even the registration of the Master Deed with the Makati City Register of Deeds renders Multi-Realty guilty of estoppel by deed.

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[71] *Id*. at 63-64, *citing* 28 Am Jur 2d, Estoppel §28.

[72] *Rollo*, p. 635.

For one, [MATUSCO] was not made to believe that it shall be the owner of the questioned extra parking lots. And for another, [MATUSCO] was not made to rely on any false representation. As we have earlier discusse—evidence is replete that both parties knew at the outset that ownership over the said extra parking lots were to be retained by Multi-Realty. It is sad to note, however, that such fact was not clearly reflected in the Master Deed and the Deed of Transfer. Besides, it was only after the issue of ownership cropped up that Multi-Realty realized that, indeed, there was a mistake in the drafting of the Master Deed.[73]

II

Despite petitioner's adoption of this Court's recital of facts in *Multi-Realty Development Corporation*, this Court deems it proper to address respondent's claim that this Court upheld its ownership of the disputed parking slots, as *Multi-Realty Development Corporation* supposedly contained final factual findings on this very issue, which ought to be respected on the ground of *res judicata*.[74]

Respondent is mistaken.

There is *res judicata* when the following concur:

a) the former judgment must be final;

b) the court which rendered judgment had jurisdiction over the parties and the subject matter;

c) *it must be a judgment on the merits*;

d) and there must be between the first and second actions identity of parties, subject matter, and cause of action.[75] (Emphasis in the original, citation omitted)

Multi-Realty Development Corporation did not take on the merits of the case but only tackled the issue of prescription

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[73] *Id*. at 108.

[74] *Id*. at 577-580.

[75] *Heirs of Enrique Diaz v. Virata*, 529 Phil. 799, 823-824 (2006) [Per J. Chico-Nazario, First Division].

raised to this Court on appeal. After finding that the action had not yet prescribed and was mistakenly dismissed by the Court of Appeals because of a supposedly stale claim, this Court directed that it be remanded to the Court of Appeals for a resolution of the appeal:

> Nevertheless, given the factual backdrop of the case, it was inappropriate for the CA, *motu proprio*, to delve into and resolve the issue of whether [Multi-Realty's] action had already prescribed. The appellate court should have proceeded to resolve [Multi-Realty's] appeal on its merits instead of dismissing the same on a ground not raised by the parties in the RTC and even in their pleadings in the CA.
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> . . . . . .
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> IN LIGHT OF ALL THE FOREGOING, the petition is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. CV No. 44696 is *SET ASIDE*. The Court of Appeals is directed to resolve petitioner's appeal with reasonable dispatch. No costs.
>
> ORDERED.[76]

Clearly, *res judicata* had not yet set in and this Court was not precluded from evaluating all of the evidence vis-a-vis the issues raised by both parties.

WHEREFORE, premises considered, the Petition for Review on Certiorari is **DENIED**. The Court of Appeals April 28, 2008 Amended Decision and December 4, 2008 Resolution in CA-G.R. CV No. 44696 are **AFFIRMED**.

SO ORDERED.

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

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[76] *Multi-Realty Development Corporation v. The Makati Tuscany Condominium Corporation*, 524 Phil. 318, 336-337 and 346 (2006) [Per *J.* Callejo, Sr., First Division].

THIRD DIVISION

[G.R. No. 192797. April 18, 2018]

EXCELLENT ESSENTIALS INTERNATIONAL CORPORATION, *petitioner, vs.* **EXTRA EXCEL INTERNATIONAL PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EFFECTS OF JUDGMENTS; CONCLUSIVENESS OF JUDGMENT; ISSUES ALREADY RESOLVED IN A FORMER SUIT CANNOT AGAIN BE RAISED IN ANY FUTURE CASE BETWEEN THE PARTIES.— One of the aspects of *res judicata*, known as "conclusiveness of judgment," ordains that issues actually and directly resolved in a former suit cannot again be raised in any future case between the parties involving a different cause of action. Conclusiveness of judgment does not require identity of the causes of action; instead, it requires identity of issues. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit; but the adjudication of an issue in the first case is not conclusive of an entirely different and distinct issue arising in the second. Hence, facts and issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties, even if the latter suit may involve a different claim or cause of action.

2. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; FINDINGS OF FACT AND OPINION OF A COURT WHEN ISSUING THE SAME ARE INTERLOCUTORY IN NATURE.— A writ of preliminary injunction is warranted where there is a showing that there exists a right to be protected and that the acts against which the writ is to be directed violate an established right. Otherwise stated, for a court to decide on the propriety of issuing a temporary restraining order and/or a writ of preliminary injunction, it must only inquire into the existence

of two things: (1) a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage. Accordingly, we must remember that the sole object of a writ of preliminary injunction, whether prohibitory or mandatory, is to preserve the status quo and prevent further injury on the applicant until the merits of the main case can be heard. The injunctive writ may only be resorted to by a litigant for the preservation and protection of his rights or interests during the pendency of the principal action. Given that the writ of preliminary injunction is temporary until the main case is resolved on the merits, the evidence submitted during the hearing on the preliminary injunction is not conclusive; for only a "sampling" is needed to give the trial court an idea of the justification for its issuance pending the decision of the case on the merits. As such, the findings of fact and opinion of a court when issuing the writ of preliminary injunction are interlocutory in nature.

3. CIVIL LAW; CONTRACTS; TORTUOUS INTERFERENCE; A THIRD PARTY WHO INDUCES ANOTHER TO VIOLATE HIS CONTRACT SHALL BE LIABLE TO DAMAGES TO THE OTHER CONTRACTING PARTY.— Under the principle of relativity of contracts, only those who are parties to a contract are liable to its breach. Under Article 1314 of the Civil Code, however, any third person who induces another to violate his contract shall be liable to damages to the other contracting party. Said provision of law embodies what we often refer to as tortuous or contractual interference. In *So Ping Bun v. CA,* we laid out the elements of tortuous interference: (1) existence of a valid contract; (2) knowledge on the part of the third person of the existence of contract; and (3) interference of the third person is without legal justification or excuse. x x x A duty which the law of torts is concerned with is respect for the property of others, and cause of action *ex delicto* may be predicated by an unlawful interference by any person of the enjoyment of the other of his private property. This may pertain to a situation where a third person induces a person to renege on or violate his undertaking under a contract. x x x To sustain a case for tortuous interference, the defendant must have acted with malice or must have been driven by purely impure reasons to injure plaintiff; otherwise stated, his act of interference cannot be justified. We further explained that the word induce refers to

situations where a person causes another to choose one course of conduct by persuasion or intimidation.

4. ID.; DAMAGES; TEMPERATE DAMAGES; HAVING NO FACTUAL BASIS TO PROVE A PECUNIARY LOSS, NOMINAL DAMAGES WAS AWARDED INSTEAD OF TEMPERATE DAMAGES.— Under Article 2224 of the Civil Code, temperate damages may be recovered when pecuniary loss has been suffered but its amount, from the nature of the case, cannot be proved with certainty. The amount thereof is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory. Thus, to warrant an award for temperate damages, the plaintiff must prove that he actually suffered a pecuniary loss but cannot ascertain the exact amount of damage suffered. x x x [Here,] having no factual basis to prove a pecuniary loss on the part of Excel Philippines, we find it appropriate to delete the award for temperate damages and award nominal damages instead. Under Article 2221 of the Civil Code, nominal damages may be awarded in order that the plaintiff's right, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered. Nominal damages are recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown. In a number of cases, this Court has awarded nominal damages because there was no substantial injury on the plaintiff but there was definitely a legal right violated. x x x Lastly, we impose the legal interest of six percent (6%) per annum from the time this judgment becomes final and executory until this judgment is wholly satisfied.

APPEARANCES OF COUNSEL

Quiason Makalintal Barot Torres Ibarra & Sison for petitioner.

Britanico Sarmiento & Franco Law Offices for respondent.

D E C I S I O N

MARTIRES, *J.*:

We resolve the petition for review on certiorari assailing the 28 June 2010 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CV No. 88388. The CA decision, in effect, reversed the Regional Trial Court, Branch 138, Makati City (*RTC, Branch 138*), by ordering petitioner Excellent Essentials International Corporation (*Excellent Essentials*) to pay respondent Extra Excel International Philippines, Inc. (*Excel Philippines*) damages, attorney's fees, and costs of suit.

FACTUAL ANTECEDENTS

The present controversy started from a complaint filed by E. Excel International, Inc. (*Excel International*) and Excellent Essentials against Excel Philippines for damages and to enjoin the latter from selling, distributing, and marketing E. Excel products in the Philippines.

On 9 August 1996, Excel International and Excel Philippines entered into an exclusive rights contract wherein the latter was granted exclusive rights to distribute E. Excel products in the Philippines.[2] Under the same contract, Excel International reserved the right to discontinue or alter their agreement at any time.[3]

Over the span of four (4) years, Excel International experienced intra-corporate struggle over the control of the corporation and the operations of its various exclusive distributors in Asia. The dispute even reached the Judicial District Court of Utah (*Utah Court*). Eventually, the conflict between the

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[1] *Rollo*, pp. 43-59; penned by Associate Justice Amy C. Lazaro-Javier, and concurred in by Associate Justices Sesinando E. Villon and Marlene Gonzales-Sison.

[2] Records, Vol. I, p. 119.

[3] *Id.*

principal stakeholders of Excel International, Jau-Hwa Stewart (*Stewart*) and Jau-Fei Chen (*Chen*), took a turn and Stewart somehow succeeded in gaining control of the company.

On 1 December 2000, Stewart, in her capacity as president of Excel International, revoked Excel Philippines' exclusive rights contract and appointed Excellent Essentials as its new exclusive distributor in the Philippines.[4]

Despite the revocation of its exclusive rights contract and the appointment of Excellent Essentials, Excel Philippines continued its operation in violation of the new exclusive distributorship agreement. Thus, on 26 January 2001, Excel International, through counsel, demanded that Excel Philippines cease from selling, importing, distributing, or advertising, directly or indirectly, any and all of E. Excel products.[5]

With its demand unheeded, Excel International and Excellent Essentials filed a complaint for injunction and damages against Excel Philippines. The complaint was originally filed before the RTC, Branch 56, of Makati City (*RTC, Branch 56*).[6]

On its part, Excel Philippines filed its answer with counterclaims saying that Excel International had no right to unilaterally revoke its exclusive right to distribute E. Excel products in the Philippines. Attached to its answer was an agreement dated 22 May 1995 between Excel International and Bright Vision Consultants, Ltd. (*Bright Vision*) showing that Excel Philippines' exclusive distributorship was irrevocable.[7] In fact, it was because of this agreement that Excel Philippines was incorporated so that it would become Excel International's exclusive distributor within the Philippines. Pertinent portions of this agreement read:

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[4] *Id*. at 123 & 126.

[5] *Id*. at 127.

[6] The case was re-raffled to Branch 138, which eventually rendered the RTC decision.

[7] Records, Vol. I, pp. 165-171.

AGREEMENT

THIS AGREEMENT is made [on] the 22nd day of May 1995 by and between E. Excel International, Inc., a company registered in the State of Utah, USA (hereinafter referred to as "E. Excel USA") and Bright Vision Consultants Limited, a company registered in British Virgin Islands with Registration No. 133985 (hereinafter referred to as "BV").

WHEREAS:

1. E. Excel USA manufactures, markets and/or distributes the products, including but not limited to nutritional supplements, herbal foods, skin care products, and household products (hereinafter referred to as "Products"). The term "Product" means all products manufactured, marketed and distributed by E. Excel USA under the name and style of E. Excel USA's company name and/or its logo.

2. BV desires to invest and establish a new company with other shareholders in the Philippines for the sole purpose of distributing the Products in the Philippines.

3. The shareholders of BV have considerable marketing experience of the Products in other countries, and have [a] long term working relationship with E. Excel USA.

4. BV shall be the majority shareholder of the new company in the Philippines.

5. E. Excel USA desires to market the Products in the Philippines through the New Company.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein set forth, E. Excel USA and BV agree as follows:

1. FORMATION OF NEW COMPANY

1.1 Within six months from the date of this Agreement, BV shall form or help with the formation and establishment of a new company for the sole purpose of distributing the Products of E. Excel USA.

1.2 The name of the new company shall be Extra Excel International Philippines Inc. (herein referred to as the "New Company").

1.3 The New Company may be jointly owned by shareholders

other than BV, however, BV shall be the majority shareholder.

2. BUSINESS PURPOSE OF THE NEW COMPANY

The formation of the New Company shall be for the following business purposes:

2.1 Distributing exclusively the Products licensed/ manufactured by E. Excel USA in the Philippines.

2.2 Promote, advertise, and build up the brand name of the Products of E. Excel USA.

2.3 Train and recruit sales force and/or distributors for the Products of E. Excel USA.

2.4 Build a network of consumers for the Products of E. Excel USA.

2.5 Set up head office, and branch offices and/or training centers and/or distributing centers as may be necessary for the Products in the Philippines.

2.6 Warehouse and maintain necessary stock of the Products for the distributors/consumers.

2.7 Be responsible for all the costs and expenses relating to all promotional and marketing expenditure relating to the distribution of the Products in the Philippines.

3. APPOINTMENT OF EXCLUSIVE DISTRIBUTOR

3.1 Upon formation of the New Company, the New Company shall automatically become E. Excel USA's "Authorized Exclusive Distributor."

3.2 E. Excel hereby agrees to grant the New Company the irrevocable and exclusive right to distribute, market and/ or sell the Products of E. Excel USA in the Philippines. The New Company shall be entitled to describe itself as E. Excel USA's "Authorized Exclusive Distributor" for its Products in the Philippines.

3.3 E. Excel USA also hereby authorizes and gives an exclusive, irrevocable license to the New Company the right to use its patents, trademarks, logo, designs, product formulations, copyrights, service marks,

business and trade names, research and development and any other rights of a similar nature.

3.4 E. Excel USA shall not directly and/or indirectly appoint any other person, firm or company other than the New Company, as a distributor, seller and/or agent for its Products in the Philippines or to sell, supply and/or distribute to any other person, firm or company any of its Products, whether for use or resale in the Philippines.

3.5 E. Excel USA shall not directly and/or indirectly sell or appoint any other person, firm or company in any other country, other than the New Company, to cause a resale of the Products or export of the Products into the Philippines.

3.6 This license of Exclusive Distributorship shall continue in force until the 21st day of May 2005. At the expiration of the period stipulated, the New Company shall have the sole and exclusive right to renew this Exclusive Distributorship for another ten (10) years by giving E. Excel USA a written notice at least six (6) months before the expiration of this Exclusive Distributorship.

3.7 The validity of this Exclusive Distributorship is also subject to the New Company fulfilling the sales volume requirement as designated by E. Excel USA and specified in clause 3.8.

3.8 The New Company shall need to fulfill a minimum sales volume of 200,000,000 pesos per year starting 1997 to maintain its exclusive distributorship with E. Excel USA. Sales volume means the amount of sales in Philippine currency, Peso, of all the Products that are sold by the New Company's network of sales force in the Philippines, i.e., the price at which the Products are sold by the New Company to its sales network and/or consumer and/or distributors.

3.9 This exclusive distributorship awarded by E. Excel USA to the New Company may not be modified, transferred or terminated except by an instrument in writing signed

by the duly authorized representative of E. Excel USA, and BV.

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7. DURATION AND TERMINATION OF AGREEMENT

7.1 This agreement shall come into force on the 22nd day of May 1995 and shall continue in force until the 21st day of May 2005. At the expiration of the period stipulated, BV shall have the sole and exclusive right to renew this agreement for another ten (10) years by giving E. Excel USA a written notice at least six (6) months before the expiration of this Agreement.

7.2 The validity of this Agreement is also subject to the New Company fulfilling the sales volume requirement as designated by E. Excel USA and specified in clause 3.8.

7.3 Unless otherwise mutually agreed upon between E. Excel USA and BV, neither party may terminate and/or revoke this Agreement until the expiry of the Agreement referred to in clause 7.1.

7.4 In the event of breach of this Agreement by E. Excel USA, E. Excel USA shall pay liquidated damages to either BV or the New Company (to be solely determined by BV) equal to 20% of the sales volume of the previous Agreement Year before the breach of the Agreement. Agreement Year means the period of 12 months from the date of this Agreement and each subsequent consecutive period of 12 months during the period of this Agreement. Nothing contained in this clause shall preclude BV or the New Company from demanding that E. Excel USA perform the obligations imposed in this Agreement until the expiry and/or optional renewal of this Agreement.

7.5 In the event that the New Company is not able to fulfill the sales volume as designated in Clause 3.8, BV, as the major shareholder of the New Company, warrants to E. Excel USA that it will ensure the New Company turns over to E. Excel USA all its trained [sales] network of distributors, and return to E. Excel

USA any of its trademarks, logos and any other information related to the Intellectual Property of E. Excel USA. E. Excel USA shall have the right to appoint another agent, company or individual as its sole exclusive distributor of the Products in the Philippines.

8. NATURE OF AGREEMENT

8.1 E. Excel USA acknowledges that BV shall be the majority shareholder of the New Company, and that the New Company shall have other shareholders, therefore, in consideration of the mutual covenants herein set forth, E. Excel USA acknowledges that this Agreement may not be modified or changed by any representative of the New Company. This Agreement can only be modified by an instrument in writing signed by duly authorized representatives of both E. Excel USA and BV.

8.2 The Exclusive Distributorship, the right to use of Intellectual Property and any other rights given to the New Company by E. Excel USA is strictly for the use by the New Company and does not entitle the New Company to transfer, sub-contract or in any manner make over to third party except by an instrument in writing signed by the duly authorized representative of both BV and E. Excel USA.

8.3 This agreement contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all previous agreement and understanding between the Parties with respect thereto, and may not be modified except by an instrument in writing signed by the duly authorized representatives of both BV and E. Excel USA.

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8.5 Any change in the Board of Directors, shareholdings and/or management of E. Excel USA or BV shall not, in any event, affect the validity and continuity of the rights and obligations of E. Excel USA and BV as contained in this Agreement.[8]

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[8] *Id*. at 165-170.

The RTC ruling

On 4 April 2001, after trial was conducted on the parties' respective applications for temporary restraining order and/or writ of preliminary injunction, the RTC, Branch 56 ruled in favor of Excel Philippines and enjoined Excellent Essentials from: (1) interfering with Excel Philippines' exclusive right to distribute; (2) claiming, publishing, and announcing that Excel Philippines has ceased to be Excel International's exclusive distributor in the Philippines; (3) intimidating, enticing, or persuading Excel Philippines' agents to abandon the company; and (4) infringing and using in its products, packaging, and promotional materials the trademarks, logos, designs, and other intellectual property that Excel International has exclusively licensed to Excel Philippines.[9]

After Excellent Essentials' motion for reconsideration was denied on 31 May 2001,[10] it filed a petition for certiorari before the CA, docketed as CA-G.R. SP No. 65115.

Prior to this, however, Excel International and Excel Philippines filed a joint motion for a judgment based on their compromise agreement wherein both parties agreed to dismiss their claims against each other, without prejudice to the continuation of the case with respect to Excellent Essentials and Excel Philippines.[11] On 14 June 2001, the RTC, Branch 56 approved the compromise agreement and dismissed the claims and counterclaims of both parties accordingly.[12]

On 11 February 2002, the CA reversed and set aside the RTC, Branch 56's order issuing the preliminary injunction saying it was tainted with grave abuse of discretion.[13] The CA ruled:

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[9] *Id*. at 572; Order dated 4 April 2001.

[10] *Id*. at 709-710.

[11] *Id*. at 713-714.

[12] *Id*. at 715.

[13] *Rollo*, pp. 132-145.

[Excel Philippines'] title or right over the contested exclusive distributorship of E. Excel's products cannot be said to be clear and unmistakable since there is a cloud of doubt in said right in view of the revocation of the same by [Excel International] and the subsequent grant of an Exclusive Rights Contract in favor of [Excellent Essentials]. The issuance by [Excel International] of the two (2) documents should already put the court *a quo* on guard as to the veracity of [Excel Philippines'] claim of exclusive distributorship. The court a quo should be, more so, be wary since both parties claim validity of their respective Exclusive Rights Contract.

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On the second requirement, it cannot be imagined how the continued operation of [Excellent Essentials] could work injustice on [Excel Philippines'] operation. The operation of Excellent Essentials appears to have no effect at all on [Excel Philippines] since it has not lifted a finger despite knowledge of [Excellent Essentials'] operation. [Excel Philippines'] visible action on the matter surfaced only when it was called by the court a quo to answer [Excellent Essentials'] cause of action. In fact, there are no indications that it had been hindered, stopped and thwarted by the commencement of [Excellent Essentials'] operations.

On the issue of damages, this Court is not convinced that [Excel Philippines] will suffer irreparable injury to warrant the issuance of a writ of preliminary injunction.

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A writ of injunction should never issue when an action for damages would adequately compensate the injuries caused. The very foundation of the jurisdiction to issue the writ of injunction rests in the possibility of irreparable injury, inadequacy of pecuniary compensation and prevention of multiplicity of suits. When the facts of the case fail to show the foregoing conditions, injunction should be issued.

In the instant case, [Excel Philippines] has aptly showed that the damages it incurred and may incur are capable of pecuniary estimation.

All told, it is clear that [the RTC, Branch 56] committed grave abuse of discretion in the issuance of a writ of preliminary injunction.

WHEREFORE, the instant petition is hereby GRANTED. Accordingly, the assailed Orders dated April 4, 2001 and May 31,

2001 issued by [the RTC, Branch 56] in Civil Case No. 01-164 are hereby **REVERSED AND SET ASIDE** for having been issued with grave abuse of discretion.[14]

On 30 August 2002, the CA's decision in CA-G.R. SP No. 65115 became final and executory.[15]

Meanwhile, the trial on the main case continued and the RTC, Branch 138, on 8 September 2006, rendered a decision dismissing Excellent Essentials' complaint as well as Excel Philippines' counterclaims.[16] The RTC, Branch 138 found the issue on who was rightfully Excel International's exclusive distributor in the Philippines moot and academic after the Utah Court came out with a decision annulling Stewart's actions, as president of Excel International, in revoking Excel Philippines' exclusive distributorship and designating Excellent Essentials as its new distributor in the Philippines.[17]

As for Excel Philippines' counterclaims for damages, the RTC, Branch 138 held that there was no bad faith and malice on the part of Excellent Essentials who merely relied on the actions of Stewart, who was then acting in her capacity as president of Excel International.[18] The RTC, Branch 38 noted as a matter of fact that Excellent Essentials immediately desisted from distributing and marketing Excel International's products when the Utah Court came out with its decision declaring Stewart's actions in the Philippines illegal and that Excel Philippines was the rightful exclusive distributor.[19] Moreover, the RTC said it could not award actual or compensatory damages for the decrease in sales volume based on projected sales as

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

[15] Records, Vol. II, p. 3.

[16] *Id*. at 345-348.

[17] *Id*. at 346-347.

[18] *Id*. at 347.

[19] *Id*.

the claim was not clearly substantiated with a reasonable degree of certainty.[20]

Unsatisfied with the outcome, Excel Philippines appealed from this decision before the CA.

In the assailed decision, the CA granted the appeal and ordered Excellent Essentials to pay Excel Philippines temperate and exemplary damages, attorney's fees, and costs of suit:

> **ACCORDINGLY**, the appeal is **GRANTED IN PART**. The Decision dated September 8, 2006 of the Regional Trial Court, Branch 138, Makati City in Civil Case No. 01-164 is **MODIFIED** to this effect only: [Excellent Essentials] is **ORDERED TO PAY** [Excel Philippines] **₱170,897,948.00** as temperate damages, with legal interest at six percent (6%) per annum from the date of this Decision, and when this Decision becomes final and executory, the legal interest shall be twelve percent (12%) per annum until the amount due is fully paid; **₱2,500,000.00** as exemplary damages; **₱25,000.00** as attorney's fees; and the **COSTS OF SUIT**. The [RTC, Branch 138 decision] is **AFFIRMED IN ALL OTHER RESPECTS**.[21]
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Petition for Review

Excellent Essentials did not file a motion for reconsideration anymore and filed the present petition before this Court. In support of its petition, Excellent Essentials raised the following arguments:

1. The Court of Appeals had earlier ruled, in CA-G.R. SP No. 65115, that [Excel Philippines] would never be damaged by the continued actions or operations of [Excellent Essentials], which is tantamount to saying that [Excel Philippines'] claim for damages is speculative, conjectural, and whimsical;
2. Winniefer Go Tam, [Excel Philippines'] witness who testified on [its] purported damages, in her Affidavit-Direct Testimony, had singled out [Stewart], not [Excellent Essentials] or its new stockholders, that strained the contractual relationship

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[20] *Id.* at 348.

[21] *Rollo*, pp. 57-58.

of [Excel International] and [Excel Philippines], revoked the latter's distributorship contract with [Excel International], diverted the supply of Excel products from and stopped the shipment of Excel products to [Excel Philippines];

3. [Excellent Essentials'] new stockholders, who now comprised the controlling shareholdings, the present membership in the Board of Directors and corporate officers of [Excellent Essentials], have no direct or indirect participation in the actions of Stewart that precipitated the present controversy, since they became stockholders of [Excellent Essentials] long after the happening of these events; and

4. [Excellent Essentials] acted in good faith and without malice.[22]

OUR RULING

We DENY Excellent Essentials' petition.

In sum, we are presented with two (2) issues that are crucial in resolving the present petition: (a) whether the CA's ruling in CA-G.R. SP No. 65115 is conclusively binding with regard to the award for damages in the instant case; and (b) whether Excellent Essentials' corporate existence and its business operations caused damage to Excel Philippines.

Findings of fact and opinion of a court when issuing a writ for preliminary injunction are interlocutory in nature.

One of the aspects of *res judicata*, known as "conclusiveness of judgment," ordains that issues actually and directly resolved in a former suit cannot again be raised in any future case between the parties involving a different cause of action.[23] Conclusiveness of judgment does not require identity of the causes of action; instead, it requires identity of issues. If a particular point or question is in issue in the second action, and the judgment will

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[22] *Id*. at 25.

[23] *Presidential Commission on Good Government v. Sandiganbayan*, 590 Phil. 382, 396 (2008).

depend on the determination of that particular point or question, a former judgment between the same parties will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit; but the adjudication of an issue in the first case is not conclusive of an entirely different and distinct issue arising in the second.[24] Hence, facts and issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties, even if the latter suit may involve a different claim or cause of action.[25]

In the case at bar, Excellent Essentials persuades us that the issues resolved during the preliminary injunction proceedings should simply carry over in the resolution of main case. To recall, the RTC, Branch 56 initially issued a temporary restraining order and/or writ of preliminary injunction but the CA nullified its order for being issued with grave abuse of discretion. The CA's reasons were: (1) Excel Philippines' exclusive distributorship in the Philippines was *doubtful* considering that Excel International revoked it and gave it to Excellent Essentials; and (2) Excel Philippines would not suffer any irreparable injury should Excellent Essentials be allowed to continue distributing Excel products in the Philippines. Thus, since it would appear that Excellent Essentials' continued operations have no effect at all on Excel Philippines, there is no injury to speak of when it comes to awarding damages in favor of the latter.

However, we cannot ascribe to Excellent Essentials' position because of the nature of a writ of preliminary injunction.

A writ of preliminary injunction is warranted where there is a showing that there exists a right to be protected and that the acts against which the writ is to be directed violate an established

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[24] *Alcantara v. Department of Environment and Natural Resources*, 582 Phil. 717, 735 (2008).

[25] *Ley Construction & Development Corporation v. Philippine Commercial & International Bank*, 635 Phil. 503, 512 (2010).

right.[26] Otherwise stated, for a court to decide on the propriety of issuing a temporary restraining order and/or a writ of preliminary injunction, it must only inquire into the existence of two things: (1) a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage.[27] Accordingly, we must remember that the sole object of a writ of preliminary injunction, whether prohibitory or mandatory, is to preserve the status quo and prevent further injury on the applicant until the merits of the main case can be heard.[28] The injunctive writ may only be resorted to by a litigant for the preservation and protection of his rights or interests during the pendency of the principal action.[29]

Given that the writ of preliminary injunction is temporary until the main case is resolved on the merits, the evidence submitted during the hearing on the preliminary injunction is not conclusive; for only a "sampling" is needed to give the trial court an idea of the justification for its issuance pending the decision of the case on the merits.[30] As such, the findings of fact and opinion of a court when issuing the writ of preliminary injunction are interlocutory in nature.[31]

From the foregoing, the CA's findings, despite being final and executory, were clearly limited to the issuance of an injunctive relief pending the final resolution of the main case. In other words, the resolution of the issue as to the existence or non-existence of an injury to Excel Philippines was determined only to preserve the status quo between the parties and not to prejudge

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[26] Rules of Court, Rule 58, Section 3.

[27] *Borlongan v. Banco De Oro*, G.R. No. 217617, 5 April 2017.

[28] *Dolmar Real Estate Development Corporation v. CA*, 570 Phil. 434, 439 (2008).

[29] *Id.*

[30] *Levi Strauss (Phils.) Inc. v. Vogue Traders Clothing Company*, 500 Phil. 438, 461 (2005).

[31] *Id.*

the outcome of the claim for damages. To our mind, when the CA reversed the RTC, Branch 56's order to issue a writ for preliminary injunction, it did not mean to say that Excel Philippines did not suffer losses. A closer look at the CA's decision in CA-G.R. SP No. 65115 would reveal that Excel Philippines was simply not entitled to an injunctive relief at that stage of the case.

A corporation, who is a third party to a contract, may be held liable for damages if used as a means to breach the obligations between the contracting parties.

Under the principle of relativity of contracts, only those who are parties to a contract are liable to its breach.[32] Under Article 1314 of the Civil Code, however, any third person who induces another to violate his contract shall be liable to damages to the other contracting party. Said provision of law embodies what we often refer to as tortuous or contractual interference. In *So Ping Bun v. CA,*[33] we laid out the elements of tortuous interference: (1) existence of a valid contract; (2) knowledge on the part of the third person of the existence of contract; and (3) interference of the third person is without legal justification or excuse.[34]

Prior to the revocation of its exclusive distributorship, Excel International had an existing contract with Bright Vision wherein they agreed to set up a corporation to exclusively distribute E. Excel products within the Philippines. This corporation, eventually, turned out to be Excel Philippines who was given the irrevocable and exclusive right to distribute, market, and/or sell. Under its agreement with Bright Vision, Excel Philippines' exclusive distributorship right was irrevocable and may only be modified, transferred, or terminated upon the mutual consent

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[32] Civil Code, Article 1311.

[33] 373 Phil. 532, 540 (1999).

[34] See also *Lagon v. CA*, 439 Phil. 739, 747 (2005).

of both parties. This agreement was effective from 22 May 1995 until 21 May 2005.

The relationship between Excel International and Excel Philippines took an unexpected turn when Stewart, acting as Excel International's president, unilaterally revoked Excel Philippines' right and conferred it to Excellent Essentials. Although Stewart's actions were later considered unlawful by the Utah Court, whose opinion was adopted by both the RTC, Branch 138 and the CA, Excellent Essentials was able to set up shop and disrupt Excel Philippines' distribution of E. Excel products in the Philippines.

At this point, Excel International had already breached its contractual obligations by unilaterally revoking Excel Philippines' exclusive distributorship even if it was prohibited from doing so under the 22 May 1995 agreement. Stewart could not have done what she did during her temporary control over Excel International because, under clause 8.5 of the agreement, any change in the management of Excel International shall not affect the validity and continuity of the rights and obligations of both parties. In other words, Stewart, as Excel International's interim president, was bound by the company's grant of exclusive distributorship to Excel Philippines and the conditions that came with it.

Having established the first element of tortuous interference, we now have to determine if Excellent Essentials had knowledge of Excel Philippines' exclusive right. On this score, we note that the exclusive distributorship right was granted to Excellent Essentials before it existed.[35] This circumstance suggests that even before Excellent Essentials was organized, its incorporators had the preconceived plan to maneuver around Excel Philippines. Worse, after going over the records, there is evidence showing that Excellent Essentials' incorporators were officers of and/or affiliated with Excel Philippines. In fact, these incorporators

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[35] The exclusive right contract of Excellent Essentials is dated 1 December 2000 but Excellent Essentials was organized and registered only on 8 December 2000.

remained at work with Excel Philippines during this time and started to pirate its supervisors, employees, and agents to join Excellent Essentials' multi-level marketing system.

Under these circumstances, we can conclude that those behind Excellent Essentials not only had knowledge that Excel International had the obligation to honor Excel Philippines' exclusive right, but also conspired with Stewart to undermine Excel Philippines. Thus, we agree with the CA when it said:

> It does not escape this Court's attention the stealthy maneuverings that [Excellent Essentials'] incorporators did while still working for [Excel Philippines]. As narrated above, they anticipated the revocation of [Excel Philippines'exclusive right contract and the award to [Excellent Essentials] of the same gratuity while the latter has yet to be organized. With this expectation comes not a foreknowledge of divine origin but a conspiracy to rig existing contractual obligations so they could swaddle themselves with the benefits that go along with such maneuverings. The Utah Court made same observations as this Court now does because the coincidence of the revocation of the exclusive rights contract and its conferment later appears so surreal if they were not planned at all. It is in this sequence of events that this Court finds bad faith in [Excellent Essentials'] actuations. Contrary to its assertions, it did not just stand as an innocent bystander but a conspirator in the manner by which [Excel International's] corporate structure and contracts were skewed to fit the best interests of some.[36]

On the last element, therefore, we cannot ascribe to Excellent Essentials' claim that it was not guilty of malice or bad faith.

A duty which the law of torts is concerned with is respect for the property of others, and cause of action *ex delicto* may be predicated by an unlawful interference by any person of the enjoyment of the other of his private property. This may pertain to a situation where a third person induces a person to renege on or violate his undertaking under a contract.[37]

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[36] *Rollo*, p. 53.

[37] *Ferro Chemicals, Inc. v. Garcia*, G.R. No. 168134, 5 October 2016, 804 SCRA 528, 570 citing *Lagon v. CA*, *supra* note 34 at 748.

In *Yu v. CA*,[38] we ruled that the right to perform an exclusive distributorship agreement and to reap the profits resulting from such performance are proprietary rights which a party may protect.[39] In that case, the former dealer of the same goods purchased the merchandise from the manufacturer in England though a trading firm in West Germany and sold these in the Philippines. We held that the rights granted to the petitioner under the exclusive distributorship agreement may not be diminished nor rendered illusory by the expedient act of utilising or interposing a person or firm to obtain goods for which the exclusive distributorship was conceptualized, at the expense of the sole authorized distributor.[40]

In the case before us, we observe the same unjust conduct exhibited by Excellent Essentials tantamount to tortuous interference.

To sustain a case for tortuous interference, the defendant must have acted with malice or must have been driven by purely impure reasons to injure plaintiff; otherwise stated, his act of interference cannot be justified.[41] We further explained that the word induce refers to situations where a person causes another to choose one course of conduct by persuasion or intimidation.[42]

Contrary to Excellent Essentials' argument in the instant petition, its participation in the scheme against Excel Philippines transgressed the bounds of permissible financial interest.[43] Its mere corporate existence played an important factor for Stewart to revoke Excel Philippines' exclusive right to distribute E. Excel

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[38] 291 Phil. 336, 340 (1993).

[39] See *Go v. Cordero*, 634 Phil. 69, 91 (2010).

[40] *Yu v. CA*, *supra* note 38.

[41] *Go v. Cordero*, *supra* note 39 at 95-96 citing *Lagon v. CA*, *supra* note 34 at 748.

[42] *Id*.

[43] See *Gilchrist v. Cuddy*, 29 Phil. 542, 549 (1915).

products in the Philippines. For without it, or the participation of its incorporators, Excel International would not have the means to connect with the marketing network Excel Philippines established. Simply put, Excellent Essentials became the vessel for the breach of Excel International's contractual undertaking with Excel Philippines.

Correction of the Award for Damages and Imposition of Interest Due.

Although Excellent Essentials is guilty of tortuous interference and, therefore, Excel Philippines is entitled to damages, we do not agree with the CA in the award of temperate damages.

Under Article 2224 of the Civil Code, temperate damages may be recovered when pecuniary loss has been suffered but its amount, from the nature of the case, cannot be proved with certainty. The amount thereof is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory.[44] Thus, to warrant an award for temperate damages, the plaintiff must prove that he actually suffered a pecuniary loss but cannot ascertain the exact amount of damage suffered.

In the present case, Excel Philippines bolsters claim for damages based on the decrease in its sales volume, the decline in the number of its distributors, and the expenses it incurred during the recovery period. The total amount of its claim is ₱512,693,845.63, at least half a billion of which is the loss in its sales volume.

In awarding temperate damages in lieu of actual or compensatory damages, the CA thought one-third (1/3) of the amount claimed as damages was proportionate, to *wit*:

As regards the relief for actual damages, the ruling in *Tan v. JAM Transit* teaches: "To warrant an award of actual and compensatory

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[44] *Dueñas v. Guce-Africa*, 618 Phil. 10, 22 (2009); *Tan v. OMC Carriers, Inc.*, 654 Phil. 443, 455 (2011).

damages for repair to damage sustained, the best evidence should be the receipts or other documentary evidence proofs of the actual amount expended."

Here, this Court finds no evidence of this sort to justify an award of actual damages. However, considering it was duly proven that the business of [Excel Philippines] was prejudiced and its operations indeed curtailed if not altogether stopped, but the actual amounts lost were not determined with certitude, this Court deems it appropriate to award temperate damages. Under Article 2224 of the Civil Code, temperate damages may be recovered when pecuniary loss has been suffered but its amount cannot be proved with certainty.

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Here, 1/3 of the total amount claimed as actual damages is just and reasonable as well as temperate damages to be adjudicated, thus: 1/3 x ₱512,693,845.63 equals ₱170,897,948.00.[45]

Even though no proof of pecuniary loss is necessary in order that temperate damages may be awarded,[46] we cannot sustain the CA's finding that Excel Philippines suffered substantial losses to warrant an award for temperate damages. In the first place, the figures offered to prove the decline in sales were based on **projected** monthly sales volume and forecasted computations. To be more specific, according to Excel Philippines' administrative manager: (1) for calendar year 2000, the audited financial statement reported a net loss of ₱75,158,650.00 but the company estimated only a net loss of ₱65,253,626.33; hence, a difference of ₱9,905,023.67; (2) for calendar year 2001, the audited financial statement reported a net loss of ₱111,869,409.00 but the company estimated a net income of ₱127,058,622.83; hence, a difference of ₱238,955,031.83; and (3) for calendar year 2002, the audited financial statement reported a net loss of ₱43,280,889.00 but the company estimated a net income of ₱209,510,170.79; hence, a difference of ₱252,791,059.79. The total variance between the forecasted figures from the actual

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[45] *Rollo*, pp. 55-57.

[46] Civil Code, Article 2216.

figures reported in its financial statement, roughly around ₱501,651,115.29, was Excel Philippines' basis for its claim for damages for the decrease in its sales volume.[47]

We cannot use these figures as basis that Excel Philippines suffered losses because of Excellent Essentials' interference. Although attributable, we cannot be sure that Excellent Essentials solely caused the decrease in Excel Philippines sales volume. These figures were based on undocumented sales figures, summarized into a table, and also, on the company's projections which cannot be relied upon if we were to account for loss of profits. Thus, having no factual basis to prove a pecuniary loss on the part of Excel Philippines, we find it appropriate to delete the award for temperate damages and award nominal damages instead.

Under Article 2221 of the Civil Code, nominal damages may be awarded in order that the plaintiff's right, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered. Nominal damages are recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown.[48] In a number of cases, this Court has awarded nominal damages because there was no substantial injury on the plaintiff but there was definitely a legal right violated.[49]

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[47] *Rollo*, pp. 153-154; Affidavit in Lieu of Direct Testimony of Winniefer Go Tam, Administrative Manager of Excel Philippines.

[48] *Seven Brothers Shipping Corporation v. DMC-Construction Resources, Inc.*, 748 Phil. 692, 700 (2014) citing *Francisco v. Ferrer*, 405 Phil. 741, 751 (2001) further citing *Areola v. CA*, 306 Phil. 656, 667 (1994).

[49] See *Saludo v. CA*, 207 Phil. 498, 536 (1992); *Northwest Airlines, Inc. v. Cuenca*, 122 Phil. 403 (1965); *Francisco v. Ferrer*, 405 Phil. 741, 751 (2001); and *Areola v. CA*, 306 Phil. 656, 667 (1994).

Given the circumstances, we believe the amount of ₱50,000,000.00, or 30% of the award for temperate damages, is just and reasonable as nominal damages.

Lastly, we impose the legal interest of six percent (6%) per annum from the time this judgment becomes final and executory until this judgment is wholly satisfied.[50]

WHEREFORE, premises considered, we **DENY** the petition. The 28 June 2010 Decision of the Court of Appeals in CA-G.R. CV No. 88388 is **AFFIRMED** with the following **MODIFICATIONS**: (1) the award for temperate damages is deleted and, in lieu thereof, Excellent Essentials International Corporation is ordered to pay Extra Excel International Philippines, Inc. ₱50,000,000.00 as nominal damages; and (2) the total amount adjudged shall earn an interest rate of six percent (6%) per annum on the balance and interest due from the date of finality of this decision until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 195962. April 18, 2018]

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, PLACIDO L. MAPA, JR.,** * **RECIO**

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[50] See *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

* Also referred to as Placido L. Mapa in some parts of the *rollo*.

M. GARCIA, LEON O. TY, JOSE R. TENGCO, JR., ALEJANDRO MELCHOR, VICENTE PATERNO, RUBEN ANCHETA, RAFAEL SISON, HILARION M. HENARES, JR., CARMELINO G. ALVENDIA and GENEROSO F. TENSECO,[**] *respondents.*

SYLLABUS

CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); CORRUPT PRACTICES OF PUBLIC OFFICERS UNDER SECTION 3(e) AND (g); RESPECTIVE ELEMENTS THEREOF.— The essential elements of violation of Section 3(e), RA 3019, as amended, are: 1. The accused is a public officer discharging official, administrative or judicial functions or private persons in conspiracy with them; 2. The public officer committed the prohibited act during the performance of his official duty or in relation to his public position; 3. The public officer acted with manifest partiality, evident bad faith or gross inexcusable negligence, and 4. His action caused injury to the Government or any private party, or gave unwarranted benefit, advantage or preference. On the other hand, to determine the culpability of private respondents under Section 3(g) of RA 3019, it must be established that: (1) they are public officers; (2) they entered into a contract or transaction on behalf of the government; and (3) such contract or transaction is grossly and manifestly disadvantageous to the government. As found by the OMB, to which the Court fully agrees, the elements of evident bad faith, manifest partiality and/or gross inexcusable negligence are lacking in the instant case; and petitioner failed to prove that the questioned foreign currency loans granted by the DBP to PPRC were grossly and manifestly disadvantageous to the government.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Trio & Regalado Law Offices for respondent Placido L. Mapa, Jr.

[**] Generoso F. Tenseco's middle initial appears as "G." and his surname is also spelled as Tanseco in some parts of the *rollo*.

Cruz Durian Alday & Cruz-Matters for respondent Jose Tengco, Jr.

Salvador G. Santos for respondent Carmelino P. Alvendia, Jr.

R E S O L U T I O N

CAGUIOA, *J.*:

Before the Court is a petition for *certiorari*[1] under Rule 65 of the Rules of Court assailing the Resolution[2] dated April 29, 2008 (Resolution) of the Office of the Ombudsman (OMB) in OMB-C-C-05-0018-A, dismissing the complaint for violation of Section 3(e) and (g) of Republic Act No. (RA) 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, against private respondents, and the undated Order[3] denying petitioner's motion for reconsideration.

The Facts and Antecedent Proceedings

The petition alleges that:

x x x On 8 October 1992, then President Fidel V. Ramos issued Administrative Order No. 13 creating the Presidential *Ad Hoc* Fact--Finding Committee on Behest Loans. The Committee was tasked to perform the following functions:

> 1. Inventory all behest loans; identify the lenders and borrowers, including the principal officers and stockholders of the borrowing firms, as well as the persons responsible for granting the loans or who influenced the grant thereof;
>
> 2. Identify the borrowers who were granted "friendly waivers" as well as the government officials who granted these waivers, determine the validity of these waivers; and

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[1] *Rollo* (Vol. 1), pp. 3-43, excluding Annexes.

[2] *Id*. at 44-80. Signed by Graft Investigation and Prosecution Officer II Nellie P. Boguen-Golez and approved by Ombudsman Ma. Merceditas Navarro-Gutierrez.

[3] *Id*. at 81-99.

3. Determine the courses of action that the government should take to recover these loans, and to recommend appropriate actions of the Office of the President within sixty (60) days from date of its creation.

x x x On 9 November 1992, President Ramos further issued Memorandum Order No. 61 expanding the functions of the Committee to include in its investigation, inventory and study, all non-performing loans, whether behest or non-behest. Moreover, the said Memorandum Order provided the following criteria as reference in determining whether a loan was behest or not, to wit:

a. It is under collateralized.
b. The borrower corporation is undercapitalized.
c. Direct or indirect endorsement by high government officials like presence of marginal notes.
d. Stockholders, officers or agents of the borrower corporation are identified as cronies.
e. Deviation of use of loan proceeds from the purpose intended.
f. Use of corporate layering.
g. Non-feasibility of the project for which financing is being sought.
h. Extra-ordinary speed in which the loan release was made.

x x x Among the loan accounts investigated by the Committee was that of the Philippine Pigment and Resin Corporation (PPRC). In its *Seventeenth (17th) Fortnightly Report* to President Ramos dated 29 November 1993, the Committee reported that the loans/ accommodations obtained by PPRC from the Development Bank of the Philippines (DBP) possessed positive characteristics of behest loans. The Committee's findings were reiterated in its *Terminal Report* dated 1 February 1994.

x x x On the strength of the Committee's findings, the complaint *a quo* was filed before [the] Office of the Ombudsman (OMB), accusing herein private respondents of *violation of Sections 3(e) and (g) of Republic Act 3019*, as amended, otherwise known as the *Anti-Graft and Corrupt Practices Act*, to wit:

Public Officials:

PLACIDO L. MAPA	-	Chairman
RECIO M. GARCIA	-	Governor
LEON O. TY	-	Governor

JOSE R. TENGCO, JR. - Governor
ALEJANDRO MELCHOR - Governor
VICENTE PATERNO - Governor
RUBEN ANCHETA - Governor
RAFAEL SISON - Governor
All of:
Development Bank of the Philippines (DBP)

Private Individuals:
HILARION M. HENARES, JR.
CARMELINO G. ALVENDIA &
GENEROSO F. TANSECO
All of:
Philippine Pigment & Resin Corporation (PPRC)

x x x The complaint *a quo* essentially alleges that PPRC was able to obtain two (2) foreign currency loans from DBP in the total amount of One Million Five Hundred Ninety Six Thousand Eight Hundred Twenty Two Dollars (US$1,596,822.00), or the equivalent of Eleven Million Nine Hundred Seventy Six Thousand One Hundred Sixty Five Pesos (PhP11,976,165.00).

x x x The said loans were secured by the following:

a. Joint first mortgage with the Private Development Corporation of the Philippines (PDCP) and National Investment and Development Corporation (NIDC) with DBP having an interest of 68.78% on existing assets (land, buildings and improvement, machinery and equipment) amounting to PhP9,297,000.00;

b. Joint first mortgage with (PDCP] and NIDC with DBP having an interest of 68.78% on assets to be acquired valued at PhP16,314,900.00; and

c. Joint and several signatures of Messrs. Carmelino G. Alvendia, Generoso G. Tanseco and Hilarion M. Henares, Jr.

x x x In other words, DBP's share on the aforesaid collaterals was valued at PhP17,615,685.00 and 64% thereof consisted of yet to be acquired assets. Moreover, it would be significant to note that at the time the loans were granted, PPRC's paid-up capital was only Php12,816,704.00.

x x x The complaint further alleged that: (1) in a statement of Total Claim as of 30 June 1987 prepared by the Transaction Processing

Department-APT of DBP, the total net claim of DBP against PPRC amounted to a staggering PhP116,625,402.58; (2) based on the examination of the loan amounts of PPRC, the Committee determined that such accounts are indeed behest loans and the same would have not been extended or granted to PPRC had it not been for the manifest partiality bestowed upon it by the Board of Governors of DBP; (3) that in the normal course of events, any financial institution would have not granted the loans received by PPRC, which were severely under-collateralized and the borrower under-capitalized; (4) that the debt of PPRC ballooned to PhP116,625,402.58 in 1987 clearly indicating that PPRC failed to pay DBP the installments and interest due on the said obligation; and that finally, (5) the said acts of the Board of Governors of DBP, in connivance with the officers of PPRC, led to the grant of benefits grossly disadvantageous to the government.

x x x Finding enough bases to conduct a preliminary investigation, x x x OMB issued an Order dated 4 January 2005 directing the private respondents to file their respective counter-affidavits. However, only respondents Jose R. Tengco, Jr. and Placido L. Mapa submitted their respective Counter-Affidavits.

x x x x x x x x x

x x x Petitioner filed its Consolidated Reply dated 20 April 2005 x x x.

x x x On 29 April 2008, [OMB] issued its now assailed Resolution dismissing petitioner's complaint for lack of probable cause to warrant [private] respondents indictment. [OMB] also held in its Resolution that private respondent[s] could not be held liable for their acts committed prior to the issuance of Memorandum Order No. 61 dated 9 November 1992. The dispositive portion of said Resolution reads as follows:

> **WHEREFORE**, there being no probable cause established to warrant the indictment of herein respondents *Placido Mapa, Recio M Garcia, Leon O. Ty, Jose Tengco, Jr., Alejandro A. Melchor, Vicente Paterno[,] Ruben Ancheta, Rafael Sison, Hilarion M. Henares, Jr., Carmelino G. [Alvendia] and Generoso F. Tanseco,* for *violation of Section 3 (e) and (g) of Republic Act 3019*, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, the instant case, docketed as **OMB-C-C-05-0018-A**, entitled ***Presidential Commission on***

Good Government, represented by *Rene B. Gorospe* versus ***Placido L. Mapa, et al.***, be, as it is hereby ***dismissed***.

SO RESOLVED.

x x x On 11 March 2009, petitioner moved for reconsideration of the aforesaid Resolution. The motion[,] however, was denied in its equally challenged undated Order, the *fallo* of which reads:

> **PREMISES CONSIDERED**, the Motion for Reconsideration of complainant-movant *PCGG* seeking that the Resolution dated 29 April 2008 dismissing **OMB-C-C-05-0018-A**, entitled: ***Presidential Commission on Good Government***, represented by *Rene B. Gorospe* versus ***Placido L. Mapa, et al.***, be, as it is hereby ***denied***.
>
> **SO ORDERED.**[4]

Hence this petition.

Private respondent Placido L. Mapa, Jr. filed a Comment[5] dated November 21, 2011. Private respondent Carmelino G. Alvendia filed a Comment[6] dated November 9, 2011. Private respondent Jose R. Tengco, Jr. filed a Comment[7] dated November 28, 2011. The Court noted the said Comments in its Resolution[8] dated February 6, 2012. In its Resolution[9] dated December 5, 2012, the Court resolved to dispense with the comments of the other private respondents, it appearing that only private respondents Jose R. Tengco, Jr. and Placido L. Mapa, Jr. submitted their respective counter-affidavits before the OMB. Petitioner filed a Consolidated Reply[10] dated March 26, 2013.

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[4] *Id*. at 9-19, numbering of paragraphs omitted.

[5] *Id*. at 358-377.

[6] *Id*. at 378-382. The Comment was filed through Carmelino P. Alvendia, Jr. who manifested that his father Carmelino G. Alvendia died on March 6, 1982.

[7] *Id*. at 388-417, excluding Annexes.

[8] *Rollo* (Vol. II), pp. 569-571.

[9] *Id.* at 605-606.

[10] *Id*. at 627-642, excluding Annex.

Issue

The petition raises the following issue:

Whether the OMB committed grave abuse of discretion and/or acted without or in excess of jurisdiction in dismissing petitioner's complaint for alleged lack of probable cause.

The Court's Ruling

The petition is without merit. The OMB did not commit grave abuse of discretion or act without or in excess of jurisdiction in dismissing petitioner's complaint for lack of probable cause.

Private respondents are charged with violation of Section 3(e) and (g) of RA 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, to wit:

SEC. 3. *Corrupt practices of public officers*. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x x x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

The Court adopts with approval the OMB's findings on the failure of petitioner to point out with certainty and definiteness the specific acts of private respondents that constituted "manifest partiality," "evident bad faith," and "excusable negligence" as well as provide the basis for its conclusion that "unwarranted benefits" were accorded to and "manifest partiality" was bestowed by the DBP to PPRC, *viz.*:

The project of PPRC was deserving of financial assistance based [on] the following documented reasons:

1. PPRC's projects were registered by the Board of Investments as preferred pioneer project under RA No. 5186 and as preferred non-pioneer [project] under RA No. 6135;

2. the principals of the company were highly respected and reputable members of the business and civic communities;

3. PPRC's credit standing was considered and rated very good as the company had excellent track record with the Bank. PPRC was an old client of DBP whose accounts were satisfactorily handled in the past;

4. further indication of the firm's good credit standing was that another major creditor, PDCP, had approved various loans for the firm;

5. the firm's operation in the past had been smooth and trouble-free and no difficulties expected;

6. projected results of operations were seen to be profitable and the project viable with no major problems foreseen in all areas of operation, technical, sales, and financial;

7. PPRC's project was clearly one that needed no special unwarranted or special consideration to be approved, since it was viable and desirable project for financing, there is always risk since not all future intervening events and other circumstances could be totally predicted. Financial institutions are always prepared to take risks on unexpected future events as it happened in the case of PPRC and other borrowers who were adversely affected by the general economic problems. The problems experienced in the account of PPRC did not certainly arise from [private] respondents' giving undue benefit, preference or advantage or any form of unwarranted consideration to PPRC or its officials.

The approval of the foreign currency loans of PPRC by the DBP Board of Governors in January 1978 was a collective act in the exercise of its sound business judgment and was in strict and full compliance with the DBP Charter and all other existing bank policies, rules and regulations.

The business judgment as that exercised in good faith by the DBP Board of Governors in approving the PPRC foreign currency loans as recommended by the DBP operating department is a legal

presumption that favors directors/governors and protects them and their substantive decisions from judicial scrutiny.

Such legal presumption was not contested by [petitioner]. Moreover, it is a fundamental rule that members of the board of directors of a corporation who purport to act for and in behalf of the corporation, keep within the lawful scope of their authority in so acting, and act in good faith, do not become liable, whether civilly or otherwise, for the consequences of their act. Those acts, when they are done under such circumstances, are properly attributable to the corporation alone and no persona liability is incurred by such officers and board members.

It is thus not enough for [petitioner] to simply say and sweepingly conclude that the Committee, based on the examination of the account of PPRC, had evaluated and determined the subject account and found it to be a "behest loan."

The unpaid account as of 1987 cited by [petitioner] is almost ten (10) years after the foreign currency loans were approved in January 1978. In making conclusions, the time element should be taken into consideration and factored in. The DBP Board of Governors, who in good faith and using their business judgment on an informed basis, approved the foreign currency loans on solid grounds almost ten years ago, cannot be held accountable for this cited situation.

No one could have reasonably foreseen the reasons for the default of PPRC in paying its dollar-denominated loans. The situation obtaining ten years after the loan was approved was the result of various contributing circumstances which could not have been anticipated, especially the worsening of economic situation that time and the resulting foreign currency/peso revaluation/devaluation over which DBP and the project proponents had no control.

It was emphasized that at the time the dollar-based loans of PPRC were approved in January 1978, the exchange rate of the peso to dollar was only PhP7.50/$1:00. By 1987, the peso-dollar exchange rate skyrocketed to PhP20.456/$1:00 or almost triple the exchange rate in 1978. The DBP Board of Governors, who approved the foreign currency loans could not, in all fairness, be held responsible for this.

What is important is that at the time they approved the foreign currency loans, the requirements of law, rules and regulations, and the standard terms and conditions in granting them were all followed and complied with.[11]

[11] OMB Resolution dated April 29, 2008, *id.* at 63-66.

The retroactive application of Memorandum Order No. (MO) 61[12] dated November 9, 1992 issued by then President Fidel V. Ramos in order to subject foreign currency loans granted in favor of PPRC on January 25, 1978 or long before the issuance of MO 61 is violative of Article 366 of the Revised Penal Code which provides that crimes are punished under the laws in force at the time of their commission.[13] Thus, MO 61 cannot be made applicable insofar as the criminal liability of private respondents is concerned.[14]

Furthermore, while petitioner pointed to how the Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans (Committee) was able to conclude that the foreign currency loans were behest loans, it failed to discuss the specific participation or acts of each of private respondents constituting violation of Section 3(e) and (g) of RA 3019.[15]

The essential elements of violation of Section 3(e), RA 3019, as amended, are:

1. The accused is a public officer discharging official, administrative or judicial functions or private persons in conspiracy with them;
2. The public officer committed the prohibited act during the performance of his official duty or in relation to his public position;
3. The public officer acted with manifest partiality, evident bad faith or gross inexcusable negligence, and
4. His action caused injury to the Government or any private party, or gave unwarranted benefit, advantage or preference.[16]

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[12] The MO sets forth the criteria in identifying behest loans, and distinguishes a behest loan from a non-behest loan in that while both may involve civil liability for non-payment or non-recovery, the former may entail criminal liability; *rollo* (Vol. 1), p. 73.

[13] *Rollo* (Vol. I), p. 73.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 73-74, citations omitted.

On the other hand, to determine the culpability of private respondents under Section 3(g) of RA 3019, it must be established that: (1) they are public officers; (2) they entered into a contract or transaction on behalf of the government; and (3) such contract or transaction is grossly and manifestly disadvantageous to the government.[17]

As found by the OMB, to which the Court fully agrees, the elements of evident bad faith, manifest partiality and/or gross inexcusable negligence are lacking in the instant case; and petitioner failed to prove that the questioned foreign currency loans granted by the DBP to PPRC were grossly and manifestly disadvantageous to the government.[18]

While petitioner alleged that the subject foreign currency loans were undercollateralized and PPRC was undercapitalized, it failed to sufficiently establish that indeed the transactions were either grossly and manifestly disadvantageous to the government or that there was evident bad faith, manifest partiality or gross inexcusable negligence on the part of private respondents.[19]

Petitioner took the position that since nearly 64% of the collaterals were yet to be acquired, the loans of PPRC were undercollateralized.[20] Even if the collaterals consisted mostly of assets yet to be acquired, the Court in the consolidated cases of *Torres v. Limjap* and *Vergara Vda. de Torres v. Limjap*,[21] had ruled that "[a] stipulation in the mortgage, extending its scope and effect to after-acquired property, is valid and binding x x x but the mortgage must expressly provide that such future acquisitions shall be held as included in the mortgage."[22] Likewise, in *People's Bank and Trust Co. v. Dahican Lumber*

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[17] *Id*. at 75.

[18] *Id*.

[19] *Id*.

[20] *Id*. at 76.

[21] 56 Phil. 141 (1931).

[22] *Id*. at 146.

Company,[23] the inclusion of after-acquired properties in a mortgage contract was held to be lawful.[24]

On the allegation of undercapitalization, PPRC was required to contribute additional equity in terms of cash equity of ₱2,500,000.00, common stock dividends of ₱1,200,000.00 and conversion of at least ₱300,000.00 of advances from stockholders into preferred shares of the company.[25]

The subject foreign currency loans were also secured by the joint and several signatures of Carmelino G. Alvendia, Generoso F. Tenseco and Hilarion M. Henares, Jr.

Lastly, as adverted to earlier, the DBP officials, in approving the foreign currency loans in favor of PPRC, were presumed to have regularly exercised sound business judgment to safeguard the interest of the Government absent any proof to the contrary.[26] Indeed, the presumption obtains in the instant petition.

WHEREFORE, the Court **AFFIRMS** the Resolution of the Office of the Ombudsman dated April 29, 2008 in OMB-C-C-05-0018-A finding no probable cause to indict herein private respondents Placido L. Mapa, Jr., Recio M. Garcia, Leon O. Ty, Jose R. Tengco, Jr., Alejandro Melchor, Vicente Paterno, Ruben Ancheta, Rafael Sison, Hilarion M. Henares, Jr., Carmelino G. Alvendia, and Generoso F. Tenseco for violation of Section 3(e) and (g) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and the instant case is hereby **DISMISSED**.

SO ORDERED.

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

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[23] 126 Phil. 354 (1967).

[24] *Rollo*, p. 76.

[25] *Id.*

[26] *Id.*

[***] Designated additional Member per Raffle dated March 26, 2018.

THIRD DIVISION

[G.R. No. 196020. April 18, 2018]

MANILA ELECTRIC COMPANY, VICENTE MONTERO, MR. BONDOC, and MR. BAYONA, *petitioners, vs.* **NORDEC PHILIPPINES and/or MARVEX INDUSTRIAL CORP. represented by its President, DR. POTENCIANO R. MALVAR,** *respondent.*

[G.R. No. 196116. April 18, 2018]

NORDEC PHILIPPINES represented by its President, DR. POTENCIANO R. MALVAR, *petitioner, vs.* **MANILA ELECTRIC COMPANY, VICENTE MONTERO, MR. BONDOC, and MR. BAYONA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FOR THE COURT OF APPEALS' FACTUAL FINDINGS TO BE REVIEWED BY THE COURT, IT MUST BE SHOWN THAT IT GRAVELY ABUSED ITS DISCRETION IN APPRECIATING THE PARTIES' RESPECTIVE EVIDENCE.— Meralco is mistaken in arguing that this Court is duty-bound to review the factual findings in this case due to the contrary findings of the Regional Trial Court and of the Court of Appeals. The Court of Appeals has the jurisdiction to review, and even reverse, the factual findings of the trial court. For the Court of Appeals' factual findings to be reviewed by this Court, it must be shown that it gravely abused its discretion in appreciating the parties' respective evidence. x x x Meralco has failed to show how the Court of Appeals acted with grave abuse of discretion in arriving at its factual findings and conclusions, or how it grossly misapprehended the evidence presented as to warrant a finding that its review and reversal of the trial court's findings of fact had been in error.

2. ID.; ID.; CAUSE OF ACTION; REQUISITES.— A cause of action "is the act or omission by which a party violates a right of

another." For a cause of action to exist, there must be, *first*, a plaintiff's legal right; *second,* defendant's correlative obligation; and *third*, an injury to the plaintiff as a result of the defendant's violation of plaintiff's right.

3. POLITICAL LAW; PUBLIC UTILITIES; ELECTRICITY DISTRIBUTION UTILITIES ARE DUTY-BOUND TO MAKE REASONABLE AND PROPER PERIODIC INSPECTIONS OF THEIR EQUIPMENT.— It is well-settled that electricity distribution utilities, which rely on mechanical devices and equipment for the orderly undertaking of their business, are duty-bound to make reasonable and proper periodic inspections of their equipment. x x x [T]he duty of inspecting for defects is not limited to inherent mechanical defects of the distribution utilities' devices, but extends to intentional and unintentional ones, such as those, which are due to tampering and mistakes in computation. x x x Should a distribution utility not exercise the standard of care required of it due to its negligence in the inspection and repair of its apparatus, then it can no longer recover the amounts of allegedly used but uncharged electricity. x x x Meralco is also duty-bound to explain the basis for its billings, especially when these are for unregistered consumption, to prevent consumers from being solely at its mercy. x x x It must be emphasized that electricity is "a basic necessity whose generation and distribution is imbued with public interest, and its provider is a public utility subject to strict regulation by the State in the exercise of police power."

4. CIVIL LAW; DAMAGES; NOMINAL DAMAGES; AN AMOUNT CONSIDERED REASONABLE BY THE COURT TO VINDICATE THE VIOLATION OF A RIGHT SUFFERED BY A PARTY; PROPER IN CASE AT BAR.— Article 2234 of the Civil Code requires proof of entitlement to moral, temperate or compensatory damages before exemplary damages may be awarded: x x x Exemplary damages, which cannot be recovered as a matter of right, may not be awarded if no moral, temperate, or compensatory damages have been granted. Since exemplary damages cannot be awarded, the award of attorney's fees should likewise be deleted. Moral damages are also not proper, in line with *Manila Electric Company v. T.E.A.M. Electronics Corporation:* x x x Here, the records are bereft of evidence that would show that Nordec's name or reputation suffered due to the disconnection of its electric supply. Moreover, contrary to Nordec's claim, it cannot be awarded temperate or moderate

damages. x x x When the court finds that a party fails to prove the fact of pecuniary loss, and not just the amount of this loss, then Article 2224 does not apply. x x x Nominal damages are awarded to vindicate the violation of a right suffered by a party, in an amount considered by the courts reasonable under the circumstances. Meralco's negligence in not providing Nordec sufficient notice of disconnection of its electric supply, especially when there was an ongoing dispute between them concerning the recomputation of the electricity bill to be paid, violated Nordec's rights. Because of this, Nordec is entitled to nominal damages in the amount of ₱30,000.00.

APPEARANCES OF COUNSEL

Raul G. Coralde, Edito E. Cedro and *Marlon J. Moises* for Manila Electric Company, *et al.*

Romeo B. Igot Law Office for Nordec Philippines.

D E C I S I O N

LEONEN, *J.*:

A distribution utility is mandated to strictly comply with the legal requisites before disconnecting an electric supply due to the serious consequences this disconnection may have on the consumer.

These are two (2) Petitions for Review on Certiorari[1] under Rule 45 of the Rules of Court, both assailing the January 21, 2011 Decision[2] and March 9, 2011 Resolution[3] of Court of Appeals

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[1] *Rollo* (G.R. No. 196020), pp. 30–82; *Rollo* (G.R. No. 196116), pp. 30–60.

[2] *Rollo* (G.R. No. 196116), pp. 62–76. The Decision was penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Sesinando E. Villon and Stephen C. Cruz of the Special Fifth Division, Court of Appeals, Manila.

[3] *Rollo* (G.R. No. 196020), p. 108. The Resolution was penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Sesinando E. Villon and Stephen C. Cruz of the Special Fifth Division, Court of Appeals, Manila.

in CA-G.R. CV No. 85564. The Court of Appeals reversed and set aside the June 15, 2005 Decision[4] of Branch 85, Regional Trial Court, Quezon City in Civil Case No. Q-49651. It ordered Manila Electric Company (Meralco) to pay Nordec Philippines (Nordec) the amounts of ₱5,625.00, representing overbilling for November 23, 1987; ₱200,000.00 as exemplary damages; ₱100,000.00 as attorney's fees; and costs of suit.

Meralco was contracted to supply electricity to Marvex Industrial Corporation (Marvex) under an Agreement for Sale of Electric Energy, with Service Account No. 9396-3422-15.[5] It installed metering devices at Marvex's premises on January 18, 1985. Marvex was billed according to the monthly electric consumption recorded in its meter.[6]

On May 29, 1985, Meralco service inspectors inspected Marvex's electric metering facilities and found that the main meter terminal and cover seals had been tampered with. During a second inspection on September 18, 1985, Meralco found that the metering devices were tampered with again. Subsequently, Meralco assessed Marvex a differential billing of ₱371,919.58 for January 18, 1985 to May 29, 1985, and ₱124,466.71 for June 17, 1985 to September 18, 1985, in the total amount of ₱496,386.29. Meralco sent demand letters dated August 7, 1985 and November 29, 1985, and disconnected Marvex's electric service when it did not pay.[7]

On December 23, 1986, Nordec, the new owner of Marvex,[8] sued Meralco for damages with prayer for preliminary mandatory injunction with Branch 85, Regional Trial Court, Quezon City.[9]

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[4] *Id*. at 109–117. The Decision was penned by Judge Marlene B. Gonzales-Sison.

[5] *Id*. at 93.

[6] *Id*. at 111.

[7] *Id*. at 93.

[8] *Id*. at 98.

[9] *Id*.

Likewise, impleaded as defendants were Meralco's legal officer, Vicente Montero, and two (2) Meralco employees, Mr. Bondoc and Mr. Bayona.[10] It alleged that Meralco's service inspectors conducted the 1985 inspections without its consent or approval. Following the inspections, Meralco's inspectors gave an unnamed Nordec employee a Power Field Order that did not mention the alleged defects in the metering devices. Nordec further claimed that the parties exchanged letters on the alleged unregistered electric bill, and that it requested a recomputation, which Meralco denied in its April 25, 1986 letter. However, in May 1986, Meralco asked Nordec to show the basis for its recomputation request, to which Nordec complied in its June 10, 1986 letter. On August 14, 1986, Meralco required Nordec to pay ₱371,919.58 for the unregistered electricity bill. Nordec then informed Meralco of the pending resolution of the recomputation. Nordec claimed that Meralco then disconnected its service without prior notice on December 18, 1986, resulting to loss of income and cancellation of other business opportunities.[11]

In its defense, Meralco claimed that the 1985 inspections had been conducted in the presence of Nordec's representatives. Further, Meralco had repeatedly warned Nordec of service disconnection in case of failure to pay the differential bill. Finally, it averred that there was no contractual relation between Nordec and Marvex, and that Nordec and its president, Dr. Potenciano Malvar (Dr. Malvar), failed to show proof that they were authorized to sue on Marvex's behalf.[12]

On January 22, 1987, the Regional Trial Court issued a writ of preliminary injunction directing Meralco to restore Nordec's electric supply.[13]

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[10] *Id*. at 110.

[11] *Id*. at 93–95.

[12] *Id*. at 95.

[13] *Id*. While the CA Decision mentioned January 22, 1987, Nordec's Petition stated January 5, 1987. See *rollo* (G.R. No. 196116), p. 39.

On November 23, 1987, Meralco conducted another inspection of Nordec's premises in the presence of Nordec's president, Dr. Malvar. The inspecting group observed that there were irregularities in Nordec's metering devices, as they continued to register power consumption even though its entire power supply equipment was turned off. Meralco offered to reimburse Nordec's excess bill of ₱5,625.10, but Nordec rejected this offer.[14]

Nordec filed a second supplemental complaint on January 4, 1991, praying that Meralco be declared guilty of tampering, and be made to refund its excess bill of not less than ₱5,625.10.[15]

In its June 15, 2005 Decision,[16] the Regional Trial Court dismissed Nordec's original complaint and second supplemental complaint. The trial court found that there was sufficient evidence to prove that the electric meter and metering installation at Marvex premises had been tampered with.[17] It found that Nordec did not dispute that the inspections of its premises were conducted with the consent and in the presence of its representatives. Moreover, Nordec failed to prove that Meralco's inspectors had ill motives to falsify their findings regarding the tampered meter, or that the inspectors were responsible for the tampering.[18]

The trial court further found that *Ridjo Tape & Chemical Corporation v. Court of Appeals* was inapplicable to this case, since that case did not involve tampering of meters. It held Nordec liable for violating its Terms and Conditions of Service with Meralco, such that Meralco was justified in disconnecting its electric service.[19] Because it was Nordec

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[14] *Id*. at 95–96.

[15] *Id*. at 96.

[16] *Id*. at 109–117.

[17] *Id*. at 113.

[18] *Id*. at 114.

[19] *Id*. at 114–116.

which committed the tampering, it was not entitled to the reliefs prayed for because it did not come to court with clean hands.[20]

There was also no contractual relationship between Nordec and Meralco, since the service contract was between Meralco and Marvex. Thus, Nordec had no cause of action against Meralco.[21]

The dispositive portion of the Regional Trial Court June 15, 2005 Decision stated:

> WHEREFORE, the original complaint as well as the second supplemental complaint are hereby DISMISSED.
>
> Anent the second supplemental complaint, the same is found to be without merit, for failure of plaintiff to substantiate with clear and convincing evidence.
>
> And, finding defendant's counterclaim to be with merit, the same is GRANTED. Accordingly, plaintiffs are hereby ordered to pay, jointly and severally, defendants the total amount of FOUR HUNDRED NINETY[-]SIX THOUSAND THREE HUNDRED EIGHTY-SIX PESOS & 29/100 (Php 496,386.29), representing the value of used but unregistered electric current; the sum of TEN THOUSAND PESOS (Php 10,000.00) as exemplary damages; and the sum of TWENTY THOUSAND PESOS (Php20,000.00) as and for attorney's fees plus costs.
>
> SO ORDERED.[22]

Nordec appealed to the Court of Appeals, which docketed the case as CA-G.R. CV No. 85564. On January 21, 2011, the Court of Appeals issued its Decision,[23] reversing and setting aside the Regional Trial Court June 15, 2005 Decision.

First, it held that there was a contractual relationship between Nordec and Meralco. It found that after the service contract

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[20] *Id.* at 116.

[21] *Id.*

[22] *Id.*

[23] *Id.* at 92–106.

between Meralco and Marvex, Nordec bought Marvex from the Development Bank of the Philippines. Thus, Nordec stepped into Marvex's shoes and assumed its rights and obligations as its assignee or successor-in-interest. As Marvex's right to receive electricity is not intransmissible, it was deemed to have been transmitted to Nordec. Moreover, Meralco's continued supply of electricity to Nordec and Nordec's payment for this supply indicate that there was an implied contract existing between these two (2) parties.[24]

Second, the Court of Appeals found that Meralco was negligent in discovering the alleged tampering only on May 29, 1985, or four (4) months after it first found irregularities in the metering devices, despite the monthly meter readings. There was no evidence that Nordec was responsible for tampering with its own metering devices. The Court of Appeals found that it was unlikely that a company previously charged with tampering and had been demanded payment for differential billing would again tamper with a newly installed meter. On the other hand, there was proof that the new metering devices were defective, since they continued to run despite a complete power shutdown. Meralco even offered to refund ₱5,625.10 due to the defect in the new meter.[25]

Third, Meralco did not deny that there was a pending communication on Nordec's request for recomputation. Citing *Spouses Quisumbing v. Manila Electric Company*, the Court of Appeals found that Meralco failed to give the required 48-hour written notice of disconnection before disconnecting Nordec's power supply.[26]

Finally, the Court of Appeals awarded Nordec exemplary damages and attorney's fees, but not actual damages. As to actual damages, Nordec failed to prove that it actually sustained pecuniary losses due to Meralco's disconnection. But Nordec

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[24] *Id*. at 98–99.

[25] *Id*. at 102–103.

[26] *Id*. at 103–104.

was entitled to exemplary damages as an example or correction for the public good, and to attorney's fees since Nordec was forced to litigate to protect its rights.[27] The Court of Appeals granted only the ₱5,625.00 refund since there was no proof presented beyond this amount.[28]

The dispositive portion of the Court of Appeals January 21, 2011 Decision stated:

> Accordingly, the appeal is GRANTED. The Decision dated June 15, 2005 of the Regional Trial Court (RTC), Quezon City, Branch 85 is REVERSED and SET ASIDE and a new one rendered ordering [Meralco] to pay [Nordec]:
>
> 1.) ₱5,625.00, representing overbilling for November 23, 1987[;]
>
> 2.) ₱200,000.00 as exemplary damages;
>
> 3.) ₱100,000.00 as attorney's fees; and
>
> 4.) Costs of suit.
>
> SO ORDERED.[29]

The Court of Appeals denied Meralco's Motion for Reconsideration[30] and Nordec's Motion for Partial Reconsideration[31] in its March 9, 2011 Resolution.[32]

On March 29, 2011, Meralco filed a motion for extension of time, praying for additional 30 days within which to file its petition for review.[33] This was docketed as G.R. No. 196020. On April 4, 2011, Nordec filed its motion for extension of time,

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[27] *Id.* at 104.

[28] *Id.* at 105.

[29] *Id.* at 105–106. The CA Decision awarded ₱5,625.00 only but it consistently mentioned ₱5,625.10 in its discussion. See also p. 36.

[30] *Id.* at 118–139.

[31] *Id.* at 140–150.

[32] *Id.* at 108.

[33] *Id.* at 3–10.

likewise praying for additional 30 days within which to file its petition for review, which was docketed as G.R. No. 196116.[34]

This Court consolidated G.R. Nos. 196020 and 196116 in its April 11, 2011 Resolution.[35]

On May 3, 2011, Meralco filed its Petition for Review in G.R. No. 196020, assailing the Court of Appeals January 21, 2011 Decision and March 9, 2011 Resolution.[36]

Meralco argues that the Court of Appeals erred in making its findings, which were contrary to the findings of the Regional Trial Court. It claims that the Court of Appeals relied on Nordec's unsubstantiated arguments; first, in finding that Nordec was Marvex's assignee or successor-in-interest, and second, that Meralco was inexcusably negligent in the late discovery of the tampered metering devices.[37]

Meralco claims that at the time of the inspections, the applicable law was Commonwealth Act No. 349, which provided that distribution utilities were required to discover tampered meters during the prescribed inspections, which were only once every two (2) years. In contrast, the four (4)-month period as found by the Court of Appeals was unreasonable, and even contrary to the rules laid down by the Energy Regulatory Commission on the conduct of meter testing.[38] Meralco argues that distribution utilities' meter readers are not required to discover any defect or tampering in the meters installed in their customers' premises, and are only required to test their customers' meters only once every two (2) years, unless the customer requests otherwise. It avers that cases of meter tampering should not be equated

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[34] *Rollo* (G.R. No. 196116), pp. 3–8.

[35] *Rollo* (G.R. No. 196020), p. 27.

[36] *Id*. at 30–82.

[37] *Id*. at 48–49.

[38] *Id*. at 52–53.

with cases involving defective meters, since the former prejudices public utilities like Meralco, due to consumers' unlawful acts.[39]

Further, Meralco claims that the inspections conducted on Marvex's metering facilities were valid and in accordance with Presidential Decree No. 401, as amended.[40] It argues that this law did not require the presence of the customer during inspections. Nonetheless, the two (2) inspections in 1985 were conducted with the consent and in the presence of Nordec's representatives.[41]

Meralco also claims that it exercised due diligence in maintaining its electric meters, which was the standard set by law. By applying *Ridjo Tape v. Court of Appeals*,[42] the Court of Appeals imposed a degree of diligence beyond what Commonwealth Act No. 349 provided.[43] Meralco asserts that the imposition of a degree of diligence beyond what the law provides is judicial legislation.[44]

Moreover, Meralco holds that the demand letter on the assessed value of the differential billing contained a notice that Marvex's electric service would be disconnected if the billing was not paid, and that this was sufficient notice. Thus, Marvex, as the registered customer, was aware that the non-payment of the differential billing would result in the disconnection of the electric service.[45]

Meralco argues that Nordec was not Marvex's assignee or successor-in-interest. It maintains that the service contract was never transferred in Nordec's name. As such, at the time

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[39] *Id*. at 54–55.

[40] *Id*. at 56.

[41] *Id*. at 57–58.

[42] 350 Phil. 184 (1998) [Per *J*. Romero, Third Division].

[43] *Rollo* (G.R. No. 196020), pp. 60–61.

[44] *Id*. at 62.

[45] *Id.* at 67–68.

Nordec filed its complaint against Meralco, it had no authority to act on Marvex's behalf. Meralco pointed out that the Deed of Absolute Sale between Nordec and the Development Bank of the Philippines was executed only three (3) years after the 1985 inspections, or on August 16, 1988. There was also no implied contract between Meralco and Nordec, since there was no act or conduct on Meralco's part to be bound to this contract.[46]

Finally, Meralco contests the awards of refund, exemplary damages, and attorney's fees to Nordec. It claims that Nordec was not entitled to the refund since it already refused without just cause to accept it, and thus, had waived its right to accept the payment.[47] It argues that since the Court of Appeals itself found that Nordec was not entitled to actual damages, it could not award exemplary damages or attorney's fees to Nordec.[48]

In its Comment,[49] Nordec argues that Meralco's reliance on Commonwealth Act No. 349 was misplaced, since the two (2)-year period stated in it referred to testing conducted by the Standardizing Meter Laboratory, and not by the distribution utilities themselves.[50] Further, Nordec claims that what Meralco failed to comply with was the 48-hour written notice of disconnection rule, and its previous demand letters did not constitute this notice.[51]

In its Reply,[52] Meralco reiterated its claims that *Ridjo Tape v. Court of Appeals* was inapplicable[53] and that it gave Nordec due notice of the disconnection.[54]

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[46] *Id*. at 68–71.

[47] *Id*. at 74.

[48] *Id*. at 74–76.

[49] *Id*. at 201–223.

[50] *Id.* at 208–209.

[51] *Id*. at 215–216.

[52] *Id*. at 237–264.

[53] *Id*. at 252–253.

[54] *Id*. at 256–257.

On May 5, 2011, Nordec filed its Petition for Review in G.R. No. 196116, assailing the Court of Appeals March 9, 2011 Resolution, denying its Motion for Partial Reconsideration and praying for the modification of the Court of Appeals January 21, 2011 Decision.[55]

Nordec claims that it should be awarded at least ₱500,000.00 in temperate damages, ₱150,000.00 in moral damages, and legal interest by the Court of Appeals. It argues that temperate damages are warranted since Meralco's unceremonious and unreasonable disconnection led to Nordec's inability to fulfill its contractual obligations and was even forced to cancel its clients' purchase orders.[56]

Further, Nordec claims that the Court of Appeals erred in finding that it was entitled to only ₱5,625.00 as a refund. It argues that it proved overbilling in excess of ₱5,625.00, through a letter showing that Nordec had been charged ₱103,412.48 by Meralco, when a past billing was only for ₱78,860.58, which Meralco did not refute. While Nordec admits that it failed to adduce proof of the accurate amount of damages that it sustained, it holds that it estimates Meralco's acts to cause at least ₱1,000,000.00 worth of damage due to Meralco's electricity disconnection, fraud in downgrading the overbilling, and installation of defective meters.[57]

It its Comment,[58] Meralco argues that Nordec's petition should be denied outright for failing to raise questions of law, but merely prayed for a modification of the Court of Appeals January 21, 2011 Decision.[59] It claims that the Court of Appeals correctly denied the award of actual and temperate or moderate damages.[60] Further, it asserts that Nordec, as a corporation,

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[55] *Rollo* (G.R. No. 196116), pp. 30–60.

[56] *Id*. at 48–55.

[57] *Id*. at 51–52.

[58] *Id*. at 172–203.

[59] *Id*. at 174–175.

[60] *Id*. at 177–178.

was not entitled to moral damages.[61] Finally, it reiterates that Nordec was not entitled to any award, since Meralco acted in accordance with the standard set by law.[62]

In its Reply,[63] Nordec claims that this Court may take cognizance of its petition since there was no longer any need to examine the probative value of the evidence presented.[64] It argues that corporations may be entitled to damages if their reputations have been besmirched, such as in this case.[65] Nordec reiterates its entitlement to the damages it prayed for.[66]

The issues for this Court's resolution are:

First, whether or not the Court of Appeals erred in making findings of fact contrary to those of the Regional Trial Court;

Second, whether or not Nordec Philippines has a cause of action against Manila Electric Company;

Third, whether or not Manila Electric Company was inexcusably negligent when it disconnected Nordec Philippines' electric supply; and

Finally, whether or not Nordec Philippines is entitled to actual, temperate, moral or exemplary damages, attorney's fees, and legal interest.

I

In its petition for review, Meralco faults the Court of Appeals for making findings of fact contrary to those of the Regional Trial Court. It claims that the trial court's findings of fact should be accorded the highest degree of respect and that the Court of Appeals failed to find that the trial court's findings

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[61] *Id.* at 184.

[62] *Id.* at 190.

[63] *Id.* at 214–226.

[64] *Id.* at 214.

[65] *Id.* at 221–222.

[66] *Id.* at 223.

were based on mere conjecture, and not evidence. Thus, Meralco claims that this Court must review the facts and evidence of this case.

Meralco is mistaken in arguing that this Court is duty-bound to review the factual findings in this case due to the contrary findings of the Regional Trial Court and of the Court of Appeals. The Court of Appeals has the jurisdiction to review, and even reverse, the factual findings of the trial court. For the Court of Appeals' factual findings to be reviewed by this Court, it must be shown that it gravely abused its discretion in appreciating the parties' respective evidence. In *Pascual v. Burgos*:[67]

> The Court of Appeals must have gravely abused its discretion in its appreciation of the evidence presented by the parties and in its factual findings to warrant a review of factual issues by this court. Grave abuse of discretion is defined, thus:
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> > By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.
> >
> > Grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It refers also to cases in which, for various reasons, there has been a gross misapprehension of facts. (Citations omitted)
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> This exception was first laid down in *Buyco v. People, et al.*:
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> > In the case at bar, the Tenth Amnesty Commission, the court of first instance and the Court of Appeals found, in effect, that the evidence did not suffice to show that appellant had acted in the manner contemplated in the amnesty proclamation. Moreover, unlike the Barrioquinto cases, which were appealed

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[67] *Pascual v. Burgos*, G.R. No. 171722, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/171722.pdf> [Per *J.* Leonen, Second Division].

> directly to this Court, which, accordingly, had authority to pass upon the validity of the findings of fact of the court of first instance and of its conclusions on the veracity of the witnesses, the case at bar is before us on appeal by certiorari from a decision of the Court of Appeals, the findings and conclusions of which, on the aforementioned subjects, are not subject to our review, except in cases of grave abuse of discretion, which has not been shown to exist.[68] (Citations omitted)

Meralco has failed to show how the Court of Appeals acted with grave abuse of discretion in arriving at its factual findings and conclusions, or how it grossly misapprehended the evidence presented as to warrant a finding that its review and reversal of the trial court's findings of fact had been in error.

II

A cause of action "is the act or omission by which a party violates a right of another."[69] For a cause of action to exist, there must be, *first*, a plaintiff's legal right; *second,* defendant's correlative obligation; and *third*, an injury to the plaintiff as a result of the defendant's violation of plaintiff's right.[70] Here, the Regional Trial Court found that Nordec had no cause of action against Meralco since they had no contractual relationship, as Meralco's service contract was with Marvex.

The beneficial users of an electric service have a cause of action against this distribution utility. In *Manila Electric Company v. Spouses Chua*,[71] it was the beneficial users who were awarded damages due to the unjust disconnection of the electric supply, even though the service contract with Meralco was registered in the name of another person.

Further, Meralco is deemed to have knowledge of the fact that Nordec was the beneficial user of Marvex's service contract with Meralco. It admits that the inspections of the metering

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[68] *Id*. at 12–13.

[69] RULES OF COURT, Rule 2, Sec. 2.

[70] See *Zuñiga-Santos v. Santos-Gran*, 745 Phil. 171 (2014) [Per *J*. Perlas-Bernabe, First Division].

[71] 637 Phil. 80 (2010) [Per *J*. Brion, Third Division].

devices were conducted in the presence of Nordec's maintenance personnel and with the consent of its manager.[72] It further admits that it corresponded with Nordec regarding the differential billing, and entertained Nordec's demand for an explanation on the finding of tampering and the recomputation of the amount to be paid by Nordec.[73] Clearly, Meralco knew that it was dealing with Nordec as the beneficial user of the electricity supply.

III

It is well-settled that electricity distribution utilities, which rely on mechanical devices and equipment for the orderly undertaking of their business, are duty-bound to make reasonable and proper periodic inspections of their equipment. If they are remiss in carrying out this duty due to their own negligence, they risk forfeiting the amounts owed by the customers affected.

In *Ridjo Tape & Chemical Corporation v. Court of Appeals*:[74]

> At this juncture, we hasten to point out that the production and distribution of electricity is a highly technical business undertaking, and in conducting its operation, it is only logical for public utilities, such as MERALCO, to employ mechanical devices and equipment for the orderly pursuit of its business.
>
> It is to be expected that the parties were consciously aware that these devices or equipment are susceptible to defects and mechanical failure. Hence, we are not prepared to believe that petitioners were ignorant of the fact that stoppages in electric meters can also result from inherent defects or flaws and not only from tampering or intentional mishandling. . . .
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> . . . . . .
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> Corollarily, it must be underscored that MERALCO has the imperative duty to make a reasonable and proper inspection of its

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[72] *Rollo* (G.R. No. 196020), p. 41.

[73] *Id*. at 43–44.

[74] 350 Phil. 184 (1998) [Per *J*. Romero, Third Division].

apparatus and equipment to ensure that they do not malfunction, and the due diligence to discover and repair defects therein. Failure to perform such duties constitutes negligence.

A review of the records, however, discloses that the unpaid charges covered the periods from November 7, 1990 to February 13, 1991 for Civil Case No. Q-92-13045 and from July 15, 1991 to April 13, 1992 for Civil Case No. 13879, approximately three months and nine months, respectively. On such basis, we take judicial notice that during those periods, personnel representing MERALCO inspected and examined the electric meters of petitioners regularly for the purpose of determining the monthly dues payable. So, why were these defects not detected and reported on time?

It has been held that notice of a defect need not be direct and express; it is enough that the same had existed for such a length of time that it is reasonable to presume that it had been detected, and the presence of a conspicuous defect which has existed for a considerable length of time will create a presumption of constructive notice thereof. Hence, MERALCO's failure to discover the defect, if any, considering the length of time, amounts to inexcusable negligence. Furthermore, we need not belabor the point that as a public utility, MERALCO has the obligation to discharge its functions with utmost care and diligence.[75] (Citations omitted)

Moreover, the duty of inspecting for defects is not limited to inherent mechanical defects of the distribution utilities' devices, but extends to intentional and unintentional ones, such as those, which are due to tampering and mistakes in computation.[76] In *Manila Electric Co. v. Wilcon Builders Supply, Inc.*:[77]

The *Ridjo* doctrine simply states that the public utility has the imperative duty to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction.

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[75] *Id*. at 193–194.

[76] See *Manila Electric Company v. Macro Textile Mills Corp.*, 424 Phil. 811 (2002) [Per *J*. Pardo, First Division]; *Manila Electric Company v. T.E.A.M. Electronics Corp.,* 564 Phil. 639 (2007) [Per *J.* Nachura, Third Division]; *Davao Light & Power Co. Inc. v. Opeña*, 513 Phil. 160 (2005) [Per *J*. Chico-Nazario, Second Division].

[77] 579 Phil. 214 (2008) [Per *J.* Nachura, Third Division].

Its failure to discover the defect, if any, considering the length of time, amounts to inexcusable negligence; its failure to make the necessary repairs and replace the defective electric meter installed within the consumer's premises limits the latter's liability. The use of the words "defect" and "defective" in the above-cited case does not restrict the application of the doctrine to cases of "mechanical defects" in the installed electric meters. A more plausible interpretation is to apply the rule on negligence whether the defect is inherent, intentional or unintentional, which therefore covers tampering, mechanical defects and mistakes in the computation of the consumers' billing.[78] (Citation omitted)

Meralco argues that the degree of diligence imposed upon it was beyond the prevailing law at the time, namely, Commonwealth Act No. 349. It claims that under this law, it is only required to test metering devices once every two (2) years. Thus, for it to be penalized for taking four (4) months to rectify and repair the defective meter, was tantamount to judicial legislation.

However, as pointed out by Nordec, the two (2)-year period prescribed under Commonwealth Act No. 349[79] is for the testing required of meters and appliances for measurements used by all public services by a standardized meter laboratory under the control of the then Public Service Commission. It does not pertain to distribution utilities' inspections of the metering devices installed in their consumers' premises.

Further, contrary to Meralco's claim, the duty imposed upon it pursuant to *Ridjo* is not beyond the standard of care imposed by law. Distribution utilities are public utilities vested with public interest, and thus, are held to a higher degree of diligence. In *Ridjo*:

The rationale behind this ruling is that public utilities should be put on notice, as a deterrent, that if they completely disregard their

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[78] *Id.* at 222.

[79] An Act creating a standardizing meter laboratory to carry out the provisions of the Public Service Act on meter testing and providing funds therefor (1938).

duty of keeping their electric meters in serviceable condition, they run the risk of forfeiting, by reason of their negligence, amounts originally due from their customers. Certainly, we cannot sanction a situation wherein the defects in the electric meter are allowed to continue indefinitely until suddenly the public utilities concerned demand payment for the unrecorded electricity utilized when, in the first place, they should have remedied the situation immediately. If we turn a blind eye on MERALCO's omission, it may encourage negligence on the part of public utilities, to the detriment of the consuming public.

. . . . . .

To summarize, it is worth emphasizing that it is not our intention to impede or diminish the business viability of MERALCO, or any public utility company for that matter. On the contrary, we would like to stress that, being a public utility vested with vital public interest, MERALCO is impressed with certain obligations towards its customers and any omission on its part to perform such duties would be prejudicial to its interest. For in the final analysis, the bottom line is that those who do not exercise such prudence in the discharge of their duties shall be made to bear the consequences of such oversight.[80]

Should a distribution utility not exercise the standard of care required of it due to its negligence in the inspection and repair of its apparatus, then it can no longer recover the amounts of allegedly used but uncharged electricity.

The distribution utility's negligence is all the more apparent when it had made prior findings of tampering, and yet still failed to correct these defects. In *Manila Electric Company v. T.E.A.M. Electronics Corp.*,[81] Meralco conducted an inspection on September 28, 1987 and found that the meters therein were tampered, and then conducted a second inspection on June 7, 1988, which yielded similar evidence of tampering. Likewise, the respondent in that case was in the midst of a differential billing dispute with Meralco, and had previously been assessed

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[80] 350 Phil. 184, 195–196 (1998) [Per *J*. Romero, Third Division].

[81] 564 Phil. 639 (2007) [Per *J*. Nachura, Third Division].

₱7,000,000.00 due to alleged tampering. There, this Court found that Meralco was negligent for failing to repair the defects in respondent's meters after the first inspection:

> Petitioner likewise claimed that when the subject meters were again inspected on June 7, 1988, they were found to have been tampered anew. The Court notes that prior to the inspection, [T.E.A.M. Electronics Corporation] was informed about it; and months before the inspection, there was an unsettled controversy between [T.E.A.M. Electronics Corporation] and petitioner, brought about by the disconnection of electric power and the non-payment of differential billing. We are more disposed to accept the trial court's conclusion that it is hard to believe that a customer previously apprehended for tampered meters and assessed ₱7 million would further jeopardize itself in the eyes of petitioner. If it is true that there was evidence of tampering found on September 28, 1987 and again on June 7, 1988, the better view would be that the defective meters were not actually corrected after the first inspection. If so, then *Manila Electric Company v. Macro Textile Mills Corporation* would apply, where we said that we cannot sanction a situation wherein the defects in the electric meter are allowed to continue indefinitely until suddenly, the public utilities demand payment for the unrecorded electricity utilized when they could have remedied the situation immediately. Petitioner's failure to do so may encourage neglect of public utilities to the detriment of the consuming public. Corollarily, it must be underscored that petitioner has the imperative duty to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction, and the due diligence to discover and repair defects therein. Failure to perform such duties constitutes negligence. By reason of said negligence, public utilities run the risk of forfeiting amounts originally due from their customers.[82] (Citations omitted)

Here, as observed by the Court of Appeals, Meralco itself claimed that the irregularities in the electricity consumption recorded in Nordec's metering devices started on January 18, 1985, as evidenced by their August 7, 1985 demand letter, covering January 18, 1985 to May 29, 1985. However, the alleged tampering was only discovered during the May 29, 1985

[82] *Id.* at 653–654.

inspection. Considering that Nordec's meters were read monthly, Meralco's belated discovery of the cause of the alleged irregularities, or four (4) months after they purportedly started, can only lead to a conclusion of negligence. Notice of a defect may be constructive when it has conspicuously existed for a considerable length of time.[83] It is also worth noting that during a third inspection on November 23, 1987, further irregularities in Nordec's metering devices were observed, showing electricity consumption even when Nordec's entire power supply equipment was switched off. Clearly, Meralco had been remiss in its duty as required by law and jurisprudence of a public utility.

Meralco is also duty-bound to explain the basis for its billings, especially when these are for unregistered consumption, to prevent consumers from being solely at its mercy.[84] Here, the Power Field Orders given to Nordec following the inspections did not mention the alleged defects that were discovered. Nordec's request for recomputation of the alleged unregistered electric bill was still pending when its electric supply was disconnected on December 18, 1986.

Finally, as found by the Court of Appeals, Meralco failed to comply with the 48-hour disconnection notice rule. Meralco claims that the statements in its demand letters, that failure to pay would result in disconnection, were sufficient notice. However, pursuant to Section 97 of Revised General Order No. 1, the governing rule when the disconnection occurred, disconnection due to non-payment of bills requires that a 48-hour written notice be given to the customer.[85]

It must be emphasized that electricity is "a basic necessity whose generation and distribution is imbued with public interest, and its provider is a public utility subject to strict regulation by

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[83] *Ridjo Tape & Chemical Corp. v. Court of Appeals*, 350 Phil. 184, 194 (1998) [Per *J.* Romero, Third Division].

[84] *Manila Electric Company v. Macro Textile Mills Corp.*, 424 Phil. 811, 828 (2002) [Per *J.* Pardo, First Division].

[85] *Manila Electric Company v. T.E.A.M. Electronics Corp.*, 564 Phil. 639, 656 (2007) [Per *J.* Nachura, Third Division].

the State in the exercise of police power."[86] The serious consequences on a consumer, whose electric supply has been cut off, behoove a distribution utility to strictly comply with the legal requisites before disconnection may be done.[87] This is all the more true considering Meralco's dominant position in the market compared to its customers' weak bargaining position.[88]

IV

At the outset, a party's entitlement to damages is a question of fact not generally cognizable in a petition for review.[89] However, in this case, the Court of Appeals' failure to apply the applicable law and jurisprudence by awarding damages to Nordec prompts this Court's review.

The Court of Appeals declined to award actual damages to Nordec as it failed to prove its pecuniary losses due to Meralco's disconnection:

> We concede that MERALCO's service disconnection bore a domino effect on NORDEC's business but in the absence of actual proof of losses, We cannot award actual damages to NORDEC. For one is only entitled to adequate compensation for pecuniary loss that he has duly proven.[90]

The Court of Appeals then proceeded to award exemplary damages to Nordec by way of example or correction for the public good. This is contrary to the requirement in Article 2234 of the Civil Code, which requires proof of entitlement to moral, temperate or compensatory damages before exemplary damages may be awarded:

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[86] *Manila Electric Company v. Spouses Chua*, 637 Phil. 80, 101 (2010) [Per *J*. Brion, Third Division].

[87] *Id.*

[88] *Id*.

[89] See *Vda. de Formoso v. Philippine National Bank*, 665 Phil. 184 (2011) [Per *J*. Mendoza, Second Division].

[90] *Rollo* (G.R. No. 196020), p. 104.

Article 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.

Exemplary damages, which cannot be recovered as a matter of right, may not be awarded if no moral, temperate, or compensatory damages have been granted.[91] Since exemplary damages cannot be awarded, the award of attorney's fees should likewise be deleted.

Moral damages are also not proper, in line with *Manila Electric Company v. T.E.A.M. Electronics Corporation*:[92]

We, however, deem it proper to delete the award of moral damages. [T.E.A.M. Electronics Corporation] claim was premised allegedly on the damage to its goodwill and reputation. As a rule, a corporation is not entitled to moral damages because, not being a natural person, it cannot experience physical suffering or sentiments like wounded feelings, serious anxiety, mental anguish and moral shock. The only exception to this rule is when the corporation has a reputation that is debased, resulting in its humiliation in the business realm. But in such a case, it is imperative for the claimant to present proof to justify the award. It is essential to prove the existence of the factual basis of the damage and its causal relation to petitioner's acts. In the present case, the records are bereft of any evidence that the name or reputation of [T.E.A.M. Electronics Corporation/Technology Electronics Assembly and Management Pacific Corporation] has been debased as a result of petitioner's acts. Besides, the trial court simply

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[91] See *Francisco v. Government Service Insurance System*, 117 Phil. 586 (1963) [Per *J.* J.B.L. Reyes, *En Banc*]; *Singson v. Aragon*, 92 Phil. 514 (1953) [Per *J.* Bautista Angelo, *En Banc*].

[92] 564 Phil. 639 (2007) [Per *J.* Nachura, Third Division].

awarded moral damages in the dispositive portion of its decision without stating the basis thereof.[93] (Citations omitted)

Here, the records are bereft of evidence that would show that Nordec's name or reputation suffered due to the disconnection of its electric supply.

Moreover, contrary to Nordec's claim, it cannot be awarded temperate or moderate damages. Under Article 2224 of the Civil Code:

> Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty.

When the court finds that a party fails to prove the fact of pecuniary loss, and not just the amount of this loss, then Article 2224 does not apply. In *Seven Brothers Shipping Corporation v. DMC-Construction Resources, Inc.*:[94]

> In contrast, under Article 2224, temperate or moderate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty. This principle was thoroughly explained in *Araneta v. Bank of America*, which cited the Code Commission, to wit:
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> > The Code Commission, in explaining the concept of temperate damages under Article 2224, makes the following comment:
> >
> > > In some States of the American Union, temperate damages are allowed. **There are cases where from the nature of the case, definite proof of pecuniary loss cannot be offered, although the court is convinced that there has been such loss.** For instance, injury to one's commercial credit or to the goodwill of a business firm is often hard to show with certainty in terms of money. Should damages be denied for that reason? The judge should be empowered to calculate moderate damages in such cases, rather than

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[93] *Id.* at 658.

[94] 748 Phil. 692 (2014) [Per *C.J.* Sereno, First Division].

> that the plaintiff should suffer, without redress from the defendant's wrongful act. (Emphasis ours)

Thus, in *Tan v. OMC Carriers, Inc*., temperate damages were rightly awarded because plaintiff suffered a loss, although definitive proof of its amount cannot be presented as the photographs produced as evidence were deemed insufficient. Established in that case, however, was the fact that respondent's truck was responsible for the damage to petitioner's property and that petitioner suffered some form of pecuniary loss. In *Canada v. All Commodities Marketing Corporation*, temperate damages were also awarded wherein respondent's goods did not reach the Pepsi Cola Plant at Muntinlupa City as a result of the negligence of petitioner in conducting its trucking and hauling services, even if the amount of the pecuniary loss had not been proven. In *Philtranco Services Enterprises, Inc. v. Paras*, the respondent was likewise awarded temperate damages in an action for breach of contract of carriage, even if his medical expenses had not been established with certainty. In *People v. Briones*, in which the accused was found guilty of murder, temperate damages were given even if the funeral expenses for the victim had not been sufficiently proven.

Given these findings, we are of the belief that temperate and not nominal damages should have been awarded, considering that it has been established that respondent herein suffered a loss, even if the amount thereof cannot be proven with certainty.[95] (Citations omitted)

Here, the Court of Appeals found that Meralco's disconnection had a "domino effect"[96] on Nordec's business, but that Nordec did not offer actual proof of its losses. Nordec even admitted in its petition for review that there was an "oversight" on its part in "adducing proof of the accurate amount of damages it sustained" due to Meralco's acts.[97] No pecuniary loss has been established in this case, apart from the claim in Nordec's complaint that the "serious anxiety" of the disconnection had caused Nordec's president to cancel business appointments,

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[95] *Id*. at 701–702.

[96] *Rollo* (G.R. No. 196020), p. 104.

[97] *Rollo* (G.R. No. 196116), p. 52.

purchase orders, and fail to fulfill contractual obligations, among others.[98]

In this instance, nominal damages may be awarded. In *Philippine Telegraph & Telephone Corporation v. Court of Appeals*:[99]

> Temperate or moderate damages may only be given if the "court finds that some pecuniary loss has been suffered but that its amount cannot, from the nature of the case, be proved with certainty." The factual findings of the appellate court that respondent has failed to establish such pecuniary loss or, if proved, cannot from their nature be precisely quantified precludes the application of the rule on temperate or moderate damages. The result comes down to only a possible award of nominal damages. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized and not for the purpose of indemnifying the plaintiff for any loss suffered by him. The court may award nominal damages in every obligation arising from any source enumerated in article 1157 of the Civil Code or, generally, in every case where property right is invaded.[100] (Citations omitted)

Nominal damages are awarded to vindicate the violation of a right suffered by a party, in an amount considered by the courts reasonable under the circumstances.[101] Meralco's negligence in not providing Nordec sufficient notice of disconnection of its electric supply, especially when there was an ongoing dispute between them concerning the recomputation of the electricity bill to be paid, violated Nordec's rights. Because of this, Nordec is entitled to nominal damages in the amount of ₱30,000.00.

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[98] *Id*. at 93.

[99] 437 Phil. 76 (2002) [Per *J*. Vitug, First Division].

[100] *Id*. at 86.

[101] See *Pryce Properties Corp. v. Spouses Octobre*, G.R. No. 186976, December 7, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/186976.pdf> [Per *J*. Jardeleza, Third Division]; *Fontana Resort and Country Club, Inc. v. Spouses Tan*, 680 Phil. 395 (2012) [Per *J*. Leonardo-De Castro, First Division].

WHEREFORE, the Petitions for Review on Certiorari in G.R. Nos. 196020 and 196116 are **DENIED**. The Court of Appeals January 21, 2011 Decision and March 9, 2011 Resolution in CA-G.R. CV No. 85564 are **AFFIRMED** with **MODIFICATION**. Manila Electric Company is ordered to pay Nordec Philippines ₱5,625.00, representing overbilling for November 23, 1987; ₱30,000.00 in nominal damages; and costs of suit. The awards for exemplary damages and attorney's fees are deleted.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 197645. April 18, 2018]

CARLOS JAY ADLAWAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; SHALL RAISE ONLY QUESTIONS OF LAW; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— At the onset, the Court holds that the petition fails as the issues it raised involves questions of fact which are not reviewable in a petition for review on certiorari under Rule 45 of the Rules of Court. It is a fundamental rule that a petition for review on certiorari filed with this Court under Rule 45 of the Rules of Court shall raise only questions of law. There is a question of law when a doubt or a difference arises as to what the law is on a certain state of facts, and the

question does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts, as when the query necessarily solicits calibration of the whole evidence considering mostly the credibility of witnesses, existence and relevance of specific surrounding circumstances, their relation to each other and to the whole, and probabilities of the situation. Simply put, when there is no dispute as to the facts, the question of whether the conclusion drawn therefrom is correct or not, is a question of law.

2. ID.; ID.; ID.; ID.; QUESTIONS OF FACT ARE NOT PROPERLY REVIEWABLE IN A PETITION FOR REVIEW ON *CERTIORARI*, AS THE COURT DOES NOT SIT AS AN ARBITER OF FACTS FOR IT IS NOT ITS FUNCTION TO ANALYZE OR WEIGH ALL OVER AGAIN THE EVIDENCE ALREADY CONSIDERED IN THE PROCEEDINGS; EXCEPTIONS, NOT PRESENT.— Although petitioner drafted his first assignment of error to make it appear that the appellate court failed to accord him due process of law, a reading of its discussion clearly reveals that such assignment of error involves questions pertaining to the credibility of the prosecution witnesses and the relevance and admissibility of the pieces of evidence presented by the prosecution. Further, the first assignment of error would entail a review of the evidence pertaining to the injuries sustained by the private complainant and a re-assessment to determine whether such injuries would have caused death if not for timely medical intervention. These are questions of fact which are not properly reviewable in a petition for review on certiorari. It has been consistently held that in a petition for review on certiorari, the Court does not sit as an arbiter of facts for it is not its function to analyze or weigh all over again the evidence already considered in the following proceedings. Such factual findings can be questioned only under exceptional circumstances which are not present in this case. For this reason alone, the present petition must fail.

3. ID.; ID.; ID.; APPEAL TO THE COURT OF APPEALS; EVERY DECISION OR FINAL RESOLUTION OF THE COURT OF APPEALS IN APPEALED CASES SHALL CLEARLY AND DISTINCTLY STATE THE FINDINGS OF FACT AND THE

CONCLUSIONS OF LAW ON WHICH IT IS BASED, WHICH MAY BE CONTAINED IN THE DECISION OR FINAL RESOLUTION ITSELF, OR ADOPTED FROM THOSE SET FORTH IN THE DECISION, ORDER, OR RESOLUTION APPEALED FROM; COMPLIED WITH IN CASE AT BAR. — Contrary to the petitioner's insinuation, the appellate court did not err when it concurred with the trial court's factual findings resulting in his conviction for frustrated homicide. Every decision or final resolution of the CA in appealed cases shall clearly and distinctly state the findings of fact and the conclusions of law on which it is based, which may be contained in the decision or final resolution itself, or adopted from those set forth in the decision, order, or resolution appealed from. The Court is satisfied that the appellate court has complied with these requirements.

4. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN THE ISSUE IS ONE OF CREDIBILITY OF WITNESSES, AN APPELLATE COURT WILL NORMALLY NOT DISTURB THE FACTUAL FINDINGS OF THE TRIAL COURT, UNLESS THE LATTER HAS REACHED CONCLUSIONS THAT ARE CLEARLY UNSUPPORTED BY EVIDENCE, OR UNLESS IT HAS OVERLOOKED SOME FACTS OR CIRCUMSTANCES OF WEIGHT AND INFLUENCE WHICH, IF CONSIDERED, WOULD AFFECT THE RESULTS. — It is a fundamental rule, however, that when the issue is one of credibility of witnesses, an appellate court will normally not disturb the factual findings of the trial court, unless the lower court has reached conclusions that are clearly unsupported by evidence, or unless it has overlooked some facts or circumstances of weight and influence which, if considered, would affect the results. As aptly observed by the appellate court, no ground exists which would prompt it to overturn the factual findings of the trial court.

5. CRIMINAL LAW; REVISED PENAL CODE; FRUSTRATED MURDER; INTENT TO KILL; INFERRED FROM THE MEANS THE OFFENDER USED AND THE NATURE, LOCATION, AND NUMBER OF WOUNDS HE INFLICTED ON HIS VICTIM. — In criminal cases for frustrated homicide, the intent to kill is often inferred from, among other things, the means the offender used and the nature, location, and number of wounds he inflicted on his victim. In this case, intent to kill was sufficiently shown not only by the testimonies of Georgia, the victim herself,

and Fred, the eyewitness, but also by the established fact that Georgia sustained multiple deep hack wounds on her head, neck, and abdomen, among other parts of her body. The gravity of these wounds was clearly shown by the photographs presented by the prosecution, and the medical certificate. Dr. Kangleon even testified that Georgia could have died if no medical attention was given to her. The medical opinion of Dr. Kangleon who is presumably an expert in this field is clearly more convincing than the petitioner's mere say-so. That petitioner intended to kill Georgia, and that the injuries she sustained were fatal and would have caused her death if not for the timely medical intervention, were therefore established by proof beyond reasonable doubt.

6. ID.; ID.; ID.; THE NON-IDENTIFICATION OR NON-PRESENTATION OF THE WEAPON USED IS NOT FATAL TO THE PROSECUTION'S CAUSE WHERE THE ACCUSED WAS POSITIVELY IDENTIFIED. — The non-identification or non-presentation of the weapon used is not fatal to the prosecution's cause where the accused was positively identified. Thus, the CA correctly affirmed petitioner's conviction for frustrated homicide despite the inadmissibility of the weapon presented in evidence. Georgia positively identified petitioner as the person who hacked him. Her testimony was corroborated by Fred who categorically declared that petitioner chased and hacked Georgia. The testimonies of the witnesses were further buttressed by other evidence including the photographs of Georgia's wounds and the medical certificate. The credibility of these testimonies and evidence is now beyond dispute.

7. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES ON MINOR DETAILS DO NOT UNDERMINE THE INTEGRITY OF A PROSECUTION WITNESS. — [P]etitioner asserts that Georgia committed material inconsistencies which clearly show that she had merely fabricated the alleged assault. After reviewing the alleged inconsistencies, the Court opines that they refer only to minor particulars which do not affect the credibility of Georgia's testimony. Inconsistencies on minor details do not undermine the integrity of a prosecution witness.

8. ID.; ID.; ID.; AFFIDAVIT OF DESISTANCE; AN AFFIDAVIT OF DESISTANCE IS MERELY AN ADDITIONAL GROUND TO

BUTTRESS THE ACCUSED'S DEFENSES, NOT THE SOLE CONSIDERATION THAT CAN RESULT IN ACQUITTAL, FOR THERE MUST BE OTHER CIRCUMSTANCES WHICH, WHEN COUPLED WITH THE RETRACTION OR DESISTANCE, CREATE DOUBTS AS TO THE TRUTH OF THE TESTIMONY GIVEN BY THE WITNESSES DURING TRIAL AND ACCEPTED BY THE JUDGE. — Mere retraction by a witness or by complainant of his or her testimony does not necessarily vitiate the original testimony or statement, if credible. The general rule is that courts look with disfavor upon retractions of testimonies previously given in court. It is only where there exist special circumstances which, when coupled with the desistance or retraction raise doubts as to the truth of the testimony or statement given, can a retraction be considered and upheld. Thus, it has been held that an affidavit of desistance is merely an additional ground to buttress the accused's defenses, not the sole consideration that can result in acquittal. To reiterate, there must be other circumstances which, when coupled with the retraction or desistance, create doubts as to the truth of the testimony given by the witnesses during trial and accepted by the judge.

9. ID.; ID.; ID.; AN AFFIDAVIT OF DESISTANCE MADE BY A WITNESS OR THE PRIVATE COMPLAINANT AFTER CONVICTION OF THE ACCUSED IS NOT RELIABLE, AND DESERVES ONLY SCANT ATTENTION; RATIONALE.— [I]t is settled that an affidavit of desistance made by a witness, including the private complainant, after conviction of the accused is not reliable, and deserves only scant attention. The rationale for the rule is obvious: affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration. Here, the Court finds credible the testimony given by Georgia in open court. Her testimony was clear, candid, and straightforward. She positively identified petitioner as the person who hacked her several times. She did not waver in her identification despite the arduous direct and cross-examinations conducted on her. The Court notes that a total of four settings were needed to complete Georgia's examinations. Despite this, she remained steadfast in her testimony and her narration of the incident was consistent in all material aspects. The credibility of Georgia's testimony is clear. On the other hand, Georgia's affidavit of recantation and

desistance is unreliable. To recall, the affidavit was executed after petitioner had already been convicted by the trial and appellate courts. Moreover, Georgia's explanation therein on how she sustained her wounds defies common sense.

APPEARANCES OF COUNSEL

Dela Cerna & Associates Law Offices for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

MARTIRES, *J.*:

This petition for review on certiorari seeks to reverse and set aside the 15 September 2010 Decision[1] and 15 June 2011 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CR No. 00555. The 15 September 2010 Decision affirmed with modification the 17 August 2006 Joint Judgment[3] of the Regional Trial Court of Cebu City, Branch 5, in Criminal Case Nos. CBU-68828 and CBU-68829, which found herein petitioner Carlos Jay Adlawan (*petitioner*) guilty beyond reasonable doubt of the crime of Frustrated Homicide; while the 15 June 2011 Resolution denied petitioner's Motion for Reconsideration[4] of the 15 September 2010 Decision, and the Joint Motion to Dismiss and to Admit Private Complainant's Affidavit of Recantation and Desistance.[5]

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[1] *Rollo*, pp. 43-55; penned by Associate Justice Portia Aliño-Hormachuelos, and concurred in by Associate Justice Edwin D. Sorongon, and Associate Justice Socorro B. Inting.

[2] *Id.* at 81-83; penned by Associate Justice Portia Aliño-Hormachuelos, and concurred in by Associate Justice Myra V. Garcia-Fernandez, and Associate Justice Nina G. Antonio-Valenzuela.

[3] Records, pp. 138-143; penned by Presiding Judge Ireneo Lee Gako, Jr.

[4] *Rollo*, pp. 57-72.

[5] *Id.* at 73-75.

THE FACTS

On 5 March 2004, herein petitioner was charged with the crimes of Frustrated Murder and Attempted Robbery under two Informations.[6]

On 25 March 2004, petitioner, with the assistance of counsel, was arraigned and pleaded not guilty to the charges against him.[7] Trial on the merits thereafter ensued.

Evidence for the Prosecution

During trial, evidence for the prosecution showed that petitioner was one of the five (5) children of the late Alfonso V. Adlawan (*Alfonso*) from his first marriage, while private complainant Georgia R. Adlawan (*Georgia*) was the second wife of Alfonso and the stepmother of the petitioner.[8] Alfonso and Georgia, their adopted daughter, and the former's five (5) children all lived together in their residence at Brgy. Lipata, Minglanilla, Cebu.[9] Georgia was engaged in the construction business;[10] on the other hand, petitioner was jobless. His legs had been operated on and were braced with stainless steel.[11]

On 18 February 2004, at around 5:30 P.M., Georgia arrived home. She was taking her dinner when she heard the petitioner talking with Cornelio Selin[12] (*Cornelio*), the Adlawans' houseboy, in the backyard. The petitioner asked Cornelio in a loud voice "*unsa na?*" ("what now?"). After eating, Georgia proceeded to the backyard to ask Cornelio what the conversation was about. On her way to the yard, she met the petitioner who proceeded to his room on the second floor.[13]

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[6] Records, pp. 1-2.

[7] *Id*. at 24.

[8] TSN, 28 October 2004, pp. 5-7; TSN, 10 December 2004, p. 25.

[9] *Id*. at 6; *id*. at 25-26; TSN, 12 January 2005, p. 19.

[10] *Id*. at 3.

[11] TSN, 10 December 2004, p. 24.

[12] Also referred to as "Cornelio Celin" in some parts of the *rollo*.

[13] TSN, 28 October 2004, pp. 7-9.

While Georgia was talking to Cornelio, the petitioner came back and angrily asked Georgia "*asa ang kwarta?*" ("where is the money?"). She replied saying, "*unsa, wa mo kahibalo nga na ospital inyong amahan?*" ("why, don't you know that your father is in the hospital?"). [14] Apparently, earlier that day, Georgia instructed her secretary Maria Reina Lastimosa (*Maria Reina*) to withdraw ₱100,000.00 from the Development Bank of the Philippines in Cebu City to pay for the hospital bills of Alfonso.[15]

Thereafter, the petitioner furiously told her "*mura kag kinsa!*" ("*as if you are somebody!*"), and started hacking her using a *katana*,[16] hitting her on the left portion of the neck and on the stomach. Georgia parried the blows using her hands.[17] Georgia ran towards the garage in front of the house, but petitioner pursued her and continued his attack, hitting her shoulders and her back until she fell down.[18] Sensing that petitioner would finish her off, she summoned all her strength, kicked his leg, and then grabbed and squeezed his sex organ.[19]

After petitioner fell down, Georgia walked towards Baking Medical Hospital located a few meters away where she was given immediate medical attention. Thereafter, she was transferred to Perpetual Succour Hospital in Cebu City.[20]

The medical certificate[21] prepared by Dr. Rogelio Kangleon (*Dr. Kangleon*) of the Perpetual Succour Hospital revealed that Georgia sustained the following injuries: (1) laceration

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[14] *Id*. at 10.

[15] TSN, 12 January 2005, pp. 25-26.

[16] Mistakenly identified as "samurai."

[17] TSN, 28 October 2004, pp. 11-12, 15-16.

[18] *Id*. at 17-18 and 21.

[19] TSN, 10 December 2004, pp. 4-5 and 7.

[20] *Id*. at 5 and 7-9.

[21] Records, p. 100; Exhibit "J".

occipital on the scalp, 3 cm long (sutured); (2) penetrating laceration on left lateral neck, 15 cm long (sutured), with surrounding contusion/hematoma; (3) laceration on left scalpular area, 8 cm long (sutured), with surrounding contusion/hematoma; (4) laceration on left ankle, 6 cm long (sutured); (5) multiple contusion/hematomas: right shoulder, right hand, left arm, left ear, left wrist, and hand, left breast, both knees; (6) superficial laceration with surrounding contusion/hematoma, 30 cm long on the anterior abdomen; and (7) superficial laceration, 12 cm long left upper back.

Georgia's version of the incident was corroborated by prosecution witness Fred John Dahay (*Fred*),[22] the Adlawans' multicab driver who testified having witnessed Georgia being chased and hacked by petitioner. The prosecution also presented Maria Reina, Georgia's secretary, who confirmed that she was instructed to withdraw ₱100,000.00 for Alfonso's hospital bills.[23]

The prosecution also presented as witnesses the police officers who investigated the crime, namely: Police Senior Inspector Germano Mallari (*PSI Mallari*),[24] Police Officer 3 Renato Masangkay,[25] Police Inspector Carlos C. Reyes, Jr.,[26] and Senior Police Officer 4 Ernesto Navales.[27] However, in the course of his cross-examination, PSI Mallari admitted that they searched petitioner's room and seized the weapons they found therein without a search warrant and without petitioner's consent.[28]

Aside from the medical certificate, the nature of the injuries sustained by Georgia was shown in the photographs[29] taken by

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[22] TSN, 18 April 2005, pp. 5-7.

[23] TSN, 7 June 2005, pp. 6-7.

[24] TSN, 15 June 2005.

[25] TSN, 8 July 2005.

[26] TSN, 20 July 2005.

[27] TSN, 1 August 2005.

[28] TSN, 15 June 2005, pp. 9-10.

[29] Records, pp. 90-96; Exhibits "B" to "G".

a certain Charlita Gloria who was also presented as witness and who identified the photographs.[30] Further, Dr. Kangleon, during his testimony, also suggested that, based on their appearance, the injuries were indeed hack wounds.[31] He also testified that Georgia's wounds, particularly the hack wound on the left neck, would have been fatal if not for the timely medical intervention.[32]

Version of the Defense

Petitioner did not take the witness stand. Instead, the defense presented Cornelio as its sole witness.

Cornelio testified that he had been the cook of the Adlawans since 1993.[33] On 18 February 2004, at around five o'clock in the afternoon, Georgia instructed him to collect the office garbage.[34] The office was one of the rooms in front of the house.[35] On his way there, Cornelio met the petitioner who was holding a cup of coffee. The petitioner asked him where he was going, to which he replied that he was instructed to clean the office. While cleaning, he noticed Georgia running towards the multicab and shouting for help, while petitioner was about two meters away, following her.[36] Georgia was about to board the multicab when she slipped and fell, causing her injuries.[37] He was about to help Georgia, but when he saw her kick petitioner on the leg and private part, he desisted and, pulled petitioner away and told him to go inside the house.[38]

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[30] TSN, 4 April 2005.

[31] TSN, 11 April 2005, p. 18.

[32] *Id.* at 12-14.

[33] TSN, 7 December 2005, p. 4.

[34] *Id*. at 6.

[35] TSN, 6 January 2006, p. 3.

[36] TSN, 7 December 2005, pp. 7-8.

[37] *Id*. at 9-11.

[38] *Id*. at 11-12.

Cornelio denied seeing petitioner hack Georgia.[39] He also refuted the claim that petitioner was carrying a weapon at that time.[40]

The RTC Ruling

In its joint judgment, the RTC acquitted petitioner of attempted robbery in Criminal Case No. CBU-68829, but convicted him of the crime of frustrated homicide in Criminal Case No. CBU-68828.

On the acquittal, the trial court ratiocinated that the evidence offered by the prosecution was insufficient to prove the attempted robbery. It pointed out that the petitioner merely asked where the money was, but such inquiry was not accompanied by any overt act which would constitute the crime of attempted robbery.

As regards the conviction for frustrated homicide, the trial court was convinced that petitioner repeatedly hacked and mortally wounded Georgia. It stressed that Fred, the eyewitness, and Georgia, the victim, herself positively identified petitioner as the perpetrator of the crime. The trial court further ruled that, based on the findings and testimony of Dr. Kangleon, petitioner performed all the acts of execution necessary for the commission of homicide. Fortunately, due to timely medical intervention, Georgia's life was saved and, thus, the crime committed by petitioner was only in its frustrated stage. The trial court also appreciated the presence of the aggravating circumstances of abuse of superior strength and disregard of the respect due to the offended party on account of her age, sex, and her being the petitioner's stepmother.

The dispositive portion of the joint judgment reads:

> WHEREFORE, in view of the foregoing, the court finds the accused guilty beyond reasonable doubt of the crime of Frustrated Homicide with the generic aggravating circumstances of using superior strength and with insult or in disregard of the respect due to the offended party on account of her being a stepmother, age and sex, and hereby

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[39] *Id*. at 21.

[40] *Id*. at 21-22.

sentences him, after applying the Indeterminate Sentence Law, to suffer imprisonment from six (6) years of prision correccional, as minimum, to twelve (12) years of prision mayor, as maximum. The court also orders him to indemnify the victim Georgia Adlawan ₱30,000.00 as moral damages and all her medical expenses, without subsidiary imprisonment in case of insolvency.[41] x x x

Aggrieved, the petitioner filed a notice of appeal to elevate the case to the CA.[42]

The CA Ruling

In its assailed decision, the CA affirmed with modification the joint judgment of the RTC. The appellate court concurred with the trial court's observation that the prosecution was able to establish by proof beyond reasonable doubt that petitioner, with intent to kill, hacked and inflicted mortal wounds upon Georgia. The appellate court, thus, opined that the trial court correctly convicted the petitioner of frustrated homicide.

The appellate court, however, observed that the trial court erred when it appreciated the ordinary aggravating circumstances of abuse of superior strength and insult or disregard of the respect due to the offended party, as these circumstances were not alleged in the information against the petitioner. Consequently, it modified the penalty imposed by the trial court upon petitioner. The dispositive portion of the assailed decision provides:

WHEREFORE, premises considered, the assailed Decision of the Regional Trial Court of Cebu City, Branch 5, is MODIFIED in that appellant Carlos Jay Adlawan is hereby sentenced to suffer a prison term of six (6) years of prision correccional as minimum, to ten (10) years of prision mayor as maximum. In all other respects, the appealed Decision is AFFIRMED.[43]

On 7 October 2010, the petitioner filed a motion for reconsideration before the CA wherein he reiterated the arguments raised in his appeal.

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[41] Records, pp. 142-143.

[42] *Id.* at 150.

[43] *Rollo*, p. 55.

On 28 December 2010, the petitioner, with Georgia's conformity, filed a Joint Motion to Dismiss and to Admit Private Complainant's Affidavit of Recantation and Desistance. Apparently, on 10 December 2010, Georgia executed an Affidavit of Recantation and Desistance,[44] wherein she admitted fabricating the accusations against the petitioner. She claimed that she sustained injuries on 18 February 2004 when she accidentally smashed herself against the clear glass door of their dining room and after she slipped when she was about to board their multicab.

In its Resolution of 15 June 2011, the appellate court denied the petitioner's motion for reconsideration and the joint motion to dismiss and to admit private complainant's affidavit of recantation and desistance. The appellate court reasoned that the motion for reconsideration merely reiterated the arguments which had already been passed upon in the assailed decision; and that as a rule, an affidavit of desistance, by itself, cannot be a ground for the dismissal of the present case.

Unsatisfied, the petitioner filed the present petition for review on certiorari; wherein the petitioner raised the following:

ISSUES

I.

WHETHER THERE WAS GRAVE FAILURE OF APPELLATE REVIEW BY THE COURT OF APPEALS, RENDERING ITS DECISION VOID.

II.

WHETHER THE COURT OF APPEALS GRAVELY ERRED WHEN IT DISREGARDED THE PRIVATE COMPLAINANT'S AFFIDAVIT OF RECANTATION AND DESISTANCE AND DECLARED THAT IT IS NOT A GROUND FOR THE DISMISSAL OF AN ACTION ONCE IT HAS BEEN INSTITUTED IN COURT.[45]

The petitioner argues that the CA did not make a real and honest review of his case because it did not thoroughly pass

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[44] *Id.* at 78-79.

[45] *Id*. at 7.

upon the issues it raised in his appeal brief. In particular, the petitioner insists that the CA erred when it failed to consider that the prosecution witnesses failed to establish intent to kill, that the weapon allegedly used in the hacking was not legally presented in court, that the injuries sustained by the private complainant were not serious enough as to cause death, and that the inconsistencies in the testimony of the private complainant clearly shows that she merely fabricated the alleged assault.

The petitioner further argues that the CA erred when it did not consider the private complainant's affidavit of recantation and desistance. He asserts that the affidavit merely confirmed what the records of the case already revealed – that Georgia had fabricated her allegations against him. Thus, the affidavit of desistance would not be the sole basis for the dismissal of the case.

THE COURT'S RULING

The petition utterly lacks merit.

The first assignment of error involves issues not reviewable by this Court under Rule 45 of the Rules of Court.

At the onset, the Court holds that the petition fails as the issues it raised involves questions of fact which are not reviewable in a petition for review on certiorari under Rule 45 of the Rules of Court.

It is a fundamental rule that a petition for review on certiorari filed with this Court under Rule 45 of the Rules of Court shall raise only questions of law.[46] There is a question of law when a doubt or a difference arises as to what the law is on a certain state of facts, and the question does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the

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[46] *Pascual v. Burgos*, 776 Phil. 167, 182 (2016).

alleged facts,[47] as when the query necessarily solicits calibration of the whole evidence considering mostly the credibility of witnesses, existence and relevance of specific surrounding circumstances, their relation to each other and to the whole, and probabilities of the situation.[48] Simply put, when there is no dispute as to the facts, the question of whether the conclusion drawn therefrom is correct or not, is a question of law.[49]

Although petitioner drafted his first assignment of error to make it appear that the appellate court failed to accord him due process of law, a reading of its discussion clearly reveals that such assignment of error involves questions pertaining to the credibility of the prosecution witnesses and the relevance and admissibility of the pieces of evidence presented by the prosecution. Further, the first assignment of error would entail a review of the evidence pertaining to the injuries sustained by the private complainant and a re-assessment to determine whether such injuries would have caused death if not for timely medical intervention. These are questions of fact which are not properly reviewable in a petition for review on certiorari.

It has been consistently held that in a petition for review on certiorari, the Court does not sit as an arbiter of facts for it is not its function to analyze or weigh all over again the evidence already considered in the following proceedings.[50] Such factual findings can be questioned only under exceptional circumstances which are not present in this case. For this reason alone, the present petition must fail.

In any case, even on the assumption that exceptional circumstances obtain to question the factual findings of the trial and appellate courts, the petition would still fail for being unmeritorious.

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[47] *Tamondong v. Court of Appeals*, 486 Phil. 729, 739 (2004).

[48] *Secretary of Education v. Heirs of Rufino Dulay, Sr.*, 516 Phil. 244, 251 (2006).

[49] *Gaerlan v. Republic of the Philippines*, 729 Phil. 418, 432 (2014).

[50] *Marcelo v. Bungubung*, 575 Phil. 538, 555 (2008).

There was no failure of appellate review.

Contrary to the petitioner's insinuation, the appellate court did not err when it concurred with the trial court's factual findings resulting in his conviction for frustrated homicide.

Every decision or final resolution of the CA in appealed cases shall clearly and distinctly state the findings of fact and the conclusions of law on which it is based, which may be contained in the decision or final resolution itself, or adopted from those set forth in the decision, order, or resolution appealed from.[51] The Court is satisfied that the appellate court has complied with these requirements.

First, petitioner claims that the testimonies of the prosecution witnesses failed to establish intent to kill, and that her injuries were not so serious as to cause her death.

It is a fundamental rule, however, that when the issue is one of credibility of witnesses, an appellate court will normally not disturb the factual findings of the trial court, unless the lower court has reached conclusions that are clearly unsupported by evidence, or unless it has overlooked some facts or circumstances of weight and influence which, if considered, would affect the results.[52] As aptly observed by the appellate court, no ground exists which would prompt it to overturn the factual findings of the trial court.

In criminal cases for frustrated homicide, the intent to kill is often inferred from, among other things, the means the offender used and the nature, location, and number of wounds he inflicted on his victim.[53] In this case, intent to kill was sufficiently shown not only by the testimonies of Georgia, the victim herself, and Fred, the eyewitness, but also by the established fact that Georgia

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[51] Revised Rules on Civil Procedure, Rule 51, Section 5.

[52] *People v. Cudal*, 536 Phil. 1164, 1174-1175 (2006).

[53] *Abella v. People*, 719 Phil. 53, 66 (2013).

sustained multiple deep hack wounds on her head, neck, and abdomen, among other parts of her body.

The gravity of these wounds was clearly shown by the photographs presented by the prosecution, and the medical certificate. Dr. Kangleon even testified that Georgia could have died if no medical attention was given to her. The medical opinion of Dr. Kangleon who is presumably an expert in this field is clearly more convincing than the petitioner's mere say-so.

That petitioner intended to kill Georgia, and that the injuries she sustained were fatal and would have caused her death if not for the timely medical intervention, were therefore established by proof beyond reasonable doubt.

Second, petitioner points out that the weapon which was allegedly used in the commission of the crime was improperly presented in court as it was illegally seized by the authorities.

Although the Court agrees that the "*katana*" that the prosecution offered in evidence is indeed inadmissible, such fact would not benefit him. In fact, the inadmissibility of the said weapon had already been considered by the CA in its decision, thus:

> **Although the weapon used by the appellant was never found, the nature of the injuries sustained by the victim establishes that she was struck by a long bladed weapon.** The number of wounds sustained and the fact that the victim was chased by the appellant even after she fled clearly evince his intent to kill. Her injury particularly on the left neck area would have been fatal except for the timely medical intervention of witness Dr. Kangleon x x x.[54] (emphasis supplied)

The non-identification or non-presentation of the weapon used is not fatal to the prosecution's cause where the accused was positively identified.[55] Thus, the CA correctly affirmed petitioner's conviction for frustrated homicide despite the inadmissibility of the weapon presented in evidence. Georgia

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[54] *Rollo*, p. 52.

[55] *People v. Fernandez*, 434 Phil. 224, 232 (2002).

positively identified petitioner as the person who hacked him. Her testimony was corroborated by Fred who categorically declared that petitioner chased and hacked Georgia. The testimonies of the witnesses were further buttressed by other evidence including the photographs of Georgia's wounds and the medical certificate. The credibility of these testimonies and evidence is now beyond dispute.

Lastly, petitioner asserts that Georgia committed material inconsistencies which clearly show that she had merely fabricated the alleged assault. After reviewing the alleged inconsistencies, the Court opines that they refer only to minor particulars which do not affect the credibility of Georgia's testimony. Inconsistencies on minor details do not undermine the integrity of a prosecution witness.[56]

In fine, the Court finds that there was no error in the CA's performance of its appellate review. Further, contrary to the petitioner's allegations, the CA considered all the issues and arguments he raised in his appeal. Its findings of fact as well as its conclusions were clearly and distinctly stated and explained in its assailed decision. Thus, the CA's 15 September 2010 decision affirming petitioner's guilt for frustrated homicide is valid in all respects.

The Court of Appeals did not err in disregarding the private complainant's affidavit of desistance and recantation.

Going now to the second issue, the petitioner insists that the CA should have dismissed the case based on Georgia's affidavit of desistance and recantation. He contends that the affidavit of desistance and recantation casts serious doubt on his criminal liability.

Mere retraction by a witness or by complainant of his or her testimony does not necessarily vitiate the original testimony or

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[56] *Avelino v. People*, 714 Phil. 322, 334 (2013).

statement, if credible. The general rule is that courts look with disfavor upon retractions of testimonies previously given in court.[57]

It is only where there exist special circumstances which, when coupled with the desistance or retraction raise doubts as to the truth of the testimony or statement given, can a retraction be considered and upheld.[58]

Thus, it has been held that an affidavit of desistance is merely an additional ground to buttress the accused's defenses, not the sole consideration that can result in acquittal. To reiterate, there must be other circumstances which, when coupled with the retraction or desistance, create doubts as to the truth of the testimony given by the witnesses during trial and accepted by the judge.[59]

Further, it is settled that an affidavit of desistance made by a witness, including the private complainant, after conviction of the accused is not reliable, and deserves only scant attention.[60] The rationale for the rule is obvious: affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration.[61]

Here, the Court finds credible the testimony given by Georgia in open court. Her testimony was clear, candid, and straightforward. She positively identified petitioner as the person who hacked her several times. She did not waver in her identification despite the arduous direct and cross-examinations

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[57] *People v. Zafra*, 712 Phil. 559, 576 (2013).

[58] *Separate Opinion of Justice Puno in Alonte v. Savellano, Jr.*, 350 Phil. 700, 752 (1998), citing *Gomez v. Intermediate Appellate Court*, 220 Phil. 295, 306 (1985); and *People v. Pimentel,* 204 Phil. 327-338 (1982).

[59] *People v. Montejo*, 407 Phil. 502, 517 (2001), citing *People v. Echegaray*, 335 Phil. 343, 351 (1997).

[60] *Santos v. People*, 443 Phil. 618, 625-626 (2003); *People v. P/Supt. Lamsen*, 721 Phil. 256, 259 (2013).

[61] *People v. P/Supt. Lamsen*, *id*.

conducted on her. The Court notes that a total of four settings were needed to complete Georgia's examinations. Despite this, she remained steadfast in her testimony and her narration of the incident was consistent in all material aspects. The credibility of Georgia's testimony is clear.

On the other hand, Georgia's affidavit of recantation and desistance is unreliable. To recall, the affidavit was executed after petitioner had already been convicted by the trial and appellate courts. Moreover, Georgia's explanation therein on how she sustained her wounds defies common sense. In her affidavit, Georgia explained that:

> Thus, when the animosity was at its worst, I had an altercation with Carlos Jay Adlawan which, out of fear, I ran away from him and in the process **I accidentally smashed against the clear glass door in the dining room injuring my head and neck**. I ran outside the house and hurriedly tried to board the Multicab which was parked in our garage, however, my foot slipped and I fell down towards the side of the said vehicle, causing me several injuries. Thereafter, I ran towards the nearby Baking hospital. I bitterly attributed all these injuries to Accused Carlos Jay Adlawan.[62] (emphasis supplied)

The photographs showing Georgia's wounds and the medical certificate prepared by Dr. Kangleon tell a story different from what Georgia would now want this Court to believe. By the appearance and nature of these wounds, only a gullible person would believe that they were the result of accidentally smashing oneself against a glass door. Indeed, crystal clear from the photographs is the fact that her wounds were inflicted by a long bladed weapon. Georgia's wounds, especially the ones on the neck, abdomen, and shoulders, were long, deep, and straight gashes inconsistent with injuries sustained from broken glass.

The Court does not dismiss the possibility that Georgia voluntarily executed her affidavit of recantation and desistance. It may be true that the parties no longer harbor ill feelings towards each other, and the spirit of compassion had already

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[62] *Rollo*, p. 78.

replaced the animosity between them. However, this fact alone is insufficient to absolve petitioner from criminal liability. As previously discussed, no special circumstance exists which would create doubt as to the truth of the testimony Georgia gave in open court during trial. Thus, though the parties have already reconciled, the fact remains that petitioner committed a crime for which he must suffer the penalties prescribed by law.

WHEREFORE, the petition is **DENIED**. The 15 September 2010 Decision and 15 June 2011 Resolution of the Court of Appeals in CA-G.R. CR No. 00555 are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 199161. April 18, 2018]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **JAMES T. CUA,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS; PROMISSORY NOTE; THE PROMISSORY NOTE IS THE BEST EVIDENCE TO PROVE THE EXISTENCE OF THE LOAN, AND THE PERSON WHO SIGNS SUCH AN INSTRUMENT IS BOUND TO HONOR IT AS A LEGITIMATE OBLIGATION DULY ASSUMED BY HIM.— A promissory note is a solemn acknowledgment of a debt and a formal commitment to repay it on the date and under the conditions agreed upon by the borrower and the lender. A person who signs such an

instrument is bound to honor it as a legitimate obligation duly assumed by him through the signature he affixes thereto as a token of his good faith. If he reneges on his promise without cause, he forfeits the sympathy and assistance of this Court and deserves instead its sharp repudiation. The promissory note is the best evidence to prove the existence of the loan. x x x. [In this case,] by affixing his signature on PN No. 0011628152240006, dated 26 February 2002, which contained the words "FOR VALUE RECEIVED," James acknowledged receipt of the proceeds of the loan in the stated amount and committed to pay the same under the conditions stated therein. As a businessman, James cannot claim unfamiliarity with commercial documents. He could not also pretend not understanding the contents of the promissory note he signed considering that he is a lettered-person and a college graduate. He certainly understood the import and was fully aware of the consequences of signing a promissory note. Indeed, no reasonable and prudent man would acknowledge a debt, and even secure it with valuable assets, if the same does not exist.

2. REMEDIAL LAW; EVIDENCE; PAROL EVIDENCE RULE; WHEN THE TERMS OF AN AGREEMENT HAVE BEEN REDUCED INTO WRITING, IT IS CONSIDERED AS CONTAINING ALL THE TERMS AGREED UPON AND THERE CAN BE, BETWEEN THE PARTIES AND THEIR SUCCESSORS IN INTEREST, NO EVIDENCE OF SUCH TERMS OTHER THAN THE CONTENTS OF THE WRITTEN AGREEMENT; EXCEPTIONS.— Rule 130, Section 9 of the Rules of Court provides for the parol evidence rule which states that when the terms of an agreement have been reduced into writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement. This rule admits of exceptions. A party may present evidence to modify, explain or add to the terms of a written agreement if he puts in issue in his pleading any of the following: (a) an intrinsic ambiguity, mistake or imperfection in the written agreement; (b) the failure of the written agreement to express the true intent and agreement of the parties thereto; (c) the validity of the written agreement; or (d) the existence of other terms agreed to by the parties or their successors-in-interest after the execution of the written agreement.

3. ID.; ID.; ID.; ID.; TO OVERCOME THE PRESUMPTION THAT THE WRITTEN AGREEMENT CONTAINS ALL THE TERMS OF THE AGREEMENT, THE PAROL EVIDENCE MUST BE CLEAR AND CONVINCING AND OF SUCH SUFFICIENT CREDIBILITY AS TO OVERTURN THE WRITTEN AGREEMENT. — [T]o overcome the presumption that the written agreement contains all the terms of the agreement, the parol evidence must be clear and convincing and of such sufficient credibility as to overturn the written agreement. In this case, James' uncorroborated allegation that the loan documents were merely pre-signed for future loans is far from being the clear and convincing evidence necessary to defeat the terms of the written instrument. Thus, there is no reason to deviate from the terms of the loan as appearing on PN No. 0011628152240006. Consequently, the trial and appellate courts erred when they considered James' unsubstantiated claim over the terms of the promissory note and ruled that PNB failed to prove James' receipt of the loan proceeds.

APPEARANCES OF COUNSEL

PNB Legal Department for Philippine National Bank.
Malate Madrigal & Mercado Law Firm for respondent.

D E C I S I O N

MARTIRES, *J.*:

This petition for review on certiorari seeks to reverse and set aside the 26 October 2011 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CV No. 91386, which affirmed with modification the 28 November 2007 Decision[2] of the Regional Trial Court of Parañaque City, Branch 195, in Civil Case No. 05-0066, a case for sum of money with damages.

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[1] *Rollo*, pp. 8-15; penned by Associate Justice Japar B. Dimaampao, and concurred in by Associate Justice Stephen C. Cruz, and Associate Justice Ramon A. Cruz.

[2] Records, pp. 496-500; penned by Judge Aida Estrella Macapagal.

THE FACTS

On 9 February 2005, herein respondent James T. Cua (*James*) filed a Complaint for Sum of Money with Damages[3] against herein petitioner Philippine National Bank (*PNB*), docketed as Civil Case No. CV-05-0066.

In the said complaint, James averred that since 1996, he and his brother, Antonio T. Cua (*Antonio*) maintained a US Dollar Savings Time Deposit with PNB, Sucat, Parañaque branch, evidenced by Certificate of Time Deposit (*CTD*) No. B-630178 issued on 9 December 2002 and which replaced CTD No. B-658788. CTD No. B-630178 has a face value of US$50,860.53. James continued that he and Antonio had the practice of pre-signing loan application documents with PNB for the purpose of having a standby loan or ready money available anytime.

On 6 May 2004, James learned that he had a loan obligation with PNB which had allegedly become due and demandable. He maintained, however, that although he had pre-signed loan documents for pre-arranged loans with his time deposit as collateral, he had never availed of its proceeds. Sometime in September 2004, to see if his dollar time deposit was still existing and in order to revive his cash-strapped machine shop business, James requested from PNB the release of ₱500,000.00 to be secured by CTD No. B-630178. To his surprise, PNB rejected his loan application which refusal, he claims, caused damage and prejudice in terms of lost business opportunity and loss of income in the amount of more or less ₱1,000,000.00

James inquired about the reason for the denial of his application. In a letter-reply dated 17 November 2004, PNB, through its vice president, explained that his dollar time deposit had been applied in payment to the loans he had with the bank, in accordance with the loan application and other documents he had executed.

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

Thereafter, James demanded the release of his entire dollar time deposit asserting that he never made use of any loan amount from his pre-arranged loan from the time he was issued CTD No. B-630178; and that it was only in September 2004 that he requested the release of the proceeds of his pre-arranged loan. After PNB failed to heed his demand, James filed a complaint for sum of money praying that PNB return to him the entire amount of the account.

In its Answer,[4] PNB admitted that James had applied for a loan. Contrary to his claim, however, he already made use of his hold-out facility with PNB and received the proceeds of his loan. PNB further denied James' allegation that he merely pre-signed the loan documents in order to have a stand-by loan. As its affirmative defense, PNB claimed that James, in fact, applied for and was extended four (4) separate loans including one on 14 February 2001 as evidenced by Promissory Note (*PN*) No. 0011628152240004 dated 14 February 2001. On 26 February 2002, the parties renewed the 14 February 2001 loan for which James executed PN No. 0011628152240006 dated 26 February 2002.

PNB further explained that James was considered as one of its valued clients such that when he came to the bank on said dates inquiring if he could use the hold-out loan facilities of the bank, the latter gladly obliged. Hence, immediately after James applied for the respective loans, the same were granted on the very same day, and the proceeds released in the form of manager's checks.

PNB averred that when the subject loan fell due, demands to pay were made on James who, however, failed to heed the demands. Thus, it was prompted to set off James' obligations with his dollar time deposit with the bank, in accordance with the provisions of the promissory notes.

PNB further alleged that it suffered besmirched reputation because of James' groundless suit. Thus, it prayed that James

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[4] *Id*. at 53-59.

be ordered to pay the amount of ₱1,000,000.00 as moral damages; the amount of ₱500,000.00 as exemplary damages; and the amount of ₱100,000.00 by way of and as attorney's fees.

Trial on the merits thereafter ensued, during which James testified for his cause. He stated that he was a businessman and a college graduate. He affirmed the allegations in his Complaint and asserted that he did not sign any document evidencing receipt of the loan referred to by PNB and for which his dollar time deposit had been applied in payment.[5] To further substantiate his claim, he presented the following documents: (1) a photocopy of CTD No. B-630178,[6] to show that James and his brother have a US Dollar Time Deposit with PNB; (2) letter dated 9 September 2004,[7] to show that James complained against an alleged loan charged against his time deposit; (3) PNB's letter-reply dated 17 November 2004,[8] explaining the reason for the denial of his request; and (d) the letter of James' counsel to PNB demanding the release of his dollar time deposit.[9]

On its part, PNB presented two witnesses: Edna Palomares (*Edna*), PNB's loans officer at its Sucat branch; and Alxis Manalili. Edna testified that on various dates, James entered into loan transactions with PNB. One of these loans was a dollar loan dated 14 February 2001 in the amount of US$50,000.00.[10] This loan was secured by James' CTD No. 629914 as evidenced by PN No. 0011628152240004. When the loan matured, James failed to pay despite demand which prompted PNB to apply his time deposit under CTD No. B-630178 as payment. Edna clarified that when James applied for the subject loan, the CTD was still numbered as CTD No.

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[5] TSN, 17 November 2005.

[6] Records, p. 247; Exhibit "A".

[7] *Id.* at 248; Exhibit "B".

[8] *Id*. at 249; Exhibit "C".

[9] *Id.* at 251-252; Exhibit "D".

[10] TSN, 12 September 2006, pp. 12-14.

629914. However, when the loan matured, CTD No. 629914 had already been replaced by CTD No. B-630178.[11]

To further support its defense and counterclaims, PNB presented, among others, the following pieces of documentary evidence: (1) duly notarized renewal Loan Application/Approval Form[12] dated 26 February 2002; (2) PN No. 0011628152240004[13] dated 14 February 2001 in the amount of US$50,000.00; (3) PN No. 0011628152240006[14] dated 26 February 2002 in the amount of US$50,000.00; and (4) a machine-validated Miscellaneous Ticket[15] dated 14 February 2001 which purportedly indicates that James received the proceeds of the loan in the amount of US$49,655.34.

The RTC Ruling

In its decision, the RTC ruled in favor of James. It explained that the burden of proof shifted from James to PNB when the latter asserted an affirmative defense – that the loan proceeds were released to James and, thus, PNB properly applied his time deposit as payment of his unpaid loan in accordance with the provisions of the promissory note. PNB, however, failed to substantiate this affirmative defense.

The trial court observed that aside from Edna's bare testimony, no other evidence was presented to prove that the proceeds of the loan subject of the pre-signed loan application were released to and duly received by James. It did not give evidentiary weight to the miscellaneous ticket presented by PNB because it did not bear James' signature. The trial court did not also give any evidentiary value to PN No. 0011628152240006, dated 26 February 2002, noting that the promissory note it purportedly renewed was not presented in evidence.

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[11] *Id.* at 58-64.

[12] Records, p. 427; Exhibit "5".

[13] *Id.* at 438-439; Exhibit "13".

[14] *Id.* at 440-441; Exhibit "14".

[15] *Id.* at 445; Exhibit "18".

Since it has not been established that James had an outstanding debt to PNB, the latter's application of the former's time deposit to the alleged loan is improper. Necessarily, James is entitled to the return of his dollar time deposit. The dispositive portion of the RTC decision provides:

> **WHEREFORE**, defendant is directed to pay plaintiff the following:
>
> 1. The amount of US$50,860.53 or its peso equivalent plus interest of 1.09375% per annum from December 14, 2004 until fully paid;
>
> 2. Attorney's fees in the amount of ₱500,000.00 plus appearance fee of ₱2,000.00 per hearing; and
>
> 3. Costs of suit.
>
> Defendant's counter-claims are dismissed for lack of merit.[16]

PNB moved for reconsideration,[17] but the same was denied by the RTC in its Order,[18] dated 28 April 2008.

Undaunted, PNB elevated an appeal before the CA.[19]

The CA Ruling

In its appealed decision, the CA affirmed with modification the 28 November 2007 decision and 28 April 2008 order of the RTC.

The appellate court concurred with the trial court that the burden of proof shifted to PNB. Unfortunately, PNB failed to substantiate its claims. The appellate court, thus, found no reversible error in the trial court's disquisition that PNB should be held liable to James.

The appellate court, however, modified the RTC decision by reducing the amount of attorney's fees to ₱50,000.00 from

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[16] *Id.* at 500.

[17] *Id.* at 509-523.

[18] *Id.* at 567.

[19] *Id.* at 568-569.

the original award of ₱500,000.00 finding the latter to be exorbitant.

The *fallo* of the appealed decision provides:

WHEREFORE, the Decision dated 28 November 2007 of the Regional Trial Court of Paranaque City, Branch 195, in Civil Case No. 05-0066, is hereby **AFFIRMED WITH MODIFICATION** in that the award of attorney's fees is reduced to Fifty Thousand Pesos (₱50,000.00).[20]

Hence, this petition for review where PNB raised the following issues:

ISSUES

I.

WHETHER THE COURT OF APPEALS GRAVELY ERRED WHEN IT HELD THAT THERE WAS NO EVIDENCE SHOWING THAT RESPONDENT RECEIVED THE PROCEEDS OF SUBJECT LOAN, THUS, IGNORING APPLICABLE DECISIONS OF THIS HONORABLE COURT HOLDING THAT THE PROMISSORY NOTE IS THE BEST EVIDENCE THAT THE BORROWER HAS RECEIVED THE LOAN PROCEEDS.

II.

WHETHER THE COURT OF APPEALS GRAVELY ERRED WHEN IT DISREGARDED THE CONTENTS OF THE NOTARIZED PROMISSORY NOTES, DESPITE THE DEARTH OF CLEAR AND CONCLUSIVE EVIDENCE SUFFICIENT TO OVERTHROW THE PAROL EVIDENCE RULE AND THE PRESUMPTION IN FAVOR OF PUBLIC DOCUMENTS UNDER RULE 132, SECTION 23 OF THE RULES OF COURT.

III.

WHETHER THE COURT OF APPEALS GRAVELY ERRED WHEN IT DID NOT RULE THAT RESPONDENT WAS BOUND BY HIS PROMISSORY NOTES, EVEN IF THERE WAS NO EVIDENCE TO OVERCOME THE PRESUMPTION THAT EVERY PERSON TAKES ORDINARY CARE OF HIS CONCERNS, ON THE CONTRARY, THE

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[20] *Rollo*, p. 15.

EVIDENCE ON RECORD SHOWS THAT RESPONDENT VOLUNTARILY AND INTELLIGENTLY EXECUTED SUCH PROMISSORY NOTES.[21]

Essentially the issue in this case is whether PNB sufficiently established James' receipt of the loan proceeds.

THE COURT'S RULING

The appeal is meritorious.

Before going into the merits of the case, it must be underscored that the loan subject of this case is the loan secured by CTD No. B-658788 which was later replaced by CTD No. B-630178. Although PNB insists that the subject loan and the 14 February 2001 loan are one and the same, the documentary evidence it submitted does not support this point.

There is no indication that PN No. 0011628152240006 dated 26 February 2002 is a renewal of PN No. 0011628152240004 dated 14 February 2001. Instead, PN No. 0011628152240006 clearly indicates that it is a renewal of PN No. 0011628152240005.

Furthermore, a reading of PN No. 0011628152240006 dated 26 February 2002 plainly states that it is secured by CTD No. B-658788 (now CTD No. B-630178). In contrast, PN No. 0011628152240004 dated 14 February 2001 states that it is secured by CTD No. 629914. Although PNB's witness, Edna, testified that CTD No. 629914 and CTD No. B-630178 represent the same time deposit account, the latter being a mere replacement of the former, nothing on record would support this claim. Indeed, it is clear from the annotation on CTD No. B-630178 that it replaced CTD No. B-658788, not CTD No. 629914.

While there is a possibility that when Edna testified that CTD No. B-630178 replaced CTD No. 629914, she meant that CTD No. 629914 was first replaced by CTD No. B-658788 which

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

was in turn replaced by CTD No. B-630178, no concrete evidence was offered to prove this point. Thus, the Court opines that the subject loan, which was renewed on 26 February 2002, is independent and distinct from the 14 February 2001 loan. Consequently, and as aptly stated by the trial court, PN No. 0011628152240004 dated 14 February 2001 is immaterial to the present case.

For the same reason, the Court shares the trial court's observation that the original promissory note evidencing the subject loan, and which was renewed by PN No. 0011628152240006, dated 26 February 2002, was not presented in evidence. The trial court, however, is mistaken when it ruled that this fact made PN No. 0011628152240006 dated 26 February 2002 devoid of any evidentiary value.

Promissory note is the best evidence of the existence of the loan.

A promissory note is a solemn acknowledgment of a debt and a formal commitment to repay it on the date and under the conditions agreed upon by the borrower and the lender. A person who signs such an instrument is bound to honor it as a legitimate obligation duly assumed by him through the signature he affixes thereto as a token of his good faith. If he reneges on his promise without cause, he forfeits the sympathy and assistance of this Court and deserves instead its sharp repudiation.[22] The promissory note is the best evidence to prove the existence of the loan.[23]

In this case, James does not deny that he executed several promissory notes in favor of PNB. In fact, during the pre-trial[24] as well as in his Comment/Opposition,[25] dated 18 July 2007, to

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[22] *Pentacapital Investment Corporation v. Mahinay*, 637 Phil. 283, 303 (2010), citing *Sierra v. Court of Appeals*, 286 Phil. 954, 965 (1992).

[23] *Ycong v. Court of Appeals*, 518 Phil. 240, 246 (2006).

[24] Records, p. 163.

[25] *Id.* at 446-447.

PNB's formal offer of documentary evidence, James admitted the genuineness of his signatures as appearing on several promissory notes, including PN No. 0011628152240006, dated 26 February 2002, albeit with the caveat that the same were pre-signed for pre-arranged loans which he allegedly never availed of.

The trial court apparently believed James' claim that the loan documents were just pre-signed for pre-arranged loans despite the absence of any corroborating evidence to support it. As a result, it ruled that PNB, indeed, failed to prove that the proceeds of the loan subject of the pre-signed loan application were released to James. The trial court's reliance on James' self-serving allegation, however, is erroneous.

Nothing in PN No. 0011628152240006 dated 26 February 2002 would suggest that it was executed merely to secure future loans. In fact, it is clear from the wordings used therein that James acknowledged receipt of the proceeds of the loan. The said promissory note provides:

> **FOR VALUE RECEIVED**, I/We, solidarily promise to pay to the order of the PHILIPPINE NATIONAL BANK (the "BANK") on the stipulated due date/s the sum of Pesos DOLLARS: FIFTY THOUSAND ONLY (P $50,000.00) (the "Loan"), together with interest at 3.85% p.a. per annum.[26] x x x (emphasis supplied)

In *Ycong v. Court of Appeals*,[27] the petitioners alleged that they did not receive the proceeds of the loan despite executing a promissory note containing the words "for a loan received today xxx." The trial court ruled in favor of the petitioners holding that they were merely intimidated, pressured and coerced into signing the promissory note. On appeal, the appellate court reversed the factual findings by the trial court. In sustaining the reversal by the appellate court, the Court ratiocinated that the promissory note is the best evidence to prove the existence of the loan and there was no need for the respondent to submit

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[26] *Id.* at 440; Exhibit "14".

[27] *Supra* note 23.

a separate receipt to prove that the petitioners received the proceeds thereof.

Similarly, by affixing his signature on PN No. 0011628152240006, dated 26 February 2002, which contained the words "FOR VALUE RECEIVED," James acknowledged receipt of the proceeds of the loan in the stated amount and committed to pay the same under the conditions stated therein. As a businessman, James cannot claim unfamiliarity with commercial documents. He could not also pretend not understanding the contents of the promissory note he signed considering that he is a lettered-person and a college graduate. He certainly understood the import and was fully aware of the consequences of signing a promissory note. Indeed, no reasonable and prudent man would acknowledge a debt, and even secure it with valuable assets, if the same does not exist.

The fact that PN No. 0011628152240006, dated 26 February 2002, is only a renewal of a previous promissory note identified as PN No. 0011628152240005 does not adversely affect the fact that it is an acknowledgment of a loan duly received. It would be inconceivable for a reasonably diligent person to renew a promissory note if the loan it purportedly evidences is inexistent. As such, the Court rules that PNB sufficiently established that James received the proceeds of the loan subject of PN No. 0011628152240006 (originally PN No. 0011628152240005).

Parol evidence must be clear and convincing.

Rule 130, Section 9 of the Rules of Court provides for the parol evidence rule which states that when the terms of an agreement have been reduced into writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

This rule admits of exceptions. A party may present evidence to modify, explain or add to the terms of a written agreement if he puts in issue in his pleading any of the following: (a) an intrinsic ambiguity, mistake or imperfection in the written

agreement; (b) the failure of the written agreement to express the true intent and agreement of the parties thereto; (c) the validity of the written agreement; or (d) the existence of other terms agreed to by the parties or their successors-in-interest after the execution of the written agreement.

However, to overcome the presumption that the written agreement contains all the terms of the agreement, the parol evidence must be clear and convincing and of such sufficient credibility as to overturn the written agreement.[28]

In this case, James' uncorroborated allegation that the loan documents were merely pre-signed for future loans is far from being the clear and convincing evidence necessary to defeat the terms of the written instrument. Thus, there is no reason to deviate from the terms of the loan as appearing on PN No. 0011628152240006. Consequently, the trial and appellate courts erred when they considered James' unsubstantiated claim over the terms of the promissory note and ruled that PNB failed to prove James' receipt of the loan proceeds.

WHEREFORE, the present petition for review on certiorari is **GRANTED**. The 26 October 2011 Decision of the Court of Appeals in CA-G.R. CV No. 91386 is hereby **REVERSED and SET ASIDE**. The case is further **REMANDED** to the court of origin for further proceedings on petitioner Philippine National Bank's counterclaim.

SO ORDERED.

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

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[28] *Bernardo v. Court of Appeals*, 387 Phil. 736, 746-747 (2000), citing *Sierra v. Court of Appeals*, *supra* note 22 at 959.

THIRD DIVISION

[G.R. No. 199513. April 18, 2018]

TERESA GUTIERREZ YAMAUCHI, *petitioner, vs.* **ROMEO F. SUÑIGA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE SUPREME COURT IS PRECLUDED FROM RESOLVING A RULE 45 PETITION THAT SOLELY RAISES THE ISSUE OF DAMAGES WHICH REQUIRES A REVIEW OF THE WEIGHT, CREDENCE, AND PROBATIVE VALUE OF THE EVIDENCE PRESENTED, FOR THE RULES OF COURT EXPRESSLY STATE THAT A PETITION FOR REVIEW ON *CERTIORARI* SHALL RAISE ONLY QUESTIONS OF LAW; EXCEPTIONS; PRESENT.— We are generally precluded from resolving a Rule 45 petition that solely raises the issue of damages because the Rules of Court expressly state that a petition for review on certiorari shall raise only questions of law. By asking us to review the award for damages, Yamauchi wants us to review the weight, credence, and probative value of the evidence presented. In doing so we are to review factual matters that are usually outside the scope of our Rule 45 review. Nevertheless, the Court has recognized exceptional circumstances as to when we can dwell on questions of fact in resolving a petition for review on certiorari: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) when the findings of fact of the CA are premised on the absence of evidence and are

contradicted by the evidence on record. Another circumstance that was not mentioned is when the RTC and the CA have conflicting findings on the kind and amount of damages suffered. This being the case here, we are compelled to consider the case as one of the recognized exceptions and look into the evidence on record to resolve the present petition.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; AWARDED TO COMPENSATE FOR A PECUNIARY LOSS PROVIDED THE INJURED PARTY PROVES THE FACT OF THE INJURY OR LOSS AND THE ACTUAL AMOUNT OF LOSS WITH REASONABLE DEGREE OF CERTAINTY PREMISED UPON COMPETENT PROOF AND ON THE BEST EVIDENCE AVAILABLE. —** Actual or compensatory damages are those damages which the injured party is entitled to recover for the wrong done and injuries received when none were intended. These are compensation for an injury and will *supposedly* put the injured party in the position in which he was before he was injured. Since actual damages are awarded to compensate for a pecuniary loss, the injured party is required to prove two things: (1) the fact of the injury or loss and (2) the actual amount of loss with reasonable degree of certainty premised upon competent proof and on the best evidence available.

3. **ID.; ID.; ID.; TEMPERATE DAMAGES; ABSENT COMPETENT PROOF ON THE AMOUNT OF ACTUAL DAMAGES SUFFERED, A PARTY IS ENTITLED TO TEMPERATE DAMAGES IN LIEU OF ACTUAL OR COMPENSATORY DAMAGES, THE AMOUNT OF WHICH IS LEFT TO THE DISCRETION OF THE COURTS, WHICH SHOULD BE MORE THAN NOMINAL BUT LESS THAN COMPENSATORY.—** Our problem, however, is that we cannot ascertain the amount of loss suffered by Yamauchi. *First*, there were indeed some renovation done that may have benefited Yamauchi and which we have to consider and deduct the "added" value from the monetary award given her. *Second*, we do not have the exact amount of loss on the Laguna Bel-Air house because Yamauchi did not present any evidence on the values of the house before and after the incomplete renovation. Under Article 2199 of the Civil Code, one is entitled to adequate compensation only for such pecuniary loss suffered as one has duly proved.

Nonetheless, in the absence of competent proof on the amount of actual damages suffered, a party is entitled to temperate damages. The amount of loss of Yamauchi cannot be proved with certainty, but the fact that there has been loss on her part was established. Thus, we find it proper to award temperate damages in lieu of actual or compensatory damages. Such amount is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory. To our mind, and in view of the circumstances obtaining in this case, an award of temperate damages equivalent to ₱500,000.00 is just and reasonable. This amount is in consideration of the following: (1) Yamauchi can no longer use the subject house unless she starts a new renovation; (2) the amount she gave Suñiga, to some extent, was lost because she was never able to use the house; and (3) the depreciation cost of the house due to being left exposed and unused.

4. ID.; ID.; ID.; MORAL DAMAGES; RECOVERABLE ONLY IF THE PARTY FROM WHOM IT IS CLAIMED HAS ACTED FRAUDULENTLY OR IN BAD FAITH OR IN WANTON DISREGARD OF HIS CONTRACTUAL OBLIGATIONS; AWARD OF MORAL DAMAGES WARRANTED IN CASE AT BAR.— With regard to moral damages, we find it proper to reinstate the award as we find Suñiga had dealt with Yamauchi in bad faith. Moral damages are recoverable only if the party from whom it is claimed has acted fraudulently or in bad faith or in wanton disregard of his contractual obligations. In *Adriano v. Lasala*, the Court said: Bad faith does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud. It is, therefore, a question of intention, which can be inferred from one's conduct and/or contemporaneous statements. In the case at bar, Suñiga acted in bad faith when he misrepresented himself to be a licensed architect and bloated the figures of the renovation expenses.

5. ID.; ID.; ID.; AWARD OF EXEMPLARY DAMAGES, ATTORNEY'S FEES AND LEGAL INTEREST PROPER IN CASE AT BAR.— To set an example to contractors who deal with the general public, we also reinstate the award for exemplary

or corrective damages. The law allows the grant of exemplary damages in cases such as this to serve as a warning to the public and as a deterrent against the repetition of this kind of underhanded actions. The RTC's award of ₱50,000.00 seems just and reasonable under the circumstances. In view of reinstating the award of exemplary damages, we find it also proper to award Yamauchi attorney's fees, in consonance with Article 2208(1) of the Civil Code. We find the award of attorney's fees, equivalent to 10% of the total amount adjudged Yamauchi, to be just and reasonable under the circumstances. Lastly, we impose legal interest of six percent (6%) from the time this judgment becomes final and executory until it is wholly satisfied.

APPEARANCES OF COUNSEL

Escudero Marasigan Vallente & E.H. Villareal for petitioner.
Sallan & Jocson Law Offices for respondent.

D E C I S I O N

MARTIRES, *J.*:

We resolve the petition for review on certiorari appealing the 12 April 2011 Decision[1] and the 22 November 2011[2] Resolution of the Court of Appeals (*CA*) in CA-G.R. CV No. 91381. Although the CA affirmed the 28 January 2008 Decision[3] of the Regional Trial Court, Branch 24 of Manila (*RTC*) in Civil Case No. 02-105365, it (1) reduced the award for actual damages, and (2) deleted the award for moral and exemplary damages, attorney's fees, and costs of suit. The instant petition contests only the CA's reduction and deletion of the award of damages.

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[1] *Rollo*, pp. 41-56; penned by Associate Justice Ramon M. Bato, Jr., and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino.

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

[3] Records, pp. 507-514; penned by Judge Antonio M. Eugenio, Jr.

THE FACTS

On 13 December 2002, Teresa Gutierrez Yamauchi (*Yamauchi*) filed a complaint against Romeo F. Suñiga (*Suñiga*) for rescission with prayer for damages.[4] The factual antecedents leading to the complaint are summarized by the CA as follows:

> [Yamauchi] owns a house located at Block 88, Lot 23, Laguna Bel-Air, Sta. Rosa, Laguna [hereinafter subject house]. Sometime in September 2000, [Yamauchi] consulted [Suñiga], the husband of her cousin, regarding the renovation of the subject house. After [Yamauchi] gave [Suñiga] a sketch of her intended renovations, the latter apprised her of the estimated cost that it would entail. Based on the Scope of Works given by [Suñiga] and accepted by [Yamauchi], the total cost was ₱869,658.00-₱849,658.00 for the renovation and ₱20,000.00 for permits and licenses. The estimated costs for the renovation were itemized in the document denominated as Bill of Materials. On October 9, 2000, [Yamauchi] gave a partial payment in the amount of ₱300,000.00 and another payment in the amount of ₱100,000.00 on January 31, 2001. It appears that, by January 2001, the renovation stopped as [Suñiga] was also constructing his house.
>
> Subsequently, [Suñiga] gave [Yamauchi] a Billing Summary stating that he had accomplished 47.02% of the intended renovations and that after deducting the amount of ₱400,000.00 previously given by [Yamauchi], the latter was liable for the billing amount of ₱8,992.50. Likewise, [Suñiga] gave [Yamauchi] an Accomplishment Billing stating that he had accomplished 25.13% of the additional works and that [Yamauchi] was liable for the billing amount of ₱49,512.50. These additional works consisted of a carport balcony, lanai trellis, and installation of new door and dormer at the carport balcony.
>
> At around March 2001, [Yamauchi] inquired from [Suñiga] as to when the renovation would be completed and the latter asked for additional funds. [Yamauchi] requested [Suñiga] to advance the expenses and proposed and that she will pay him later, but [Suñiga] replied that he had no money. The renovation was thereafter suspended and [Suñiga] told [Yamauchi] that he will resume the renovation after the construction of his house, and [Yamauchi] should give the additional funds then. In the interim, [Yamauchi] consulted her

[4] *Id*. at 1-14.

neighbor, a certain Engr. Froilan Thomas, who told her that the amount stated on the Bill of Materials could actually build a new house. Feeling shortchanged and deceived, [Yamauchi] asked [Suñiga] to explain why she should pay the additional amount he was demanding. The confrontation eventually led to a heated argument and [Suñiga] decided to stop the work and pulled out the workers and recalled the materials.

[Yamauchi], through counsel, sent a letter to [Suñiga] stating that due to the bloated amount of the cost of renovation and [Suñiga's] stubborn refusal to complete the project, she was constrained to terminate their contract. She demanded the payment of ₱400,000.00, plus 12% interest thereon. [Suñiga] sent a reply stating that the demand for payment was without basis since the stoppage of the renovation was due to [her] non-payment of the billing. In turn, [Suñiga] demanded the payment of ₱49,512.50, representing the amount of additional works that he had partially accomplished.[5]

In her complaint, Yamauchi alleged that she was seeking rescission of their contract because of the following: (a) Suñiga's misrepresentation that he was a licensed architect; (b) the changes on the subject house were not in accordance with what they agreed upon; (c) Suñiga refused to comply with his obligation to finish the renovation by December 2000; (d) there were some renovations which were reported as accomplished, when in fact they had not yet been constructed; and (e) the subject house was rendered uninhabitable. According to Yamauchi, these circumstances constituted substantial breach of Suñiga's contractual obligations, entitling her to seek for the rescission of the contract, plus award of damages and attorney's fees.[6]

Suñiga filed his answer with counterclaims denying Yamauchi's allegations and at the same time claiming that: (a) he did not solicit the contract and it was Yamauchi who requested him to renovate the subject house; (b) he told Yamauchi that payments would be on accomplishment basis; (c) there was no target schedule as Yamauchi intimated to him that she did not have

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[5] *Rollo*, pp. 42-43.

[6] *Id*. at 44.

sufficient funds to finance the project; (d) he was able to accomplish 47% of the renovation works aside from the additional works requested by Yamauchi; and (e) it was Yamauchi who asked him to suspend the renovation. Claiming that he was the one who had the right to seek rescission, Suñiga averred that Yamauchi should pay her unpaid obligation in the amount of ₱58,005.00, as well as attorney's fees, moral and exemplary damages, and costs of suit.[7]

The RTC Ruling

After reception of evidence and submission of the parties' respective memoranda, the RTC rendered its decision warranting rescission and payment of damages in favor of Yamauchi.[8] As a result, the RTC ruled:

> Palpable in the case at bar is the action of [Yamauchi] in periodically assessing the progress of [the] renovation and in all instances felt shorthanded. From the delay in starting the construction, lack of a laborer at the site, the utter absence of supervision by [Suñiga], and the bloated cost of construction materials. All these can only be indicative of [Suñigas's] breach of his obligation to [Yamauchi]. Thus, we find it unjust that [Suñiga] would rebuke [Yamauchi] for coming up short with the payments when he has violated the very terms of the agreement and was in no position to fulfill what was incumbent [upon] him to accomplish.[9]
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> x x x x x x x x x

The dispositive portion of the RTC decision reads:

> Accordingly, judgment is hereby rendered ordering [Suñiga] to pay [Yamauchi] the following:
>
> (1) Four Hundred Thousand (₱400,000.00) Pesos, as actual damages;
>
> (2) Fifty Thousand (₱50,000.00) Pesos, as moral damages;

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[7] *Id.*

[8] Records, pp. 507-514; penned by Judge Antonio M. Eugenio, Jr.

[9] *Id*. at 513.

(3) Fifty Thousand (₱50,000.00) Pesos, as exemplary damages;

(4) Attorney's fees in the amount of Thirty Thousand (₱30,000.00) Pesos; and

(5) Costs of suit.[10]

The CA Ruling

Dissatisfied, Suñiga appealed to the CA, which affirmed the RTC's ruling to rescind the contract between Yamauchi and Suñiga under Article 1191 of the Civil Code.[11] The CA held however, that the RTC erred in its award for damages, to *wit*:

Accordingly, when a decree for rescission is handed down, it is the duty of the court to require both parties to surrender that which they have respectively received and to place each other as far as practicable in his original situation. In the present case, the court a quo ordered [Suñiga] to return the entire amount (₱400,000.00) paid by [Yamauchi].

We differ from the court a quo's conclusion.

The rule is that when it is no longer possible to return the object of the contract, an indemnity for damages operates as restitution. The important consideration is that the indemnity for damages should restore to the injured party what was lost. However, restoration of the parties to their relative position which they would have occupied had no contract ever been made is not practicable nor possible because we cannot turn back the hands of time so as to undo the partial renovations undertaken by [Suñiga]. At any rate, it is worthy to note that [Yamauchi] had not lost the entire amount (₱400,000.00) she gave to [Suñiga]. A perusal of the photographs offered by [Yamauchi], as part of her evidence, clearly shows that the house had been partially renovated by [Suñiga]. Ergo, to order [Suñiga] to pay actual damages

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[10] *Id.* at 514.

[11] *Id.* at 52; on the matter of rescission, the CA said: "In view of all the acts committed by [Suñiga] – unauthorized additional works, the bloated costs in the Billing Summary and Accomplishment Billing, and the unjustified termination of the contract – the court a quo correctly rescinded the parties' agreement as the aforementioned acts constituted substantial breach of [Suñiga]'s obligation."

in the amount of ₱400,000.00 to [Yamauchi] would result to unjust enrichment on the latter's part.

Settled is the rule that actual damages must be proved with reasonable degree of certainty. A party is entitled only up to such compensation for the pecuniary loss that he had duly proven. It cannot be presumed. Absent proof of the amount of actual damages sustained, the court cannot rely on speculations, conjectures, or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have been suffered by the injured party and on the best obtainable evidence of the actual amount thereof. In this case, [Yamauchi]'s evidence relative to the award of actual damages consists of the checks she paid to [Suñiga]. On the other hand, in support of his claim that there was 47.02%- accomplishment, [Suñiga) adduced in evidence the Billing Summary. In addition, the foreman of the renovation project, Alberto Otto, corroborated [Suñiga]'s claim and categorically testified that they had accomplished 45%-50% of the renovation. As [w]e have earlier stated, the photographs presented by [Yamauchi] undoubtedly show that the house had been partially renovated by [Suñiga]. [He] had already demolished the exterior wall, built the 2.5-meter extension (sans paint, doors, windows and roof), and the concrete posts for the garage/carport were already in place. Thus, [w]e are inclined to believe [Suñiga's] claim that he had accomplished 47.02% of the renovation. However, in view of the fact the amount charged by [Suñiga] for demolition works was ₱75,650.00 which was not in accordance with their initial agreement of ₱35,070.00, [Suñiga] should return the amount of ₱40,580 to [Yamauchi]. Also, [Suñiga] should return the amount of ₱20,000.00, representing costs for permits and licenses, since [Yamauchi] had already paid the amount of ₱11,000.00, representing payment to Laguna Bel-Air Homeowners' Association for construction bond/permit. In sum, [Yamauchi] is only entitled to the amount of ₱60,580.00 as actual damages.

As to the award of moral and exemplary damages, [w]e find that the court a quo erred in awarding the same to [Yamauchi].

The established rule is that a breach of contract may give rise to an award of moral damages if the party guilty of the breach acted fraudulently or in bad faith. In this case, there was no proof that [Suñiga] acted fraudulently or in bad faith. In any case, it should be pointed out that [Yamauchi] is not entirely blameless for the stoppage of the renovation as [she] had not sufficient funds. Hence, the award of moral damages must be deleted. As [Yamauchi] is not entitled to

moral damages, a *fortiori*, she is not entitled to exemplary damages. Exemplary damages is allowed only in addition to moral damages such that no exemplary damages can be awarded unless the claimant first establishes his clear right to moral damages. In the instant case, [Yamauchi] failed to establish her claim for moral damages, thus, she is not entitled to exemplary damages. Further, the award of attorney's fees and cost of suit should also be vacated since the court a quo did not make any finding that any of the instances enumerated in Article 2208 of the New Civil Code exists. Besides, while it may be true that [Yamauchi] was constrained to engage the services of counsel due to [Suñiga]'s refusal to return the amount of ₱400,000.00, such refusal was justified taking into account Our disquisition that [Yamauchi] is not entitled thereto, but only to the amount of ₱60,580.00.

WHEREFORE, the Decision dated January 28, 2008 of the Regional Trial Court of Manila, Branch 24, in Civil Case No. 02-105365, is hereby **AFFIRMED** with the **MODIFICATION** in that the award for actual damages is hereby reduced to ₱60,580.00 while the awards of moral and exemplary damages, attorney's fees and cost of suit are hereby **DELETED**.[12]

On 3 May 2011, Yamauchi filed a partial motion for reconsideration questioning the reduction and deletion of the award for damages.[13] As to actual damages, Yamauchi claimed that she actually lost the entire amount of ₱400,000.00 because after the so-called "renovation," her house was left in shambles and became uninhabitable. In other words, the money she paid to Suñiga went nowhere because the house was now destroyed and useless. Thus, even if the house was partially renovated, Yamauchi could not use it because Suñiga left it exposed to the elements.

As for moral and exemplary damages, Yamauchi argued that Suñiga misrepresented himself and acted in bad faith during the whole period of engagement. Yamauchi averred that he considered hiring Suñiga believing that he was a licensed architect.

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

[13] *Id*. at 181-205.

However, she later found out that he was in fact not one. In their meetings, never did Suñiga correct Yamauchi's belief that he was not a licensed architect. The bloated figures in the billing summary submitted by Suñiga showed that he had been dealing with her in bad faith. Suñiga also kept requesting Yamauchi to make payments for the renovations, for which, as found out later that Yamauchi had already made double payments.

Unmoved, the CA denied Yamauchi's motion saying that there were no new and substantial issues raised therein; hence, the present petition before this Court.

OUR RULING

Before us, Yamauchi raised the following:

ISSUES

I.

THE HONORABLE COURT OF APPEALS ERRED IN REDUCING THE AMOUNT OF ACTUAL DAMAGES AWARDED TO MS. GUTIERREZ-YAMAUCHI.

II.

THE HONORABLE COURT OF APPEALS ERRED IN DELETING THE AWARD FOR MORAL AND EXEMPLARY DAMAGES, ATTORNEY'S FEES AND COSTS OF LITIGATION.[14]

Procedural Issue

We are generally precluded from resolving a Rule 45 petition that solely raises the issue of damages because the Rules of Court expressly state that a petition for review on certiorari shall raise only questions of law. By asking us to review the award for damages, Yamauchi wants us to review the weight, credence, and probative value of the evidence presented. In doing so we are to review factual matters that are usually outside the scope of our Rule 45 review.

Nevertheless, the Court has recognized exceptional circumstances as to when we can dwell on questions of fact

[14] *Id.* at 22-23.

in resolving a petition for review on certiorari: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.[15]

Another circumstance that was not mentioned is when the RTC and the CA have conflicting findings on the kind and amount of damages suffered.[16] This being the case here, we are compelled to consider the case as one of the recognized exceptions and look into the evidence on record to resolve the present petition.

Actual or compensatory damages are awarded provided the pecuniary loss has been duly proven.

Actual or compensatory damages are those damages which the injured party is entitled to recover for the wrong done and injuries received when none were intended.[17] These are compensation for an injury and will *supposedly* put the injured party in the position in which he was before he was injured.[18]

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[15] *College Assurance Plan v. Belfranlt Development, Inc*., 563 Phil. 355, 364-365 (2007).

[16] *Tan v. OMC Carriers, Inc*., 654 Phil. 443 (2011) citing *Sarmiento v. Court of Appeals*, 353 Phil. 834, 846 (1998).

[17] *Empire East Land Holdings, Inc. v. Capitol Industrial Construction Groups, Inc.,* 588 Phil. 156, 170 (2008).

[18] *Filipinas (Pre-Fab Bldg.) Systems, Inc. v. Metro Rail Transit Development Corporation*, 563 Phil. 184, 216 (2007).

Since actual damages are awarded to compensate for a pecuniary loss, the injured party is required to prove two things: (1) the fact of the injury or loss and (2) the actual amount of loss with reasonable degree of certainty premised upon competent proof and on the best evidence available.[19]

In the instant case, the CA reduced the award for damages because Suñiga had already completed 47.02% of the renovations on the subject house; thus, awarding full compensation would result in unjust enrichment for Yamauchi. However, the CA failed to consider the fact that the house became uninhabitable because the renovation was left unfinished. Yamauchi took pictures showing the physical condition of the house nine (9) months after the supposed renovation.[20] True enough, these photographs confirmed that the house was no longer habitable since the renovated portions left the entire house open and exposed to the elements of nature. Contrary to the position of the CA, Yamauchi did not gain anything from the incomplete renovation of her house. She, in fact, lost it in its entirety.

Yamauchi's testimony is enlightening:

Q: Can you inform what was the state of your Laguna Bel-Air residence prior to the engagement of the services of Architect Suñiga?

A: The house was handed to me ready to move in state complete already new built homes and everything is complete.[21]

x x x x x x x x x

Q: So after discovering that, after feeling that way because of the discovery of his alleged profession now you turned to this Court, specifically what do you want from this Court to give you? What are the reliefs you are asking for?

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[19] See *Oceaneering Contractors (Phils.), Inc. v. Barreto*, 657 Phil. 607, 617 (2011) and *Manila Electric Corporation v. T.E.A.M Electronics Corporation*, 564 Phil. 639, 565 (2007).

[20] Records, pp. 182-184; Exhibits "H" to "H-8" of Yamauchi.

[21] TSN, 19 November 2003, p. 84.

A: After the loss of my first investment, your Honor, after my hard earned money, I want my money back. I want the money that I paid plus interest because I got it from my time deposit. I want him to pay the interest since the day that I demanded him to pay me back in 2001 and then I also wanted him to pay for the destruction of my house because it is **useless already. I cannot use it anymore and so I want him to pay for that.**

Court:

Q: What do you mean useless?

A: Sira na po e, wala na pong pinto ang bahay, all the parts, Your Honor.

Q: Sira na?

A: Opo, because the year 2000 I thought I could move my children there pero hindi talaga pupuwede, it is not certain to earn that amount just to improve it again, so I want him to pay for the destruction of the house. All I have now is just a lot and the destroyed house so I want him to pay for that.[22] x x x (emphasis supplied)

Putting together the pictures showing the actual physical condition of the house and Yamauchi's testimony, we cannot but conclude that Yamauchi suffered great losses because the renovation was not completed. Contrary to findings of the CA, that Suñiga would receive unjust enrichment if she were given full reimbursement. Yamauchi gained practically nothing from the partial renovation made by Suñiga. The RTC shares our sentiments:

This is no more evident than in the photographs of renovations which indubitably show that works made rendered the house uninhabitable, a far cry to its condition prior to the so called redesign. An eloquent examply is the garage which could not accommodate [Yamauchi's] car; no iron grill in the additional veranda contrary to what is stated in the billing summary; and a car park with no roofing, ceiling and floor.

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[22] *Id*. at 102-104.

The billing summary prepared by [Suñiga] likewise reveals acts of fraud. While in the bill of materials, the cost of demolition is ₱35,075.00, in the billing summary, it is ₱75,650.00; while in the bill of materials, the exterior would cost only ₱35,598.80, in the billing summary the same is billed at ₱95,650.00.

The performance or shall we say, non-performance of [Suñiga] left must to be desired and [Yamauchi] was better off with the house prior to its renovation. We can only surmise that given the state of the house it will probably cost [Yamauchi] a fortune to repair it. [Yamauchi] is thus entitled to rescission and damages under Article 1191 of the Civil Code on account of culpable breach of obligation by [Suñiga].[23]

Henceforth, having established that Yamauchi had suffered actual losses, we now have to consider if the amount of losses were accurately proven, bearing in mind that the ultimate effect of rescission is to restore the parties to their original status before they entered into the contract. Rescission has the effect of "unmaking a contract, or its undoing from the beginning, and not merely its termination."[24] Hence, rescission creates the obligation to return the object of the contract because to rescind is to declare a contract void at its inception and to put an end to it as though it never existed.[25] Our objective now is to bring Yamauchi back, as far as practicable, to a state as if no renovation happened.

Temperate or moderate damages in lieu of actual damages are awarded when the amount of loss cannot be proved with certainty.

Our problem, however, is that we cannot ascertain the amount of loss suffered by Yamauchi. *First*, there were indeed some renovation done that may have benefited Yamauchi and which

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[23] Records, pp. 513-514.

[24] *Fong v. Dueñas*, 759 Phil. 373, 384 (2015) citing *Unlad Resources Development Corporation v. Dragon*, 582 Phil. 61, 79 (2008).

[25] *Id.*

we have to consider and deduct the "added" value from the monetary award given her. *Second*, we do not have the exact amount of loss on the Laguna Bel-Air house because Yamauchi did not present any evidence on the values of the house before and after the incomplete renovation. Under Article 2199 of the Civil Code, one is entitled to adequate compensation only for such pecuniary loss suffered as one has duly proved.

Nonetheless, in the absence of competent proof on the amount of actual damages suffered, a party is entitled to temperate damages.[26] The amount of loss of Yamauchi cannot be proved with certainty, but the fact that there has been loss on her part was established. Thus, we find it proper to award temperate damages in lieu of actual or compensatory damages.

Such amount is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory.[27] To our mind, and in view of the circumstances obtaining in this case, an award of temperate damages equivalent to ₱500,000.00 is just and reasonable. This amount is in consideration of the following: (1) Yamauchi can no longer use the subject house unless she starts a new renovation; (2) the amount she gave Suñiga, to some extent, was lost because she was never able to use the house; and (3) the depreciation cost of the house due to being left exposed and unused.

Moral damages may be awarded when the defendant acted fraudulently or in bad faith.

With regard to moral damages, we find it proper to reinstate the award as we find Suñiga had dealt with Yamauchi in bad

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[26] Civil Code, Art. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.

[27] *College Assurance Plan v. Belfranlt Development, Inc.*, *supra* note 15 at 367.

faith. Moral damages are recoverable only if the party from whom it is claimed has acted fraudulently or in bad faith or in wanton disregard of his contractual obligations.[28] In *Adriano v. Lasala*,[29] the Court said:

> Bad faith does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud. It is, therefore, a question of intention, which can be inferred from one's conduct and/or contemporaneous statements.[30]

In the case at bar, Suñiga acted in bad faith when he misrepresented himself to be a licensed architect and bloated the figures of the renovation expenses. Gathered from the records is Suñiga's admission that he never took the licensure exam for architects, yet he signed documents pertaining to the renovation as if he was an architect.[31] On cross-examination, Suñiga confirmed this fact, *viz*:

Q: For the information of the Honorable Court and all of us here, it is stated here that you have recognized that you have signed above the name Arch. Romeo F. Suñiga?
A: Yes, ma'am.

Q: Can you tell us what "Arch." means?
A: Architect.

Q: So, if I read it completely, I can say that it is submitted by, as you have signed, by Architect Romeo F. Suñiga?
A: Yes.

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[28] *Arco Pulp and Paper Co., Inc. v. Lim*, 737 Phil. 133, 147-148 (2014) citing *Philippine Savings Bank v. Spouses Castillo*, 664 Phil. 774, 786 (2011) further citing *Philippine National Bank v. Spouses Rocamora*, 616 Phil. 369, 385 (2009); *Pilipinas Shell Petroleum Corporation v. John Bordman Ltd. of Iloilo, Inc*., 509 Phil. 728, 751 (2005).

[29] 719 Phil. 408 (2013).

[30] *Id*. at 419.

[31] TSN, 31 July 2007, pp. 6-9.

Q: And this Architect Romeo F. Suñiga is you?
A: Yes, ma'am.

Q: So it is correct to state that you have signed this document as an Architect even though you know that you are not a licensed architect?
A: Yes, ma'am.[32]

As for the bloated expenses, the trial court noted:

The billing summary prepared by [Suñiga] likewise reveals acts of fraud. While in the bill of materials, the cost of demolition is ₱35,075.00, in the billing summary, it is ₱75,650.00; while in the bill of materials, the exterior would cost only ₱35,598.00, in the billing summary the same is billed at ₱95,650.00.[33]

All these circumstances point to the fact that Suñiga was trying to take advantage of Yamauchi's inexperience. If he were an honest and fair contractor, Suñiga should have been upfront with his client and have tried not try to get away with an easy buck. To our mind, these are signs of bad faith warranting the award for moral damages.

Exemplary damages, attorney's fees, and interest due.

To set an example to contractors who deal with the general public, we also reinstate the award for exemplary or corrective damages. The law allows the grant of exemplary damages in cases such as this to serve as a warning to the public and as a deterrent against the repetition of this kind of underhanded actions.[34] The RTC's award of ₱50,000.00 seems just and reasonable under the circumstances.

In view of reinstating the award of exemplary damages, we find it also proper to award Yamauchi attorney's fees, in

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[32] *Id.* at 8-9.

[33] Records, p. 514.

[34] See *Cebu Country Club, Inc. v. Elizagaque*, 566 Phil. 65, 75 (2008) citing *Country Bankers Insurance Corporation v. Lianga Bay*, 425 Phil. 511, 524 (2002).

consonance with Article 2208(1) of the Civil Code. We find the award of attorney's fees, equivalent to 10% of the total amount adjudged Yamauchi, to be just and reasonable under the circumstances.

Lastly, we impose legal interest of six percent (6%) from the time this judgment becomes final and executory until it is wholly satisfied.[35]

WHEREFORE, premises considered, the instant petition is **PARTIALLY GRANTED**. The Decision of the Court of Appeals dated 12 April 2011 in CA-G.R. CV No. 91381 is hereby **MODIFIED**. Romeo F. Suñiga is ordered to pay Teresa Gutierrez Yamauchi the following:

(1) ₱500,000.00, as temperate damages;
(2) ₱50,000.00, as moral damages;
(3) ₱50,000.00, as exemplary damages; and
(4) Ten percent (10%) of the total amount awarded, as attorney's fees

In addition, the total amount adjudged shall earn an interest rate of six percent (6%) per annum on the balance and interest due from the finality of this decision until fully paid.

SO ORDERED.

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

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[35] See *Nacar v. Gallery Frames*, 716 Phil. 267, 281-283 (2013).

SECOND DIVISION

[G.R. Nos. 201225-26. April 18, 2018]
(From CTA-EB Nos. 649 & 651)

TEAM SUAL CORPORATION (formerly MIRANT SUAL CORPORATION), *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

[G.R. No. 201132. April 18, 2018]
(From CTA-EB No. 651)

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **TEAM SUAL CORPORATION (formerly MIRANT SUAL CORPORATION),** *respondent.*

[G.R. No. 201133. April 18, 2018]
(From CTA-EB No. 649)

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **TEAM SUAL CORPORATION (formerly MIRANT SUAL CORPORATION),** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997; REFUND OR TAX CREDIT OF UNUTILIZED INPUT VAT (VALUE-ADDED TAX); IN ORDER FOR THE COURT OF TAX APPEALS (CTA) TO ACQUIRE JURISDICTION OVER A JUDICIAL CLAIM FOR REFUND OR TAX CREDIT ARISING FROM UNUTILIZED INPUT VAT, THE SAID CLAIM MUST FIRST COMPLY WITH THE MANDATORY 120+30-DAY WAITING PERIOD; ANY JUDICIAL CLAIM FOR REFUND OR TAX CREDIT FILED IN CONTRAVENTION OF SAID PERIOD IS RENDERED PREMATURE, DEPRIVING THE CTA OF JURISDICTION TO ACT ON IT.— In order for the CTA to acquire jurisdiction over a judicial claim for refund or tax credit arising from unutilized input VAT, the said claim must first comply with the mandatory 120+30-day waiting period. Any judicial claim for refund or tax credit filed in contravention of

said period is rendered premature, depriving the CTA of jurisdiction to act on it. x x x. It is clear from [Section 112, Subsections (A) and (C) of the National Internal Revenue Code of 1997] that any taxpayer seeking a refund or tax credit arising from unutilized input VAT from zero-rated or effectively zero-rated sales should first file an initial administrative claim with the BIR. This claim for refund or tax credit must be filed within two years after the close of the taxable quarter when the sales were made. The CIR is then given a period of 120-days from the submission of complete documents in support of the application to either grant or deny the claim. If the claim is denied by the CIR or the latter has not acted on it within the 120-day period, the taxpayer-claimant is then given a period of 30 days to file a judicial claim *via* petition for review with the CTA. As such, the law provides for two scenarios before a judicial claim for refund may be filed with the CTA: (1) the full or partial denial of the claim within the 120-day period, or (2) the lapse of the 120-day period without the CIR having acted on the claim. It is only from the happening of either one may a taxpayer-claimant file its judicial claim for refund or tax credit for unutilized input VAT. Consequently, failure to observe the said period renders the judicial claim premature, divesting the CTA of jurisdiction to act on it.

2. **ID.; ID.; ID.; ID.; THE COURT OF TAX APPEALS ACQUIRES JURISDICTION OVER THE TAXPAYER'S JUDICIAL CLAIM FOR REFUND WHERE THE MANDATORY 120+30 – DAY WAITING PERIOD WAS COMPLIED WITH.—** In the instant case, TSC filed its administrative claim for refund for taxable year 2001 on March 20, 2003, well within the two-year period provided for by law. TSC then filed two separate judicial claims for refund: one on March 31, 2003 for the first quarter of 2001, and the other on July 23, 2003 for the second, third, and fourth quarters of the same year. Given the fact that TSC's administrative claim was filed on March 20, 2003, the CIR had 120 days or until July 18, 2003 to act on it. Thus, the first judicial claim was premature because TSC filed it a mere 11 days after filing its administrative claim. On the other hand, the second judicial claim filed by TSC was filed on time because it was filed on July 23, 2003 or five days after the lapse of the 120-day period. Accordingly, it is clear that the second judicial claim

complied with the mandatory waiting period of 120 days and was filed within the prescriptive period of 30 days from the CIR's action or inaction. Therefore, the CTA division only acquired jurisdiction over TSC's second judicial claim for refund covering its second, third, and fourth quarters of taxable year 2001.

3. **ID.; ID.; ID.; ID.; THE FAILURE OF THE COMMISSIONER OF INTERNAL REVENUE TO RAISE THE ISSUE OF THE TAXPAYER'S NON-COMPLIANCE WITH THE 120-DAY WAITING PERIOD AT THE FIRST INSTANCE, WOULD NOT OPERATE TO VEST THE COURT OF TAX APPEALS WITH JURISDICTION OVER THE TAXPAYER'S JUDICIAL CLAIM FOR REFUND, AS A JUDICIAL CLAIM FOR REFUND WHICH DOES NOT COMPLY WITH THE 120-DAY MANDATORY WAITING PERIOD RENDERS THE SAME VOID; AS SUCH, NO RIGHT CAN BE CLAIMED OR ACQUIRED FROM IT. —** [E]ven if the CIR failed to raise the issue of TSC's non-compliance with the 120-day waiting period at the first instance, such failure would not operate to vest the CTA with jurisdiction over TSC's judicial claims for refund. The Court has already settled that a judicial claim for refund which does not comply with the 120-day mandatory waiting period renders the same void. As such, no right can be claimed or acquired from it, notwithstanding the failure of a party to raise it as a ground for dismissal. In *San Roque*, the Court expounded on such point, *to wit*: San Roque's failure to comply with the 120-day mandatory period renders its petition for review with the CTA void. Article 5 of the Civil Code provides, "Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.'' San Roque's void petition for review cannot be legitimized by the CTA or this Court because Article 5 of the Civil Code states that such void petition cannot be legitimized "except when the law itself authorizes [its] validity." There is no law authorizing the petition's validity. It is hornbook doctrine that **a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act**. **A right cannot spring in favor of a person from his own void or illegal act.** x x x. Being a mere scrap of paper, TSC's judicial claim for refund filed on March 31, 2003 covering the first quarter of taxable year 2001 cannot be the source of any rights.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE COURT OF TAX APPEALS WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE, WILL NOT BE DISTURBED ON APPEAL, AND ARE ACCORDED THE HIGHEST RESPECT BY THE COURT, UNLESS THERE HAS BEEN AN ABUSE OF DISCRETION ON ITS PART.— [T]he Court agrees with the ruling of the CTA *En Banc* which held that between the March 31 and the July 23 petitions for review filed by TSC, the CTA Division only acquired jurisdiction over the latter. Seeing as the CTA validly acquired jurisdiction over the July 23 petition for review covering the second, third, and fourth quarters of taxable year 2001, we give full accord to its factual findings with respect to the amount of duly substantiated excess input VAT for said periods. The CTA *En Banc*, based on their appreciation of the evidence presented to them, unequivocally ruled that TSC has sufficiently proven its entitlement to the refund or the issuance of a tax credit certificate in its favor for unutilized input VAT in the amount of ₱123,110,001.68. It is well settled that factual findings of the CTA when supported by substantial evidence, will not be disturbed on appeal. Due to the nature of its functions, the tax court dedicates itself to the study and consideration of tax problems and necessarily develops expertise thereon. Unless there has been an abuse of discretion on its part, the Court accords the highest respect to the factual findings of the CTA.

5. ID.; ID.; ID.; THE ISSUE OF WHETHER A CLAIMANT HAS ACTUALLY PRESENTED THE NECESSARY DOCUMENTS THAT WOULD PROVE ITS ENTITLEMENT TO A TAX REFUND OR TAX CREDIT, IS A QUESTION OF FACT WHICH IS NOT THE PROVINCE OF AN APPEAL BY PETITION FOR REVIEW ON *CERTIORARI;* EXCEPTIONS, NOT PRESENT.— It must be emphasized that generally, it is not the province of an appeal by petition for review on *certiorari* to determine factual matters. Although there are exceptions to this general rule, none of these exist in the instant case. With that being said, the issue of whether a claimant has actually presented the necessary documents that would prove its entitlement to a tax refund or tax credit, is indubitably a question of fact.

6. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997; REFUND OR TAX CREDIT OF UNUTILIZED INPUT VAT

(VALUE-ADDED TAX); A CLAIM FOR TAX REFUND IS A STATUTORY PRIVILEGE AND THE MERE EXISTENCE OF UNUTILIZED INPUT VAT DOES NOT ENTITLE THE TAXPAYER, AS A MATTER OF RIGHT, TO IT; AS SUCH, THE RULES AND PROCEDURE IN CLAIMING A TAX REFUND SHOULD BE FAITHFULLY COMPLIED WITH. — [T]ax refunds or tax credits, just like tax exemptions, are strictly construed against the taxpayer-claimant. A claim for tax refund is a statutory privilege and the mere existence of unutilized input VAT does not entitle the taxpayer, as a matter of right, to it. As such, the rules and procedure in claiming a tax refund should be faithfully complied with. Non-compliance with the pertinent laws should render any judicial claim fatally defective.

APPEARANCES OF COUNSEL

Follosco Morallos & Herce for Team Sual Corporation.
Office of the Solicitor General for Commissioner of Internal Revenue.

D E C I S I O N

REYES, JR., *J.*:

Nature of the Petitions

Challenged before the Court *via* Petitions for Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the Consolidated Decision[2] of the Court of Tax Appeals (CTA) *En Banc* dated September 15, 2011 and its subsequent Resolution[3] dated March 21, 2012 in CTA-EB Nos. 649 and 651. The assailed Decision and Resolution modified the Amended Decision[4] of

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[1] *Rollo* (G.R. Nos. 201225-26), Vol. I, pp. 104-129 & *Rollo*, (G.R. No. 201132), Vol. I, pp. 12-50.

[2] *Rollo* (G.R. Nos. 201225-26), Vol. I, pp. 136-163.

[3] *Rollo* (G.R. No. 201132), Vol. I. pp. 186-204.

[4] *Rollo* (G.R. Nos. 201225-26), Vol. I. pp. 12-25.

the CTA Special First Division dated June 7, 2010 and partially granted Team Sual Corporation's (TSC) claim for refund in the amount of ₱123,110,001.68 representing unutilized input Value Added Tax (VAT) for the second, third, and fourth quarters of taxable year 2001.

The Antecedent Facts

TSC is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Barangay Pangascasan, Sual, Pangasinan. It is principally engaged in the business of power generation and subsequent sale thereof to the National Power Corporation (NPC) under a *Build, Operate*, and *Transfer* scheme. TSC was originally registered with the Securities and Exchange Commission under the name "Pangasinan Electric Corporation." On August 17, 1999, it changed its name to "Southern Energy Pangasinan, Inc.," which was then changed to "Mirant Sual Corporation" on June 28, 2001, and finally to "Team Sual" on July 23, 2007.[5]

As a seller of services, TSC is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Certificate of Registration bearing RDO Control No. 05-0181 and Taxpayer's Identification No. 003-841-103.[6]

On December 6, 2000, TSC filed with the BIR Revenue District Office No. 5-Alaminos, Pangasinan an application for zero-rating arising from its sale of power generation services to NPC for the taxable year 2001. The same was subsequently approved. As a result, TSC filed its VAT returns covering the four quarters of taxable year 2001.[7]

For the first, second, third, and fourth quarters of 2001, TSC reported excess input VAT amounting to ₱37,985,009.25,

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[5] *Id*. at 137-138.

[6] *Id*. at 137.

[7] The VAT returns for the first, second, third, and fourth quarters of taxable year 2001 were filed on April 18, 2001, July 24, 2001, October 24, 2001, and January 24, 2002, respectively; *id*. at 35.

₱29,298,556.12, ₱32,869,835.40, and ₱66,566,967.02, respectively. The total excess input VAT claimed by TSC for the taxable year amounted to ₱166,720,367.79.[8]

On March 20, 2003, TSC filed with the BIR an administrative claim for refund in the aggregate amount of ₱166,720,367.79 for its unutilized input VAT for taxable year 2001.[9]

On March 31, 2003, without waiting for the resolution of its administrative claim for refund or tax credit, TSC filed with the CTA Division a petition for review docketed as CTA Case No. 6630. It prayed for the refund or issuance of a tax credit certificate for its alleged unutilized input VAT for the first quarter of taxable year 2001 in the amount of ₱37,985,009.25.[10]

On July 23, 2003, TSC filed another petition for review docketed as CTA Case No. 6733, seeking the refund or issuance of a tax credit certificate for its alleged unutilized input VAT for the second, third, and fourth quarters of taxable year 2001 in the amount of ₱128,735,358.54. Both cases were consolidated on August 7, 2003.[11]

Trial of the case ensued.

In its Decision dated June 9, 2006, the CTA Division partially granted TSC's claim. It allowed the refund of unutilized input VAT for the first, third, and fourth quarters of taxable year 2001, but disallowed the refund for the second quarter. The CTA Division ruled that the claim for the second quarter did not fall within the two-year prescriptive period. The dispositive portion of the CTA Division's decision reads:

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. **ACCORDINGLY**, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX**

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[8] *Id*. at 139.

[9] *Id*.

[10] *Id*.

[11] *Id*.

CREDIT CERTIFICATE in the amount of **ONE HUNDRED SEVENTEEN MILLION THREE HUNDRED THIRTY THOUSAND FIVE HUNDRED FIFTY PESOS AND 62/100 (₱117,330,550.62)** to petitioner Mirant Sual Corporation, representing unutilized input VAT from its domestic purchases of goods and services and importation of goods attributable to its effectively zero-rated sales to the National Power Corporation for the first, third, and fourth quarters of taxable year 2001.[12]

The Commissioner of Internal Revenue (CIR) filed a Motion for Partial Reconsideration on July 3, 2009, praying that the entire claim for refund be denied. The CIR argued that TSC has not sufficiently proven its entitlement to refund and that the CTA had no jurisdiction to act on the judicial claim for refund because the same was prematurely filed.[13]

Likewise, in its Motion for Partial Reconsideration dated July 7, 2009 and Supplemental Motion for Partial Reconsideration dated July 31, 2009, TSC prayed that the CTA, in addition to the amount already granted, refund the amounts of: (1) ₱29,298,556.12 representing input VAT for the second quarter of taxable year 2001, and (2) ₱12,761,224.50 for input VAT on local purchases of goods and services for the same year.[14]

On June 7, 2010, the CTA Division promulgated an Amended Decision which partially granted TSC's additional claim for refund. In said decision, the CTA denied the claim for input VAT on local purchases of goods and services, but allowed the refund for input VAT for the second quarter of taxable year 2001. However, the grant was reduced from ₱29,298,556.12 to ₱27,233,561.57 for failure to substantiate the difference.[15] The dispositive portion of the amended decision states:

WHEREFORE, respondent's *Motion for Partial Reconsideration* filed on July 3, 2009 and petitioner's *Supplemental Motion for Partial*

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[12] *Id*. at 37.

[13] *Id*.

[14] *Id*. at 37-38.

[15] *Id*. at 23.

Reconsideration filed on July 31, 2009 are hereby **DENIED** for lack of merit. Petitioner's *Motion for Partial Reconsideration* filed on July 7, 2009 is hereby **PARTIALLY GRANTED** and this Court's Decision dated June 9, 2009 denying petitioner's claim for refund of unutilized input VAT for the second quarter of 2001 is hereby **MODIFIED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the amount of **ONE HUNDRED FORTY FOUR MILLION FIVE HUNDRED SIXTY FOUR THOUSAND ONE HUNDRED TWELVE PESOS AND 19/100 (₱144,564,112.19)** to petitioner Team Sual Corporation (formerly: Mirant Sual Corporation), representing unutilized input VAT from its domestic purchases of goods and services and importation of goods attributable to its effectively zero-rated sales to the National Power Corporation for the first, second, third, and fourth quarters of taxable year 2001.

SO ORDERED.[16]

Dissatisfied, TSC filed a Petition for Review docketed as CTA EB No. 649 before the CTA *En Banc*. It posits that the CTA Division erred in disallowing the amount of ₱12,761,224.50 for input VAT on local purchases of goods and services on the mere fact that the pertinent supporting documents were issued under TSC's former name. TSC argues that a corporation's change of name does not affect its identity or rights. Thus, it should still be entitled to claim the said input VAT.[17]

The CIR also filed a petition for review praying that the Decision dated June 9, 2009 and the Amended Decision dated June 7, 2010 be reversed and set aside and another one be rendered denying the entire claim for refund. The CIR reiterated the arguments she raised in her Motion for Partial Reconsideration. The case was docketed as CTA EB No. 651.[18]

On September 15, 2010, the CTA *En Banc* resolved[19] to consolidate CTA EB No. 649 with CTA EB No. 651.

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[16] *Id*. at 24.

[17] *Id*. at 39.

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

[19] *Id*. at 41.

On September 15, 2011, the CTA *En Banc* rendered a Consolidated Decision[20] granting petitioner's claim for refund of input VAT for the second, third, and fourth quarters of taxable year 2001 amounting to ₱123,110,001.68. Insofar as the refund of the input VAT for the first quarter of taxable year 2001 is concerned, the CTA *En Banc* ruled that the CTA did not acquire jurisdiction over it as it had been filed prematurely. The dispositive portion of said decision reads as follows:

WHEREFORE, all the foregoing considered, the Commissioner's Petition for Review in CTA EB No. 651 is hereby **DENIED**.

On the other hand, Team Sual's Petition for Review in CTA EB No. 649 is hereby **PARTIALLY GRANTED**, but only insofar as the consideration of the portion of the refund claim disallowed by the court *a quo* upon the reason that the supporting documents were in Team Sual's former names.

The Decision promulgated on June 9, 2009 and Amended Decision dated June 7, 2010 by the Court in Division, are therefore **MODIFIED**. Accordingly, the Commissioner is hereby **ORDERED** to **REFUND** to Team Sual the amount of, or to **ISSUE A TAX CREDIT CERTIFICATE** in its favor amounting to, **ONE HUNDRED TWENTY THREE MILLION ONE HUNDRED TEN THOUSAND ONE PESOS and SIXTY EIGHT CENTAVOS (₱123,110,001.68)**, representing Team Sual's unutilized input VAT attributable to its effectively zero-rated sales to NPC for the second, third and fourth quarters of taxable year 2001.

SO ORDERED.[21]

TSC filed a Motion for Partial Reconsideration of the CTA *En Banc*'s decision. It insists that the judicial claim for refund over the first quarter of 2001 was not prematurely filed and that the CTA Division did in fact have jurisdiction to act on it. Similarly, the CIR filed a motion for reconsideration, praying that TSC's claim be denied altogether.[22]

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[20] *Rollo* (G.R. Nos. 201225-26), Vol. I, pp. 136-163.

[21] *Id*. at 59.

[22] *Id*. at 110.

In its Resolution dated March 21, 2012, the CTA *En Banc* denied the motions of both TSC and the CIR, affirming its September 15, 2011 Decision as follows:

WHEREFORE, premises considered, the *Motion for Reconsideration* of the Commissioner and the *Motion for Partial Reconsideration* of Team Sual are hereby **DENIED** for lack of merit.

SO ORDERED.[23]

Aggrieved, the CIR and TSC filed their respective Petitions for Review on *Certiorari* under Rule 45 before the Court. TSC's petition was docketed as G.R. Nos. 201225-26,[24] while the CIR's petitions were docketed as G.R. Nos. 201132[25] and 201133.[26]

In the Resolutions dated June 25, 2012[27] and July 18, 2012,[28] the Court resolved to consolidate G.R. Nos. 201132, 201133, and 201225-26.

The Issues

On one hand, the CIR argues the following for the total disallowance of TSC's claim:

I. The Honorable Court of Tax Appeals *En Banc* erred, when it affirmed, with modification, the former First Division's decision promulgated on June 9, 2009 and Amended Decision dated June 7, 2012, granting respondent's claim for refund in the amount of ₱123,110,001.68 allegedly representing unutilized input

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[23] *Id.* at 100.

[24] Team Sual Corporation challenging the Decisions of the CTA *En Banc* in CTA-EB Nos. 649 & 651.

[25] Commissioner of Internal Revenue challenging the Decision of the CTA *En Banc* in CTA-EB No. 651.

[26] Commissioner of Internal Revenue challenging the Decision of the CTA *En Banc* in CTA-EB No. 649.

[27] *Rollo* (G.R. No. 201132), Vol. I. p. 183-A.

[28] *Rollo* (G.R. Nos. 201225-26), Vol. I, p. 224.

VAT attributable to its effectively zero-rated sales to the National Power Corporation for the second, third, and fourth quarters of taxable year 2001, because the Honorable Court of Tax Appeals had no jurisdiction to act on respondent's petitions for review; and

II. Assuming that the former First Division had jurisdiction, petitioner avers that its denial by inaction was proper and that respondent has not sufficiently proven its entitlement to a refund.[29]

On the other hand, TSC raises the following grounds for the allowance of its judicial claim for refund covering the first quarter of taxable year 2001:

I. The CTA acquired jurisdiction over the case filed with and tried by the First Division of the CTA due to the failure of respondent CIR to invoke the rule of non-exhaustion of administrative remedies; and

II. The CTA *En Banc*'s application of the doctrine laid down in the case of *Commissioner Of Internal Revenue vs. Aichi Forging Company of Asia*[30] to petitioner's claim for refund is erroneous as:

A.) It will violate established rules on non-retroactivity of judicial decisions;

B.) It will cause injustice to petitioner who relied in good faith on the existing jurisprudence at the time of the filing of the claim for refund; and

C.) It will unjustly enrich the government at the expense of the petitioner.[31]

In sum, the rise or fall of the instant petitions rest upon whether the CTA has jurisdiction to act on TSC's two judicial claims for refund.

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[29] *Rollo* (G.R. No. 201132), Vol. I, pp. 22-23.

[30] 646 Phil. 710 (2010).

[31] *Rollo* (G.R. Nos. 201225-26), Vol. I, p. 111.

The Court's Ruling

The petitions are bereft of merit.

In order for the CTA to acquire jurisdiction over a judicial claim for refund or tax credit arising from unutilized input VAT, the said claim must first comply with the mandatory 120+30-day waiting period. Any judicial claim for refund or tax credit filed in contravention of said period is rendered premature, depriving the CTA of jurisdiction to act on it.[32]

Pursuant to Section 112, Subsections (A) and (C) of the National Internal Revenue Code (NIRC) of 1997,[33] the procedure to be followed in claiming a refund or tax credit of unutilized input VAT are as follows:

Sec. 112. *Refunds or Tax Credits of Input Tax.—*

(A) Zero-rated or Effectively Zero-rated Sales. - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. Provided, finally, that for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

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[32] *Supra* note 27.

[33] As amended by R.A. No. 9337.

(C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days** from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) hereof.

In case of **full or partial denial of the claim** for tax refund or tax credit, or the **failure on the part of the Commissioner to act on the application** within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied)

It is clear from the above-quoted provisions that any taxpayer seeking a refund or tax credit arising from unutilized input VAT from zero-rated or effectively zero-rated sales should first file an initial administrative claim with the BIR. This claim for refund or tax credit must be filed within two years after the close of the taxable quarter when the sales were made.

The CIR is then given a period of 120-days from the submission of complete documents in support of the application to either grant or deny the claim. If the claim is denied by the CIR or the latter has not acted on it within the 120-day period, the taxpayer-claimant is then given a period of 30 days to file a judicial claim *via* petition for review with the CTA.

As such, the law provides for two scenarios before a judicial claim for refund may be filed with the CTA: (1) the full or partial denial of the claim within the 120-day period, or (2) the lapse of the 120-day period without the CIR having acted on the claim. It is only from the happening of either one may a taxpayer-claimant file its judicial claim for refund or tax credit for unutilized input VAT. Consequently, failure to observe the said period renders the judicial claim premature, divesting the CTA of jurisdiction to act on it.

This mandatory and jurisdictional nature of the 120-day waiting period has been reiterated time and again by the Court.[34] In the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*,[35] the Court *En Banc* categorically stated:

> Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles.[36]

Likewise, in *Harte-Hanks Philippines, Inc. vs. Commissioner of Internal Revenue*,[37] the Court illustrated the fatal effect of non-observance of the 120-day period. In said case, the Court dismissed the judicial claim for refund because it was filed a mere seven days after taxpayer-claimant HHPI filed its administrative claim, without waiting for it to be first resolved. The Court explained that the CTA must wait for the Commissioner's decision on the administrative claim or the lapse of the 120-day waiting period otherwise there would be nothing to review. It is the denial or inaction "deemed a denial" which the taxpayer-claimant takes to the CTA for review. Without any 'decision,' the CTA as a court of special jurisdiction acquires no jurisdiction over a taxpayer-claimant's judicial claim for refund.[38]

In the instant case, TSC filed its administrative claim for refund for taxable year 2001 on March 20, 2003, well within

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[34] See *Commissioner of Internal Revenue v. Deutsche Knowledge Services, Pte. Ltd.*, G.R. No. 211072, November 7, 2016, 807 SCRA 90, 98; *Commissioner of Internal Revenue v. Toledo Power Company*, 766 Phil. 20, 26 (2015); *Taganito Mining Corporation v. Commissioner of Internal Revenue*, 747 Phil. 469, 475-476 (2014).

[35] 703 Phil. 311 (2013).

[36] *Id.* at 354.

[37] G.R. No. 205721, September 14, 2016.

[38] *Id.*

the two-year period provided for by law. TSC then filed two separate judicial claims for refund: one on March 31, 2003 for the first quarter of 2001, and the other on July 23, 2003 for the second, third, and fourth quarters of the same year.[39]

Given the fact that TSC's administrative claim was filed on March 20, 2003, the CIR had 120 days or until July 18, 2003 to act on it. Thus, the first judicial claim was premature because TSC filed it a mere 11 days after filing its administrative claim.

On the other hand, the second judicial claim filed by TSC was filed on time because it was filed on July 23, 2003 or five days after the lapse of the 120-day period.[40] Accordingly, it is clear that the second judicial claim complied with the mandatory waiting period of 120 days and was filed within the prescriptive period of 30 days from the CIR's action or inaction. Therefore, the CTA division only acquired jurisdiction over TSC's second judicial claim for refund covering its second, third, and fourth quarters of taxable year 2001.

TSC submits that at the time of the filing of its claims for refund, prevailing jurisprudence espoused that the 120-day waiting period was merely permissive instead of mandatory.[41] Otherwise stated, TSC argues that as long as a taxpayer-claimant filed both its administrative and judicial claim within the two year prescriptive period under Section 112(A) of the NIRC then there would be no need to comply with the 120-day waiting period. This assertion has no basis.

In support of its position, TSC cites[42] the cases of *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*,[43] *San Roque Power Corporation vs. Commissioner of Internal Revenue*,[44] *AT&T Communications Services*

[39] *Rollo* (G.R. Nos. 201225-26), Vol. I, p. 139.

[40] *Id.*

[41] *Rollo* (G.R. Nos. 201225-26), Vol. I, pp. 116-127.

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

[43] 550 Phil. 751 (2007).

[44] 620 Phil. 554 (2009).

Philippines, Inc. vs. Commissioner of Internal Revenue,[45] and *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*.[46] TSC insists that in said cases, because the Court allowed the filing of the judicial claim even before the CIR could act on the administrative claim, then the Court implicitly ruled that the 120-day period is not mandatory. However, a more thorough study of the cases reveals that they are inapplicable to this controversy as they involve different issues.

In *Intel Technology Philippines*,[47] the Court resolved the issue of whether entities engaged in business are required to indicate in their receipts or invoices the authority from the BIR to print the same. Nowhere in the case did the Court rule that the 120-day period may be dispensed with as long as the administrative and judicial claims are filed within the two-year prescriptive period.

In *San Roque Power Corporation*,[48] the main issue revolved around the coverage of the terms, "zero-rated or effectively zero-rated sales." The Court discussed that the NIRC does not limit the definition of "sale" to commercial transactions in the normal course of business, but extends the term to transactions which are also "deemed" sale under Section 106(B) of the NIRC. Again, nowhere in said case was the 120-day period even remotely mentioned or ruled upon.

Finally, in *AT&T Communications Services Philippines, Inc*.[49] and *Southern Philippines Power Corporation*,[50] the issues resolved by the Court dealt with the substantiation requirements in relation to a claim for tax refund or credit.

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[45] 640 Phil. 613 (2010).

[46] 675 Phil. 732 (2011).

[47] *Supra* note 43, at 788.

[48] *Supra* note 44, at 578.

[49] *Supra* note 45, at 615.

[50] *Supra* note 46, at 739.

Likewise, the Court never even touched upon the nature of the 120-day waiting period in said case.

Given the foregoing, it is apparent that none of these cases constitute binding precedent as to the nature of the 120-day period. As such, TSC cannot now claim that at the time they filed their judicial claims, they relied in good faith on the then-prevailing interpretation as to the nature of the 120-day period.

Nevertheless, TSC insists that assuming arguendo that the 120-day period was indeed mandatory and jurisdictional, the issue of its non-compliance with said period, as a ground to deny its claim, was already waived since the CIR did not raise it in the proceedings before the CTA Division. It claims that non-compliance with the 120-day period prior to the filing of a judicial claim with the CTA merely results in a lack of cause of action, a ground which may be waived for failure to timely invoke the same.[51]

However, it is apparent from the records that the issue of TSC's non-compliance with the 120-day waiting period has been raised by the CIR throughout the pendency of the entire case. In fact, the records reveal that the CIR raised it at the earliest possible opportunity, when it filed its motion for partial reconsideration with the CTA Division dated July 3, 2009.[52]

In any case, even if the CIR failed to raise the issue of TSC's non-compliance with the 120-day waiting period at the first instance, such failure would not operate to vest the CTA with jurisdiction over TSC's judicial claims for refund. The Court has already settled that a judicial claim for refund which does not comply with the 120-day mandatory waiting period renders the same void.[53] As such, no right can be claimed or acquired from it, notwithstanding the failure of a party to raise

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[51] *Rollo* (G.R. Nos. 201225-26), Vol. I, pp. 112-115.

[52] *Rollo* (G.R. No. 201132), Vol. I, p. 60.

[53] *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*, 726 Phil. 266, 282 (2014).

it as a ground for dismissal. In *San Roque*,[54] the Court expounded on such point, *to wit*:

> San Roque's failure to comply with the 120-day mandatory period renders its petition for review with the CTA void. Article 5 of the Civil Code provides, "Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." San Roque's void petition for review cannot be legitimized by the CTA or this Court because Article 5 of the Civil Code states that such void petition cannot be legitimized "except when the law itself authorizes [its] validity." There is no law authorizing the petition's validity.
>
> It is hornbook doctrine that **a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act**. **A right cannot spring in favor of a person from his own void or illegal act.** This doctrine is repeated in Article 2254 of the Civil Code, which states, "No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others." For violating a mandatory provision of law in filing its petition with the CTA, San Roque cannot claim any right arising from such void petition. Thus, San Roque's petition with the CTA is a mere scrap of paper.[55] (Emphasis supplied)

Being a mere scrap of paper, TSC's judicial claim for refund filed on March 31, 2003 covering the first quarter of taxable year 2001 cannot be the source of any rights.

Thus, considering the foregoing, the Court agrees with the ruling of the CTA *En Banc* which held that between the March 31 and the July 23 petitions for review filed by TSC, the CTA Division only acquired jurisdiction over the latter.

Seeing as the CTA validly acquired jurisdiction over the July 23 petition for review covering the second, third, and fourth quarters of taxable year 2001, we give full accord to its factual findings with respect to the amount of duly substantiated excess input VAT for said periods.

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[54] *Supra* note 35.

[55] *Id*. at 356.

The CTA *En Banc*, based on their appreciation of the evidence presented to them, unequivocally ruled that TSC has sufficiently proven its entitlement to the refund or the issuance of a tax credit certificate in its favor for unutilized input VAT in the amount of ₱123,110,001.68.[56]

It is well settled that factual findings of the CTA when supported by substantial evidence, will not be disturbed on appeal. Due to the nature of its functions, the tax court dedicates itself to the study and consideration of tax problems and necessarily develops expertise thereon. Unless there has been an abuse of discretion on its part, the Court accords the highest respect to the factual findings of the CTA.[57]

It must be emphasized that generally, it is not the province of an appeal by petition for review on *certiorari* to determine factual matters. Although there are exceptions[58] to this general

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[56] *Rollo* (G.R. Nos. 201225-26), Vol. I, pp. 49-58.

[57] *Commissioner of Internal Revenue v. San Miguel Corporation*, G.R. No. 205045 and G.R. No. 205723, January 25, 2017, 815 SCRA 563, 617.

[58] See *Pascual v. Burgos*, G.R. No. 171722, January 11, 2016, 778 SCRA 189, 207. Where the Court held that the following are known exceptions, *to wit*:

(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

rule, none of these exist in the instant case. With that being said, the issue of whether a claimant has actually presented the necessary documents that would prove its entitlement to a tax refund or tax credit, is indubitably a question of fact.[59]

As a final note, tax refunds or tax credits, just like tax exemptions, are strictly construed against the taxpayer-claimant. A claim for tax refund is a statutory privilege and the mere existence of unutilized input VAT does not entitle the taxpayer, as a matter of right, to it. As such, the rules and procedure in claiming a tax refund should be faithfully complied with. Non-compliance with the pertinent laws should render any judicial claim fatally defective.[60]

WHEREFORE, premises considered, the instant petitions are DENIED. The Consolidated Decision dated September 15, 2011 and the Resolution dated March 21, 2012 of the Court of Tax Appeals *En Banc* in CTA EB No. 649 and CTA EB No. 651 are hereby **AFFIRMED** *in toto*.

SO ORDERED.

Carpio,[*] *Acting C.J. (Chairperson)*, *Peralta, Perlas-Bernabe*, and *Caguioa, JJ.*, concur.

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(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.

[59] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, 655 Phil. 499, 508 (2011).

[60] *Supra* note 37.

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

THIRD DIVISION

[G.R. No. 201414. April 18, 2018]

PEDRO PEREZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NO STANDARD FORM OF BEHAVIOUR CAN BE ANTICIPATED OF A RAPE VICTIM FOLLOWING HER DEFILEMENT, PARTICULARLY A CHILD WHO COULD NOT BE EXPECTED TO FULLY COMPREHEND THE WAYS OF AN ADULT.— Petitioner advances the seeming impossibility of AAA's allegation of child abuse considering AAA's outfit that day, her inaction during and after the commission of the alleged act, and the presence of other persons in the house where it happened. x x x. In *People v. Lomaque*, the accused sexually abused the victim since she was eight (8) years old until she was 14 years old. The accused inserted either his penis or his finger in the victim's vagina in more than 10 instances. The victim also failed to cry for help. This Court held: Neither the failure of "AAA" to struggle nor at least offer resistance during the rape incidents would tarnish her credibility. "Physical resistance need not be established when intimidation is brought to bear on the victim and the latter submits herself out of fear. As has been held, the failure to shout or offer tenuous resistance does not make voluntary the victim's submission to the criminal acts of the accused." Rape is subjective and not everyone responds in the same way to an attack by a sexual fiend. Although an older person may have shouted for help under similar circumstances, a young victim such as "AAA" is easily overcome by fear and may not be able to cry for help. We have consistently ruled that "no standard form of behaviour can be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult. People react differently to emotional stress and rape victims are no different from them.

2. CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND

DISCRIMINATION ACT (REPUBLIC ACT NO. 7610); SEXUAL ABUSE; LUST IS NO RESPECTER OF TIME AND PLACE; THUS, RAPE CAN BE COMMITTED EVEN IN PLACES WHERE PEOPLE CONGREGATE, IN PARKS, ALONG THE ROADSIDE, WITHIN SCHOOL PREMISES AND EVEN INSIDE A HOUSE WHERE THERE ARE OTHER OCCUPANTS OR WHERE OTHER MEMBERS OF THE FAMILY ARE ALSO SLEEPING.— It is also not impossible for petitioner to commit the crime even if there were other people nearby. In *Barcela*, the accused was able to insert his finger inside the vagina of his 14-year-old stepdaughter while the victim's mother and her other sister were sleeping in the same room. In *People v. Divinagracia, Sr.*, the accused inserted his finger in the vagina of his eight (8)-year-old daughter and raped her afterwards while his nine (9)-year-old daughter was lying beside her. In *People v. Gaduyon*, the accused inserted his finger into the vagina of his 12-year-old daughter who was then sleeping on the upper portion of a double-deck bed while his other daughter was on the lower portion. This Court cannot emphasize enough that "lust is no respecter of time and place." Thus, "rape can be committed even in places where people congregate, in parks, along the roadside, within school premises and even inside a house where there are other occupants or where other members of the family are also sleeping."

3. **REMEDIAL LAW; EVIDENCE; DEFENSES OF DENIAL AND ALIBI; IF UNSUBSTANTIATED, THE DEFENSES OF DENIAL AND ALIBI CANNOT PREVAIL OVER THE RAPE VICTIM'S POSITIVE IDENTIFICATION OF THE ACCUSED AS HER ASSAILANT.—** [T]he victim in this case was able to positively identify her assailant. She made a clear and categorical statement that petitioner was the person who committed the crime against her. Aside from petitioner's denial, he failed to present his aunt as a witness or other documentary evidence to corroborate his alibi that he went to a school on the day of the incident. In light of AAA's positive declaration, petitioner's unsubstantiated defense must fail following the doctrine that "positive identification prevails over denial and alibi."

4. **CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT (REPUBLIC ACT NO. 7610); SEXUAL ABUSE; THE AGGRESSIVE EXPRESSION OF INFATUATION**

FROM A 12-YEAR-OLD GIRL IS NEVER AN INVITATION FOR SEXUAL INDIGNITIES.— Even if it were true that AAA was infatuated with the accused, it did not justify the indignity done to her. At the tender age of 12, adolescents will normally be misled by their hormones and mistake regard or adoration for love. The aggressive expression of infatuation from a 12-year-old girl is never an invitation for sexual indignities. Certainly, it does not deserve the accused's mashing of her breasts or the insertion of his finger into her vagina. Consistent with our pronouncement in *Amarela*, AAA was no *Maria Clara*. Not being the fictitious and generalized demure girl, it does not make her testimony less credible especially when supported by the other pieces of evidence presented in this case.

5. **ID.; ID.; SEXUAL ABUSE; ELEMENTS.—** Under [Article III], Section 5(b) [of Republic Act. No. 7610], the elements of sexual abuse are: (1) The accused commits the act of sexual intercourse or lascivious conduct[;] (2) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse[; and] (3) The child, whether male or female, is below 18 years of age.

6. **ID.; ID.; ID.; CHILDREN WHO ARE COERCED IN LASCIVIOUS CONDUCT ARE DEEMED TO BE CHILDREN EXPLOITED IN PROSTITUTION AND OTHER SEXUAL ABUSE; INSERTING A FINGER INTO THE VAGINA OF A MINOR, WITH THE USE OF THREAT AND COERCION, AMOUNTS TO SEXUAL ABUSE.—** The presence of the first and third elements is already established. Petitioner admits in the pre-trial that AAA was only 12 years old at the commission of the crime. He also concedes that if ever he is liable, he is liable only for acts of lasciviousness. However, petitioner claims that the second element is wanting. For petitioner, the prosecution must show that AAA was "exploited in prostitution or subjected to other sexual abuse." A thorough review of the records reveals that the second element is present in this case. x x x. In *Ricalde v. People*, this Court clarified: The first paragraph of Article III, Section 5 of Republic Act No. 7610 clearly provides that "children ... who ... due to the coercion ... of any adult ... indulge in sexual intercourse ... are deemed to be children exploited in prostitution and other sexual abuse." The label "children exploited in ... other sexual abuse" inheres in a child who has been the subject of coercion and sexual intercourse. Thus, paragraph (b) refers to

a specification only as to who is liable and the penalty to be imposed. The person who engages in sexual intercourse with a child already coerced is liable. By analogy with the ruling in *Ricalde*, children who are likewise coerced in lascivious conduct are "deemed to be children exploited in prostitution and other sexual abuse." When petitioner inserted his finger into the vagina of AAA, a minor, with the use of threat and coercion, he is already liable for sexual abuse.

7. ID.; ID.; ACCUSED-APPELLANT FOUND GUILTY FOR THE CHARGE OF CHILD ABUSE UNDER SECTION 5 (b) OF R.A. NO. 7610; PROPER IMPOSABLE PENALTY.— This Court affirms the finding of guilt beyond reasonable doubt of petitioner for the charge of child abuse under Section 5(b) of Republic Act No. 7610. However, this Court modifies the penalty imposed by the trial court, as affirmed by the Court of Appeals. Under Section 5(b), "the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period." *Reclusion temporal* in its medium period is fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months. In *People v. Pusing*, this Court imposed the indeterminate penalty of fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal* as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* as maximum for the criminal case of child abuse.

8. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— This Court also awarded ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages. Additionally, "interest at the legal rate of 6% per annum [was imposed on all damages awarded] from the date of finality of [the] judgment until fully paid."

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

Inserting a finger in a 12-year-old girl's vagina and mashing her breasts are not only acts of lasciviousness but also amount to child abuse punished under Republic Act No. 7610.

This is a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure, praying that the September 30, 2011 Decision[2] and April 10, 2012 Resolution[3] of the Court of Appeals in CA-G.R. CR No. 33290 be reversed and set aside.[4] The Court of Appeals affirmed the March 8, 2010 Judgment[5] of the Regional Trial Court, which found Pedro Perez (Perez) guilty beyond reasonable doubt of violation of Section 5(b) of Republic Act No. 7610.

On March 29, 1999, an Information was filed against Perez, charging him with violation of Section 5(b) of Republic Act No. 7610 or the Special Protection of Children against Child Abuse, Exploitation and Discrimination Act:[6]

[T]hat on or about the 7th day of November 1998, in Quezon City, Philippines, the said accused, with lewd design, did, then and there willfully, unlawfully, feloniously commit an act of sexual abuse upon

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[1] *Rollo*, pp. 9-29.

[2] *Id*. at 85-95. The Decision was penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Isaias P. Dicdican and Rodil V. Zalameda of the Special Sixteenth Division, Court of Appeals, Manila.

[3] *Id*. at 103-104. The Resolution was penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Isaias P. Dicdican and Rodil V. Zalameda of the Former Special Sixteenth Division, Court of Appeals, Manila.

[4] *Id*. at 25.

[5] *Id*. at 48-58. The Judgment, docketed as Criminal Case No. Q-99-84282, was penned by Presiding Judge Roslyn M. Rabara-Tria of Branch 94, Regional Trial Court, Quezon City.

[6] *Id.* at 48 and 85-86.

the person of [AAA], a minor, 12 years of age, by then and there inserting his finger [into] her private organ while mashing her breast against her will and without her consent which act debases, degrades or demeans the intrinsic worth and dignity of complainant as a human being, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.[7]

Perez pleaded not guilty during arraignment.[8] Pre-trial was held, wherein the prosecution and the defense stipulated the following:

1. That at the time of the commission of the crime, the minor, the victim in this case was only 12 years of age; and
2. That the accused was residing at that time at No. 4, Pangasinan Street, Luzviminda Street, Brgy. Batasan Hills, Quezon City.[9]

Thereafter, trial on the merits ensued.[10] The prosecution presented AAA,[11] SPO4 Mila Billones (SPO4 Billones), and Dr. Winston Tan (Dr. Tan) as its witnesses.[12]

AAA testified that she met Perez for the first time on November 6, 1998 when she attended her cousin BBB's birthday party. The next day, November 7, 1998, she saw Perez again

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[7] *Id.* at 48.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] The fictitious initials "AAA" represent the victim-survivor's real name. In *People v. Cabalquinto* (533 Phil. 703 (2006) [Per *J.* Tinga, *En Banc*]), this Court discussed the need to withhold the victim's real name and other information that would compromise the victim's identity, applying the confidentiality provisions of: (1) Republic Act No. 7610 (*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*) and its implementing rules; (2) Republic Act No. 9262 (*Anti-Violence Against Women and their Children Act of 2004*) and its implementing rules; and (3) this Court's October 19, 2004 resolution in A.M. No. 04-10-11-SC (*Rule on Violence Against Women and their Children*).

[12] *Rollo*, p. 49 and pp. 87-88.

when she visited her friend CCC at her house. Aside from her, Perez, and CCC, their other companions inside the house were BBB, DDD, and EEE.[13]

AAA recalled that she was wearing a sleeveless blouse, a skirt, and cycling shorts under her skirt that day.[14]

AAA narrated that she "went to the kitchen to drink water."[15] She saw Perez following her.[16] After drinking, Perez "kissed her on the nape and simultaneously told her to keep silent."[17] Then, Perez slid his finger in her vagina while mashing her breasts. AAA stated that it was painful when Perez inserted his finger. She attempted to remove his hands but he forced himself. Because she was very afraid, she failed to fight back. Perez succeeded in his sexual advances, which lasted for around ten seconds. He then told her not to tell anybody about what happened.[18]

AAA later narrated what happened to her other cousin FFF, who disclosed the incident to AAA's parents. Her parents reported the incident to the barangay officials, who eventually referred the matter to the police for investigation.[19]

SPO4 Billones testified that she was the women's desk officer who interviewed AAA. At first, AAA hesitated to answer the questions but eventually disclosed what happened. SPO4 Billones observed that AAA almost cried when she narrated that Perez inserted his finger into her vagina. After the interview, she prepared AAA's statement and thereafter filed the case. She

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[13] *Id*. at 49.

[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id.* at 49-50 and 87.

[19] *Id*. at 50 and 87.

also recommended AAA to undergo further medical examination.[20]

Dr. Tan testified that he was a Medico-Legal Officer of the Philippine National Police Crime Laboratory in Camp Crame, Quezon City.[21] He examined AAA and stated in his Medico Legal Report that there were "signs of physical abuse, particularly, deep healed laceration at three (3) o'clock on the hymen of [AAA] and ecchymosis in the right mammary region."[22] He noted that the laceration was consistent with AAA's allegation of sexual abuse and that the ecchymosis or bruising matched with the date of the alleged incident.[23] However, he also testified that the "injuries can likewise be inflicted in a consensual relationship."[24]

Meanwhile, he defense presented Perez; his sister, Alma Perez (Alma); and CCC as its witnesses.[25]

At the time of his testimony on May 23, 2005, Perez mentioned that he was 26 years old. Thus, he was about 19 years old in 1998 when the offense was committed.[26]

Perez denied abusing AAA. He stated that he first met AAA on October 17, 1998. AAA purportedly informed him that she was already 16 years old. He testified that he was not romantically involved with AAA. However, AAA supposedly gave him a love letter through Alma but he did not reciprocate her affection. He admitted that he met AAA again at BBB's birthday on November 6, 1998.[27]

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[20] *Id*. at 50 and 88.

[21] *Id.* at 50.

[22] *Id*.

[23] *Id*. at 50 and 87.

[24] *Id*. at 50.

[25] *Id*. at 50-51 and 86-87.

[26] *Id*. at 54.

[27] *Id.* at 50-51 and 86.

Perez narrated that on the day of the alleged incident, he and his aunt, Nena Rodrigo, went to a school in New Manila. He left her aunt around 6:00p.m. and went straight home.[28]

Perez added that on November 11, 1998, AAA filed a complaint against him for slander before the barangay. They were able to settle the matter, and their agreement was put in writing.[29]

Alma testified that she noticed that AAA liked her brother Perez. She was also surprised when AAA gave her a love letter for her brother. She stated that AAA went to their place frequently and that she talked to her at BBB's party.[30]

CCC testified that she, AAA, and BBB were together on the day of the alleged incident. However, she swore that she did not see Perez enter her house. She also did not see anything unusual with AAA that day. She claimed that they just slept for five (5) hours the whole time they were together.[31]

On March 8, 2010, the Regional Trial Court rendered a Judgment,[32] finding Perez guilty beyond reasonable doubt of violation of Section 5(b) of Republic Act No. 7610, in relation to Article 336 of the Revised Penal Code.[33] It held that the prosecution was able to establish the presence of all elements of violation of Section 5(b). Perez likewise failed to provide proof of his alibi.[34] Lastly, it noted that "the location as well as the presence of other persons [are] not a barometer that a rapist will be deterred in his lustful intentions to commit the crime of rape if and when his urgings call for it."[35]

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[28] *Id.*

[29] *Id.* at 51.

[30] *Id.*

[31] *Id.* at 86-87.

[32] *Id.* at 48-58.

[33] *Id.* at 57.

[34] *Id.* at 51-57.

[35] *Id.* at 56.

The dispositive portion of the trial court Judgment provided:

> **WHEREFORE**, judgment is hereby rendered finding accused Pedro Perez **GUILTY** beyond reasonable doubt of Violation of R.A. 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act in relation to Article 336 of the Revised Penal Code, as amended, and is sentenced to suffer an indeterminate penalty of **EIGHT (8) YEARS** and **ONE (1) DAY OF** *PRISION MAYOR* **IN ITS MEDIUM PERIOD AS MINIMUM TO FOURTEEN (14) YEARS** and **EIGHT (8) MONTHS OF** *RECLUSION TEMPORAL* **IN ITS MINIMUM PERIOD AS MAXIMUM**.
>
> Accused Pedro Perez is likewise ordered to pay FIFTY THOUSAND PESOS (₱50,000.00) as moral damages and TWENTY[-]FIVE THOUSAND PESOS (₱25,000.00) as exemplary damages plus costs of suit.
>
> SO ORDERED.[36] (Emphasis in the original)

Perez filed an appeal[37] before the Court of Appeals.[38]

On September 30, 2011, the Court of Appeals promulgated a Decision,[39] dismissing the appeal and affirming the trial court's Judgment.[40] The dispositive portion of this Decision provided:

> **WHEREFORE**, premises considered, the instant appeal is hereby **DISMISSED**. Accordingly, the assailed Judgment of the Regional Trial Court of Quezon City (RTC), Branch 94, dated March 8, 2010 is **AFFIRMED** *in toto*.
>
> **SO ORDERED.**[41] (Emphasis in the original)

Perez moved for reconsideration,[42] which was denied by the Court of Appeals in its April 10, 2012 Resolution.[43]

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[36] *Id.* at 57.

[37] *Id.* at 30-47.

[38] *Id.* at 85.

[39] *Id.* at 85-95.

[40] *Id.* at 94.

[41] *Id.*

[42] *Id.* at 96-99.

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

On May 30, 2012, Perez filed a Petition for Review[44] before this Court. Respondent People of the Philippines, through the Office of the Solicitor General, filed its Comment[45] on September 6, 2013. Meanwhile, petitioner filed a Manifestation and Motion (In Lieu of Reply)[46] on September 30, 2013.

On April 7, 2014, this Court issued a Resolution[47] giving due course to the petition. The parties subsequently submitted their respective Memoranda.[48]

In his pleadings, petitioner asserts that the situation created by AAA is improbable and not in line with common human experience, given her tight-fitting clothes at the time of the incident. Although not impenetrable, her attire was restricting and the time needed to consummate the alleged act was enough for her to ask for help from her companions. AAA likewise fails to mention how petitioner subdued her in spite of her resistance. Petitioner stresses that the alleged crime occurred in close proximity of other persons. It is then impossible that nobody noticed what was happening.[49]

Petitioner points out that the medico-legal officer testified that there was a possibility that the injuries sustained by AAA were inflicted with her consent in a sexual relationship.[50] In addition to his denial of any romantic relationship with AAA,[51] he claims that "the medico-legal report did not conclusively prove that [he] was responsible for [AAA's] vaginal laceration."[52]

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

[45] *Id*. at 127-153.

[46] *Id*. at 154-157.

[47] *Id*. at 161.

[48] *Id*. at 166-192, People of the Philippines' Memorandum filed on July 7, 2014, and 198-213, Pedro Perez's Memorandum filed on August 4, 2014.

[49] *Id*. at 203-205.

[50] *Id*. at 206.

[51] *Id*. at 86.

[52] *Id*. at 206.

Finally, petitioner contends that assuming a crime was committed, it should only be acts of lasciviousness under Article 336 of the Revised Penal Code since the prosecution failed to prove beyond reasonable doubt the presence of the elements of child abuse.[53] Petitioner explains:

> [B]efore an accused may be convicted of child abuse through lascivious conduct involving a minor below twelve (12) years of age, the requisites for acts of lasciviousness under Article 336 of the Revised Penal Code must be met **IN ADDITION** to the requisites for sexual abuse under Section 5 of R.A. No. 7610. The elements of the offense aforementioned, are as follows:
>
> "1. The accused commits the acts of sexual intercourse or *lascivious conduct*.
>
> 2. **The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.**
>
> 3. The child, whether male or female, is below 18 years of age."[54] (Emphasis in the original, citations omitted)

Petitioner claims that the prosecution failed to allege the second element either in the Complaint or in the Information. According to petitioner, the prosecution must also prove that AAA was "exploited in prostitution or subjected to other sexual abuse" aside from being subjected to acts of lasciviousness since these are separate and distinct elements.[55]

On the other hand, respondent avers that petitioner tried to challenge the credibility of the prosecution's witnesses when he raised the matter of the attire worn by AAA and when he questioned her reaction during the incident. However, respondent pointed out that the trial court already found its witnesses credible. Hence, the trial court's findings should be given great weight considering that it did not commit any misappreciation of facts.[56]

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[53] *Id*. at 206-210.

[54] *Id*. at 208-210.

[55] *Id*.

[56] *Id*. at 171-180.

Respondent maintains that AAA's garment, no matter how tight-fitting as petitioner claims, is not unpiercable and petitioner could have easily slid his hand inside it. AAA's inaction is also understandable since she was only 12 years old when the incident happened and fear already overcame her when petitioner threatened her not to speak or shout.[57]

In addition, the medico-legal report verifies AAA's claim that she was sexually assaulted. This report and Dr. Tan's testimony corroborate AAA's allegation that it was petitioner who committed the crime.[58]

Respondent also counters that petitioner failed to timely question the nature of his indictment since he only raised it for the first time on appeal. Moreover, the allegations contained in the Information sufficiently support a conviction for Child Abuse under Section 5(b) of Republic Act No. 7610 in relation to Article 336 of the Revised Penal Code.[59]

There are two (2) issues for this Court's resolution:

First, whether the evidence sufficiently establishes AAA's narrative; and

Second, whether all the elements charged in the Information are sufficiently proven beyond reasonable doubt.

I

Petitioner advances the seeming impossibility of AAA's allegation of child abuse considering AAA's outfit that day, her inaction during and after the commission of the alleged act, and the presence of other persons in the house where it happened.

Petitioner's contention has no merit.

This Court cannot accept this reasoning of petitioner. As correctly found by the Court of Appeals:

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[57] *Id*.

[58] *Id*. at 180-181.

[59] *Id*. at 181-188.

This type of reasoning borders on the preposterous in that the accused literally made it sound like the victim's cycling shorts were made of impenetrable steel like a chastity belt. That, or he is trying to portray himself as a hapless human being with wispy cotton for arms such that the act of lifting a child's blouse or adjusting her undergarment's waistband (to accommodate his hand) pose a serious physical challenge that a man of his age and built cannot hope to accomplish. This, at all, does not run afoul with human experience as the accused so conveniently puts it. On the contrary, this particular act of indecency is easily attainable given the disparity in his strength and that of the child's, the unique access by which the accused succeeded in his dastardly act and, for good measure, the customary ascendancy that adults have over children.

As so clearly described by the victim, the manner by which the accused committed lasciviousness against her is not far removed from the [other victims of acts of lasciviousness] before her. She stated that the accused sneaked in after her when she walked toward the kitchen to fetch herself a glass of water. There, hidden from everyone else (the living room and the kitchen [were] separated by a room), the accused took advantage of the situation by inserting his fingers from behind her and fumbled her breast that visibly resulted in a bruise. Young as she is, she struggled as best as she could to remove herself from his grip but the accused warned her not to scream or shout for help. For a child of tenders (sic) age, such a stern warning from a fully grown man was enough to kill off whatever courage she might have had to scream for the others for assistance.[60]

In *Awas v. People*,[61] the 10-year-old victim likewise failed to shout for help when the accused touched her vagina.[62] This Court held that "[t]here is no standard behavior for a victim of

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[60] *Id*. at 89-90. There was no finding in the trial court or in the Court of Appeals as to the physical built of the accused in relation to that of the victim's physique.

[61] G.R. No. 203114, June 28, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/203114.pdf> [Per *J*. Bersamin, Third Division].

[62] *Id*. at 5.

a crime against chastity."[63] Moreover, "[b]ehavioral psychology teaches that people react to similar situations dissimilarly."[64]

In *People v. Lomaque*,[65] the accused sexually abused the victim since she was eight (8) years old until she was 14 years old.[66] The accused inserted either his penis or his finger in the victim's vagina in more than 10 instances.[67] The victim also failed to cry for help.[68] This Court held:

> Neither the failure of "AAA" to struggle nor at least offer resistance during the rape incidents would tarnish her credibility. "Physical resistance need not be established when intimidation is brought to bear on the victim and the latter submits herself out of fear. As has been held, the failure to shout or offer tenuous resistance does not make voluntary the victim's submission to the criminal acts of the accused." Rape is subjective and not everyone responds in the same way to an attack by a sexual fiend. Although an older person may have shouted for help under similar circumstances, a young victim such as "AAA" is easily overcome by fear and may not be able to cry for help.
>
> We have consistently ruled that "no standard form of behavior can be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult. People react differently to emotional stress and rape victims are no different from them."[69] (Citations omitted)

People v. Barcela[70] further elucidated the reaction of a minor when something extremely and unexpectedly dreadful happens to him or her:

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[63] *Id.*

[64] *Id.*

[65] 710 Phil. 338 (2013) [Per *J.* Del Castillo, Second Division].

[66] *Id.* at 344-346.

[67] *Id.*

[68] *Id.* at 351.

[69] *Id.* at 352.

[70] 734 Phil. 332 (2014) [Per *J.* Mendoza, Third Division].

Behavioral psychology teaches us that, even among adults, people react to similar situations differently, and there is no standard form of human behavioral response when one is confronted with a startling or frightful experience. Let it be underscored that these cases involve victims of tender years, and with their simple, unsophisticated minds, they must not have fully understood and realized at first the repercussions of the contemptible nature of the acts committed against them. This Court has repeatedly stated that no standard form of behavior could be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult.[71] (Citations omitted)

It is also not impossible for petitioner to commit the crime even if there were other people nearby. In *Barcela*, the accused was able to insert his finger inside the vagina of his 14-year-old stepdaughter while the victim's mother and her other sister were sleeping in the same room.[72] In *People v. Divinagracia, Sr.*,[73] the accused inserted his finger in the vagina of his eight (8)-year-old daughter and raped her afterwards while his nine (9)-year-old daughter was lying beside her.[74] In *People v. Gaduyon*,[75] the accused inserted his finger into the vagina of his 12-year-old daughter who was then sleeping on the upper portion of a double-deck bed while his other daughter was on the lower portion.[76]

This Court cannot emphasize enough that "lust is no respecter of time and place."[77] Thus, "rape can be committed even in

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[71] *Id.* at 344.

[72] *Id.* at 338.

[73] G.R. No. 207765, July 26, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/207765.pdf> [Per *J.* Leonen, Second Division].

[74] *Id.* at 3.

[75] 720 Phil. 750 (2013) [Per *J.* Del Castillo, Second Division].

[76] *Id.* at 758.

[77] *People v. Cesista*, 435 Phil. 250, 267 (2002) [Per *J.* Kapunan, *En Banc*]. See also *People v. Evina*, 453 Phil. 25, 41 (2003) [Per *J.* Callejo, Sr., Second Division], *People v. Calamlam*, 451 Phil. 283, 296 (2003) [Per

places where people congregate, in parks, along the roadside, within school premises and even inside a house where there are other occupants or where other members of the family are also sleeping."[78]

Furthermore, the victim in this case was able to positively identify her assailant. She made a clear and categorical statement that petitioner was the person who committed the crime against her. Aside from petitioner's denial, he failed to present his aunt as a witness or other documentary evidence to corroborate his alibi that he went to a school on the day of the incident. In light of AAA's positive declaration, petitioner's unsubstantiated defense must fail following the doctrine that "positive identification prevails over denial and alibi."[79]

In *People v. Amarela*,[80] this Court had occasion to correct a generalization of all women, which amounted to a stereotype, thus:

> More often than not, where the alleged victim survives to tell her story of sexual depredation, rape cases are solely decided based on the credibility of the testimony of the private complainant. In doing so, we have hinged on the impression that *no young Filipina of decent repute would publicly admit that she has been sexually abused, unless that is the truth, for it is her natural instinct to protect her honor*. However, this misconception, particularly in this day and age, not only puts the accused at an unfair disadvantage, but creates a travesty of justice.

J. Carpio Morales, Third Division], *People v. Besmonte*, 445 Phil. 555, 564 (2003) [Per *J.* Quisumbing, Second Division], and *People v. Lomaque*, 710 Phil. 338, 353 (2013) [Per *J.* Del Castillo, Second Division].

[78] *People v. Evina*, 453 Phil. 25, 41 (2003) [Per *J.* Callejo, Sr., Second Division].

[79] *People v. Lubong*, 388 Phil. 474, 491 (2000) [Per *J.* Gonzaga-Reyes, Third Division].

[80] G.R. Nos. 225642-43, January 17, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/225642-43.pdf> [Per *J.* Martires, Third Division].

The "women's honor" doctrine surfaced in our jurisprudence sometime in 1960. In the case of *People v. Taño*, the Court affirmed the conviction of three (3) armed robbers who took turns raping a person named Herminigilda Domingo. The Court, speaking through Justice Alejo Labrador, said:

> It is a well-known fact that women, especially Filipinos, would not admit that they have been abused unless that abuse had actually happened. This is due to their natural instinct to protect their honor. We cannot believe that the offended party would have positively stated that intercourse took place unless it did actually take place.

This opinion borders on the fallacy of *non sequitor*. And while the factual setting back then would have been appropriate to say it is natural for a woman to be reluctant in disclosing a sexual assault[,] today, we simply cannot be stuck to the *Maria Clara* stereotype of a demure and reserved Filipino woman. We, should stay away from such mindset and accept the realities of a woman's dynamic role in society today; she who has over the years transformed into a strong and confidently intelligent and beautiful person, willing to fight for her rights.[81] (Emphasis in the original, citations omitted)

This Court then found the alleged victim's statement as less credible than the inferences from the other established evidence and proceeded to acquit the accused.

This Court in *Amarela*, however, did not go as far as denying the existence of patriarchal dominance in many social relationships. Courts must continue to be sensitive to the power relations that come clothed in gender roles. In many instances, it does take courage for girls or women to come forward and testify against the boys or men in their lives who, perhaps due to cultural roles, dominate them. Courts must continue to acknowledge that the dastardly illicit and lustful acts of men are often veiled in either the power of coercive threat or the inconvenience inherent in patriarchy as a culture.

Even if it were true that AAA was infatuated with the accused, it did not justify the indignity done to her. At the tender age of

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[81] *Id*. at 7.

12, adolescents will normally be misled by their hormones and mistake regard or adoration for love. The aggressive expression of infatuation from a 12-year-old girl is never an invitation for sexual indignities. Certainly, it does not deserve the accused's mashing of her breasts or the insertion of his finger into her vagina.

Consistent with our pronouncement in *Amarela*, AAA was no *Maria Clara*. Not being the fictitious and generalized demure girl, it does not make her testimony less credible especially when supported by the other pieces of evidence presented in this case.

II

Petitioner asserts that even assuming that he is liable, he is only liable for acts of lasciviousness since the prosecution failed to prove all elements of child abuse under Section 5(b) of Republic Act No. 7610.

Petitioner is mistaken.

Article III, Section 5(b) of Republic Act No. 7610 provides:

ARTICLE III

CHILD PROSTITUTION AND OTHER SEXUAL ABUSE

Section 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

. . . . . .

(b) *Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended,

the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.] (Emphasis supplied)

Under Section 5(b), the elements of sexual abuse are:

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

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

(3) The child, whether male or female, is below 18 years of age.[82]

The presence of the first and third elements is already established. Petitioner admits in the pre-trial that AAA was only 12 years old at the commission of the crime. He also concedes that if ever he is liable, he is liable only for acts of lasciviousness. However, petitioner claims that the second element is wanting. For petitioner, the prosecution must show that AAA was "exploited in prostitution or subjected to other sexual abuse."

A thorough review of the records reveals that the second element is present in this case.

This Court in *People v. Villacampa*[83] explained:

[T]he second element is that the act is performed with a child exploited in prostitution or subjected to other sexual abuse. To meet this element, the child victim must either be exploited in prostitution or subjected to other sexual abuse. In *Quimvel v. People, the Court held that the fact that a child is under the coercion and influence*

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[82] *People v. Villacampa*, G.R. No. 216057, January 8, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/216057.pdf> [Per *J.* Carpio, Second Division]. See also *People v. Gaduyon*, 720 Phil. 750, 768-769 (2013) [Per *J.* Del Castillo, Second Division]; *People v. Fragante*, 657 Phil. 577, 596 (2011) [Per *J.* Carpio, Second Division]; *Awas v. People*, G.R. No. 203114, June 28, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/203114.pdf> 6 [Per *J.* Bersamin, Third Division].

[83] G.R. No. 216057, January 8, 2018 [Per *J.* Carpio, Second Division].

of an adult is sufficient to satisfy this second element and will classify the child victim as one subjected to other sexual abuse. The Court held:

> To the mind of the Court, the allegations are sufficient to classify the victim as one "*exploited in prostitution or subject to other sexual abuse*." This is anchored on the very definition of the phrase in Sec. 5 of RA 7610, which encompasses children who indulge in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) *under the coercion or influence of any adult*, syndicate or group.
>
> Correlatively, Sec. 5(a) of RA 7610 punishes acts pertaining to or connected with child prostitution wherein the child is abused primarily for profit. On the other hand, paragraph (b) punishes sexual intercourse or lascivious conduct committed on a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a *child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct*. Hence, the law punishes not only child prostitution but also other forms of sexual abuse against children....[84] (Emphasis supplied, citations omitted)

In *Ricalde v. People*,[85] this Court clarified:

> The first paragraph of Article III, Section 5 of Republic Act No. 7610 clearly provides that "children ... who ... due to the coercion ... of any adult ... indulge in sexual intercourse ... are deemed to be children exploited in prostitution and other sexual abuse." The label "children exploited in ... other sexual abuse" inheres in a child who has been the subject of coercion and sexual intercourse.
>
> Thus, paragraph (b) refers to a specification only as to who is liable and the penalty to be imposed. The person who engages in sexual intercourse with a child already coerced is liable.[86] (Underscoring in the original)

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[84] *Id.*

[85] 751 Phil. 793 (2015) [Per *J.* Leonen, Second Division].

[86] *Id.* at 813-814.

By analogy with the ruling in *Ricalde*, children who are likewise coerced in lascivious conduct are "deemed to be children exploited in prostitution and other sexual abuse." When petitioner inserted his finger into the vagina of AAA, a minor, with the use of threat and coercion, he is already liable for sexual abuse.

III

This Court affirms the finding of guilt beyond reasonable doubt of petitioner for the charge of child abuse under Section 5(b) of Republic Act No. 7610. However, this Court modifies the penalty imposed by the trial court, as affirmed by the Court of Appeals.

Under Section 5(b), "the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period." *Reclusion temporal* in its medium period is fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months.

In *People v. Pusing*,[87] this Court imposed the indeterminate penalty of fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal* as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* as maximum for the criminal case of child abuse.[88] This Court also awarded ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages.[89] Additionally, "interest at the legal rate of 6% per annum [was imposed on all damages awarded] from the date of finality of [the] judgment until fully paid."[90]

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[87] 789 Phil. 541 (2016) [Per *J.* Leonen, Second Division]. See also *People v. Gaduyon*, 720 Phil. 750, 780 (2013) [Per *J.* Del Castillo, Second Division], wherein this Court initially imposed the penalty of *reclusion temporal* for violation of Section 5 of Republic Act No. 7610 but was later increased to *reclusion perpetua* due to the aggravating circumstance of relationship.

[88] *People v. Pusing*, 789 Phil. 541, 563 (2016) [Per *J.* Leonen, Second Division].

[89] *Id.*

[90] *Id.* at 562.

WHEREFORE, this Court **ADOPTS** the findings of fact and conclusions of law of the Court of Appeals September 30, 2011 Decision in CA-G.R. CR No. 33290, with **MODIFICATION** as follows:

WHEREFORE, judgment is hereby rendered finding accused Pedro Perez **GUILTY** beyond reasonable doubt of violation of R.A. 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act in relation to Article 336 of the Revised Penal Code, as amended, and is sentenced to suffer an indeterminate penalty of ***FOURTEEN (14) YEARS, EIGHT (8) MONTHS, and ONE (1) DAY OF RECLUSION TEMPORAL AS MINIMUM TO SEVENTEEN (17) YEARS*** and ***FOUR (4) MONTHS OF RECLUSION TEMPORAL AS MAXIMUM***.

Accused Pedro Perez is likewise ordered to pay ***FIFTY THOUSAND PESOS (₱50,000.00) as civil indemnity, FIFTY THOUSAND PESOS (₱50,000.00) as moral damages,*** and ***THIRTY THOUSAND PESOS (₱30,000.00)*** as exemplary damages plus costs of suit.

All awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

SO ORDERED.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 202784. April 18, 2018]

JONNEL D. ESPALDON, *petitioner, vs.* **RICHARD E. BUBAN in his capacity as Graft Investigation and Prosecution Officer II, MEDWIN S. DIZON in his capacity as Director, PIAB-A, ALEU A. AMANTE in his capacity as Assistant Ombudsman, PAMO I, and CONCHITA CARPIO-MORALES in her capacity as OMBUDSMAN OF THE REPUBLIC of THE PHILIPPINES, PETER L. CALIMAG, Assistant Secretary, Revenue Affairs and Legal Affairs Group, Department of Finance, RENATO M. GARBO III, MA. LETICIA MALMALATEO, MARLON K. TAULI, FRAYN M. BANAWA, and JOHNNY CAGUIAT, all NBI Agents, National Bureau of Investigation, ROGELIO M. SABADO, and PRUDENCIO S. DAR, JR., Railway Police, Philippine National Railways, ANTONIO MARIANO ALMEDA, IRENEO C. QUIZON, ARIEL SARMIENTO, DOMINGO BEGUERAS, JOHN DOES/JANE DOES, NBI and/or PNR,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; REPUBLIC ACT NO. 6770; ADMINISTRATIVE COMPLAINTS; DISMISSAL BY THE OMBUDSMAN ON GROUNDS UNDER SECTION 20 IS APPLICABLE ONLY TO ADMINISTRATIVE COMPLAINTS.— Section 19 of R.A. No. 6770 enumerates the acts or omissions that could be the subject of *administrative complaints* x x x. Section 20 has been clarified by Administrative Order No. 17, amending Administrative Order No. 07. x x x Jurisprudence has so far settled that dismissal based on the grounds provided under Section 20 is not mandatory and is discretionary on the part of the evaluating Ombudsman or Deputy Ombudsman evaluating the *administrative complaint*.

Clearly, as the law, its implementing rules, and interpretative jurisprudence stand, the dismissal by the Ombudsman on grounds provided under Section 20 is applicable only to *administrative complaints*.

2. ID.; ID.; ID.; ID.; CRIMINAL COMPLAINTS; OUTRIGHT DISMISSAL OF A CRIMINAL COMPLAINT IS WARRANTED ONLY WHEN SUCH COMPLAINT IS PALPABLY DEVOID OF MERIT.— [T]he procedure in criminal cases requires that the Ombudsman evaluate the complaint and after evaluation, to make its recommendations in accordance with Section 2, Rule II of the Administrative Order No. 07 x x x. Thus, the only instance when an outright dismissal of a criminal complaint is warranted is when such complaint is palpably devoid of merit. Nothing in the assailed Orders would show that the Ombudsman found the complaint to have suffered from utter lack of merit. In fact, the assailed Orders are empty except for the citation of Section 20 as basis for outright dismissal. It is thus inaccurate and misleading for the Ombudsman to profess that the criminal complaint was dismissed only after the conduct of a preliminary investigation, when the complaint never reached that stage to begin with. Clearly, the Ombudsman committed grave abuse of discretion when it evaluated and consequently dismissed a criminal complaint based on grounds peculiar to administrative cases and in an unexplained deviation from its own rules of procedure.

3. ID.; ID.; ID.; THE OMBUDSMAN'S AUTHORITY TO PASS UPON CRIMINAL COMPLAINTS INVOLVING PUBLIC OFFICIALS AND EMPLOYEES MAY BE SUBJECT TO JUDICIAL SCRUTINY WHEN IT ACTED WITH GRAVE ABUSE OF DISCRETION WHICH WARRANTS THE ISSUANCE OF THE PREROGATIVE WRIT OF *CERTIORARI*.— While the Ombudsman is clothed with ample authority to pass upon criminal complaints involving public officials and employees, the Ombudsman's act is not immune from judicial scrutiny in the Court's discharge of its own constitutional power and duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government. Invariably, grave abuse of discretion connotes a capricious and whimsical exercise of judgment as amounting to lack of jurisdiction. Necessarily then, to justify the issuance of the

prerogative writ of *certiorari* to correct grave abuse of discretion, the Ombudsman's exercise of power must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. The Ombudsman's failure to abide by its duty to evaluate a criminal complaint in accordance with Section 2, Rule II of its own procedural rules constitutes grave abuse of discretion.

APPEARANCES OF COUNSEL

Formilleza and Santiago Law Firm for petitioner.
The Solicitor General for respondents.
Flaminiano Arroyo & Dueñas for A. M. Almeda, *et al*.

D E C I S I O N

TIJAM, *J*.:

Through this petition for *certiorari* and *mandamus*[1] under Rule 65 of the Rules of Court, petitioner Jonnel D. Espaldon (Espaldon) seeks to nullify the Order[2] dated January 16, 2012 and Joint Order[3] dated March 12, 2012 of respondent Office of the Ombudsman (Ombudsman) in the criminal complaint docketed as OMB-C-C-11-0034-A, and thereafter, to compel the Ombudsman to take cognizance of Espaldon's complaint against respondents.

The Antecedents

Atty. Renato M. Garbo III (Atty. Garbo) of the National Bureau of Investigation (NBI) and detailed at the Revenue Operations and Legal Affairs Group of the Department of Finance (DOF), received information[4] that Ferrotech Steel Corporation

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[1] *Rollo*, pp. 3-36.

[2] *Id*. at 39-42.

[3] *Id*. at 87-90.

[4] *Id*. at 124-135.

and/or its President, Benito Keh (Keh) employed schemes to evade payment of taxes by failing to issue sales invoices and falsifying sales invoices, in violation of Section 264[5] in relation to Section 254[6] of the National Internal Revenue Code (NIRC). Upon verification of said information and by virtue of a Letter of Authority[7] dated December 7, 2010 issued by Secretary Cesar V. Purisima (Secretary Purisima) of the DOF, Atty. Garbo applied[8] for the issuance of search warrants to search the

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[5] **Sec. 264. Failure or refusal to Issue Receipts or Sales or Commercial Invoices, Violations related to the Printing of such Receipts or Invoices and Other Violations.** -

(a) Any person who, being required under Section 237 to issue receipts or sales or commercial invoices, fails or refuses to issue such receipts of invoices, issues receipts or invoices that do not truly reflect and/or contain all the information required to be shown therein. or uses multiple or double receipts or invoices, shall, upon conviction for each act or omission, be punished by a fine of not less than One thousand pesos (₱1,000) but not more than Fifty thousand pesos (₱50,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years.

(b) Any person who commits any or the acts enumerated hereunder shall be penalized in the same manner and to the same extent as provided for in this Section:

(1) Printing of receipts or sales or commercial invoices without authority from the Bureau of Internal Revenue; or

(2) Printing of double or multiple sets of invoices or receipts; or

(3) Printing of unnumbered receipts or sales or commercial invoices, not bearing the name, business style, Taxpayer Identification Number, and business address of the person or entity.

[6] **Sec. 254. Attempt to Evade or Defeat Tax.** - Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine not less than Thirty thousand (₱30,000) but not more than One hundred thousand pesos (₱100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

[7] *Id*. at 123.

[8] *Id*. at 118-122.

premises occupied and/or used by Ferrotech Steel Corporation and/or Keh before the regional trial court (RTC).[9]

On December 17, 2010, Search Warrant Nos. 10-17070 to 17073[10] were issued by the RTC of Manila, Branch 47 for the different offices and warehouses of Ferrotech Steel Corporation and/or Keh located in Valenzuela City and Makati City. Secretary Purisima likewise issued OSEC Mission Order No. 10-001,[11] directing the NBI to search the offices and warehouses of Metalex International Inc., and Metal Trade Sales Co. On even date, these search warrants were served by NBI agents, Philippine National Railways (PNR) personnel and private individuals, who are the respondents in this case.

Espaldon, the Corporate Secretary of Metal Exponents, Inc., and the counsel of Ferrotech Steel Corporation and Metalex International Inc., alleged that several irregularities attended the implementation of the search warrants, *i.e.*, heavily armed NBI agents were present; the non-NBI agents were not authorized in writing to participate in the search; private individuals orchestrated the search and pointed the items to be seized; documents and items belonging to Metalex International, Inc., Metal Exponents, Inc., and other companies not mentioned in the search warrants were also seized;[12] and the employees were illegally detained, prohibited from using their phones and leaving the office, and threatened with bodily harm.[13]

Consequently, Espaldon filed a complaint-affidavit[14] before the Ombudsman against respondents for violations of the Revised Penal Code (RPC), Republic Act (R.A) No. 3019 or the Anti-Graft and Corrupt Practices Act, Code of Conduct and Ethical Standards for Public Officials and Employees, NIRC, Tariff

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[9] Raffled to Branch 47 of the City of Manila.

[10] Issued by Presiding Judge Paulino Q. Gallegos; *rollo*, pp. 140-155.

[11] *Id.* at 156.

[12] *Id.* at 9.

[13] *Id.* at 13.

[14] *Id.* at 91-117.

and Customs Code of the Philippines, Electronic Commerce Act of 2000 and the Code of Professional Responsibility. A supplemental complaint-affidavit praying for the preventive suspension of respondents was subsequently filed. The administrative aspect of the said complaint was subsequently docketed as OMB-C-A-11-0036-A for "Misconduct", while the criminal aspect was docketed as OMB-C-C-11-0034-A for "Violation of Articles 129 and 286 of the RPC and Section 3(e) of R.A. No. 3019."

The Ruling of the Ombudsman

The administrative complaint[15] and the criminal complaint were dismissed by the Ombudsman in separate but similarly-worded Orders[16] dated January 16, 2012. The dismissal of both the administrative and the criminal complaints were grounded on Section 20(1) of R.A. No. 6770,[17] which provides:

> Sec. 20. Exceptions. The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:
>
> (1) The complainant has a[n] adequate remedy in another judicial or quasi-judicial body.
>
> x x x x x x x x x

In dismissing the administrative and the criminal complaints, the Ombudsman continued with identical ratiocination and disposed, as follows:

> As the complaint essentially involves the application and interpretation of the Tariff and Customs Code, raising the matter with the Commissioner of Customs and/or the Department of Finance and/or the Court of Tax Appeals could provide adequate remedy.

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[15] *Id*. at 22.

[16] *Id*. at 39-42 and 56-59.

[17] AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN AND FOR OTHER PURPOSES.

It need not be underscored that the actions taken by these tribunals would have a bearing on an investigation of the respondents' possible criminal liability. It is on this account that this Office resolves to dismiss the complaint.

WHEREFORE, the criminal complaint is hereby **DISMISSED**.

SO ORDERED.[18]

Espaldon's motion for reconsideration[19] met similar denial from the Ombudsman through its Joint Order[20] dated March 12, 2012 on the ground that said motion for reconsideration was neither based on new evidence nor on errors of law or commission of irregularities prejudicial to the interest of the movant as provided under Section 27 of R.A. No. 6770.

The dismissal of the administrative complaint and the criminal complaint respectively spurred Espaldon's petition for review[21] under Rule 43 before the Court of Appeals (CA) and the instant petition for *certiorari* and *mandamus* under Rule 65.

In their respective comments, respondents[22] and the Ombudsman[23] implore the Court's policy of non-interference with the Ombudsman's exercise of its investigatory powers.

The Issue

At its core, the present petition raises the issue of whether or not the Ombudsman gravely abused its discretion in refusing to conduct an investigation on the criminal act complained of on the basis of Section 20(1) of R.A. No. 6770.

The Ruling of the Court

There is merit in the petition.

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[18] *Rollo*, pp. 40-41 and 57-58.

[19] *Id*. at 43-55.

[20] *Id*. at 87-90.

[21] *Id*. at 322-354.

[22] *Id*. at 373-383.

[23] *Id.* at 406-423.

Section 19 of R.A. No. 6770 enumerates the acts or omissions that could be the subject of *administrative complaints*, thus:

> Sec. 19. *Administrative Complaints*. — The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:
>
> (1) Are contrary to law or regulation;
> (2) Are unreasonable, unfair, oppressive or discriminatory;
> (3) Are inconsistent with the general course of an agency's functions, though in accordance with law;
> (4) Proceed from a mistake of law or an arbitrary ascertainment of facts;
> (5) Are in the exercise of discretionary powers but for an improper purpose; or
> (6) Are otherwise irregular, immoral or devoid of justification.

Going further, the full text of Section 20 of R.A. No. 6770, reads:

> Section 20. Exceptions. — The Office of the Ombudsman may not conduct the necessary investigation of any **administrative act or omission** complained of if it believes that:
>
> (1) The complainant has an adequate remedy in another judicial or quasi-judicial body;
> (2) The complaint pertains to a matter outside the jurisdiction of the Office of the Ombudsman;
> 3) The complaint is trivial, frivolous, vexatious or made in bad faith;
> (4) The complainant has no sufficient personal interest in the subject matter of the grievance; or
> (5) The complaint was filed after one year from the occurrence of the act or omission complained of. (Emphasis ours)

Section 20 has been clarified[24] by Administrative Order No. 17,[25] amending Administrative Order No. 07.[26] As thus amended,

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[24] See *Office of the Ombudsman v. Court of Appeals, et al.*, 576 Phil. 784 (2008).

[25] Amendment of Rule III, Administrative Order No. 07, signed by Ombudsman Simeon V. Marcelo on September 15, 2003.

[26] Rules of Procedure of the Office of the Ombudsman.

Section 4, Rule III on the *procedure in administrative cases* presently provides:

> Sec. 4. Evaluation. - Upon receipt of the complaint, the same shall be evaluated to determine whether the same may be:
>
> a) **dismissed outright for any of the grounds stated under Section 20 of Republic Act No. 6770, provided, however, that the dismissal thereof is not mandatory and shall be discretionary on the part of the Ombudsman or the Deputy Ombudsman concerned;**
>
> b) treated as a **grievance/request for assistance** which may be referred to the Public Assistance Bureau, this Office, for appropriate action under Section 2, Rule IV of this Rules;
>
> c) referred to other **disciplinary authorities** under paragraph 2, Section 23, R.A. 6770 for the taking of **appropriate administrative proceedings;**
>
> d) referred to the appropriate office/agency or official for the conduct of further fact-finding investigation; or
>
> e) **docketed as an administrative case** for the purpose of **administrative adjudication** by the Office of the Ombudsman. (Emphasis ours)

Jurisprudence has so far settled that dismissal based on the grounds provided under Section 20 is not mandatory and is discretionary on the part of the evaluating Ombudsman or Deputy Ombudsman evaluating the *administrative complaint*.[27] Clearly, as the law, its implementing rules, and interpretative jurisprudence[28] stand, the dismissal by the Ombudsman on grounds provided under Section 20 is applicable only to *administrative complaints*. Its invocation in the present criminal case is therefore misplaced.

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[27] *Bueno, et al. v. Office of the Ombudsman, et al.*, 743 Phil. 313, 330 (2014).

[28] See *Casing v. Hon. Ombudsman, et al.*, 687 Phil. 468 (2012).

Contrariwise, the procedure in criminal cases requires that the Ombudsman evaluate the complaint and after evaluation, to make its recommendations in accordance with Section 2, Rule II of the Administrative Order No. 07, as follows:

> Section 2. Evaluation – Upon evaluating the complaint, the investigating officer s**hall recommend** whether it may be:
>
> **a) dismissed outright for want of palpable merit;**
> b) referred to respondent for comment;
> c) indorsed to the proper government office or agency which has jurisdiction over the case;
> d) forwarded to the appropriate office or official for fact-finding investigation;
> e) referred for administrative adjudication; or
> f) subjected to a preliminary investigation. (Emphasis ours)

Thus, the only instance when an outright dismissal of a criminal complaint is warranted is when such complaint is palpably devoid of merit. Nothing in the assailed Orders would show that the Ombudsman found the complaint to have suffered from utter lack of merit. In fact, the assailed Orders are empty except for the citation of Section 20 as basis for outright dismissal. It is thus inaccurate and misleading for the Ombudsman to profess that the criminal complaint was dismissed only after the conduct of a preliminary investigation,[29] when the complaint never reached that stage to begin with. Clearly, the Ombudsman committed grave abuse of discretion when it evaluated and consequently dismissed a criminal complaint based on grounds peculiar to administrative cases and in an unexplained deviation from its own rules of procedure.

Accordingly, in this case, the exercise of judicial restraint in view of the Ombudsman's awesome powers to investigate and prosecute is ill-judged. While the Ombudsman is clothed with ample authority to pass upon criminal complaints involving public officials and employees, the Ombudsman's act is not immune from judicial scrutiny in the Court's discharge of its own

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[29] *Rollo*, p. 411.

constitutional power and duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.[30]

Invariably, grave abuse of discretion connotes a capricious and whimsical exercise of judgment as amounting to lack of jurisdiction. Necessarily then, to justify the issuance of the prerogative writ of *certiorari* to correct grave abuse of discretion, the Ombudsman's exercise of power must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[31] The Ombudsman's failure to abide by its duty to evaluate a criminal complaint in accordance with Section 2, Rule II of its own procedural rules constitutes grave abuse of discretion.

Nevertheless, the Court, at this stage, cannot preempt whatever action will be had by the Ombudsman after evaluation of the criminal complaint. It is not for the Court to pronounce whether the criminal complaint should be subjected to preliminary investigation. All the more, it will be premature for the Court to decide in this present petition whether or not there exists probable cause for the filing of the criminal information against respondents. These matters, not being proper subjects of the instant petition are best left to the Ombudsman's appropriate action.

WHEREFORE, the petition is **GRANTED**. The Order dated January 16, 2012 and Joint Order dated March 12, 2012 of the Office of the Ombudsman insofar as it dismissed outright the criminal complaint docketed as OMB-C-C-11-0034-A are **REVERSED** and **SET ASIDE**. The Office of the Ombudsman is forthwith **DIRECTED** to take cognizance of the criminal complaint and evaluate the same in accordance with Section

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[30] 1987 CONSTITUTION, Article VIII, Section 1.

[31] *Eijansantos v. Special Presidential Task Force 156*, 734 Phil. 748, 760 (2014).

2, Rule II of the Rules of Procedure of the Office of the Ombudsman.

SO ORDERED.

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

Sereno, C.J., on leave.

FIRST DIVISION

[G.R. No. 210446. April 18, 2018]

ANGELICA G. CRUZ, ANNA MARIE KUDO, ALBERT G. CRUZ and ARTURO G. CRUZ, *petitioners, vs.* **MARYLOU TOLENTINO and the Office of The Register of Deeds of Mandaluyong City,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; DISMISSAL OF ACTION ON GROUND OF *LITIS PENDENTIA*; REQUISITES; PRESENT.— *Litis pendentia* is a Latin term that literally means "a pending suit" and is variously referred to as *lis pendens* and *auter action pendant*. As a ground for dismissing a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits. As held in *City of Makati v. Municipality (now City) of Taguig*, the following requirements must concur before *litis pendentia* may be invoked: (a) identity of parties or at least such as represent the same interest in both actions; (b) identity of rights

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

asserted and reliefs prayed for, the reliefs being founded on the same facts; and (c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other. In this case, it is indubitably clear that *litis pendentia* exists.

2. ID.; ID.; ID.; ID.; ID.; IDENTITY OF PARTIES; ONLY SUBSTANTIAL IDENTITY OF PARTIES IS REQUIRED. — As to the first requisite of identity of parties, the Court agrees with the ruling of the Court of Appeals that the same is present as only substantial identity of parties is required for *litis pendentia* to apply. Tolentino and Purificacion — the defendants in Civil Case No. MC00-1300 - are the plaintiff and defendant, respectively, in Civil Case No. MC 99-843. On the other hand, petitioners — the plaintiffs in Civil Case No. MC00-1300 — were originally not parties to Case No. MC 99-843, but they later substituted Purificacion in said case after she died. More importantly, petitioners had a community of interest with Purificacion since they were one in disputing the validity of the Deed of Absolute Sale dated December 1, 1992 in both cases.

3. ID.; ID.; ID.; ID.; ID.; IDENTITY OF RIGHTS ASSERTED AND RELIEFS PRAYED FOR; PRESENT IN CASE AT BAR.— Anent the second requisite of identity of rights asserted and reliefs prayed for, the same is likewise extant in the case. A reading of Tolentino's complaint for Registration of Deed of Sale Covered by TCT Nos. 461194 and 461195, Mandamus with Damages in Civil Case No. MC 99-843 readily reveals that the principal relief prayed for therein is for judgment to be rendered (1) declaring the validity of the Deed of Absolute Sale dated December 1, 1992, insofar as the share of Purificacion over the properties covered by TCT Nos. 461194 and 461195 is concerned, and (2) ordering the Register of Deeds of Mandaluyong City to register in Tolentino's name the aforesaid share of Purificacion over the properties covered by TCT Nos. 461194 and 461195. On the other hand, in petitioners' complaint for Annulment of Sale & Title, Damages & Injunction in Civil Case No. MC00-1300, they primarily seek the nullification of the Deed of Absolute Sale dated December 1, 1992 due to its allegedly fraudulent execution in favor of Tolentino.

4. ID.; ID.; ID.; ID.; *RES JUDICATA*; ELEMENTS; PRESENT.— For *res judicata* to serve as a bar to a subsequent action, the following elements must be present: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action. Should identity of parties, subject matter, and causes of action be shown in the two cases, *res judicata* in its aspect as a "bar by prior judgment" would apply. If as between the two cases, only identity of parties can be shown, but not identical causes of action, then *res judicata* as "conclusiveness of judgment" applies. In this case, the elements of *res judicata*, as a bar by prior judgment, are present.

APPEARANCES OF COUNSEL

S.V. Ramos Law Office for petitioners.
Conrado Marquez for respondent Marylou Tolentino.

D E C I S I O N

LEONARDO-DE CASTRO,[*] *J.*:

This is a petition for review on *certiorari*[1] of the Decision[2] dated December 17, 2013 of the Court of Appeals in CA-G.R. CV No. 100370, which affirmed the Decision[3] dated December 27, 2012 of the Regional Trial Court (RTC) of Mandaluyong City, Branch 213 in Civil Case No. MC00-1300. The trial court dismissed the case on the ground of *litis pendentia*.

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[*] Per Special Order No. 2540 dated February 28, 2018.

[1] *Rollo*, pp. 8-37.

[2] *Id*. at 41-55; penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Noel G. Tijam (now a member of this Court) and Agnes Reyes Carpio concurring.

[3] CA *rollo*, pp. 22-44; penned by Judge Carlos A. Valenzuela.

The Facts

Alfredo S. Cruz (Alfredo) is the registered owner of two parcels of land located in Barrio Baranca, then Municipality of Mandaluyong, Rizal. The first lot consisted of 77 square meters (sq. m.), more or less, and was covered by **Transfer Certificate of Title (TCT) No. 461194**[4] of the Register of Deeds of the Province of Rizal. The second lot consisted of 516 sq. m., more or less, and was covered by **TCT No. 461195**[5] of the Register of Deeds of the Province of Rizal. On July 10, 1985, Alfredo executed a special power of attorney[6] (SPA) in favor of his wife, Purificacion G. Cruz (Purificacion), authorizing her to sell, transfer, convey, and/or mortgage the aforementioned properties. Thereafter, on November 14, 1985, Alfredo passed away.[7]

According to the records of the case, the aforesaid properties figured in two transactions involving herein private respondent Marylou Tolentino (Tolentino). The first transaction was contained in a **Deed of Absolute Sale**[8] **dated July 9, 1992** purportedly executed and signed by Alfredo and Tolentino. In this instrument, the two properties were sold to Tolentino for ₱1,350,000.00. The instrument was not notarized. The second transaction, on the other hand, was embodied in a **Deed of Absolute Sale**[9] **dated December 1, 1992** ostensibly executed between Alfredo — as represented by Purificacion - and Tolentino. Here, the two properties were sold to Tolentino for ₱1,400,000.00. The latter instrument was notarized and it specifically mentioned the SPA in favor of Purificacion.

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[4] Records, Vol. II, pp. 629-630.

[5] Records, Vol. I, pp. 216-217.

[6] Records, Vol. II, pp. 633-635.

[7] Records, Vol. I, p. 16.

[8] Records, Vol. II, pp. 540-542.

[9] *Id*. at 534-535.

On December 2, 1992, TCT Nos. 461194 and 461195 were cancelled and TCT Nos. 6724 and 6725 were issued in Tolentino's name.[10]

On **October 16, 2000**, herein petitioners Angelica G. Cruz, Auralita C. Matsuura,[11] Anna Marie Kudo, Albert G. Cruz, and Arturo G. Cruz (petitioners) filed a **complaint**[12] for Annulment of Sale & Title, Damages & Injunction. Docketed as **Civil Case No. MC00-1300** in the RTC of Mandaluyong City, Branch 214 (RTC-Br. 214), the case was filed against Tolentino, Purificacion, and the Register of Deeds of Mandaluyong City.

Petitioners alleged, among others, that they are the children of Alfredo and Purificacion. Upon their discovery of the Deed of Absolute Sale dated December 1, 2002, they orally demanded the cancellation thereof and the reinstatement of TCT No. 461194. The demands, however, went unheeded. Petitioner Angelica Cruz (Angelica) then caused the annotation of an affidavit of adverse claim[13] in Tolentino's title. Petitioners prayed that the Deed of Absolute Sale dated December 1, 1992 be annulled as the SPA of Alfredo was rendered ineffectual by his death. They claimed that the sale was also fraudulent as petitioners were denied of their rights to the subject property. They further sought the cancellation of TCT No. 6724 and the payment of moral damages, attorney's fees, and costs of suit.

Respondent Tolentino initially filed a motion to dismiss,[14] alleging that no earnest efforts toward a compromise had been made prior to the filing of the complaint and petitioners were not the real parties in interest as they already sold the subject

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[10] *Id.* at 631-632; records, Vol. I, pp. 226-227.

[11] Auralita C. Matsuura was later substituted by her two minor children who were then represented by their guardian *ad litem*, Angelica G. Cruz.

[12] Records, Vol. I, pp. 2-8.

[13] Records, Vol. II, pp. 538-539.

[14] Records, Vol. I, pp. 34-39.

property to Elsa Moya, as evidenced by an Extrajudicial Settlement of the Estate with Absolute Sale.[15]

Thereafter, Civil Case No. MC00-1300 was re-raffled to the RTC-Br. 210.[16]

Purificacion filed her **Answer with Compulsory Counterclaim**,[17] alleging that in 1992 when the subject property was about to be foreclosed by Paquito Lazaro (Lazaro), she was introduced to Reynaldo Tolentino (Reynaldo). In July 1992, Lazaro and Reynaldo talked to each other and the latter got hold of the title to the subject property at the Land Bank of the Philippines on Shaw Boulevard. Reynaldo then asked Purificacion to sign a document. Lazaro informed Purificacion that her debt had been transferred to Reynaldo, who took the title of the subject property as collateral. Purificacion later found out that Reynaldo is Tolentino's father. Reynaldo, Lazaro, and Tolentino allegedly knew that Alfredo was already dead.

Purificacion added that she did not voluntarily sign the Deed of Absolute Sale dated December 1, 1992. The same was allegedly void as the property belonged to Alfredo and she had no right to dispose of it. She prayed that the Deed of Absolute Sale be declared void and Tolentino be ordered to pay her moral and exemplary damages and attorney's fees.

Atty. Federico M. Cas, the Registrar of Deeds of Mandaluyong City, filed an **Answer**[18] to the complaint. He averred that he only assumed office in October 1996. He admitted the existence of TCT No. 461194 and the cancellation thereof by his predecessor, Cesar S. Gutierrez. In lieu of said title, TCT No. 6724 was issued in Tolentino's name. He stated that petitioner Angelica caused the annotation of an Affidavit of Adverse Claim on TCT No. 6724 and he signed the annotation under Entry No. 69306.

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[15] *Id*. at 40-43.

[16] *Id*. at 55, 82.

[17] *Id*. at 72-73.

[18] *Id*. at 167-170.

In an Order[19] dated June 19, 2001, the trial court denied Tolentino's motion to dismiss, ruling that the lack of earnest efforts to reach a compromise was not a prerequisite to the filing of the complaint since Tolentino was not a member of petitioners' family. Petitioners also had an interest in the subject property as they stood to be benefitted or injured by the judgment in the suit. Tolentino filed a motion for reconsideration[20] of this denial, but the same was also denied.[21]

Tolentino then filed her **Answer**[22] where she specifically denied the averments in the complaint relating to the SPA and the death of Alfredo. She claimed that the truth of the matter relative to the subject property is narrated in the complaint[23] she filed on **August 26, 1999** for Registration of Deed of Sale Covered by TCT Nos. 461194 and 461195, Mandamus and Damages. This case was docketed as **Civil Case No. MC 99-843** in the RTC-Br. 209.[24] Tolentino's causes of action were: (a) to validate the Deed of Absolute Sale in so far as the 50% and one share of Purificacion over the property covered by TCT Nos. 461194 and 461195; and (b) to charge and/or collect from Purificacion the amount representing the value of the property also covered by TCT Nos. 461194 and 461195 belonging to the heirs of Alfredo including the 5% monthly interest thereon until the amount is paid and/or collected.[25] In the aforesaid case, Tolentino also caused the annotation of a Notice of *Lis Pendens*[26] in TCT Nos. 6724 and 461195.

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[19] *Id*. at 105.

[20] *Id*. at 148-152.

[21] *Id*. at 183.

[22] *Id*. at 196-200.

[23] *Id*. at 201-212.

[24] Civil Case No. MC 99-843 was eventually re-raffled to the RTC-Br. 213.

[25] Records, Vol. I, p. 207.

[26] *Id*. at 232.

Tolentino pointed out that the Deed of Absolute Sale subject matter of the aforesaid case is the same Deed of Absolute Sale involved in the present case. Moreover, the parties are the same, *i.e.*, Tolentino is the plaintiff in Civil Case No. MC 99-843, while Purificacion is the defendant in Civil Case No. MC 99-843. Petitioners, who are the plaintiffs in the present case, are the heirs of Alfredo. Tolentino argued that the complaint in Civil Case No. MC00-1300 was dismissible on the grounds of *res judicata*, forum shopping, and lack of jurisdiction. She added that the sale of a property by a surviving spouse cannot be voided insofar as his/her share is concerned. Also, the share of the heirs is liable to pay for the loan of the deceased especially if the proceeds of the loan inured to their benefit.

In petitioners' Reply,[27] they alleged that Tolentino knew about the SPA in favor of Purificacion and the death of Alfredo. They also argued that Civil Case No. MC 99-843 was barred by Civil Case No. SCA No. 247, which was filed by Sonia Uykimpang against Purificacion and Tolentino for the recovery of the property covered by TCT No. 461195. In a decision dated June 20, 1994 in said case, the RTC of Pasig ordered the cancellation of Tolentino's TCT No. 6725 and the reinstatement of TCT No. 461195. The decision became final and executory when the Court of Appeals affirmed the same and Tolentino no longer filed a petition before the Supreme Court to assail the ruling.[28] Furthermore, as petitioners were not parties to Civil Case No. MC 99-843, said case cannot affect Civil Case No. MC00-1300.

On April 3, 2002, petitioners filed a motion for consolidation[29] of Civil Case No. MC00-1300 with Civil Case No. MC 99-843 that was pending before the RTC-Br. 209. Petitioners alleged that the two cases involved the same question of fact and of law, the same subject matter — at least insofar as the property

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[27] *Id*. at 295-297.

[28] *Id*. at 301.

[29] *Id*. at 342-344.

covered by TCT No. 461194 was concerned — and the parties were more or less the same.

In an Order[30] dated April 12, 2002, the judge in the RTC-Br. 210 granted the request for consolidation provided that the judge in Civil Case No. MC 99-843 in the RTC-Br. 209 had no objection thereto. However, the judge in the RTC-Br. 209 rejected the consolidation. In an Order[31] dated July 28, 2003, the RTC-Br. 209 ordered the return of the records of Civil Case No. MC00-1300 to the RTC-Br. 210 as petitioners' motion for intervention in Civil Case No. MC 99-843 was denied.

On December 2, 2003, petitioners again filed a motion for consolidation[32] as Civil Case No. MC 99-843 in the RTC-Br. 209 had been raffled to the RTC-Br. 210. The motion was denied in an Order[33] dated February 20, 2004.

Shortly thereafter, Civil Case No. MC00-1300 was re-raffled to the RTC-Br. 213.

In the trial of the case, Angelica testified for the petitioners. She admitted that Purificacion is her mother and the latter was made a defendant because she mortgaged the properties that petitioners inherited from their father.[34] Angelica testified, among others, that they talked to Purificacion when they discovered the sale of the subject property to Tolentino. Purificacion said that she sold the property through Alfredo's SPA in order to cover for the expenses and debts that she incurred.[35]

Angelica also presented in court a Deed of Absolute Sale dated July 9, 1992,[36] which she claimed was only a mortgage

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[30] *Id.* at 346.

[31] *Id.* at 356-357.

[32] *Id.* at 388-390.

[33] *Id.* at 394.

[34] TSN, April 23, 2007, pp. 6-7.

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

[36] Records, Vol. II, pp. 540-542.

document. Petitioners first came to know about the deed in 1999 after they learned of the case filed by Sonia Uykimpang against Purificacion. The latter told them that Tolentino gave her ₱1,350,000.00 and the two properties registered in Alfredo's name were the collateral for the amount. Angelica said that she did not recognize the signature that appeared on the typewritten name of Alfredo in the deed.[37]

After said confrontation, Purificacion showed to petitioners a copy of Tolentino's complaint in Civil Case No. MC 99-843. Angelica first got a copy of Tolentino's complaint in 1999 when petitioners filed an adverse claim with the Register of Deeds as they wanted to know what the real agreement was between Purificacion and Tolentino regarding the subject property. Purificacion never discussed the mortgage with the petitioners.[38]

On cross-examination, Angelica testified that the subject property was already sold to Elsa Moya. At first, she denied that she knew anything about this sale, but when she was shown the document entitled Extrajudicial Settlement of Estate with Sale, she stated that she remembered the same and she admitted her signature therein.[39] She stated that the loan contracted by Purificacion from Tolentino was not yet paid.[40]

Prior to the rendition of the judgment in Civil Case No. MC00-1300, Purificacion died on January 2, 2011.[41]

The Decision of the RTC

In a **Decision dated December 27, 2012**, the RTC-Br. 213 dismissed Civil Case No. MC00-1300 as the case was related to Civil Case No. MC 99-843 since they referred to the same parties, the same evidence presented, and the same subject matter, *i.e.*, TCT No. 461194, now TCT No. 6724.

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[37] TSN, June 8, 2007, pp. 5-12.

[38] *Id.* at 8-14.

[39] TSN, October 15, 2007, pp. 4-7.

[40] *Id.* at 24.

[41] *See* CA *rollo*, p. 134.

According to the trial court, it had already issued a **Decision dated December 7, 2012** in Civil Case No. MC 99-843, finding that the Deed of Absolute Sale dated December 1, 1992 and the SPA executed by Alfredo in favor of Purificacion were valid and effective. In view of the aforesaid decision, the trial court ruled that Civil Case No. MC00-1300 was already dismissible on the ground of *res judicata* or, at best, *litis pendentia*.

The RTC added that in petitioners' motion for consolidation filed on April 3, 2002, they admitted that the questions of fact and law in both cases involved TCT No. 461194. Also, in Civil Case No. MC 99-843, petitioners offered in evidence the SPA in favor of Purificacion, TCT No. 461194, TCT No. 6724, and the Deed of Absolute Sale dated December 1, 1992.

The Decision of the Court of Appeals

Petitioners appealed[42] the judgment of the RTC, but the appeal was denied in the assailed Court of Appeals Decision dated December 17, 2013. The appellate court found that *res judicata* was not applicable to the case as the trial court decision in Civil Case No. MC 99-843 did not state that the same was already final and executory. The appellate court ruled, however, that the elements of *litis pendentia* were extant in the case.

As to the identity of parties, the Court of Appeals similarly observed that Tolentino - a defendant in Civil Case No. MC00-1300 — is the plaintiff in Civil Case No. MC 99-843, while Purificacion — a defendant in Civil Case No. MC00-1300 — is also a defendant in Civil Case No. MC 99-843. That petitioners were not parties in Civil Case No. MC 99-843 was found to be immaterial as mere substantial identity of parties was sufficient.

As to the subject matter, the Court of Appeals found that notwithstanding the difference in the issues and reliefs prayed for in Civil Case Nos. MC00-1300 and MC 99-843, both actions

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

pertain to the same issue, which is the validity of the deed of absolute sale entered into between Tolentino and Purificacion involving the subject property. Moreover, some of the pieces of evidence offered in Civil Case No. MC 99-843 were also presented in Civil Case No. MC00-1300.

The Court of Appeals, thus, opined that the trial court did not err in dismissing Civil Case No. MC00-1300 on the ground of *litis pendentia*. This holds true even if the decision in Civil Case No. 99-843 was not offered in evidence by the parties as, according to the appellate court, *litis pendentia* like *res judicata* cannot be waived by any party.

The Court of Appeals adjudged that Civil Case No. MC 99-843 should subsist since it was filed ahead and the case was an appropriate vehicle for litigating all the issues invoked by the parties. The appellate court found no more need to rule on the other issues raised by the petitioners.

The Arguments of Petitioners

Without moving for a reconsideration of the assailed decision, petitioners filed the instant petition that raised the following issues:

1. Can lis pendens be validly applied to favor the pendency of [C]ivil [C]ase [N]o. MC 99-843 over that of Civil Case No. MC00-1300?
2. Was there a valid sale of the property covered by TCT No. 461194 to Marylou Tolentino or was the contract entered into by the parties one of loan secured by a real estate mortgage?
3. Was the Court of Appeals correct in ruling that there is no necessity to discuss and pass upon the issue to determine whether the contract between Purificacion Cruz and Marylou Tolentino is one of a real estate mortgage loan or one of sale?[43]

Petitioners argue that even if Civil Case No. MC 99-843 was filed ahead of Civil Case No. MC00-1300, *lis pendens*

[43] *Rollo*, p. 161.

cannot be invoked to dismiss the latter case since the earlier case did not have a genuine issue for resolution. According to petitioners, Tolentino's admitted purpose in filing Civil Case No. MC 99-843 was to compel the registration of the two properties previously owned by Alfredo in her name.

Petitioners stress that the property covered by Alfredo's TCT No. 461195 was already registered in Tolentino's name under TCT No. 6725, but the title was cancelled by the RTC of Pasig in SCA Case No. 247 — the case filed by Sonia Uykimpang against Purificacion. Tolentino appealed the judgment before the Court of Appeals in CA-G.R. CV No. 47976, but the same was dismissed with finality. On the other hand, the subject property remained registered in Tolentino's name under TCT No. 6724 and she need not register it again through Civil Case No. MC 99-843. Petitioners conclude that the filing of Civil Case No. MC 99-843 was a sham and, therefore, the same should be dismissed, not Civil Case No. MC00-1300.

Petitioners also faulted the Court of Appeals for failing to rule on the true nature of the contract between Purificacion and Tolentino as a contract of loan with an exorbitant interest of 5% per month. Petitioners prayed for a judgment reversing of the assailed Court of Appeals decision, declaring the Deed of Absolute Sale dated December 1, 1992 null and void, and reducing the allegedly usurious interest rate of the loan to the legal rate.

The Arguments of Respondent Tolentino

Tolentino argues that the Court of Appeals did not err when it upheld the ruling of the trial court. She avers that absent any clear showing of abuse, arbitrariness or capriciousness on the part of the trial court, its findings of fact are binding and conclusive upon the Court especially when affirmed by the Court of Appeals. Tolentino maintains that there is nothing in the Deed of Absolute Sale dated December 1, 1992 that would justify the petitioners' claim that the same was actually a loan contract.

The Ruling of the Court

The petition lacks merit.

Litis pendentia is a Latin term that literally means "a pending suit" and is variously referred to as *lis pendens* and *auter action pendant*. As a ground for dismissing a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits.[44]

As held in *City of Makati v. Municipality (now City) of Taguig*,[45] the following requirements must concur before *litis pendentia* may be invoked:

(a) identity of parties or at least such as represent the same interest in both actions;

(b) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and

(c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other. (Citation omitted.)

In this case, it is indubitably clear that *litis pendentia* exists.

As to the first requisite of identity of parties, the Court agrees with the ruling of the Court of Appeals that the same is present as only substantial identity of parties is required for *litis pendentia* to apply. Tolentino and Purificacion — the defendants in Civil Case No. MC00-1300 — are the plaintiff and defendant, respectively, in Civil Case No. MC 99-843. On the other hand, petitioners — the plaintiffs in Civil Case No. MC00-1300 — were originally not parties to Case No. MC 99-843, but they later substituted Purificacion in said case after she died.[46] More importantly, petitioners had a community of interest with Purificacion since they were one in disputing the validity of the Deed of Absolute Sale dated December 1, 1992 in both cases.

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[44] *Benavidez v. Salvador*, 723 Phil. 332, 342 (2013).

[45] 578 Phil. 773, 783 (2008).

[46] CA *rollo*, pp. 131-133.

Anent the second requisite of identity of rights asserted and reliefs prayed for, the same is likewise extant in the case. A reading of Tolentino's complaint for Registration of Deed of Sale Covered by TCT Nos. 461194 and 461195, Mandamus with Damages in Civil Case No. MC 99-843 readily reveals that the principal relief prayed for therein is for judgment to be rendered (1) declaring the validity of the Deed of Absolute Sale dated December 1, 1992, insofar as the share of Purificacion over the properties covered by TCT Nos. 461194 and 461195 is concerned, and (2) ordering the Register of Deeds of Mandaluyong City to register in Tolentino's name the aforesaid share of Purificacion over the properties covered by TCT Nos. 461194 and 461195. On the other hand, in petitioners' complaint for Annulment of Sale & Title, Damages & Injunction in Civil Case No. MC00-1300, they primarily seek the nullification of the Deed of Absolute Sale dated December 1, 1992 due to its allegedly fraudulent execution in favor of Tolentino.

The records of the case also reveal that the following pieces of documentary evidence were offered by the parties in both cases: (1) the complaint in Civil Case No. MC 99-843; (2) the SPA in favor of Purificacion; (3) the Deed of Absolute Sale dated July 9, 1992; (4) the Deed of Absolute Sale dated December 1, 1992; (5) TCT No. 461194; (6) TCT No. 461195; and (7) TCT No. 6724.

Obviously, the resolution of both Civil Case No. MC 99-843 and Civil Case No. MC00-1300 hinge on the determination of the issue of whether or not the Deed of Absolute Sale dated December 1, 1992 in favor of Tolentino was valid and legal. As such, the judgment that may be rendered in either case regarding the validity of said deed would amount to *res judicata* in the other case, regardless of which party is successful.

As it turns out, the above issue had already been decided with finality in Civil Case No. MC 99-843. Thus, the principle of *res judicata* applies.

For *res judicata* to serve as a bar to a subsequent action, the following elements must be present: (1) the judgment sought to bar the new action must be final; (2) the decision must have

been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action. Should identity of parties, subject matter, and causes of action be shown in the two cases, *res judicata* in its aspect as a "bar by prior judgment" would apply. If as between the two cases, only identity of parties can be shown, but not identical causes of action, then *res judicata* as "conclusiveness of judgment" applies.[47]

In this case, the elements of *res judicata*, as a bar by prior judgment, are present.

In the Decision dated December 7, 2012 in Civil Case No. MC 99-843, the trial court already decreed that **the Deed of Absolute Sale dated December 1, 1992 was valid and legal**.[48] Petitioners, as substitute appellants in lieu of the deceased Purificacion, appealed the decision to the Court of Appeals. On February 28, 2017, the appellate court rendered a Decision[49] in CA-G.R. CV No. 101028 that affirmed the trial court's ruling. Furthermore, the Court takes judicial notice of the fact that petitioners elevated the judgment of the appellate court to this Court *via* a petition for review on *certiorari*, which was docketed as G.R. No. 230297. In a Resolution dated June 28, 2017, the petition was denied.[50] Petitioners' motion for reconsideration thereon was likewise denied in a Resolution[51] dated October 11, 2017 and the Court's ruling had since become **final**.[52]

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[47] *P.L. Uy Realty Corporation v. ALS Management and Development Corporation*, 698 Phil. 47, 59-60 (2012), citing *Social Security Commission v. Rizal Poultry and Livestock Association, Inc.*, 665 Phil. 198, 206 (2011).

[48] CA *rollo*, p. 130.

[49] *Rollo*, pp. 120-142; penned by Associate Justice Ramon Paul L. Hernando with Associate Justices Jose C. Reyes, Jr. and Stephen C. Cruz, concurring.

[50] *Rollo* (G.R. No. 230297), pp. 355-356.

[51] *Id.* at 376-377.

[52] *Id.* at 378.

Also, as heretofore discussed, Civil Case No. MC00-1300 and Civil Case No. MC 99-843 involve a substantial identity of parties and the same Deed of Absolute Sale dated December 1, 1992 the validity of which is the bone of contention in both cases.

Notably, we observe that petitioners do not even argue the absence of any or all of the aforesaid elements of *litis pendentia* in this case. Instead, petitioners contend that between Civil Case No. MC00-1300 and Civil Case No. MC 99-843, the latter should be dismissed given that the complaint thereon was a sham for it allegedly lacked a genuine issue for resolution. In other words, petitioners would have the Court delve into the merits of Civil Case No. MC 99-843 and the trial court's ruling thereon.

In light of the foregoing discussion, the Court is already precluded from scrutinizing the merits of Civil Case No. MC 99-843. Any attempt to relitigate the same would run afoul the doctrine of *res judicata*.

WHEREFORE, the petition is **DENIED**. The Decision dated December 17, 2013 of the Court of Appeals in CA-G.R. CV No. 100370 is hereby **AFFIRMED**. Costs against petitioners.

SO ORDERED.

Del Castillo, Jardeleza, and *Martires,*[**] *JJ.*, concur.

Sereno, C.J., on leave.

[**] Per Raffle dated January 22, 2018.

SECOND DIVISION

[G.R. No. 210518. April 18, 2018]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **MARTIN NIKOLAI Z. JAVIER and MICHELLE K. MERCADO-JAVIER,** *respondents.*

SYLLABUS

1. CIVIL LAW; THE FAMILY CODE; VOID MARRIAGE; PSYCHOLOGICAL INCAPACITY; THE PSYCHOLOGICAL INCAPACITY OF A SPOUSE MUST BE CHARACTERIZED BY GRAVITY, JURIDICAL ANTECEDENCE, AND INCURABILITY; DISCUSSED.— The psychological incapacity of a spouse must be characterized by (a) gravity; (b) juridical antecedence; and (c) incurability, which the Court discussed in *Santos v. CA, et al*. as follows: 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.

2. ID.; ID.; ID.; ID.; ID.; FOR PURPOSES OF ESTABLISHING THE PSYCHOLOGICAL INCAPACITY OF A SPOUSE, IT IS NOT REQUIRED THAT A PHYSICIAN CONDUCT AN ACTUAL MEDICAL EXAMINATION OF THE PERSON CONCERNED, FOR IT IS ENOUGH THAT THE TOTALITY OF EVIDENCE IS STRONG ENOUGH TO SUSTAIN THE FINDING OF PSYCHOLOGICAL INCAPACITY.— The Court later clarified in *Marcos v. Marcos* that for purposes of establishing the psychological incapacity of a spouse, it is not required that a physician conduct an actual medical examination of the person concerned. It is enough that the totality of evidence is strong enough to sustain the finding of psychological incapacity. In such case, however, the petitioner bears a greater burden in proving the gravity, juridical antecedence, and incurability of the other spouse's psychological incapacity.

3. ID.; ID.; ID.; ID.; THE PHYSICIAN'S FINDINGS ON THE RESPONDENT-SPOUSE'S PSYCHOLOGICAL CONDITION NOT IMMEDIATELY INVALIDATED BY THE FACT THAT THE SAME WAS BASED ON THE NARRATION OF THE PETITIONER-SPOUSE; NEVERTHELESS, THE RESPONDENT-SPOUSE CANNOT BE DECLARED PSYCHOLOGICALLY INCAPACITATED TO COMPLY WITH THE ESSENTIAL MARITAL OBLIGATIONS AT THE TIME OF MARRIAGE ABSENT INDEPENDENT EVIDENCE ESTABLISHING THE ROOT CAUSE OR JURIDICAL ANTECEDENCE OF HIS/HER ALLEGED PSYCHOLOGICAL INCAPACITY.— While it is true that Michelle was not personally examined or evaluated for purposes of the psychological report, the trial court was incorrect in ruling that Dr. Adamos' findings were based solely on the interview with Martin. Even if that were the case, the findings of the psychologist are not immediately invalidated for this reason alone. Because a marriage necessarily involves only two persons, the spouse who witnessed the other spouse's behavior may "validly relay" the pattern of behavior to the psychologist. **This notwithstanding, the Court disagrees with the CA's findings that Michelle was psychologically incapacitated.** We cannot absolutely rely on the Psychological Impression Report on Michelle. There were no other independent evidence establishing the root cause or juridical antecedence of Michelle's alleged psychological incapacity. While this Court cannot discount their first-hand observations, it is highly unlikely that they were able to paint Dr. Adamos a complete picture of Michelle's family and childhood history. The records do not show that Michelle and Jose Vicente were childhood friends, while Martin, on the other hand, was introduced to Michelle during their adulthood. Either Martin or Jose Vicente, as third persons outside the family of Michelle, could not have known about her childhood, how she was raised, and the dysfunctional nature of her family. Without a credible source of her supposed childhood trauma, Dr. Adamos was not equipped with enough information from which he may reasonably conclude that Michelle is suffering from a chronic and persistent disorder that is grave and incurable.

4. ID.; ID.; ID.; ID.; PETITION FOR THE DECLARATION OF NULLITY OF MARRIAGE GRANTED, AS PETITIONER-

SPOUSE WAS FOUND TO BE PSYCHOLOGICALLY INCAPACITATED TO PERFORM THE ESSENTIAL MARITAL OBLIGATIONS AT THE TIME OF HIS MARRIAGE TO RESPONDENT-SPOUSE.— Martin was diagnosed with Narcissistic Personality Disorder, with tendencies toward sadism. Dr. Adamos concluded from the tests administered on Martin that this disorder was rooted in the traumatic experiences he experienced during his childhood, having grown up around a violent father who was abusive of his mother. This adversely affected Martin in such a manner that he formed unrealistic values and standards on his own marriage, and proposed unconventional sexual practices. When Michelle would disagree with his ideals, Martin would not only quarrel with Michelle, but would also inflict harm on her. Other manifestations include excessive love for himself, self-entitlement, immaturity, and self-centeredness. These circumstances, taken together, prove the three essential characteristics of psychological incapacity on the part of Martin. **As such, insofar as the psychological incapacity of Martin is concerned, the CA did not commit a reversible error in declaring the marriage of the respondents null and void under Article 36 of the Family Code.** [T]he Court emphasizes that the factual circumstances obtaining in this *specific* case warrant the declaration that Martin is psychologically incapacitated to perform the essential marital obligations at the time of his marriage to Michelle. This is neither a relaxation nor abandonment of previous doctrines relating to Article 36 of the Family Code. The guidelines in *Molina* still apply to all petitions for declaration of nullity of marriage inasmuch as this Court does not lose sight of the constitutional protection to the institution of marriage.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Maria Patricia L. Alvarez for respondent Martin Nikolai Z. Javier.

D E C I S I O N

REYES, JR., *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, which seeks to reverse and set aside the Court of Appeals' (CA) Decision[2] dated July 10, 2013, and Resolution[3] dated November 28, 2013, rendered in relation to CA-G.R. CV No. 98015. In these assailed issuances, the CA reversed the ruling of the Regional Trial Court (RTC) of Pasig City, which dismissed the petition for the declaration of nullity of marriage filed by respondent Martin Nikolai Z. Javier (Martin) against respondent Michelle K. Mercado-Javier (Michelle) under Article 36 of the Family Code.

Factual Antecedents

Martin and Michelle were married on February 8, 2002.[4]

On November 20, 2008, Martin filed a Petition for Declaration of Nullity of Marriage and Joint Custody of Common Minor Child under Article 36 of the Family Code.[5] Martin alleged that both he and Michelle were psychologically incapacitated to comply with the essential obligations of marriage.[6] He thus prayed for the declaration of nullity of their marriage, and for the joint custody of their minor child, Amanda M. Javier.[7]

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[1] *Rollo*, pp. 9-33.

[2] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Magdangal M. De Leon and Myra V. Garcia-Fernandez, concurring; *id.* at 36-51.

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

[4] *Rollo*, p. 70.

[5] *Id.* at 58-69.

[6] *Id*. at 64-66.

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

In order to support the allegations in his petition, Martin testified on his own behalf,[8] and presented the psychological findings of Dr. Elias D. Adamos (Dr. Adamos) (*i.e.*, Psychological Evaluation Report on Martin and Psychological Impression Report on Michelle).[9]

In the Psychological Impression Report on Michelle, Dr. Adamos diagnosed her with Narcissistic Personality Disorder.[10] Likewise, Dr. Adamos concluded in the Psychological Evaluation Report that Martin suffered from the same disorder.[11] Their disorder was considered grave and incurable, and rendered Martin and Michelle incapacitated to perform the essential obligations of marriage. Dr. Adamos further testified before the RTC to provide his expert opinion, and stated that with respect to the Psychological Impression Report on Michelle, the informants were Martin and the respondents' common friend, Jose Vicente Luis Serra (Jose Vicente).[12] He was unable to evaluate Michelle because she did not respond to Dr. Adamos' earlier request to come in for psychological evaluation.[13]

Ruling of the RTC

In its Decision[14] dated March 10, 2011, the RTC dismissed the petition for failure to establish a sufficient basis for the declaration of nullity of the respondents' marriage. The relevant portions of the RTC's decision reads:

> Upon the other hand, though Dr. Adamos diagnosed [Martin] to be afflicted with a narcissistic personality disorder, which rendered him incapacitated to comply with his essential marital obligations of observing love, trust and respect. [Martin's] testimony is found by

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[8] *Id*. at 193-204.

[9] *Id*. at 72-73, 205-211.

[10] *Id*. at 209.

[11] *Id*. at 45, 65.

[12] *Id*. at 47.

[13] *Id*. at 79.

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

the Court to be not supportive of such finding and *vice-versa*. In fact, on the basis of [Martin's] declarations, the Court came up with an impression that [Martin] is a man gifted with a lot of patience; that he was righteous, that he laudably performed his role as husband and father, and that in spite of [Michelle's] alleged wrongdoings, he still exerted his best efforts to save their marriage.

Thus, as to [Michelle's] alleged psychological incapacity, the Court finds [Martin's] testimony to be self-serving and Dr. Adamos' findings to be without sufficient basis.

Taking all the foregoing into consideration, the Court finds no sufficient basis for granting the relief prayed for in the petition.

WHEREFORE, premises considered, the instant petition is DENIED.

SO ORDERED.[15]

Martin moved for the reconsideration of the RTC's decision on May 18, 2011.[16] Finding the arguments in the motion unmeritorious, the RTC denied the motion in its Order[17] dated September 7, 2011:

In the case at bar, the Court found no sufficient basis for making a finding that either petitioner or respondent or both were afflicted with a psychological disorder within the contemplation of existing law and jurisprudence. Such being the case, there was no need to resort to Dr. Adamos' findings.

Having said this, the Court finds no compelling reason to set aside its March 10, 2011 Decision.

Wherefore, premises considered, the pending Motion for Reconsideration is DENIED.

SO ORDERED.[18]

Unsatisfied with the RTC's ruling, Martin appealed the denial of his petition to the CA.[19] In his Appellant's Brief, Martin

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[15] *Id*. at 83.

[16] *Id*. at 84-106.

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

[18] *Id*. at 108.

[19] *Id*. at 109.

submitted that it is not necessary for the psychologist to personally examine the incapacitated spouse, or Michelle in this case, before the court may rule on the petition for declaration of nullity of marriage.[20] He also argued that, at the very least, there was sufficient evidence to support his own diagnosis of psychological incapacity.[21] Martin thus claimed that the RTC committed a reversible error in dismissing his petition.

The Republic filed its own brief opposing the appeal of Martin. Arguing that there was no basis for Dr. Adamos' findings as to Michelle's psychological incapacity, the Republic asserts that there was no independent proof to establish this claim. Furthermore, the Republic argued that Martin supported his petition for declaration of nullity of marriage with self-serving testimonies and hearsay evidence.[22]

Ruling of the CA

On review, Martin's appeal was granted. In its Decision[23] dated July 10, 2013, the CA held that:

> WHEREFORE, the instant appeal is GRANTED. The assailed Decision dated March 10, 2011 and the Resolution dated September 07, 2011, respectively, issued by the [RTC] of Pasig City, Branch 261, are hereby REVERSED AND SET ASIDE. Accordingly, the marriage between [Martin] and [Michelle] is hereby declared NULL and VOID *ab initio* under Article 36 of the Family Code.
>
> SO ORDERED.[24]

The CA found that there was sufficient evidence to support Martin's claim that he is psychologically incapacitated. The CA also negated the RTC's ruling by referring to Martin's own testimony, in which he narrated his tendency to impose

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[20] *Id*. at 132-138.

[21] *Id*. at 139-144.

[22] *Id*. at 154-185.

[23] *Id*. at 35-51.

[24] *Id*. at 50.

his own unrealistic standards on Michelle.[25] In its challenged decision, the CA likewise ruled that Michelle's diagnosis was adequately supported by the narrations of Martin and Jose Vicente.[26]

Aggrieved, the Republic filed its motion for reconsideration from the CA's Decision dated July 10, 2013.[27] The CA denied the motion in its Resolution[28] dated November 28, 2013 for being a mere rehash of its earlier arguments.

The Republic is now before this Court, arguing that there was no basis for the CA's ruling granting the petition for declaration of nullity of marriage. It argues that the testimony of Martin was self-serving, especially in relation to Dr. Adamos' diagnosis that Michelle was psychologically incapacitated to comply with the essential marital obligations under the Family Code. According to the Republic, there were no other witnesses that were presented in court, who could have testified on Michelle's behavior.[29]

Ruling of the Court

The Court finds the present petition partially unmeritorious. The totality of evidence supports the finding that Martin is psychologically incapacitated to perform the essential obligations of marriage.

The psychological incapacity of a spouse must be characterized by (a) gravity; (b) juridical antecedence; and (c) incurability, which the Court discussed in *Santos v. CA, et al.*[30] as follows:

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[25] *Id*. at 45-47.

[26] *Id*. at 47-50.

[27] *Id*. at 186-192.

[28] *Id*. at 52-54.

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

[30] 310 Phil. 21, 39 (1995).

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.[31]

The Court later clarified in *Marcos v. Marcos*[32] that for purposes of establishing the psychological incapacity of a spouse, it is not required that a physician conduct an actual medical examination of the person concerned. It is enough that the totality of evidence is strong enough to sustain the finding of psychological incapacity. In such case, however, the petitioner bears a greater burden in proving the gravity, juridical antecedence, and incurability of the other spouse's psychological incapacity.[33]

While the Court has consistently followed the parameters in *Republic v. Molina*,[34] these guidelines are not meant to straightjacket all petitions for declaration of nullity of marriage. The merits of each case are determined on a case-to-case basis, as no case is on all fours with another.[35]

Martin, as the petitioner in this case, submitted several pieces of evidence to support his petition for declaration of nullity of marriage. He testified as to his own psychological incapacity and that of his spouse, Michelle. In particular, he stated that Michelle was confrontational even before their marriage.[36] He alleged that Michelle always challenged his opinions on what he thinks is proper, which he insisted on because he witnessed the abuse that his mother went through with his biological father.[37]

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[31] *Id.* at 39.

[32] 397 Phil. 840, 850 (2000).

[33] *Viñas v. Parel-Viñas*, 751 Phil. 762, 769-770 (2015).

[34] 335 Phil. 664 (1997).

[35] *Bier v. Bier, et al.*, 570 Phil. 442, 448-449 (2008).

[36] *Rollo*, p. 37.

[37] *Id.* at 194-195.

He also thought that Michelle was highly impressionable and easily influenced by friends, as a result of which, Martin alleged that Michelle acted recklessly and without consideration of his feelings.[38]

The psychological findings of Dr. Adamos were also presented in the trial court to corroborate his claim. According to Dr. Adamos, Michelle suffered from Narcissistic Personality Disorder as a result of childhood trauma and defective child-rearing practices.[39] This disorder was supposedly aggravated by her marriage with Martin, who she constantly lied to. It was also alleged in the Psychological Impression Report that Michelle openly had extra-marital affairs.[40]

The basis of Dr. Adamos' findings on the psychological incapacity of Michelle was the information provided by Martin and Jose Vicente. Jose Vicente was a close friend of the respondents, having introduced them to each other before their marriage.[41] Jose Vicente was also allegedly a regular confidant of Michelle.[42]

While it is true that Michelle was not personally examined or evaluated for purposes of the psychological report, the trial court was incorrect in ruling that Dr. Adamos' findings were based solely on the interview with Martin.[43] Even if that were the case, the findings of the psychologist are not immediately invalidated for this reason alone. Because a marriage necessarily involves only two persons, the spouse who witnessed the other spouse's behavior may "validly relay" the pattern of behavior to the psychologist.[44]

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[38] *Id.* at 37-39, 194-201.

[39] *Id.* at 209.

[40] *Id.* at 210.

[41] *Id.* at 47, 136-137.

[42] *Id.* at 136.

[43] *Id.* at 83.

[44] *Camacho-Reyes v. Reyes*, 642 Phil. 602, 627 (2010).

This notwithstanding, the Court disagrees with the CA's findings that Michelle was psychologically incapacitated. We cannot absolutely rely on the Psychological Impression Report on Michelle. There were no other independent evidence establishing the root cause or juridical antecedence of Michelle's alleged psychological incapacity. While this Court cannot discount their first-hand observations, it is highly unlikely that they were able to paint Dr. Adamos a complete picture of Michelle's family and childhood history. The records do not show that Michelle and Jose Vicente were childhood friends, while Martin, on the other hand, was introduced to Michelle during their adulthood. Either Martin or Jose Vicente, as third persons outside the family of Michelle, could not have known about her childhood, how she was raised, and the dysfunctional nature of her family.[45] Without a credible source of her supposed childhood trauma, Dr. Adamos was not equipped with enough information from which he may reasonably conclude that Michelle is suffering from a chronic and persistent disorder that is grave and incurable.

The Court's explanation in *Rumbaua v. Rumbaua*[46] judiciously discussed the dangers of relying on the narrations of a petitioner-spouse to the psychologist, *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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> x x x x x x x x x
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> We find these observations and conclusions insufficiently in-depth and comprehensive to warrant the conclusion that a psychological

[45] *Rollo*, p. 209.

[46] 612 Phil. 1061 (2009).

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 really 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.[47] (Citations omitted and emphasis Ours)

It does not escape our attention, however, that Martin was also subjected to several psychological tests, as a result of which, Dr. Adamos diagnosed him with Narcissistic Personality Disorder.[48] Additionally, the diagnosis was based on Dr. Adamos' personal interviews of Martin, who underwent several—or to be accurate, more than 10—counselling sessions with Dr. Adamos from 2008 to 2009.[49] These facts were uncontroverted by the Republic.

In his testimony, Dr. Adamos explained that Martin had a "grandiose self[-]existence," which proceeded from his "ideas of preference towards ideal love and ideal marriage."[50] Dr. Adamos also found that Martin lacked empathy, leading him to disregard and ignore the feelings of Michelle.[51]

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[47] *Id*. at 1084-1085.

[48] *Rollo*, pp. 45, 205-211.

[49] *Id*. at 95.

[50] *Id*. at 46.

[51] *Id*. at 47.

As a result, Martin was diagnosed with Narcissistic Personality Disorder, with tendencies toward sadism.[52] Dr. Adamos concluded from the tests administered on Martin that this disorder was rooted in the traumatic experiences he experienced during his childhood, having grown up around a violent father who was abusive of his mother.[53] This adversely affected Martin in such a manner that he formed unrealistic values and standards on his own marriage, and proposed unconventional sexual practices. When Michelle would disagree with his ideals, Martin would not only quarrel with Michelle, but would also inflict harm on her.[54] Other manifestations include excessive love for himself, self-entitlement, immaturity, and self-centeredness.[55]

These circumstances, taken together, prove the three essential characteristics of psychological incapacity on the part of Martin. **As such, insofar as the psychological incapacity of Martin is concerned, the CA did not commit a reversible error in declaring the marriage of the respondents null and void under Article 36 of the Family Code.**

As a final note, the Court emphasizes that the factual circumstances obtaining in this *specific* case warrant the declaration that Martin is psychologically incapacitated to perform the essential marital obligations at the time of his marriage to Michelle. This is neither a relaxation nor abandonment of previous doctrines relating to Article 36 of the Family Code. The guidelines in *Molina* still apply to all petitions for declaration of nullity of marriage inasmuch as this Court does not lose sight of the constitutional protection to the institution of marriage.

WHEREFORE, premises considered, the petition for review on *certiorari* is **PARTIALLY GRANTED** insofar as the psychological incapacity of respondent Michelle K. Mercado-

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[52] *Id.* at 45-46.

[53] *Id.* at 93-95.

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

[55] *Id.* at 93.

Javier is concerned. The Decision dated July 10, 2013 and Resolution dated November 28, 2013 of the Court of Appeals in CA-G.R. CV No. 98015 are **MODIFIED** to the extent that the marriage of the respondents on February 8, 2002 is declared **NULL** and **VOID** ***AB INITIO*** due to the psychological incapacity of respondent Martin Nikolai Z. Javier, pursuant to Article 36 of the Family Code.

SO ORDERED.

Carpio,[*] *Acting C.J. (Chairperson), Peralta, Perlas-Bernabe*, and *Caguioa, JJ.*, concur.

SECOND DIVISION

[G.R. No. 210580. April 18, 2018]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **LUDYSON C. CATUBAG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; THE NATURE OF THE PROCEEDING DETERMINES THE APPROPRIATE REMEDIES AVAILABLE.— Basic is the rule that the nature of the proceeding determines the appropriate remedy or remedies available. Hence, a party aggrieved by an action of a court must first correctly determine the nature of the order, resolution, or decision, in order to properly assail it.

2. ID.; ID.; SUMMARY PROCEEDINGS; ACTIONS FOR PRESUMPTIVE DEATH ARE SUMMARY IN NATURE; LEGAL REMEDIES.— Since what is involved in the instant case is a

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

petition for declaration of presumptive death, the relevant provisions of law are Articles 41, 238, and 253 of the Family Code. These provisions explicitly provide that actions for presumptive death are summary in nature. x x x Consequently, parties cannot seek reconsideration, nor appeal decisions in summary judicial proceedings under the Family Code because by express mandate of law, judgments rendered thereunder are immediately final and executory. x x x Further, it is well settled in our laws and jurisprudence that a decision that has acquired finality becomes immutable and unalterable. As such, it may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. While parties are precluded from filing a motion for reconsideration or a notice of appeal, in a petition for declaration of presumptive death, they may challenge the decision of the court *a quo* through a petition for *certiorari* to question grave abuse of discretion amounting to lack of jurisdiction. In *Republic vs. Sareñogon, Jr.*, the Court outlined the legal remedies available in a summary proceeding for the declaration of presumptive death. If aggrieved by the decision of the RTC, then filing with the CA a Petition for *Certiorari* under Rule 65 would be proper. Any subsequent decision by the CA may then be elevated to the Court *via* a Petition for Review on *Certiorari* under Rule 45.

3. **CIVIL LAW; FAMILY CODE; MARRIAGES; DECLARATION OF PRESUMPTIVE DEATH; REQUISITES.—** [The] four (4) requisites under Article 41 of the Family Code that must be complied with for the declaration of presumptive death to prosper: first, the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391 of the Civil Code. Second, the present spouse wishes to remarry. Third, the present spouse has a well-founded belief that the absentee is dead. Fourth, the present spouse files for a summary proceeding for the declaration of presumptive death of the absentee. In seeking a declaration of presumptive death, it is the present spouse who has the burden of proving that all the requisites under Article 41 of the Family Code are present.

4. ID.; ID.; ID.; ID.; ID.; REQUISITE OF "WELL-FOUNDED BELIEF" THAT THE ABSENTEE IS DEAD; SUCH BELIEF MUST RESULT FROM DILIGENT EFFORTS TO LOCATE THE ABSENT SPOUSE.— The Court in [*Republic v.*] *Cantor* pointed out that the term, "well-founded belief" has no exact definition under the law. In fact, the Court notes that such belief depends on the circumstances of each particular case. As such, each petition must be judged on a case-to-case basis. x x x [However,] [i]n *Republic vs. Orcelino-Villanueva*, the Court, through Justice Mendoza, provided that such belief must result from diligent efforts to locate the absent spouse. Such diligence entails an active effort on the part of the present spouse to locate the missing one. The mere absence of a spouse, devoid of any attempt by the present spouse to locate the former, will not suffice.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Bonifacio Albino B. Pattaguan, Jr. for respondent.

D E C I S I O N

REYES, JR., *J.*:

Nature of the Petition

Challenged before this Court *via* Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the Resolutions[2] of the Court of Appeals (CA) in CA-G.R. SP. No. 131269 dated September 3, 2013[3] and December 6, 2013.[4] The assailed Resolutions denied the petition for *certiorari* filed by petitioner for failure to file a motion for reconsideration.

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[1] *Rollo*, pp. 10-28.

[2] Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Agnes Reyes Carpio.

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

[4] *Id*. at 33-35.

Likewise challenged is the Decision[5] dated May 23, 2013 of the Regional Trial Court (RTC) of Tuao, Cagayan, Branch 11, declaring Ludyson C. Catubag's (private respondent) spouse, Shanaviv G. Alvarez-Catubag (Shanaviv), as presumptively dead.

The Antecedent Facts

Prior to the celebration of their marriage in 2003, private respondent and Shanaviv had been cohabiting with each other as husband and wife. Their union begot two (2) children named Mark Bryan A. Catubag and Rose Mae A. Catubag, both of whom were born on May 18, 2000 and May 21, 2001, respectively.[6]

In 2001, in order to meet the needs of his family, private respondent took work overseas. Meanwhile, Shanaviv stayed behind in the Philippines to tend to the needs of their children.[7]

On June 26, 2003, private respondent and Shanaviv tied the knot in Rizal, Cagayan. The marriage was solemnized by Honorable Judge Tomas D. Lasam at the Office of the Municipal Judge, Rizal, Cagayan.[8]

Sometime in April 2006, private respondent and his family were able to acquire a housing unit located at Rio del Grande Subdivision, Enrile Cagayan. Thereafter, private respondent returned overseas to continue his work. While abroad, he maintained constant communication with his family.[9]

On July 12, 2006, while working abroad, private respondent was informed by his relatives that Shanaviv left their house and never returned. In the meantime, private respondent's relatives took care of the children.[10]

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[5] *Id.* at 78-81.

[6] *Id.* at 78-79.

[7] *Id.* at 79.

[8] *Id.* at 78.

[9] *Id.* at 79.

[10] *Id.*

Worried about his wife's sudden disappearance and the welfare of his children, private respondent took an emergency vacation and flew back home. Private respondent looked for his wife in Enrile Cagayan, but to no avail. He then proceeded to inquire about Shanaviv's whereabouts from their close friends and relatives, but they too could offer no help. Private respondent travelled as far as Bicol, where Shanaviv was born and raised, but he still could not locate her.[11]

Private respondent subsequently sought the help of Bombo Radyo Philippines, one of the more well-known radio networks in the Philippines, to broadcast the fact of his wife's disappearance. Moreover, private respondent searched various hospitals and funeral parlors in Tuguegarao and in Bicol, with no avail.[12]

On May 4, 2012, after almost seven (7) years of waiting, private respondent filed with the RTC a petition to have his wife declared presumptively dead.[13]

On May 23, 2013, the RTC rendered its Decision granting the Petition. The dispositive portion of the decision which reads:

> WHEREFORE, the petition is GRANTED. SHANAVIV G. ALVAREZ-CATUBAG is hereby adjudged PRESUMPTIVELY DEAD only for the purpose that petitioner LUDYSON C. CATUBAG may contract a marriage subsequent to what he had with SHANAVIV G. ALVAREZ-CATUBAG without prejudice to the reappearance of the latter.
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> SO ORDERED.[14]

On August 5, 2013, petitioner, through the Office of the Solicitor General (OSG), elevated the judgment of the RTC to the CA *via* a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court. Petitioner's main contention is that private

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[11] *Id.*

[12] *Id.*

[13] *Id.* at 50-52.

[14] *Id.* at 81.

respondent failed to establish a "well-founded belief" that his missing wife was already dead.[15]

In its Resolution[16] dated September 3, 2013, the CA dismissed the petition because no motion for reconsideration was filed with the court *a quo*. The CA ruled that such defect was fatal and warranted the immediate dismissal of the petition. The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the instant petition for certiorari is **DISMISSED**.

SO ORDERED.[17]

On September 18, 2013, petitioner filed a Motion for Reconsideration, but the same was denied by the CA in its Resolution[18] dated December 6, 2013. Hence, this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

The Issues

The petitioner anchors its plea for the annulment of the assailed resolutions and the denial of private respondent's petition to declare his wife presumptively dead on the following grounds:

I. THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR CERTIORARI ON THE GROUND THAT PETITIONER DID NOT PREVIOUSLY FILE A MOTION FOR RECONSIDERATION BEFORE THE COURT *A QUO*.

II. THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR [*CERTIORARI*] ON THE GROUND THAT PETITIONER FAILED TO ATTACH THERETO COPIES OF ALL

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[15] *Id*. at 13.

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

[17] *Id*. at 31.

[18] *Id*. at 33-35.

PERTINENT AND RELEVANT DOCUMENTS AND PLEADINGS.

III. PRIVATE RESPONDENT HAS NOT ESTABLISHED A WELL-FOUNDED BELIEF THAT HIS WIFE IS PRESUMPTIVELY DEAD.

IV. PRIVATE RESPONDENT FAILED TO PROVE HIS INTENTION TO RE-MARRY.[19]

In sum, the instant petition rests on the resolution of two issues: (1) whether or not petitioner's resort to a Petition for *Certiorari* under Rule 65 to challenge the decision of the RTC declaring Shanaviv presumptively dead was proper; and (2) whether or not private respondent complied with the essential requisites of a petition for declaration of presumptive death under Article 41 of the Family Code.

The Court's Ruling

The petition is impressed with merit.

Basic is the rule that the nature of the proceeding determines the appropriate remedy or remedies available. Hence, a party aggrieved by an action of a court must first correctly determine the nature of the order, resolution, or decision, in order to properly assail it.[20]

Since what is involved in the instant case is a petition for declaration of presumptive death, the relevant provisions of law are Articles 41, 238, and 253 of the Family Code. These provisions explicitly provide that actions for presumptive death are summary in nature. Article 41 provides:

Article 41. A marriage contracted by any person during subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present has a well-

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

[20] See *Bergonia v. Court of Appeals (4th Division)*, 680 Phil. 334, 339 (2012); *Raymundo v. Vda. de Suarez, et al*., 593 Phil. 28, 49.

founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute **a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee**, without prejudice to the effect of reappearance of the absent spouse. (Emphasis supplied)

Likewise, Article 238 in relation to Article 253, under Title XI: SUMMARY JUDICIAL PROCEEDINGS IN THE FAMILY LAW, of the Family Code provides:

Article 238. Until modified by the Supreme Court, the procedural rules in this Title shall apply in all cases provided for in this Code requiring summary court proceedings. Such cases shall be decided in an expeditious manner without regard to technical rules.

x x x x x x x x x

Article 253. The foregoing rules in Chapters 2 and 3 hereof shall likewise govern **summary proceedings filed under Articles 41**, 51, 69, 73, 96, 124 and 217, insofar as they are applicable. (Emphasis Supplied)

Consequently, parties cannot seek reconsideration, nor appeal decisions in summary judicial proceedings under the Family Code because by express mandate of law, judgments rendered thereunder are immediately final and executory.[21] As explained by the Court in *Republic of the Phils. vs. Bermudez-Lorino*,[22] citing *Atty. Veloria vs. Comelec*:[23]

[T]he right to appeal is not a natural right nor is it a part of due process, for it is merely a statutory privilege. Since, by express mandate of Article 247 of the Family Code, all judgments rendered in summary judicial proceedings in Family Law are "immediately final and

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[21] Art. 247. The judgment of the court shall be immediately final and executory.

[22] 489 Phil. 761 (2005).

[23] 286 Phil. 1079, 1087 (1992).

executory," the right to appeal was not granted to any of the parties therein. The Republic of the Philippines, as oppositor in the petition for declaration of presumptive death, should not be treated differently. It had no right to appeal the RTC decision of November 7, 2001.[24]

Further, it is well settled in our laws and jurisprudence that a decision that has acquired finality becomes immutable and unalterable. As such, it may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.[25]

While parties are precluded from filing a motion for reconsideration or a notice of appeal, in a petition for declaration of presumptive death, they may challenge the decision of the court *a quo* through a petition for *certiorari* to question grave abuse of discretion amounting to lack of jurisdiction.[26]

In *Republic vs. Sareñogon, Jr.*,[27] the Court outlined the legal remedies available in a summary proceeding for the declaration of presumptive death. If aggrieved by the decision of the RTC, then filing with the CA a Petition for *Certiorari* under Rule 65 would be proper. Any subsequent decision by the CA may then be elevated to the Court *via* a Petition for Review on *Certiorari* under Rule 45.[28]

Considering the foregoing, the Court finds that petitioner's resort to *certiorari* under Rule 65 of the Rules of Court to challenge the RTC's Order declaring Shanaviv presumptively dead was proper.

Having determined the propriety of petitioner's mode of challenging the RTC's Order, the Court shall now proceed to

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[24] *Supra* note 22, at 767.

[25] *Nacuray v. NLRC*, 336 Phil. 749, 757 (1997).

[26] *Id.*

[27] G.R. No. 199194, February 10, 2016, 783 SCRA 615.

[28] *Id.* at 625.

tackle the issue of whether or not private respondent has sufficiently complied with the essential requisites in a petition for declaration of presumptive death.

Prevailing jurisprudence has time and again pointed out four (4) requisites under Article 41 of the Family Code that must be complied with for the declaration of presumptive death to prosper: first, the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391 of the Civil Code.[29] Second, the present spouse wishes to remarry. Third, the present spouse has a well-founded belief that the absentee is dead. Fourth, the present spouse files for a summary proceeding for the declaration of presumptive death of the absentee.[30]

In seeking a declaration of presumptive death, it is the present spouse who has the burden of proving that all the requisites under Article 41 of the Family Code are present. In the instant case, since it is private respondent who asserts the affirmative of the issue, then it is his duty to substantiate the same. He who alleges a fact has the burden of proving it and mere allegations will not suffice.[31]

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[29] Art. 391. The following shall be presumed dead for all purposes, including the division of the estate among the heirs:

(1) A person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane;

(2) A person in the armed forces who has taken part in war, and has been missing for four years;

(3) A person who has been in danger of death under other circumstances and his existence has not been known for four years. (n)

[30] See *Republic v. Tampus*, G.R. No. 214243, March 16, 2016, 787 SCRA 563, 567, citing *Republic v. Cantor*, 723 Phil. 114, 127-129 (2013); *Republic v. Granada*, 687 Phil. 403, 413 (2012); *Republic v. Nolasco*, 292-A Phil. 102, 109 (1993).

[31] *Id.* at 568.

Notably, the records reveal that private respondent has complied with the first, second, and fourth requisites. Thus, what remains to be resolved is whether or not private respondent successfully discharged the burden of establishing a well-founded belief that his wife, Shanaviv, is dead.

The Court in *Cantor*,[32] pointed out that the term, "well-founded belief" has no exact definition under the law. In fact, the Court notes that such belief depends on the circumstances of each particular case. As such, each petition must be judged on a case-to-case basis.[33]

This is not to say, however, that there is no guide in establishing the existence of a well-founded belief that an absent spouse is already dead. In *Republic vs. Orcelino-Villanueva*,[34] the Court, through Justice Mendoza, provided that such belief must result from diligent efforts to locate the absent spouse. Such diligence entails an active effort on the part of the present spouse to locate the missing one. The mere absence of a spouse, devoid of any attempt by the present spouse to locate the former, will not suffice. The Court expounded on the required diligence, *to wit*:

> The well-founded belief in the absentee's death requires the present spouse to prove that his/her belief was the result of diligent and reasonable efforts to locate the absent spouse and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead. It necessitates exertion of active effort (not a mere passive one). Mere absence of the spouse (even beyond the period required by law), lack of any news that the absentee spouse is still alive, mere failure to communicate, or general presumption of absence under the Civil Code would not suffice. The premise is that Article 41 of the Family Code places upon the present spouse the burden of complying with the stringent requirement of "well-founded belief" which can only be discharged upon a showing of proper and honest-to-goodness

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[32] *Republic v. Cantor*, 723 Phil. 114 (2013).

[33] *Id.* at 129.

[34] 765 Phil. 324 (2015).

inquiries and efforts to ascertain not only the absent spouse's whereabouts but, more importantly, whether the absent spouse is still alive or is already dead.[35] (Citations omitted)

Furthermore, jurisprudence is replete with cases which help determine whether belief of an absent spouses' death is well-founded or not. A perusal of the cases of *Republic vs. Granada*,[36] *Cantor*,[37] and *Orcelino-Villanueva*[38] reveal the circumstances which do not meet the Court's standards in establishing a "well-founded belief."

In *Granada*,[39] the present spouse alleged that she exerted efforts in locating her absent spouse by inquiring from the latter's relatives regarding his whereabouts. The Court ruled against the present spouse and stated that the mere act of inquiring from relatives falls short of the diligence required by law. It pointed out that the present spouse did not report to the police nor seek the aid of mass media. Even worse, the present spouse did not even bother to present any of the absent spouses' relatives to corroborate her allegations.[40]

Similarly in *Cantor*,[41] the present spouse alleged that she exerted "earnest efforts" in attempting to locate her missing husband. She claimed that she made inquiries with their relatives, neighbors, and friends as to his whereabouts. She even stated that she would take the time to look through the patient's directory whenever she would visit a hospital.[42]

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[35] *Id*. at 329-330.

[36] *Republic v. Granada*, 687 Phil. 403, 415 (2012).

[37] *Republic v. Cantor*, *supra* note 32 at 133.

[38] *Orcelino-Villanueva*, *supra* note 34, at 330.

[39] *Supra* note 36, at 414.

[40] *Id*. at 415.

[41] *Republic v. Cantor*, *supra* note 32, at 114.

[42] *Id*. at 132.

Despite these alleged "earnest efforts,'' the Court still ruled otherwise. It held that the present spouse engaged in a mere "passive-search" Applying the "stringent-standards" and degree of diligence required by jurisprudence, the Court pointed out four acts of the present spouse which contradict the claim of a diligent and active search,[43] to wit:

> First, the respondent did not actively look for her missing husband. It can be inferred from the records that her hospital visits and her consequent checking of the patients' directory therein were unintentional. She did not purposely undertake a diligent search for her husband as her hospital visits were not planned nor primarily directed to look for him. This Court thus considers these attempts insufficient to engender a belief that her husband is dead.
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> Second, she did not report Jerry's absence to the police nor did she seek the aid of the authorities to look for him. While a finding of well-founded belief varies with the nature of the situation in which the present spouse is placed, under present conditions, we find it proper and prudent for a present spouse, whose spouse had been missing, to seek the aid of the authorities or, at the very least, report his/her absence to the police.
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> Third, she did not present as witnesses Jerry's relatives or their neighbors and friends, who can corroborate her efforts to locate Jerry. Worse, these persons, from whom she allegedly made inquiries, were not even named. As held in Nolasco, the present spouse's bare assertion that he inquired from his friends about his absent spouse's whereabouts is insufficient as the names of the friends from whom he made inquiries were not identified in the testimony nor presented as witnesses.
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> Lastly, there was no other corroborative evidence to support the respondent's claim that she conducted a diligent search. Neither was there supporting evidence proving that she had a well-founded belief other than her bare claims that she inquired from her friends and in-laws about her husband's whereabouts.[44] (Citations omitted)

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[43] *Id.*

[44] *Id.* at 132-133.

The foregoing conduct of the present spouse led the Court to conclude that her efforts in searching for her absent spouse were insincere. Ultimately, the Courts considered these attempts insufficient to comply with the requirement of conducting a reasonable, diligent, and active search.[45]

In *Orcelino-Villanueva*, the Court likewise ruled that the present spouse failed to prove that she had a well-founded belief that her absent spouse was already dead. In said case, the present spouse began her "search" by returning home from her work overseas to look for her missing husband. She then inquired from her in-laws and common friends as to his whereabouts. The present spouse even went as far as Negros Oriental, where the absent spouse was born. Additionally, the present spouse claimed that fifteen (15) years have already lapsed since her husband's disappearance.[46]

In that case, the Court held that the factual circumstances were very similar to the two aforementioned cases. It further held that it was erroneous for the lower courts to grant the petition for declaration of presumptive death. The Court explained why the present spouse's allegations should not have been given credence, to wit:

> Applying the standard set forth by the Court in the previously cited cases, particularly *Cantor*, Edna's efforts failed to satisfy the required well-founded belief of her absent husband's death.
>
> Her claim of making diligent search and inquiries remained unfounded as it merely consisted of bare assertions without any corroborative evidence on record. She also failed to present any person from whom she inquired about the whereabouts of her husband. She did not even present her children from whom she learned the disappearance of her husband. In fact, she was the lone witness. Following the basic rule that mere allegation is not evidence and is not equivalent

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[45] *Id.* at 133.

[46] *Republic v. Orcelino-Villanueva*, *supra* note 34, at 327.

to proof, the Court cannot give credence to her claims that she indeed exerted diligent efforts to locate her husband. [47] (Citations omitted)

Having laid out the foregoing jurisprudential guidelines in determining the existence of a "well-founded belief," the Court now shifts focus to the specific circumstances surrounding the current case. In the case at bar, private respondent first took a leave of absence from his work in the United Arab Emirates and returned to the Philippines to search for Shanaviv. He then proceeded to inquire about his wife's whereabouts from their friends and relatives in Cagayan and Bicol. Next, private respondent aired over Bombo Radyo Philippines, a known radio station, regarding the fact of disappearance of his wife. Finally, he claims to have visited various hospitals and funeral parlors in Tuguegarao City and nearby municipalities.[48]

Applying the foregoing standards discussed by the Court in *Cantor*,[49] *Granada*,[50] and *Orcelino-Villanueva*,[51] the Court finds that private respondent's efforts falls short of the degree of diligence required by jurisprudence for the following reasons:

First, private respondent claims to have inquired about his missing wife's whereabouts from both friends and relatives. Further, he claims to have carried out such inquiries in the place where they lived and in the place where his wife was born and raised. However, private respondent failed to present any of these alleged friends or relatives to corroborate these "inquiries." Moreover, no explanation for such omission was given. As held in the previous cases, failure to present any of the persons from whom inquiries were allegedly made tends to belie a claim of a diligent search.

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[47] *Id*. at 332-333.

[48] *Rollo*, p. 79.

[49] *Republic v. Cantor*, *supra* note 32, at 132.

[50] *Republic v. Granada*, *supra* note 36, at 414.

[51] *Orcelino-Villanueva*, *supra* note 34, at 331.

Second, private respondent did not seek the help of other concerned government agencies, namely, the local police authorities and the National Bureau of Investigation (NBI). In *Cantor*, the Court reasoned that while a finding of well-founded belief varies with the nature of the situation, it would still be prudent for the present spouse to seek the aid of the authorities in searching for the missing spouse. Absent such efforts to employ the help of local authorities, the present spouse cannot be said to have actively and diligently searched for the absentee spouse.[52]

Finally, aside from the certification of Bombo Radyo's manager, private respondent bases his "well-founded belief" on bare assertions that he exercised earnest efforts in looking for his wife. Again, the present spouse's bare assertions, uncorroborated by any kind of evidence, falls short of the diligence required to engender a well-founded belief that the absentee spouse is dead.

Taken together, the Court is of the view that private respondent's efforts in searching for his missing wife, Shanaviv, are merely passive. Private respondent could have easily convinced the Court otherwise by providing evidence which corroborated his "earnest-efforts." Yet, no explanation or justification was given for these glaring omissions. Again, he who alleges a fact has the burden of proving it by some other means than mere allegations.

Stripped of private respondent's mere allegations, only the act of broadcasting his wife's alleged disappearance through a known radio station was corroborated.[53] This act comes nowhere close to establishing a well-founded belief that Shanaviv has already passed away. At most, it just reaffirms the unfortunate theory that she abandoned the family.

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[52] *Republic v. Cantor*, *supra* note 32, at 132-133.

[53] Certification from Bombo Radyo Philippine's Station Manager, *rollo,* p. 75.

To accept private respondent's bare allegations would be to apply a liberal approach in complying with the requisite of establishing a well-founded belief that the missing spouse is dead. In *Republic vs. Court of Appeals (Tenth Div.)*,[54] the Court cautioned against such a liberal approach. It opined that to do so would allow easy circumvention and undermining of the Family Code. The Court stated:

> There have been times when Article 41 of the Family Code had been resorted to by parties wishing to remarry knowing fully well that their alleged missing spouses are alive and well. It is even possible that those who cannot have their marriages x x x declared null and void under Article 36 of the Family Code resort to Article 41 of the Family Code for relief because of the x x x summary nature of its proceedings.

Stated otherwise, spouses may easily circumvent the policy of the laws on marriage by simply agreeing that one of them leave the conjugal abode and never return again. Thus, there is a need for courts to exercise prudence in evaluating petitions for declaration of presumptive death of an absent spouse. A lenient approach in applying the standards of diligence required in establishing a "well-founded belief" would defeat the State's policy in protecting and strengthening the institution of marriage.[55]

On this basis, it is clear that private respondent failed to fulfill the requisite of establishing a well-founded belief that the absentee spouse is dead. Thus, the RTC should have denied private respondent's petition for declaration of presumptive death.

In fine, having determined the propriety of petitioner's resort to a petition for *certiorari* and private respondent's failure to meet the stringent standard and degree of due diligence required by jurisprudence to support his claim of a "well-founded belief' that his wife, Shanaviv, is already dead, it is proper for the Court to grant the petition. Consequently, the other issues raised by the petitioner need not be discussed further.

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[54] *Republic v. Court of Appeals*, 513 Phil. 391, (2005), as cited in *Republic v. Cantor*.

[55] See concurring opinion of Justice Velasco, Jr., *supra* note 30.

WHEREFORE, the petition is **GRANTED**. Accordingly, the Decision dated May 23, 2013 of the Regional Trial Court of Tuao, Cagayan, Branch 11 and the Resolutions dated September 3, 2013 and December 6, 2013 rendered by the Court of Appeals in CA-G.R. S.P. No. 131269 are hereby **ANNULLED** and **SET ASIDE**. Consequently, the petition of private respondent Ludyson C. Catubag to have his wife, Shanaviv G. Alvarez-Catubag, declared presumptively dead is **DENIED**.

SO ORDERED.

Carpio,[*] *Acting C. J. (Chairperson)*, *Peralta, Perlas-Bernabe*, and *Caguioa, JJ.*, concur.

FIRST DIVISION

[G.R. No. 211273. April 18, 2018]

RAYMOND A. SON, RAYMOND S. ANTIOLA, and WILFREDO E. POLLARCO, *petitioners, vs.* **UNIVERSITY OF SANTO TOMAS, FR. ROLANDO DELA ROSA, DR. CLARITA CARILLO, DR. CYNTHIA LOZA, FR. EDGARDO ALAURIN, and the COLLEGE OF FINE ARTS AND DESIGN FACULTY COUNCIL,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DECS ORDER 92, SERIES OF 1992 OR THE REVISED MANUAL OF REGULATIONS FOR PRIVATE SCHOOLS; CHED MEMORANDUM ORDER NO. 40-08; COLLEGE FACULTY

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

MEMBERS MUST HAVE A MASTER'S DEGREE IN THEIR FIELD OF INSTRUCTION AS A MINIMUM QUALIFICATION FOR TEACHING IN A PRIVATE EDUCATIONAL INSTITUTION AND ACQUIRING REGULAR STATUS THEREIN; THE TENURE BY DEFAULT PROVISION IN THE COLLECTIVE BARGAINING AGREEMENT IS NULL AND VOID, AND HAS NO EFFECT AS BETWEEN THE PARTIES AS THE SAME IS CONTRARY TO, AND VIOLATIVE OF THE 1992 REVISED MANUAL OF REGULATIONS FOR PRIVATE SCHOOLS. — As early as in 1992, the requirement of a Master's degree in the undergraduate program professor's field of instruction has been in place, through DECS Order 92 (series of 1992, August 10, 1992) or the Revised Manual of Regulations for Private Schools. Article IX, Section 44, paragraph 1 (a) thereof provides that college faculty members must have a master's degree in their field of instruction as a minimum qualification for teaching in a private educational institution and acquiring regular status therein. DECS Order 92, Series of 1992 was promulgated by the DECS in the exercise of its rule-making power as provided for under Section 70 of Batas Pambansa Blg. 232, otherwise known as the Education Act of 1982. As such, it has the force and effect of law. In *University of the East v. Pepanio*, the requirement of a masteral degree for tertiary education teachers was held to be not unreasonable but rather in accord with the public interest. Thus, when the CBA was executed between the parties in 2006, they had no right to include therein the provision relative to the acquisition of tenure by default, because it is contrary to, and thus violative of, the 1992 Revised Manual of Regulations for Private Schools that was in effect at the time. As such, said CBA provision is null and void, and can have no effect as between the parties. "A void contract is equivalent to nothing; it produces no civil effect; and it does not create, modify or extinguish a juridical relation." Under the Civil Code, Art. 1409. The following contracts are inexistent and void from the beginning: (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy; x x x.

2. ID.; ID.; ID.; ID.; ID.; DISMISSAL OF PETITIONERS AFFIRMED, AS FACULTY MEMBERS OF UNDERGRADUATE PROGRAMS WHO DO NOT POSSESS THE MANDATED MASTER'S DEGREE CANNOT INSIST TO BE EMPLOYED

BY EDUCATIONAL INSTITUTIONS, AND THE FACT THAT EDUCATIONAL INSTITUTIONS CONTINUE TO HIRE AND MAINTAIN PROFESSORS WITHOUT THE NECESSARY MASTER'S DEGREE IS NOT A GROUND FOR CLAIMING ILLEGAL DISMISSAL.— When CHED Memorandum Order No. 40-08 came out, it merely carried over the requirement of a masteral degree for faculty members of undergraduate programs contained in the 1992 Revised Manual of Regulations for Private Schools. It cannot therefore be said that the requirement of a master's degree was retroactively applied in petitioners' case, because it was already the prevailing rule with the issuance of the 1992 Revised Manual of Regulations for Private Schools. Thus, going by the requirements of law, it is plain to see that petitioners are not qualified to teach in the undergraduate programs of UST. And while they were given ample time and opportunity to satisfy the requirements by obtaining their respective master's degrees, they failed in the endeavor. Petitioners knew this - that they cannot continue to teach for failure to secure their master's degrees - and needed no reminding of this fact; "those who are seeking to be educators are presumed to know these mandated qualifications." From a strict legal viewpoint, the parties are both in violation of the law: respondents, for maintaining professors without the mandated masteral degrees, and for petitioners, agreeing to be employed despite knowledge of their lack of the necessary qualifications. Petitioners cannot therefore insist to be employed by UST since they still do not possess the required master's degrees; the fact that UST continues to hire and maintain professors without the necessary master's degrees is not a ground for claiming illegal dismissal, or even reinstatement.

3. **ID.; ID.; ID.; ID.; PETITIONERS AND RESPONDENTS ARE IN *PARI DELICTO* FOR VIOLATING DECS ORDER 92, SERIES OF 1992; *PARI DELICTO* DOCTRINE, EXPLAINED.—** As far as the law is concerned, respondents are in violation of the CHED regulations for continuing the practice of hiring unqualified teaching personnel; but the law cannot come to the aid of petitioners on this sole ground. As between the parties herein, they are in *pari delicto*. Latin for 'in equal fault,' in *pari delicto* connotes that two or more people are at fault or are guilty of a crime. Neither courts of law nor equity will interpose to grant relief to the parties, when an illegal agreement

has been made, and both parties stand in *pari delicto*. Under the *pari delicto* doctrine, the parties to a controversy are equally culpable or guilty, they shall have no action against each other, and it shall leave the parties where it finds them. This doctrine finds expression in the maxims "*ex dolo malo nonoritur actio*" and "*in pari delicto potior est conditio defendentis*." x x x. The minimum requirement of a master's degree in the undergraduate teacher's field of instruction has been cemented in DECS Order 92, Series of 1992. Both petitioners and respondents have been violating it. The fact that government has not cracked down on violators, or that it chose not to strictly implement the provision, does not erase the violations committed by erring educational institutions, including the parties herein; it simply means that government will not punish these violations for the meantime. The parties cannot escape its concomitant effects, nonetheless. And if respondents knew the overwhelming importance of the said provision and the public interest involved -as they now fiercely advocate to their favor - they should have complied with the same as soon as it was promulgated.

4. ID.; ID.; ID.; ID.; AGREEMENT TO THE TENURE BY DEFAULT PROVISION IN THE CBA NEITHER CONSTITUTES ESTOPPEL NOR DEEMED A WAIVER OF THE APPLICATION OF THE REQUIREMENT OF A MASTER'S DEGREE FOR FACULTY MEMBERS IN THE UNDERGRADUATE PROGRAMS UNDER CHED MEMORANDUM ORDER NO. 40-08, AS A WAIVER THEREOF IS CONTRARY TO LAW, AND THERE COULD BE NO ACQUIESCENCE - AMOUNTING TO ESTOPPEL - WITH RESPECT TO ACTS WHICH CONSTITUTE A VIOLATION OF LAW.— It cannot be said either that by agreeing to the tenure by default provision in the CBA, respondents are deemed to be in estoppel or have waived the application of the requirement under CHED Memorandum Order No. 40-08. Such a waiver is precisely contrary to law. Moreover, a waiver would prejudice the rights of the students and the public, who have a right to expect that UST is acting within the bounds of the law, and provides quality education by hiring only qualified teaching personnel. Under Article 6 of the Civil Code, "[r]ights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law."

> On the other hand, there could be no acquiescence - amounting to estoppel - with respect to acts which constitute a violation of law. "The doctrine of estoppel cannot operate to give effect to an act which is otherwise null and void or *ultra vires*." "[N]o estoppel can be predicated on an illegal act."

APPEARANCES OF COUNSEL

Delos Reyes Irog Braga and Associates for petitioners.
Divina Law for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to set aside the September 27, 2013 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 128666 setting aside the August 10, 2011 Decision[3] and October 30, 2012 Decision[4] and January 22, 2013 Resolution[5] of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 04-001131-11 and reinstating the March 26, 2012 Decision[6] of the NLRC, as well as the CA's January 29, 2014 Resolution[7] denying petitioners' Motion for Reconsideration.[8]

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[1] *Rollo*, Vol. I, pp. 14-37.

[2] *Id*. at 39-50; penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes, Jr. and Mario V. Lopez.

[3] *Id*. at 315-323; penned by Commissioner Angelo Ang Palaña and concurred in by Commissioner Numeriano D. Villena.

[4] *Id*. at 381-390; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioner Pablo C. Espiritu, Jr.

[5] *Rollo*, Vol. II, pp. 805-807.

[6] *Rollo*, Vol. I, pp. 354-362; penned by Commissioner Napoleon M. Menese and concurred in by Commissioner Gregorio O. Bilog.

[7] *Id*. at 52-53; penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes, Jr. and Mario V. Lopez.

[8] *Id*. at 108-117.

Factual Antecedents

Respondent University of Santo Tomas (UST) is an educational institution operating under the authority of the Commission on Higher Education (CHED). The rest of the herein respondents are impleaded as officers and administrators of the school.

Petitioners Raymond A. Son (Son), Raymond S. Antiola (Antiola), and Wilfredo E. Pollarco (Pollarco) are full time professors of the UST Colleges of Fine Arts and Design and Philosophy, and are members of the UST Faculty Union, with which UST at the time had a Collective Bargaining Agreement (CBA).

Son and Antiola were hired in June, 2005, while Pollarco was employed earlier, or in June, 2004. Under their respective appointment papers, petitioners were designated as "faculty member[s] on PROBATIONARY status," whose "accession to tenure status is conditioned by [sic] your meeting all the requirements provided under existing University rules and regulations and other applicable laws including, among others, possession of the [prerequisite] graduate degree before the expiration of the probationary period and by your satisfactory performance of the duties and responsibilities set forth in the job description hereto attached."[9]

The UST-UST Faculty Union CBA provided that –

ARTICLE XV
TENURE

Section 1 .Tenured Faculty Member. - He is:

a. Teaching Faculty member, given a tenure track appointment upon hiring who has rendered six (6) consecutive semesters of satisfactory service on a full-time basis, carrying fifteen-unit load (15) or more. Although a master's degree is an entry requirement, a faculty member admitted to serve the University without a master's degree shall finish his master's degree in five (5) semesters. If he does not finish his degree

[9] *Id*. at 437.

> in five (5) semesters, he shall be separated from service at the end of the fifth semester; however, if he is made to serve the University further, in spite of the lack of a master's degree, he shall be deemed to have attained tenure.[10]

The CBA provision relative to the requirement of a Master's degree in the faculty member's field of instruction is in line with the requirement laid down in the 1992 Revised Manual of Regulations for Private Schools issued by then Department of Education, Culture, and Sports (DECS), and the CHED's Memorandum Order No. 40-08 - or Manual of Regulations for Private Higher Education of 2008 - stating that:

> Section 35.**Minimum Faculty Qualifications**. - The minimum qualifications of a faculty in a higher education institution shall be as follows:
>
> 1. **For undergraduate program**
>
> a. Holder of a master's degree; to teach mainly in his major field and where applicable, a holder of appropriate professional license requiring at least a bachelor's degree for the professional courses. However, in specific fields where there is dearth of holders of Master's degree, or a holder of a professional license requiring at least a bachelor's degree may be qualified to teach. Any deviation from this requirement will be subject to regulation by the Commission.

Petitioners did not possess the required Master's degree, but were nonetheless hired by UST on the condition that they fulfill the requirement within the prescribed period. Petitioners enrolled in the Master's program, but were unable to finish the same. In spite of their failure to obtain the required Master's degree, they continued to teach even beyond the period given for completion thereof.

On March 3, 2010, then CHED Chairman Emmanuel Angeles issued a Memorandum[11] addressed to the Presidents of public

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[10] *Id*. at 518.

[11] *Id*. at 473.

and private higher education institutions, directing the strict implementation of the minimum qualification for faculty members of undergraduate programs, particularly the Master's degree and licensure requirements, as mandated by Memorandum Order No. 40-08, "to ensure the highest qualification of their faculty."

Acting on the March 3, 2010 Memorandum, UST wrote the petitioners and other affected faculty members, informing them of the university's decision to cease re-appointment of those who failed to complete their Master's degrees, but allow a written appeal from the concerned faculty members who are due for thesis defense/completion of their Master's degrees.[12]

Petitioners did not make a written appeal, operating under the belief that they have been vested tenure under the CBA for their continued employment despite failure to obtain the required Master's degree.[13]

On June 11, 2010, petitioners received termination/thank you letters[14] signed by respondent Dr. Cynthia Loza, Dean of the College of Fine Arts and Design. The reason given for non-renewal of their appointments is their failure to obtain the required Master's degree.

Ruling of the Labor Arbiter

Petitioners filed a labor case against the respondents for unfair labor practice, illegal dismissal, and recovery of money claims. In their joint Position Paper and other pleadings,[15] petitioners claimed that since they have already acquired tenure by default pursuant to the tenure provision in the CBA, they could not be dismissed for failure to complete their respective Master's degrees; that the UST-UST Faculty Union CBA is the law between the parties, and its provisions should be observed; that in spite of the CBA provision on tenure, respondents illegally

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[12] *Id*. at 477-482.

[13] *Id*. at 17.

[14] *Id*. at 520-523.

[15] *Id*. at 505-517, 554-560, 575-581.

terminated their employment; that they were illegally terminated for their refusal to send the prescribed appeal letter, which is tantamount to an undue waiver and unlawful surrender of their tenurial rights, and is against the law and public policy; that in terminating their employment, respondents did not comply with the required "twin-notice rule"; that respondents are guilty of bad faith and unfair labor practice on account of their violation of the CBA; that respondents are guilty of bad faith when they re-hired the other professors even when they did not possess the required Master's degree, while they (petitioners) were discriminated against and terminated from work just because they did not file the prescribed appeal letter; and that they should be paid backwages and other money claims. Thus, petitioners prayed for reinstatement with full backwages, allowances and other benefits; moral and exemplary damages; and attorney's fees and costs of suit.

In their joint Position Paper and other pleadings[16] respondents countered that there is no unfair labor practice committed, because the CBA provision adverted to is not an economic provision; that the implementation of Memorandum Order No. 40-08 takes legal precedence over the parties' CBA; that the CBA provision granting tenure by default may no longer be enforced on account of the requirement under Memorandum Order No. 40-08, an administrative regulation that is equivalent to law and has the effect of abrogating the tenure provision of the CBA; that Memorandum Order No. 40-08 is a police power measure for the protection and promotion of quality education, and as such, the CBA should yield to the same and to the broader interests of the State; that petitioners could not have acquired tenure since they did not possess the minimum qualification - a Master's degree - prescribed under Memorandum Order No. 40-08; that the CBA provision on tenure by default has become illegal as it is contrary to law, and for this reason, it may not be enforced; that said CBA provision, being contrary to law, cannot be the object of estoppel, and produces no effect whatsoever and need

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[16] *Id*. at 486-504, 527-544, 562-574.

not be set aside nor declared ineffective by judicial action; that in not renewing petitioners' probationary appointments, respondents observed due process and the provisions of the Labor Code, particularly Article 281, which provides that a probationary employee may be terminated from work "when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement"; that petitioners are not entitled to monetary awards as they were dismissed for cause, paid their correct salaries, and are not entitled to damages and attorney's fees; and that the case against the individual respondents should be dismissed as well, as they were acting within their official capacities. Thus, they prayed for the dismissal of petitioners' complaint.

On March 17, 2011, Labor Arbiter Joel S. Lustria rendered his Decision[17] in NLRC Case Nos. NCR-07-09179-10, 07-09180-10, and 07-09181-10, finding for petitioners and declaring respondents guilty of illegal dismissal and unfair labor practice, as well as malice and bad faith in illegally dismissing the former. The Labor Arbiter upheld the CBA provision granting tenure by default to petitioners, and declared that petitioners were not accorded due process prior to dismissal. Thus, petitioners were awarded money claims, damages, and attorney's fees.

Ruling of the National Labor Relations Commission

Respondents appealed before the NLRC. On August 10, 2011, the NLRC issued its Decision dismissing the appeal for lack of merit and affirming the Labor Arbiter's Decision. It held that the UST-UST Faculty Union CBA took precedence over CHED Memorandum Order No. 40-08; that by said CBA provision, petitioners acquired tenure by default; that UST continued to hire faculty members without the required Master's degree in their field of instruction even after petitioners were dismissed from work; and that the only cause for petitioners' dismissal was their refusal to submit a written appeal, which

[17] *Id.* at 585-598.

is not a valid ground for dismissal or non-renewal of their appointment.

Respondents moved for reconsideration. The case was re-opened as the handling Commissioners inhibited themselves from the case.

On March 26, 2012, the Special Division of the NLRC issued a new Decision which set aside the earlier August 10, 2011 Decision and dismissed petitioners' labor case. It held that CHED Memorandum Order No. 40-08 took precedence over the parties' CBA; that the CBA should conform to the said Memorandum, which had the force and effect of law; and that since the CBA provision on tenure by default did not conform to the CHED Memorandum, it is null and void.

Petitioners moved to reconsider.[18] Meanwhile, the case was re-assigned to the Second Division of the NLRC which, on October 30, 2012, promulgated a Decision granting petitioners' motion for reconsideration. It set aside the March 26, 2012 Decision of the Special Division and reinstated the Labor Arbiter's Decision. It held that the CBA superseded the CHED Memorandum; that CHED Memorandum Order No. 40-08 requiring a Master's degree of professors in the undergraduate programs is merely directory, and did not provide that the lack of a Master's degree was a ground to terminate the professor's services; that CHED Memorandum Order No. 40-08 was issued only in 2008, while the CBA was concluded in 2006 - thus, it may not be retroactively applied in the absence of a specific provision authorizing retroactivity; and consequently, petitioners acquired tenure.

Respondents filed their Motion for Reconsideration,[19] but in a January 22, 2013 Resolution,[20] the NLRC denied the motion for lack of merit.

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[18] *Rollo*, Vol. II, pp. 745-761.

[19] *Id.* at 770-804.

[20] *Id*. at 805-807.

Ruling of the Court of Appeals

In a Petition for *Certiorari*[21] before the CA, respondents questioned the adverse NLRC dispositions and prayed for dismissal of the labor case or NLRC Case Nos. NCR-07-09179-10, 07-09180-10 and 07-09181-10.

On September 27, 2013, the CA rendered the assailed Decision granting the Petition, decreeing thus:

> Private respondents[22] contend that they already attained tenureship by reason of their continuous employment service on a probationary status to petitioner University, invoking the provision of the 2006-2011 Faculty Collective Bargaining Agreement (CBA), particularly Article XV, Section 1 thereof, which was signed on July 18, 2008. According to them, when the petitioner University and the UST Faculty Union of which private respondents are members agreed to the terms and conditions set forth in the UST Faculty CBA, the former explicitly and unequivocally intended to vest tenure to those professors without master's degrees who served for at least six (6) semesters.
>
> Private respondents' reliance on the collective bargaining agreement is not tenable. While every individual has autonomy to enter into any contract, the contractual stipulations, however, must not be contrary to law, morals, good customs, public order, or public policy. In a case involving the observance of a collective bargaining agreement, the Supreme Court, in *Lakas ng Manggagawang Makabayan (LMM) vs. Abiera*, had the occasion to pronounce:
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> > 'It is a fundamental postulate that however broad the freedom of contracting parties may be, it does not go so far as to countenance disrespect for or failure to observe a legal prescription. The statute takes precedence; a stipulation in a collective bargaining agreement must yield to it. That is to adhere to the rule of law.'
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> The above principle was likewise reiterated in *Escorpizo, et al. vs. University of Baguio, et al.*, from which We quote:

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[21] *Id*. at 808-861.

[22] Herein petitioners.

> "...Indeed, provisions of a CBA must be respected since its terms and conditions constitute the law between the contracting parties. Those who are entitled to its benefits can invoke its provisions. And in the event that an obligation therein imposed is not fulfilled, the aggrieved party has the right to go to court for redress. xxx xxx xxx
>
> ...Nevertheless, the aforecited CBA provision must be read in conjunction with statutory and administrative regulations governing faculty qualifications. It is settled that an existing law enters into and forms part of a valid contract without the need for the parties expressly making reference to it. Further, while contracting parties may establish such stipulations, clauses, terms and conditions as they may see fit, such right to contract is subject to limitation that the agreement must not be contrary to law or public policy."

It should be borne in mind that the operation of educational institutions involves public interest. The government has a right to ensure that only qualified persons, in possession of sufficient academic knowledge and teaching skills, are allowed to teach in such institutions. Government regulation in this field of human activity is desirable for protecting, not only the students, but the public as well from ill-prepared teachers, who are lacking in the required scientific or technical knowledge. They may be required to take an examination or to possess postgraduate degrees as prerequisite to employment.

In the instant case, there is no doubt that private respondents failed to meet the standards for regular employment provided under Memorandum Order No. 040-08 issued by CHED. The termination of their contract was based on their failure to obtain [a] master's degree and cannot, therefore, be regarded as illegal. In fact, the services of an employee hired on probationary basis may be terminated when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. There is nothing that would hinder the employer from extending a regular or permanent appointment to an employee once the employer finds that the employee is qualified for a regular employment even before the expiration of the probationary period. Conversely, if the purpose sought by the employer is neither attained nor attainable within the said period, the law does not preclude the employer from terminating the probationary employment on justifiable ground. Here, no vested right to tenureship had yet accrued in private

respondents' favor since they had not complied, during their probation, with the prerequisites necessary for the acquisition of permanent status. It must be stressed that herein private respondents were given more than ample opportunities to obtain their respective master's degree since their first appointment in 2004 or 2005 as a prerequisite to tenure status. But they did not take advantage of such opportunities. Justice, fairness, and due process demand that an employer should not be penalized for situations where it had little or no participation or control.

In addition, the petitioner University as an educational institution enjoys academic freedom - a guarantee that enjoys protection from the Constitution. Section 5(2), Article XIV of the 1987 Constitution guarantees all institutions of higher learning academic freedom. This institutional academic freedom includes the right of the school or college to decide for itself, its aims and objectives, and how best to attain them free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. Indeed, the Constitution allows merely the State's regulation and supervision of educational institutions, and not the deprivation of their rights.

The essential freedoms subsumed in the term 'academic freedom' encompasses the freedom to determine for itself on academic grounds: (1) Who may teach, (2) What may be taught, (3) How it shall be taught, and (4) Who may be admitted to study. Undeniably, the school's prerogative to provide standards for its teachers and to determine whether or not these standards have been met is in accordance with academic freedom that gives the educational institution the right to choose who should teach. In *Peña v. National Labor Relations Commission*, the Supreme Court emphasized:

> 'It is the prerogative of the school to set high standards of efficiency for its teachers since quality education is a mandate of the Constitution. As long as the standards fixed are reasonable and not arbitrary, courts are not at liberty to set them aside.'

The authority to choose whom to hire is likewise covered and protected by its management prerogative - the right of an employer to regulate all aspects of employment, such as hiring, the freedom to prescribe work assignments, working methods, process to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of workers. This Court was more emphatic in holding that in protecting the rights

of the laborer, it cannot authorize the oppression or self-destruction of the employer.

All told, We are satisfied that private respondents' termination from employment was valid and legal.

WHEREFORE, the petition is GRANTED. The Decisions dated August 10, 2011 and October 30, 2012 as well as the Resolution dated January 22, 2013 of the National Labor Relations Commission (NLRC) in NLRC-LAC Case No. 04-001131-11 are REVERSED and SET ASIDE. Consequently, the Decision dated March 26, 2012 that dismissed the complaints of herein private respondents is hereby REINSTATED.

SO ORDERED.[23] (Citations omitted)

Petitioners filed a Motion for Reconsideration, but the CA denied the same *via* its January 29, 2014 Resolution. Hence, the instant Petition.

In a February 3, 2016 Resolution,[24] the Court resolved to give due course to the Petition.

Issue

Petitioners claim simply that the CA erred in ruling that they were not illegally dismissed.

Petitioners' Arguments

In their Petition and Reply[25] seeking reversal of the assailed CA dispositions and, in lieu thereof, the reinstatement of the August 10, 2011 and October 30, 2012 NLRC Decisions and the January 22, 2013 NLRC Resolution, petitioners insist that they were illegally dismissed; that the CBA and its provision on tenure by default prevail over CHED Memorandum Order No. 40-08, as they constitute the law between the parties; that since they acquired tenure by application of the CBA provision, they may not be removed except for cause; that contrary to the provisions of said CHED Memorandum, respondents were

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[23] *Rollo*, Vol. I, pp. 46-50.

[24] *Rollo*, Vol. II, pp. 952-953.

[25] *Id*. at 939-950.

never prohibited from maintaining faculty members without a master's degree, as in fact they continued to hire such faculty even after they were separated from UST; that respondents' continued hiring of non-Master's degree holders constitutes estoppel - respondents are estopped from claiming that they (petitioners) are not qualified to teach in UST, and so should not have been dismissed therefrom; that instead of treating their respective cases with harshness, respondents should have instead allowed them to finish their Master's degrees, since the only requirement missing is their thesis defense; that the true reason for their removal is their obstinate refusal to make the required appeal letter in waiver of their acquired tenure, which manifestly indicates respondents' malice and bad faith in dealing with petitioners - especially considering that they (petitioners) were the only professors whose appointments were not renewed out of the 70 faculty members without Master's degrees who were notified of the strict implementation of CHED Memorandum Order No. 40-08 and required to file a written appeal; that respondents violated the twin-notice rule as petitioners were not given notice and an opportunity to be heard prior to their separation; that the right of academic freedom does not give respondents the unbridled right to undermine petitioners' right to security of tenure; and finally, that the CHED itself did not direct the removal of faculty members without Master's degrees, but only the strict implementation of the schools' faculty development programs.

Respondents' Arguments

In their joint Comment[26] to the Petition, respondents argue that a Master's degree in the undergraduate program professor's field of instruction is a mandatory requirement that may not be the subject of agreement between the school and the professor, citing *Herrera-Manaois v. St. Scholastica's College*,[27] where the Court held that full-time faculty status may be extended

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[26] *Rollo*, Vol. I, pp. 401-436.

[27] 723 Phil. 495 (2013).

only to those who possess, among others, a master's degree in the field of instruction, and this is neither subject to the prerogative of the school nor the agreement of the parties, and this requirement is deemed impliedly written in the employment contracts between private educational institutions and prospective faculty members; that the *Herrera-Manaois* doctrine was reiterated in *University of the East v. Pepanio*,[28] where it was held that government had a right to ensure that only qualified individuals with sufficient academic knowledge and teaching skills are allowed to teach in educational institutions, whose operation involves public interest; that the CBA provision on tenure by default has been superseded by CHED Memorandum Order No. 40-08, which for all intents and purposes is deemed law to which the CBA must yield as it conflicts with the former; that the non-impairment clause of the Constitution must yield to the loftier purposes of government, as into every contract is read the provisions of existing law; that the operation of educational institutions involves public interest, and to this end, these institutions have the obligation to the public to ensure that only those individuals who possess the required academic knowledge, training, and qualifications may teach; that CHED Memorandum Order No. 40-08 is a police power measure which may impair the CBA provision on tenure by default for the protection of the public; that the strict implementation of CHED Memorandum Order No. 40-08 is not subject to compromise or leniency, contrary to what petitioners believe - in claiming that they should be allowed to finish their master's degrees even while the Memorandum is already in effect, which places UST in a precarious position of active violation of law; that petitioners cannot claim tenure as they remained probationary teachers even if their appointments/contracts were repeatedly renewed - so long as they do not obtain their master's degrees, they continue to remain probationary employees of the university; that petitioners were given ample opportunity to finish their master's degrees, but they did not do so; and that UST's decision not to renew petitioner's appointments is a valid exercise of academic freedom and management prerogative. Thus, respondents pray for denial of the instant Petition.

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[28] 702 Phil. 191 (2013).

Our Ruling

The Court denies the Petition.

As early as in 1992, the requirement of a Master's degree in the undergraduate program professor's field of instruction has been in place, through DECS Order 92 (series of 1992, August 10, 1992) or the Revised Manual of Regulations for Private Schools. Article IX, Section 44, paragraph 1 (a) thereof provides that college faculty members must have a master's degree in their field of instruction as a minimum qualification for teaching in a private educational institution and acquiring regular status therein.

DECS Order 92, Series of 1992 was promulgated by the DECS in the exercise of its rule-making power as provided for under Section 70 of Batas Pambansa Blg. 232, otherwise known as the Education Act of 1982.[29] As such, it has the force and effect of law.[30] In *University of the East v. Pepanio*,[31] the requirement of a masteral degree for tertiary education teachers was held to be not unreasonable but rather in accord with the public interest.

Thus, when the CBA was executed between the parties in 2006, they had no right to include therein the provision relative to the acquisition of tenure by default, because it is contrary to, and thus violative of, the 1992 Revised Manual of Regulations for Private Schools that was in effect at the time. As such, said CBA provision is null and void, and can have no effect as between the parties. "A void contract is equivalent to nothing; it produces no civil effect; and it does not create, modify or extinguish a juridical relation."[32] Under the Civil Code,

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[29] SEC. 70. *Rule-making Authority*. - The Minister of Education, Culture and Sports charged with the administration and enforcement of this Act, shall promulgate the necessary implementing rules and regulations.

[30] See *Aklan College, Inc. v. Guarino*, 556 Phil. 693 (2007).

[31] *Supra* note 28.

[32] *Borromeo v. Mina*, 710 Phil. 454, 464 (2013).

Art. 1409. The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;

x x x x x x x x x

When CHED Memorandum Order No. 40-08 came out, it merely carried over the requirement of a masteral degree for faculty members of undergraduate programs contained in the 1992 Revised Manual of Regulations for Private Schools. It cannot therefore be said that the requirement of a master's degree was retroactively applied in petitioners' case, because it was already the prevailing rule with the issuance of the 1992 Revised Manual of Regulations for Private Schools.

Thus, going by the requirements of law, it is plain to see that petitioners are not qualified to teach in the undergraduate programs of UST. And while they were given ample time and opportunity to satisfy the requirements by obtaining their respective master's degrees, they failed in the endeavor. Petitioners knew this - that they cannot continue to teach for failure to secure their master's degrees - and needed no reminding of this fact; "those who are seeking to be educators are presumed to know these mandated qualifications."[33]

From a strict legal viewpoint, the parties are both in violation of the law: respondents, for maintaining professors without the mandated masteral degrees, and for petitioners, agreeing to be employed despite knowledge of their lack of the necessary qualifications. Petitioners cannot therefore insist to be employed by UST since they still do not possess the required master's degrees; the fact that UST continues to hire and maintain professors without the necessary master's degrees is not a ground for claiming illegal dismissal, or even reinstatement. As far as the law is concerned, respondents are in violation of the CHED regulations for continuing the practice of hiring

[33] *Herrera-Manaois v. St. Scholastica's College*, *supra* note 27 at 513.

unqualified teaching personnel; but the law cannot come to the aid of petitioners on this sole ground. As between the parties herein, they are in *pari delicto*.

Latin for 'in equal fault,' in *pari delicto* connotes that two or more people are at fault or are guilty of a crime. Neither courts of law nor equity will interpose to grant relief to the parties, when an illegal agreement has been made, and both parties stand in *pari delicto*. Under the *pari delicto* doctrine, the parties to a controversy are equally culpable or guilty, they shall have no action against each other, and it shall leave the parties where it finds them. This doctrine finds expression in the maxims "*ex dolo malo nonoritur actio*" and "*in pari delicto potior est conditio defendentis*."

x x x x x x x x x

As a doctrine in civil law, the rule on *pari delicto* is principally governed by Articles 1411 and 1412 of the Civil Code, which state that:

> Article 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in *pari delicto*, they shall have no action against each other, and both shall be prosecuted.
>
> x x x x x x x x x
>
> Article 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:
>
> x x x x x x x x x
>
> 1. When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;
>
> x x x x x x x x x.[34] (Citations omitted)

The minimum requirement of a master's degree in the undergraduate teacher's field of instruction has been cemented in DECS Order 92, Series of 1992. Both petitioners and

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[34] *Constantino v. Heirs of Pedro Constantino, Jr.*, 718 Phil. 575, 584-586 (2013).

respondents have been violating it. The fact that government has not cracked down on violators, or that it chose not to strictly implement the provision, does not erase the violations committed by erring educational institutions, including the parties herein; it simply means that government will not punish these violations for the meantime. The parties cannot escape its concomitant effects, nonetheless. And if respondents knew the overwhelming importance of the said provision and the public interest involved - as they now fiercely advocate to their favor - they should have complied with the same as soon as it was promulgated.

It cannot be said either that by agreeing to the tenure by default provision in the CBA, respondents are deemed to be in estoppel or have waived the application of the requirement under CHED Memorandum Order No. 40-08. Such a waiver is precisely contrary to law. Moreover, a waiver would prejudice the rights of the students and the public, who have a right to expect that UST is acting within the bounds of the law, and provides quality education by hiring only qualified teaching personnel. Under Article 6 of the Civil Code, "[r]ights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law." On the other hand, there could be no acquiescence - amounting to estoppel - with respect to acts which constitute a violation of law. "The doctrine of estoppel cannot operate to give effect to an act which is otherwise null and void or *ultra vires*."[35] "[N]o estoppel can be predicated on an illegal act."[36]

It cannot be said either that in requiring petitioners to file a written appeal, respondents are guilty of bad faith and malice for practically forcing the former to renounce their tenure. There is no tenure to speak of in the first place.

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[35] *Acebedo Optical Company, Inc. v. Court of Appeals*, 385 Phil. 956, 978 (2000).

[36] *Eugenio v. Perdido*, 97 Phil. 41, 44 (1955).

Just the same, as correctly argued by the respondents, the crucial issues in this case have been settled. In the case of *University of the East v. Pepanio*,[37] the Court held that –

> Three. Respondents argue that UE hired them in 1997 and 2000, when what was in force was the 1994 CBA between UE and the faculty union. Since that CBA did not yet require a master's degree for acquiring a regular status and since respondents had already complied with the three requirements of the CBA, namely, (a) that they served full-time; (b) that they rendered three consecutive years of service; and (c) that their services were satisfactory, they should be regarded as having attained permanent or regular status.
>
> But the policy requiring postgraduate degrees of college teachers was provided in the Manual of Regulations as early as 1992. Indeed, recognizing this, the 1994 CBA provided even then that UE was to extend only semester-to-semester appointments to college faculty staffs, like respondents, who did not possess the minimum qualifications for their positions.
>
> Besides, as the Court held in *Escorpizo v. University of Baguio*, a school CBA must be read in conjunction with statutory and administrative regulations governing faculty qualifications. Such regulations form part of a valid CBA without need for the parties to make express reference to it. While the contracting parties may establish such stipulations, clauses, terms and conditions, as they may see fit, the right to contract is still subject to the limitation that the agreement must not be contrary to law or public policy.
>
> The State through Batas Pambansa Bilang 232 (The Education Act of 1982) delegated the administration of the education system and the supervision and regulation of educational institutions to the Ministry of Education, Culture and Sports (now Department of Education). Accordingly, in promulgating the Manual of Regulations, DECS was exercising its power of regulation over educational institutions, which includes prescribing the minimum academic qualifications for teaching personnel.
>
> In 1994 the legislature transferred the power to prescribe such qualifications to the Commission on Higher Education (CHED). CHED's charter authorized it to set minimum standards for programs and

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[37] *Supra* note 28.

institutions of higher learning. The Manual of Regulations continued to apply to colleges and universities and suppletorily the Joint Order until 2010 when CHED issued a Revised Manual of Regulations which specifically applies only to institutions involved in tertiary education.

The requirement of a masteral degree for tertiary education teachers is not unreasonable. The operation of educational institutions involves public interest. The government has a right to ensure that only qualified persons, in possession of sufficient academic knowledge and teaching skills, are allowed to teach in such institutions. Government regulation in this field of human activity is desirable for protecting, not only the students, but the public as well from ill-prepared teachers, who are lacking in the required scientific or technical knowledge. They may be required to take an examination or to possess postgraduate degrees as prerequisite to employment.

Respondents were each given only semester-to-semester appointments from the beginning of their employment with UE precisely because they lacked the required master's degree. It was only when UE and the faculty union signed their 2001 CBA that the school extended petitioners a conditional probationary status subject to their obtaining a master's degree within their probationary period. It is clear, therefore, that the parties intended to subject respondents' permanent status appointments to the standards set by the law and the university.

Here, UE gave respondents Bueno and Pepanio more than ample opportunities to acquire the postgraduate degree required of them. But they did not take advantage of such opportunities. Justice, fairness, and due process demand that an employer should not be penalized for situations where it had little or no participation or control. (Citations omitted)[38]

In addition, the Court already held in *Herrera-Manaois v. St. Scholastica's College*[39] that –

Notwithstanding the existence of the SSC Faculty Manual, Manaois still cannot legally acquire a permanent status of employment. Private educational institutions must still supplementarily refer to the prevailing standards, qualifications, and conditions set by the

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[38] *Id*. at 200-202.

[39] *Supra* note 27.

appropriate government agencies (presently the Department of Education, the Commission on Higher Education, and the Technical Education and Skills Development Authority). This limitation on the right of private schools, colleges, and universities to select and determine the employment status of their academic personnel has been imposed by the state in view of the public interest nature of educational institutions, so as to ensure the quality and competency of our schools and educators.

The applicable guidebook at the time petitioner was engaged as a probationary full-time instructor for the school year 2000 to 2003 is the 1992 Manual of Regulations for Private Schools (1992 Manual). It provides the following conditions of a probationary employment:

> Section 89. Conditions of Employment. Every private school shall promote the improvement of the economic, social and professional status of all its personnel.
>
> In recognition of their special employment status and their special role in the advancement of knowledge, the employment of teaching and non-teaching academic personnel shall be governed by such rules as may from time to time be promulgated, in coordination with one another, by the Department of Education, Culture and Sports and the Department of Labor and Employment.
>
> Conditions of employment of non-academic non-teaching school personnel, including compensation, hours of work, security of tenure and labor relations, shall be governed by the appropriate labor laws and regulations.
>
> Section 92. Probationary Period. Subject in all instances to compliance with Department and school requirements, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on the trimester basis.
>
> Section 93. Regular or Permanent Status. Those who have served the probationary period shall be made regular or permanent. Fulltime teachers who have satisfactorily completed

their probationary period shall be considered regular or permanent.

Considering that petitioner ultimately sought for the position of a permanent full-time instructor, we must further look into the following provisions under the 1992 Manual, which set out the minimum requirements for such status:

> Section 44. Minimum Faculty Qualifications. The minimum qualifications for faculty for the different grades and levels of instruction duly supported by appropriate credentials on file in the school shall be as follows:
>
> x x x x x x x x x
>
> c. Tertiary
>
> (1) For undergraduate courses, other than vocational:
>
> (a) Holder of a master's degree, to teach largely in his major field; or, for professional courses, holder of the appropriate professional license required for at least a bachelor's degree. Any deviation from this requirement will be subject to regulation by the Department.
>
> Section 45. Full-time and Part-time Faculty. As a general rule, all private schools shall employ full-time academic personnel consistent with the levels of instruction.
>
> Full-time academic personnel are those meeting all the following requirements:
>
> a. Who possess at least the minimum academic qualifications prescribed by the Department under this Manual for all academic personnel;
>
> x x x x x x x x x
>
> All teaching personnel who do not meet the foregoing qualifications are considered part-time.
>
> x x x x x x x x x

Thus, pursuant to the 1992 Manual, private educational institutions in the tertiary level may extend 'full-time faculty' status only to those who possess, *inter alia*, a master's degree in the field of study that will be taught. This minimum requirement is neither subject to the prerogative of the school nor to the agreement between the parties.

For all intents and purposes, this qualification must be deemed impliedly written in the employment contracts between private educational institutions and prospective faculty members. The issue of whether probationers were informed of this academic requirement before they were engaged as probationary employees is thus no longer material, as those who are seeking to be educators are presumed to know these mandated qualifications. Thus, all those who fail to meet the criteria under the 1992 Manual cannot legally attain the status of permanent full-time faculty members, even if they have completed three years of satisfactory service.

In the light of the failure of Manaois to satisfy the academic requirements for the position, she may only be considered as a part-time instructor pursuant to Section 45 of the 1992 Manual. In turn, as we have enunciated in a line of cases, a part-time member of the academic personnel cannot acquire permanence of employment and security of tenure under the Manual of Regulations in relation to the Labor Code. (Citations omitted)

WHEREFORE, the Petition is **DENIED**. The September 27, 2013 Decision and January 29, 2014 Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 128666 are**AFFIRMED *in toto***.

SO ORDERED.

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

Sereno, C.J., on leave.

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

SECOND DIVISION

[G.R. No. 213617. April 18, 2018]

ARCH. EUSEBIO B. BERNAL, DOING BUSINESS UNDER THE NAME AND STYLE CONTEMPORARY BUILDERS, *petitioner, vs.* **DR. VIVENCIO VILLAFLOR and DRA. GREGORIA VILLAFLOR,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; DAMAGES; INTEREST; GUIDELINES IN THE AWARD OF INTEREST.— In *Eastern Shipping Lines, Inc. vs. Court of Appeals*, the Court made the following pronouncement, which was intended to be the guidelines in the proper determination of awards of interest: 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% [*per annum*] to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code. 2. **When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion* of the court at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty.** Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally

adjudged. 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

2. ID.; ID.; ID.; ID.; INTEREST SHALL BEGIN TO RUN FROM THE TIME THE QUANTIFICATION OF DAMAGES HAD BEEN REASONABLY ASCERTAINED; THE AWARD OF INTEREST IN CASE AT BAR SHOULD BE RECKONED FROM THE TIME OF THE PROMULGATION OF THE DECISION OF THE COURT OF APPEALS.— In this case, the award of interest is discretionary on the part of the court. The petitioner's original demand does not equate to a loan or forbearance of money but pertains to the cost of construction and services, the amount of which has not yet been determined with certainty even up to the time of the complaint's filing with the RTC. Petitioner's original claim was in fact thereafter limited by the RTC after a consideration of the evidence presented during trial, and ultimately further reduced by the CA. The uncertainty was brought about by the numerous change orders that happened while the subject Medical Arts Building was being constructed. Clearly, at the time of the petitioner's judicial and extrajudicial demands, the amount of the respondents' obligation remained uncertain. It is material that the respondents' liability was reasonably ascertained only at the time the CA rendered its Decision on February 14, 2014. The amount of the award, specifically ₱1,710,271.21, was no longer questioned in petitioner's motion for reconsideration with the CA, or in his petition for review before this Court. In light of the pronouncement in *Eastern Shipping* that in such cases, interest shall begin to run from the time the quantification of damages had been reasonably ascertained, the CA decision should then be modified, but only in that the interest of 6% *per annum* on the award of ₱1,710,271.21 shall be reckoned from the time of the CA Decision's promulgation on February 14, 2014.

3. ID.; ID.; ID.; ID.; ONCE THE JUDGMENT AWARDING A SUM OF MONEY BECOMES FINAL AND EXECUTORY, THE LEGAL RATE OF INTEREST BEGINS TO APPLY, AS THE AWARD EQUATES TO A LOAN OR FORBEARANCE OF MONEY; THE LEGAL RATE OF INTEREST ON LOANS AND

FORBEARANCE OF MONEY IS 6% PER *ANNUM* FROM THE TIME OF THE EFFECTIVITY OF CENTRAL BANK CIRCULAR NO. 799 ON JULY 1, 2013.— Petitioner cannot validly invoke the Court's ruling in *Republic of the Phils. vs. De Guzman* wherein interest was reckoned from demand, because unlike in this case, the unpaid obligation in *Republic* was clear and uncontested even from the time that the extrajudicial demand was made. Once this judgment becomes final and executory, the award equates to a loan or forbearance of money and from such time, the legal rate of interest begins to apply. Petitioner's insistence on an increase in the interest rate from such time to 12% per *annum* is erroneous; his reference to jurisprudence prior to 2013 is misplaced. In Circular No. 799 issued on June 21, 2013 by the Bangko Sentral ng Pilipinas, the legal rate of interest on loans and forbearance of money was reduced from 12% to 6% per *annum* from the time of the circular's effectivity on July 1, 2013.

APPEARANCES OF COUNSEL

De La Rama De La Rama De La Rama Law Firm for petitioner.

Callanta Onglegco & Moreño Law Partners for respondents.

R E S O L U T I O N

REYES, JR., *J.*:

Before the Court is a petition for review filed under Rule 45 of the Rules of Court by Architect Eusebio B. Bernal (petitioner), doing business under the name and style Contemporary Builders, to assail the Decision[1] dated February 14, 2014 and Resolution[2] dated July 21, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 93172 insofar as it declared Dr. Vivencio Villaflor

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[1] Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion concurring; *rollo*, pp. 35-59.

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

and Dra. Gregoria Villaflor (respondents) liable for interests on a monetary award of ₱1,710,271.21 at a rate of only six percent (6%) *per annum*, to be counted from the date of finality of judgment until full satisfaction.

The Antecedents

On January 28, 2009, the Regional Trial Court (RTC), Branch 41 of Dagupan City rendered its Decision in Civil Case No. 98-02678-D, which was an action for sum of money with damages instituted by the petitioner against the respondents. Petitioner demanded from the respondents the payment of ₱3,241,800.00, representing sums allegedly left unpaid in relation to the construction of the Medical Arts Building in Caranglaan District, Dagupan City for which the respondents obtained the expertise and services of the petitioner sometime in 1995. The dispositive portion of the RTC decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. Ordering the [respondents] to pay [petitioner] the amount of Two Million Eight Hundred Forty Eight Thousand Pesos (Php2,848,000.00) plus interest thereon at the legal rate from March 4, 2008 until the amount is fully paid;
>
> 2. Ordering the [respondents] to pay [petitioner] the amount of Php200,000.00 as and for attorney's fees;
>
> 3. Dismissing all other claims and counterclaims for lack of basis.
>
> No pronouncement as to cost.
>
> SO ORDERED.[3]

Dissatisfied, the respondents appealed the RTC's decision to the CA *via* CA-G.R. CV. No. 93172. On February 14, 2014, the CA rendered its Decision that modified the RTC's Decision by further reducing the total award. The *fallo* of the CA decision reads:

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[3] Issued by Judge Emma M. Torio; *id*. at 88.

We **MODIFY** the Decision dated 28 January 2009 of the [RTC]. Branch 41, Dagupan City, in Civil Case No. 98-02678-D, as follows: 1) we **ORDER** the [respondents] to pay [petitioner] the amount of ₱1,710,271.21, plus legal interest x x x at the rate of six percent (6%) per annum, computed from the finality of the judgment until full satisfaction;

2) we **AFFIRM** the award of Php200,000.00, as attorney's fees, in favor of [petitioner]; 3) we **AFFIRM** the dismissal of the [respondents'] counterclaims.

IT IS SO ORDERED.[4]

For the CA, it was clear that the respondents had an unpaid obligation to the petitioner for the construction of the Medical Arts Building and the 18 change orders that were effected in relation thereto. The trial court's award was however reduced by the appellate court given the following findings:

During the proceedings before the RTC, [petitioner] was able to prove that the total cost of the 18 change orders was Php9,836,505.32. We find it necessary, however, to fix the total cost of the 18 change orders to the amount claimed in the Complaint, *i.e.*, Php9,796,816.94.

In the same wise, we cannot allow the amount of Php271,915.99 (Item C, items which were found on the building but were not billed by the [petitioner]) to be credited, since this was never alleged, nor prayed for by the [petitioner] in the Complaint.

It was also erroneous for the RTC to use the amount of Php13,528,200.00, as the total amount of payment made by the [respondents] to the [petitioner]. The complaint alleged that the sum of Php17,596,816.94 represents that total construction cost of the Medical Arts Building under the original Agreement (Php7,800,000.00) and the 18 change orders (Php9,796,816.94). The Complaint also alleged that after the payments made to the [petitioner], the remaining balance of the [respondents] is the sum of Php3,241,800. x x x Thus, the correct amount of total payments made by the [respondents] should be Php14,355,016.94.

Thus, the total balance due to the [petitioner] should be Php1,710,271.21 x x x.[5]

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[4] *Id*. at 58.

[5] *Id*. at 47-48.

Following the Court's ruling in *Nacar vs. Gallery Frames and/or Bordey, Jr.*, the CA also changed the rate and reckoning date of the interest on the award, as it declared that the principal amount of ₱1,710,271.21 shall earn interest at the rate of 6% *per annum* from date of finality of the judgment until full satisfaction.

Feeling aggrieved, petitioner filed the instant petition for review, but limits his question on the manner by which the interest should be determined. Petitioner argues that the interest should be computed at the rate of 6% per *annum* from the time of either the last extrajudicial demand on July 5, 1998 or judicial demand on November 16, 1998, plus 12% per *annum* interest from the date of judgment until full payment.

The Court's Ruling

The Court partially grants the petition.

In *Eastern Shipping Lines, Inc. vs. Court of Appeals*,[6] the Court made the following pronouncement, which was intended to be the guidelines in the proper determination of awards of interest:

> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% [*per annum*] to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> 2. **When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion* of the court at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty.** Accordingly, where the demand is

[6] *Eastern Shipping Lines, Inc. v. Hon. Court of Appeals*, 304 Phil. 236 (1994).

established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per *annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[7] (Emphasis supplied)

In this case, the award of interest is discretionary on the part of the court. The petitioner's original demand does not equate to a loan or forbearance of money but pertains to the cost of construction and services, the amount of which has not yet been determined with certainty even up to the time of the complaint's filing with the RTC. Petitioner's original claim was in fact thereafter limited by the RTC after a consideration of the evidence presented during trial, and ultimately further reduced by the CA. The uncertainty was brought about by the numerous change orders that happened while the subject Medical Arts Building was being constructed. Clearly, at the time of the petitioner's judicial and extrajudicial demands, the amount of the respondents' obligation remained uncertain.

It is material that the respondents' liability was reasonably ascertained only at the time the CA rendered its Decision on February 14, 2014. The amount of the award, specifically ₱1,710,271.21, was no longer questioned in petitioner's motion for reconsideration with the CA, or in his petition for review before this Court. In light of the pronouncement in *Eastern Shipping* that in such cases, interest shall begin to run from the time the quantification of damages had been reasonably

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[7] *Id*. at 252-254.

ascertained, the CA decision should then be modified, but only in that the interest of 6% per *annum* on the award of ₱1,710,271.21 shall be reckoned from the time of the CA Decision's promulgation on February 14, 2014.

Petitioner cannot validly invoke the Court's ruling in *Republic of the Phils. vs. De Guzman*[8] wherein interest was reckoned from demand, because unlike in this case, the unpaid obligation in *Republic* was clear and uncontested even from the time that the extrajudicial demand was made.

Once this judgment becomes final and executory, the award equates to a loan or forbearance of money and from such time, the legal rate of interest begins to apply. Petitioner's insistence on an increase in the interest rate from such time to 12% per *annum* is erroneous; his reference to jurisprudence prior to 2013 is misplaced. In Circular No. 799 issued on June 21, 2013 by the Bangko Sentral ng Pilipinas, the legal rate of interest on loans and forbearance of money was reduced from 12% to 6% per *annum* from the time of the circular's effectivity on July 1, 2013.[9]

WHEREFORE, the petition is **PARTLY GRANTED**. The Court of Appeals' Decision dated February 14, 2014 and Resolution dated July 21, 2014 in CA-G.R. CV No. 93172 are **MODIFIED** in that the award of ₱1,710,271.21 in favor of petitioner Arch. Eusebio B. Bernal shall earn interest at the rate of 6% per *annum* from the date of the Court of Appeals Decision's promulgation on February 14, 2014, until full payment.

SO ORDERED.

Carpio,[*] *Acting C.J. (Chairperson)*, *Peralta, Perlas-Bernabe*, and *Caguioa, JJ.*, concur.

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[8] 667 Phil. 229, 251 (2011).

[9] See *Nacar v. Gallery Frames*, 716 Phil. 267, 281 (2013).

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

SECOND DIVISION

[G.R. No. 213994. April 18, 2018]

MARGIE SANTOS MITRA, *petitioner, vs.* **PERPETUA L. SABLAN-GUEVARRA, REMEGIO L. SABLAN, *et al.*,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; IF A STRINGENT APPLICATION OF THE RULES WOULD HINDER RATHER THAN SERVE THE DEMANDS OF SUBSTANTIAL JUSTICE, THE FORMER MUST YIELD TO THE LATTER, AS LITIGATIONS SHOULD AS MUCH AS POSSIBLE, BE DECIDED ON THE MERITS AND NOT ON TECHNICALITIES.— [T]he importance of complying with procedural rules can not be overemphasized; these are tools designed to facilitate the adjudication of cases. These are set in place to obviate arbitrariness, caprice, or whimsically in the administration of justice. Nevertheless, if a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter. "Litigations should as much as possible, be decided on the merits and not on technicalities." x x x. x x x [I]n *Philippine Bank of Communications vs. Yeung,* the Court permitted the delay of seven (7) days in the filing of the motion for reconsideration in view of the CA's erroneous application of legal principles to prevent the resulting inequity that might arise from the outright denial of the petition. In the present case, the petitioner's motion for reconsideration of the CA decision was indeed filed a day late. However, taking into account the substantive merit of the case, and also, the conflicting rulings of the RTC and CA, a relaxation of the rules becomes imperative to prevent the commission of a grave injustice. Verily, a rigid application of the rules would inevitably lead to the automatic defeasance of Legaspi's last will and testament— an unjust result that is not commensurate with the petitioner's failure to comply with the required procedure.

2. ID.; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; MAY ONLY RAISE QUESTIONS OF LAW, EXCEPT WHERE THE FINDINGS OF FACT OF THE PROBATE COURT AND COURT OF APPEALS ARE CONFLICTING, OR WHERE IT APPEARS THAT THE COURT OF APPEALS MANIFESTLY OVERLOOKED CERTAIN RELEVANT FACTS NOT DISPUTED BY THE PARTIES, WHICH, IF PROPERLY CONSIDERED, WOULD JUSTIFY A DIFFERENT CONCLUSION.— One of the issues raised by the petitioner entails an examination of the records of the case, as it pertains to the factual findings of the CA. As a general rule, a petition for review on *certiorari* may only raise questions of law, as provided under Rule 45 of the 1997 Rules of Civil Procedure. Nevertheless, the Court will not hesitate to set aside the general rule when circumstances exist warranting the same, such as in the present case, where the findings of fact of the probate court and CA are conflicting. Additionally, it appears that the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

3. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; SUCCESSION; NOTARIAL WILL; THE REQUIREMENT THAT THE TESTATOR MUST SUBSCRIBE AT THE END OF THE WILL REFERS TO THE LOGICAL END THEREOF, WHICH IS WHERE THE LAST TESTAMENTARY DISPOSITION ENDS.— It should also be mentioned that the respondents take a skewed stance in insisting that the testator Legaspi and the instrumental witnesses should have signed on the last page of the subject will. When Article 805 of the Civil Code requires the testator to subscribe at the end of the will, it necessarily refers to the logical end thereof, which is where the last testamentary disposition ends. As the probate court correctly appreciated, the last page of the will does not contain any testamentary disposition; it is but a mere continuation of the Acknowledgment.

4. ID.; ID.; ID.; ID.; ATTESTATION CLAUSE; SUBSTANTIAL COMPLIANCE RULE; A WILL MAY BE ALLOWED DESPITE THE EXISTENCE OF OMISSIONS PROVIDED SUCH OMISSIONS CAN BE SUPPLIED BY AN EXAMINATION OF THE WILL ITSELF, WITHOUT THE NEED OF RESORTING

TO EXTRINSIC EVIDENCE; OMISSIONS WHICH CANNOT BE SUPPLIED EXCEPT BY EVIDENCE *ALIUNDE* WOULD RESULT IN THE INVALIDATION OF THE ATTESTATION CLAUSE AND OF THE WILL ITSELF.—The substantial compliance rule is embodied in the Civil Code as Article 809 thereof, which provides that: **Article 809**. In the absence of bad faith, forgery, or fraud, or undue and improper pressure and influence, defects and imperfections in the form of attestation or in the language used therein shall not render the will invalid if it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of Article 805. Thus, in *Toboada vs. Hon. Rosal*, the Court allowed the probate of a will notwithstanding that the number of pages was stated not in the attestation clause, but in the Acknowledgment. In *Azuela vs. CA*, the Court ruled that there is substantial compliance with the requirement, if it is stated elsewhere in the will how many pages it is comprised of. What is imperative for the allowance of a will despite the existence of omissions is that such omissions must be supplied by an examination of the will itself, without the need of resorting to extrinsic evidence. "However, those omissions which cannot be supplied except by evidence *aliunde* would result in the invalidation of the attestation clause and ultimately, of the will itself." An examination of the will in question reveals that the attestation clause indeed failed to state the number of pages comprising the will. However, as was the situation in *Taboada*, this omission was supplied in the Acknowledgment. It was specified therein that the will is composed of four pages, the Acknowledgment included.

5. ID.; ID.; ID.; ID.; FORMALITIES REQUIRED OF A NOTARIAL WILL SUBSTANTIALLY COMPLIED WITH IN CASE AT BAR.— [L]egaspi's last will and testament has substantially complied with all the formalities required of a notarial will. It has been proven that Legaspi and the instrumental witnesses signed on every page of the will, except on the last, which refers to the Acknowledgment page. With regard to the omission of the number of pages in the attestation clause, this was supplied by the Acknowledgment portion of the will itself without the need to resort to extrinsic evidence. Contrary to the CA conclusion, such omission does not in any way serve as hindrance to probate.

APPEARANCES OF COUNSEL

Cruz Calupitan and Associates for petitioner.
Bañez Bañez & Associates for respondents.

D E C I S I O N

REYES JR., *J.*:

This treats of a Petition for Review on *Certiorari*[1] of the Decision[2] dated May 22, 2013 and Resolution[3] dated August 15, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 93671, which reversed the Decision[4] dated February 23, 2009 of the Regional Trial Court (RTC), Branch 128 of Caloocan City in SP. Proc. Case No. C-3450.

ANTECEDENT FACTS

On June 26, 2006, Margie Santos Mitra (petitioner) filed a petition for the probate of the notarial will of Remedios Legaspi *y* Reyes (Legaspi) with prayer for issuance of letters testamentary before the RTC. It was alleged that the petitioner is the *de facto* adopted daughter of Legaspi; that Legaspi, single, died on December 22, 2004 in Caloocan City; that Legaspi left a notarial will, instituting the petitioner, Orlando Castro, Perpetua Sablan Guevarra, and Remigio Legaspi Sablan, as her heirs, legatees and devisees; that Legaspi left real and personal properties with the approximate total value of One Million Thirty-Two Thousand and Two Hundred Thirty Seven Pesos (₱1,032,237.00); and that Legaspi named Mary Ann Castro as the executor of the will.[5]

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[1] *Rollo*, pp. 11-32.

[2] Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Normandie B. Pizarro and Stephen C. Cruz, concurring; *id*. at 53-64.

[3] *Id*. at 65.

[4] Penned by Presiding Judge Eleanor R. Kwong; *id*. at 33-52.

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

Perpetua L. Sablan-Guevarra and Remegio L. Sablan (respondents), who claim to be Legaspi's legal heirs, opposed the petition. They aver that the will was not executed in accordance with the formalities required by law; that since the last page of the will, which contained the Acknowledgement, was not signed by Legaspi and her instrumental witnesses, the will should be declared invalid; that the attestation clause failed to state the number of pages upon which the will was written; and that the will was executed under undue and improper pressure, thus, Legaspi could not have intended the document to be her last will and testament.[6]

THE RULING OF THE RTC

On February 23, 2009, the RTC rendered a Decision[7] admitting Legaspi's will to probate. The dispositive portion reads:

> **WHEREFORE**, premises considered, this Court having been satisfied that the will was duly executed, and that the testator at the time of its execution was of sound and disposing mind, and not acting under duress, menace and undue influence, or fraud, the petition for the probate of the *Huling Habilin at Pagpapatunay* of the testator Remedios Legaspi is hereby granted.
>
> The *Huling Habilin at Pagpapatunay* of the testator Remedios Legaspi dated September 27, 2004 is hereby allowed.
>
> In the meantime, the hearing on the issuance of [the] letters testamentary to the named executor Mary Ann Castro is hereby set on April 23, 2009.
>
> **SO ORDERED**.[8]

The probate court explained that the last page of the will is but a mere continuation of the Acknowledgement portion, which the testator and the witnesses are not required to sign.[9] Also,

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[6] *Id.* at 42.

[7] *Id*. at 33-52.

[8] *Id*. at 52.

[9] *Id*. at 46.

it held that inasmuch as the number of pages upon which the will was written was stated in the Acknowledgement, the will must be admitted to probate.[10] The respondents' allegation of undue influence or improper pressure exerted upon Legaspi was disregarded for failure on their part to adduce evidence proving the existence thereof.[11]

Aggrieved, the respondents appealed to the CA.

THE RULING OF THE CA

In its assailed Decision[12] dated May 22, 2013, the CA reversed the judgment of the RTC, as the CA adhered to the view of strictly complying with the requirement of stating the number of pages of the will in the attestation clause. Moreover, the CA detected another supposed fatal defect in the will: the photocopy of the will submitted by the respondents on appeal did not contain the signatures of the instrumental witnesses on each and every page thereof. Thus, the CA disposed of the appeal in this wise:

> **WHEREFORE**, the appealed decision dated February 23, 2009 rendered by the Regional Trial Court, Branch 128 of Caloocan City in Special Proceeding Case No. C-3450 for probate of the last will and testament of the deceased Remedios Legaspi *y* Reyes is **REVERSED AND SET ASIDE**.
>
> SO ORDERED.[13]

The respondents filed their motion for reconsideration a day late. Thus, the CA denied the same in a Resolution[14] dated August 15, 2014.

ISSUES

Whether the CA erred in finding that the instrumental witnesses to the will failed to sign on each and every page

[10] *Id.* at 51.

[11] *Id.*

[12] *Id.* at 53-64.

[13] *Id.* at 63-64.

[14] *Id.* at 65.

thereof on the left margin, except the last, as required under Article 805 of the Civil Code

Whether the CA erred in ruling that the failure to state the number of pages comprising the will on the attestation clause renders such will defective

THE RULING OF THE COURT

To begin with, the importance of complying with procedural rules can not be overemphasized; these are tools designed to facilitate the adjudication of cases.[15] These are set in place to obviate arbitrariness, caprice, or whimsicality in the administration of justice.[16] Nevertheless, if a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter."[17] "Litigations should, as much as possible, be decided on the merits and not on technicalities."[18]

In *Republic vs. Court of Appeals*,[19] the Court allowed the perfection of the appeal of the Republic, despite the delay of six (6) days, since the Republic stands to lose hundreds of hectares of land already titled in its name. This was done in order to prevent a gross miscarriage of justice. Also, in *Barnes vs. Padilla*,[20] the Court suspended the rule that a motion for extension of time to file a motion for reconsideration in the CA does not toll the fifteen-day period to appeal. The Court held that the procedural infirmity was not entirely attributable to the fault of the petitioner and there was lack of any showing that the review sought is merely frivolous and dilatory. Similarly,

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[15] *Magsino v. Ocampo and Guico,* 741 Phil. 394, 408 (2014).

[16] *Tible and Tible Company, Inc. v. Royal Savings and Loan Association*, 574 Phil. 20, 38 (2008).

[17] *Sumbila v. Matrix Finance Corporation*, 762 Phil. 130, 138 (2015).

[18] *Cometa v. Court of Appeals*, 404 Phil. 107, 120 (2001).

[19] 172 Phil. 741, 758 (1978).

[20] 500 Phil. 303, 310 (2005).

in *Philippine Bank of Communications vs. Yeung*,[21] the Court permitted the delay of seven (7) days in the filing of the motion for reconsideration in view of the CA's erroneous application of legal principles to prevent the resulting inequity that might arise from the outright denial of the petition.

In the present case, the petitioner's motion for reconsideration of the CA decision was indeed filed a day late. However, taking into account the substantive merit of the case, and also, the conflicting rulings of the RTC and CA, a relaxation of the rules becomes imperative to prevent the commission of a grave injustice. Verily, a rigid application of the rules would inevitably lead to the automatic defeasance of Legaspi's last will and testament — an unjust result that is not commensurate with the petitioner's failure to comply with the required procedure.

One of the issues raised by the petitioner entails an examination of the records of the case, as it pertains to the factual findings of the CA. As a general rule, a petition for review on *certiorari* may only raise questions of law, as provided under Rule 45 of the 1997 Rules of Civil Procedure. Nevertheless, the Court will not hesitate to set aside the general rule when circumstances exist warranting the same, such as in the present case, where the findings of fact of the probate court and CA are conflicting. Additionally, it appears that the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[22]

According to the CA, while Legaspi signed on the left margin of each and every page of her will, the instrumental witnesses failed to do the same, in blatant violation of Article 805 of the Civil Code which states:

Article 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.

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[21] 722 Phil. 710, 720 (2013).

[22] *Sps. Andrada v. Pilhino Sales Corporation*, 659 Phil. 70, 79 (2011).

The testator or the person requested by him to write his name and **the instrumental witnesses of the will, shall also sign**, as aforesaid, **each and every page thereof, except the last, on the left margin**, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.

The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.

If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them. (Emphasis supplied)

The petitioner, in assailing the findings of the CA, argues that in the original copy[23] of the will that was offered before the probate court as Exhibit "L," it is clear that the instrumental witnesses signed on the left margin of every page of the will except the last, as did Legaspi.[24] The petitioner advances that the confusion arose when the *respondents*, in their record of appeal, submitted an altered photocopy[25] of the will to the CA, in which the signatures of the instrumental witnesses were covered when photocopied, to make it appear that the witnesses did not sign on every page. This misled the CA to rule that the will was defective for the lack of signatures.[26]

For their part, the respondents do not deny that the original copy of the will, as opposed to its photocopy, bore the signatures of the instrumental witnesses on every page thereof, except the last.[27] However, they submit that they did not cause any alteration to the photocopied version. They explain that since the folder holding the records of the case was bound on the

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[23] *Rollo*, pp. 70-73.

[24] *Id*. at 19.

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

[26] *Id*. at 26.

[27] *Id*. at 154.

left margin and the pages may not be detached therefrom, the left portion of the will must have been unintentionally excluded or cut-off in the process of photocopying.[28]

In any event, it is uncontested and can be readily gleaned that the instrumental witnesses signed on each and every page of the will, except the last page. Such being the case, the CA erred in concluding otherwise. There is no doubt that the requirement under the Article 805 of the Civil Code, which calls for the signature of the testator and of the instrumental witnesses on each and every page of the will on the left margin, except the last, was complied with.

It should also be mentioned that the respondents take a skewed stance in insisting that the testator Legaspi and the instrumental witnesses should have signed on the last page of the subject will. When Article 805 of the Civil Code requires the testator to subscribe at the end of the will, it necessarily refers to the logical end thereof, which is where the last testamentary disposition ends.[29] As the probate court correctly appreciated, the last page of the will does not contain any testamentary disposition; it is but a mere continuation of the Acknowledgment.[30]

As to whether the failure to state the number of pages of the will in the attestation clause renders such will defective, the CA, citing *Uy Coque vs. Naves Sioca*[31] and *In re: Will of Andrada,* perceived such omission as a fatal flaw.[32] In *Uy Coque*, one of the defects in the will that led to its disallowance is the failure to declare the number of its pages in the attestation clause. The Court elucidated that the purpose of requiring the number of pages to be stated in the attestation clause is to make the falsification of a will more difficult. In *In re: Will of*

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[28] *Id.* at 153.

[29] *Jottings and Jurisprudence in Civil Law (Succession)*, p. 78, Ruben F. Balane, Central Book Supply, (2016).

[30] *Rollo*, p. 45.

[31] 43 Phil. 405, 407 (1922).

[32] 42 Phil. 180, 181 (1921).

Andrada, the Court deemed the failure to state the number of pages in the attestation clause, fatal. Both pronouncements were, however, made prior to the effectivity of the Civil Code on August 30, 1950.

Subsequently, in *Singson vs. Florentino*,[33] the Court adopted a more liberal approach and allowed probate, even if the number of pages of the will was mentioned in the last part of the body of the will and not in the attestation clause. This is to prevent the will of the testator from being defeated by purely technical considerations.[34]

The substantial compliance rule is embodied in the Civil Code as Article 809 thereof, which provides that:

> **Article 809.** In the absence of bad faith, forgery, or fraud, or undue and improper pressure and influence, defects and imperfections in the form of attestation or in the language used therein shall not render the will invalid if it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of Article 805.

Thus, in *Taboada vs. Hon. Rosal*,[35] the Court allowed the probate of a will notwithstanding that the number of pages was stated not in the attestation clause, but in the Acknowledgment. In *Azuela vs. CA*,[36] the Court ruled that there is substantial compliance with the requirement, if it is stated elsewhere in the will how many pages it is comprised of.

What is imperative for the allowance of a will despite the existence of omissions is that such omissions must be supplied by an examination of the will itself, without the need of resorting to extrinsic evidence. "However, those omissions which cannot be supplied except by evidence <u>*aliunde*</u> would result in the

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[33] 92 Phil. 161 (1952).

[34] *Id.* at 165.

[35] 203 Phil. 572 (1982).

[36] 521 Phil. 263, 280-281 (2006).

invalidation of the attestation clause and ultimately, of the will itself."[37]

An examination of the will in question reveals that the attestation clause indeed failed to state the number of pages comprising the will. However, as was the situation in *Taboada*, this omission was supplied in the Acknowledgment. It was specified therein that the will is composed of four pages, the Acknowledgment included. As with the will, the Acknowledgment[38] is written in Filipino, quoted in part below:

x x x x x x x x x

Ang HULING HABILING ito ay binubuo ng apat (4) na dahon, kasama ang dahong kinaroroonan ng Pagpapatunay at Pagpapatotoong ito.

x x x x x x x x x[39]

In sum, Legaspi's last will and testament has substantially complied with all the formalities required of a notarial will. It has been proven that Legaspi and the instrumental witnesses signed on every page of the will, except on the last, which refers to the Acknowledgment page. With regard to the omission of the number of pages in the attestation clause, this was supplied by the Acknowledgment portion of the will itself without the need to resort to extrinsic evidence. Contrary to the CA conclusion, such omission does not in any way serve as hindrance to probate.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated May 22, 2013 and Resolution dated August 15, 2014 of the Court of Appeals in CA-G.R. CV No. 93671 are hereby **REVERSED** and **SET ASIDE**. The Decision dated February 23, 2009 of the Regional Trial Court, Branch 128 of Caloocan City in SP. Proc. Case No. C-3450 is **REINSTATED** and **AFFIRMED**. The case is remanded to the trial court for further proceedings.

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[37] *Caneda, et al. v. CA*, 294 Phil. 801, 824 (1993).

[38] *Rollo*, pp. 72-73.

[39] *Id.* at 73.

SO ORDERED.

Carpio,[*] *Acting C.J. (Chairperson), Peralta, Perlas-Bernabe,* and *Caguioa, JJ., concur.*

THIRD DIVISION

[G.R. No. 216065. April 18, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REYNANTE MANZANERO *y* HABANA *a.k.a.* "NANTE", MARIO TANYAG *y* MARASIGAN *a.k.a.* "TAGA", ANGELITO EVANGELISTA *y* AVELINO *a.k.a.* "LITO", ARTHUR FAJARDO *y* MAMALAYAN, MARIO EVANGELISTA *a.k.a.* "TIKYO", PATRICK ALEMANIA *a.k.a.* "BOBBY PATRICK", TOYING PENALES *a.k.a.* "TOYING", *a.k.a.* "REY", and *a.k.a.* "MARLON",** *accused,* **ARTHUR FAJARDO *y* MAMALAYAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; ELEMENTS; THE MAXIMUM PENALTY OF DEATH IS IMPOSABLE WHERE THE PURPOSE OF THE DETENTION OR KIDNAPPING IS TO EXTORT MONEY.— Serious Illegal Detention or Kidnapping with Ransom is punished under Article 267 of the RPC. x x x. As such, in order for the accused to be guilty of the crime, the following elements must concur: (a) the offender is a private individual; (b) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or

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

kidnapping must be illegal; and (d) in the commission of the offense any of the following circumstances is present: (1) the kidnapping or detention lasts for more than three days; (2) it is committed by simulating public authority; (3) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (4) the person kidnapped or detained is a minor, female, or a public officer. In addition, the maximum penalty of death is imposable should the purpose of the detention or kidnapping was to extort money, even if qualifying circumstances mentioned in Article 267 are not present.

2. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; THE CONVICTION OF THE ACCUSED HEAVILY RESTS ON THE STRENGTH OF THE EVIDENCE OF THE PROSECUTION WHICH HAS THE BURDEN TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.—** [I]t is well-settled that the conviction of the accused heavily rests on the strength of the evidence of the prosecution which has the burden to prove the guilt of the accused beyond reasonable doubt. After a review of the records of the case, the Court is convinced that the prosecution was able to meet the quantum of proof for Fajardo's conviction.

3. **ID.; ID.; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT OF FACTS AND CREDIBILITY OF WITNESSES IS HEAVILY RESPECTED BECAUSE THE TRIAL COURT JUDGE HAD THE DISTINCT ADVANTAGE OF PERSONALLY HEARING THE ACCUSED AND THE WITNESSES AND OBSERVING THEIR DEMEANOR ON THE WITNESS STAND.—** In his testimony, Tony categorically and consistently narrated how Fajardo and his co-accused forcibly took him to an unidentified place where he was kept for a period of 37 days. x x x. Tony never wavered in identifying his abductors despite the rigorous cross-examination by the defense counsel. It is also noteworthy that Tony was able to categorically identify Fajardo and his co-accused as his captors and illustrate their respective positions inside the vehicle. The details he provided on his abduction strengthened the credibility of his testimony. The Court finds no reason to depart from the probative value the courts *a quo* had attributed to Tony's testimony. After all, the trial court's assessment of facts and credibility of witnesses is heavily respected because the trial

court judge had the distinct advantage of personally hearing the accused and the witnesses and observing their demeanor on the witness stand. Further, it is settled that where there is no evidence that the principal witness for the prosecution acted with improper motives, the latter's testimony is entitled to full faith and credit.

4. **CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; THE ILLEGAL DETENTION COUPLED WITH A DEMAND FOR MONEY IS TANTAMOUNT TO SERIOUS ILLEGAL DETENTION OR KIDNAPPING, AND THE DEMAND FOR RANSOM CONSUMMATES THE CRIME , AS ACTUAL PAYMENT OR RECEIPT BY THE KIDNAPPERS OF THE MONEY IS IMMATERIAL.—** [T]here is sufficient evidence to establish that Fajardo and his co-accused had illegally deprived Tony of his liberty. They were able to do so by simulating public authority when they misrepresented themselves as NBI personnel. Further, Fajardo and his cohorts detained Tony for more than five (5) days because he was only able to escape captivity after 37 days. These facts alone were sufficient to convict Fajardo of the crime of serious illegal detention. In addition, even if the said qualifying circumstance were not present, serious illegal detention or kidnapping was still consummated. In her testimony, Cynthia recounted how Tony's abductors demanded money for his release x x x. Tony's testimony likewise corroborates that his abductors made a demand to his family. The illegal detention coupled with a demand for money is tantamount to serious illegal detention or kidnapping punishable under Article 267 of the RPC. The demand for ransom consummates the crime of serious illegal detention or kidnapping because the actual payment or receipt by the kidnappers of the money is immaterial.

5. **ID.; ID.; CONSPIRACY; WHEN PRESENT; CONSPIRACY NEED NOT BE EXPRESS AS IT CAN BE INFERRED FROM THE ACTS OF THE ACCUSED THEMSELVES WHEN THEIR OVERT ACTS INDICATE A JOINT PURPOSE AND DESIGN, CONCERTED ACTION AND COMMUNITY OF INTERESTS; ELABORATED.—** There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be express as it can be inferred from the acts of the accused themselves when

their overt acts indicate a joint purpose and design, concerted action and community of interests. In *People v. Pepino*, the Court explained that the meeting of the minds of the accused need not be expressly proven as it can be deduced from the coordinated actions of the group, to wit: Proof of the agreement does not need to rest on direct evidence, as the agreement may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense. Corollarily, it is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out. Contrary to Fajardo's position, there is evidence to establish conspiracy independent of the extrajudicial confession of his co-accused. Tony's testimony clearly illustrated how Fajardo and his cohorts acted together to achieve their common purpose of detaining him. He narrated the exact participation of the assailants in his abduction. Fajardo, Manzanero, and Mario were the ones who forcibly pushed him into a van where the driver Tanyag was waiting; and all of them were wearing NBI uniforms. Thus, it is readily apparent that Fajardo and his co-accused performed their coordinated actions with the common understanding or intent to detain Tony and demand ransom for his release.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DISREGARD OF THE EXTRA-JUDICIAL CONFESSION OF A CO-ACCUSED NOT FATAL TO THE PROSECUTION, AS THE IDENTIFICATION BY AN EYEWITNESS OF ACCUSED-APPELLANT AS THE PERPETRATOR OF THE CRIME CONSTITUTES DIRECT EVIDENCE AGAINST THE ACCUSED-APPELLANT.— The Court, however, agrees with the observation of the appellate court that even if the extrajudicial confessions of his co-accused were disregarded, there is still sufficient evidence to convict Fajardo of the crime charged. The identification by an eyewitness of a suspect or accused as the perpetrator of the crime constitutes direct evidence thereof. Here, Tony was able to clearly, categorically, and steadfastly identify Fajardo as one of his abductors. Thus, his credible testimony alone would suffice as it is direct evidence against Fajardo; and even if the extrajudicial confessions were discarded, it would not be fatal to the prosecution because it would merely corroborate Tony's testimony.

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 2 September 2013 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 04513, which affirmed with modification the 25 March 2010 Joint Decision[2] of the Regional Trial Court, Branch 47, Manila (*RTC*), in Criminal Case Nos. 05-235530 and 05-235531, finding accused-appellant Arthur Fajardo *y* Mamalayan (*Fajardo*) guilty beyond reasonable doubt of the crimes of Kidnapping and Serious Illegal Detention and Robbery.

THE FACTS

In an Amended Information[3] dated 4 August 2004, Fajardo, together with his co-accused, were charged with Kidnapping for Ransom defined and penalized under Article 267 of the Revised Penal Code (*RPC*). The accusatory portion of the information reads:

> That on or about November 23, 2003, at the City of Manila, and within the jurisidiction of this Honorable Court, the above-named accused, conspiring and confederating with each other, did then and there willfully, unlawfully and feloniously, and for the purpose of extorting ransom from the victim and his relative, kidnap and detain Tony Chua.

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[1] *Rollo*, pp. 2-31; penned by Associate Justice Eduardo B. Peralta, Jr, and concurred in by Associate Justices Vicente S.E. Veloso and Nina G. Antonio-Valenzuela.

[2] CA *rollo*, pp. 15-51; penned by Pairing Judge Silverio Q. Castillo.

[3] Records, Volume III, pp. 620-621.

That the said kidnapping had been committed by the above-named accused by simulating public authority and the deprivation of liberty of Tony Chua lasted for more than three (3) days. That the ransom money in the amount of $3,000,000.00 was in fact demanded by the above-named accused from his family for his release.[4]

In a separate Information, Fajardo and his co-accused were also charged with Robbery. During arraignment, Fajardo, Reynante Manzanero (*Manzanero*), Mario Tanyag (*Tanyag*), Angelito Evangelista (*Angelito*), and Mario Evangelista (*Mario*) all pleaded "not guilty." The other persons indicted remain at-large.

Version of the Prosecution

In the afternoon of 23 November 2003, private complainant Tony Chua (*Tony*) was at the Metropolitan Building in Mabini playing mahjong with his friends. At around 10:30 P.M. that day, he decided to go home and proceeded to his car. While Tony was about to open his car, three men identifying themselves as National Bureau of Investigation (*NBI*) agents handcuffed him. They pushed him into a van parked behind his car where he saw two more persons in NBI apparel at the driver and front passenger seats. Once inside, he was blindfolded.[5]

Tony was able to identify in open court four of the five assailants who abducted him. He named Fajardo, Manzanero, and Mario as the persons who approached him and Tanyag the driver. The one seated beside the driver was not in court so he was not identified. On the other hand, Tony pointed to Angelito as the one who served him food during his detention.[6]

On the same date, Tony's sister Cynthia Chua (*Cynthia*) was at home watching television when he got a call from Tony's friend Avelino Belmonte (*Belmonte*). The latter told her that he saw Tony forcibly taken by three unidentified men while he

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[4] *Id*. at 620.

[5] TSN, 13 June 2006, pp. 9-11.

[6] TSN, 27 July 2006, pp. 19-21.

was trying to board his car. Shocked, Cynthia immediately tried to call Tony but he could not be contacted.[7]

Meanwhile, Tony was brought to a safe house where his captors took his wallet, cellphone, and ring. The kidnappers asked for the number of Tony's wife and siblings.[8] On 24 November 2003, Cynthia received a call from a man asking for Tony's wife who informed her that they had Tony. Pretending to be Tony's wife she was told to prepare $3 million in exchange for Tony's liberty. Later, Cynthia would receive several calls asking if the money had already been prepared.[9]

After five (5) days, Tony was given a cellphone to contact relatives with and tell them to give into the assailants' demands. After two weeks, he was transferred to a resort but was brought back to the safe house after three days. During these periods, Tony was kept blindfolded and was only able to remove it when he was alone in the room.[10]

Cynthia was eventually referred to the Philippine National Police – Police Anti-Crime and Emergency Response Unit (*PNP-PACER*), where she was told that she and her family would stay in a safe house where the PNP-PACER would assist Cynthia and her family in negotiating with Tony's captors.[11] On 25 December 2003, Cynthia received a call from a certain Ed Alvarez (*Alvarez*) who identified himself as Tony's friend. He told her that he would facilitate Tony's release but warned that she should not report it to the authorities.[12]

On 30 December 2003, when Tony peeped through the door and saw a woman sleeping in the living room, he decided to

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[7] TSN, 6 November 2007, pp. 4-7.

[8] TSN, 13 June 2006, pp. 11-12.

[9] TSN, 6 November 2007, pp. 7-9 and 13-17.

[10] TSN, 13 June 2006, pp. 13-14.

[11] TSN, 6 November 2007, pp. 19-22.

[12] TSN, 5 December 2007, pp. 16-19.

escape and ran towards the road. There, he met a jeepney driver who brought him to a barangay captain in Tanauan, Batangas. The barangay official brought Tony to the bus station and gave him fare money to Cubao. Once in Cubao, Tony called his brother Edgar Chua (*Edgar*), who relayed to Cynthia to say that Tony was in a restaurant at Cubao.[13] The following day, he accompanied the police to the safe house where he was detained.[14]

On 31 December 2003, Alvarez again called Cynthia and said he helped Tony be released by his abductors. They agreed to meet at Festival Mall so that she could repay him for his efforts. Cynthia informed the PNP-PACER about the meeting and set up operations for her meeting with Alvarez. They informed her later that the persons responsible for the kidnapping were in their custody.[15]

On 8 January 2004, Manzanero, Tanyag, and Angelito surrendered to Police Senior Inspector Vic Orsino (*Orsino*), Chief Investigator of the PNP- PACER, who requested the PNP Laboratory to subject the three to a physical examination.[16] The following day, the three executed their respective affidavits, in the presence of Atty. Manuel Go, confessing their involvement in Tony's kidnapping.[17]

On 17 January 2004, Fajardo, together with his lawyer, surrendered to the Criminal Investigation and Detention Group (*CIDG*) and was subsequently turned over to Orsino. After getting the results of Fajardo's physical examination, Orsino took his statement.[18]

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[13] TSN, 13 June 2006, pp. 17-20 and TSN, 5 December 2007, pp. 20-21.

[14] TSN, 13 June 2006, p. 21.

[15] TSN, 5 December 2007, pp. 22-24.

[16] TSN, 16 September 2008, pp. 14-16.

[17] *Id*. at 21-25.

[18] *Id*. at 36 and 47.

Version of the Defense

Fajardo testified that on 17 January 2004, he was accompanied by his lawyer to the CIDG and was later endorsed to the PNP-PACER. There, he prepared a statement concerning Tony's kidnapping, which he identified in court.[19] He denied any involvement therein and claimed that he became aware of the kidnapping only after his house was raided.[20]

Tanyag testified that on the date of the alleged kidnapping he was just riding his tricycle in Calamba, Laguna, when police officers arrested him.[21] He claimed that he met his co-accused only in jail and denied the contents of the affidavit he had allegedly executed while in detention.[22] On the other hand, Manzanero denied executing any affidavit and that he was surprised when police officers arrested him on 8 January 2004; that they handcuffed him, placed a plastic bag over his head, and pushed him inside a vehicle.[23]

Angelito testified that on 8 January 2004 operatives of the PNP- PACER invited him to their office. Once inside their vehicle, he was blindfolded and was asked whether he knew Manzanero and Tanyag. On their way to the PNP-PACER office, he was continuously punched by the police officers.[24] On the other hand, Mario narrated that on 10 February 2004, he was invited by police officers and was eventually handcuffed, and similary with Angelito, a plastic bag was placed over his head and was asked whether he knew the other accused.[25] At the PNP-PACER office, both Mario and Angelito were tortured into admitting that they knew their co-accused.[26]

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[19] TSN, 21 May 2009, pp. 8-13.

[20] Records, Volume I, pp. 32-34.

[21] TSN, 21 April 2009, pp. 5-8.

[22] *Id.* at 9-12.

[23] TSN, 17 February 2009, pp. 7-8 and 14-16.

[24] TSN, 24 February 2009, pp. 5-6 and 9-10.

[25] *Id*. at 21-23.

[26] *Id*. at 31-33.

The RTC Ruling

In its 25 March 2010 joint decision, the RTC found Fajardo and his co-accused guilty of kidnapping and serious illegal detention. The trial court noted that the interlocking admissions of Manzanero, Tanyag, Mario, and Angelito evinced the conspiratorial acts of the accused in kidnapping Tony Chua. It explained that Angelito was guilty only as an accomplice because his participation was limited to acts leading to the criminal purpose of the principal offenders. The RTC also highlighted that the accused conspired to take Tony's property after he was detained which warranted their conviction for the crime of robbery. The dispositive portion of its decision reads:

> WHEREFORE, the Court finds the accused Reynante Manzanero, Mario Tanyag y Marasigan, Arhtur Fajardo y Mamalayan and Mario Evangelista GUILTY BEYOND REASONABLE DOUBT for the felony of KIDNAPPING and SERIOUS ILLEGAL DETENTION with ransom and in conformity with law they are hereby sentenced to suffer separate prison term of RECLUSION PERPETUA and to pay the costs.
>
> With respect to ANGELITO EVANGELISTA he is hereby sentenced to suffer prison term of 12 years and 1 day as minimum to 14 years and 8 months as maximum of reclusion temporal.
>
> x x x x x x x x x
>
> Thus, the Court further finds the accused Reynante Manzanero, Mario Tanyag, Arthur Fajardo and Mario Evangelista GUILTY beyond reasonable doubt of the felony of Robbery and hereby sentenced to suffer prison terms of eight (8) years and two (2) days as minimum to ten (10) years as maximum as prision mayor. The accused are ordered to pay the amount of ₱50,000.00 representing the value of victim's personal property.
>
> The L-300 van which was used by the accused as their getaway vehicle and in boarding the victim to a secluded place in Tanauan, Batangas is ordered confiscated and forfeited in favor of the STATE.
>
> In view of the conviction of the accused, the BJMP of Manila is ordered to commit them to the National Bilibid Prison, Muntinlupa without any oncoming delay. With respect to accused Mario Tanyag

y Marasigan, the BJMP of Calamba City Laguna is ordered to commit him to the National Bilibid Prison, Muntinlupa, Metro Manila.[27]

Aggrieved, Manzanero and Fajardo appealed before the CA.

The CA Ruling

In its assailed 2 September 2013 decision, the CA granted Manzanero and Fajardo's appeal. The appellate court agreed that all the elements of kidnapping with ransom were duly proven by the prosecution. It elucidated that even if the extrajudicial confession of the accused were disregarded, Tony's positive identification of his abductors was sufficient to convict Manzanero and Fajardo. However, the CA expounded that there was insufficient evidence to prove conspiracy to commit robbery because the degree of participation of the accused was not clearly proven. The dispositive portion of the ruling reads:

WHEREFORE, premises considered, the appeal is hereby PARTIALLY GRANTED and the appealed Decision is MODIFIED as follows:

(1) We AFFIRM the judgment in Criminal Case NO. 05-235530 which adjudged the guilt of accused for kidnapping and serious illegal detention and sentenced them to suffer the corresponding penalty, with forfeiture of the vehicle, and to pay the costs;

(2) We REVERSE the convictions of Reynante Manzanero, Mario Tanyag, Arthur Fajardo, Mario Evangelista and Angelito Evangelista in Criminal Case NO. 05-235531 for robbery due to the prosecution's failure to prove their guilt beyond reasonable doubt. Consequently, We delete the award of Php50,000.00 allegedly representing the value of the victim's personal belongings.[28]

Aggrieved, Fajardo appealed before the Court.

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[27] CA *rollo*, pp. 97-98.

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

ISSUE

WHETHER THE ACCUSED-APPELLANT IS GUILTY BEYOND REASONABLE DOUBT OF SERIOUS ILLEGAL DETENTION

THE COURT'S RULING

The appeal has no merit.

Serious Illegal Detention or Kidnapping with Ransom is punished under Article 267 of the RPC. It provides:

> Article 267. *Kidnapping and serious illegal detention*. - Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:
>
> 1. If the kidnapping or detention shall have **lasted more than five days**;
> 2. If it shall have been committed by **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; or
> 4. If the person kidnapped or detained shall be a minor, female or a public officer.
>
> The penalty shall be death where the kidnapping or detention was c**ommitted for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned are present in the commission of the offense**.

As such, in order for the accused to be guilty of the crime, the following elements must concur: (a) the offender is a private individual; (b) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping must be illegal; and (d) in the commission of the offense any of the following circumstances is present: (1) the kidnapping or detention lasts for more than three days; (2) it is committed by simulating public authority; (3) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (4) the person kidnapped or detained is a minor, female, or a public officer.[29]

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[29] *People v. Niegas*, 722 Phil. 301, 309-310 (2013).

In addition, the maximum penalty of death is imposable should the purpose of the detention or kidnapping was to extort money, even if qualifying circumstances mentioned in Article 267 are not present.

In turn, it is well-settled that the conviction of the accused heavily rests on the strength of the evidence of the prosecution which has the burden to prove the guilt of the accused beyond reasonable doubt.[30] After a review of the records of the case, the Court is convinced that the prosecution was able to meet the quantum of proof for Fajardo's conviction.

In his testimony, Tony categorically and consistently narrated how Fajardo and his co-accused forcibly took him to an unidentified place where he was kept for a period of 37 days. He recounted in his direct examination:

ATTY. YOUNG

Q: Mr. Chua, can you tell the Honorable Court where were you on November 23, 2003 sometime in the evening of that date?
A: I was in Metropolitan Building somewhere in Mabini.

Q: Can you tell us when you were in that building that you mentioned?
A: Around 5:00 o'clock I was there playing majong with some of my friends.

Q: This is 5:00 o'clock in the afternoon?
A: Yes.

Q: Up to what time?
A: I was playing majong and at around 10:30 in the evening I left. I stayed until 10:30.

Q: What did you do at that point and time at around 10:30 in the evening?

x x x x x x x x x

A: Until 10:30 when I felt I was almost tired, I tried to go home at 10:30 in the evening.

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[30] *Macayan v. People*, 756 Phil. 202, 214 (2015).

Q: Then what did you do Mr. Witness?
A: When I was trying to open the door of my car, around three guys approached me. They said that they were NBI. They were with white T-shirts with NBI mark. A few seconds later they handcuffed me and pushed me to the van, a Mistubishi van which is behind my car.

Q: During this time that you were handcuff by these people, did they tell you anything?
A: They said they are NBI and they pushed me to the van.

x x x x x x x x x

Q: Now Mr. witness, you said you were pushed inside an L-300 van, when you were pushed inside what happen? These three persons where were they?
A: They were more than three in the car. One driver and somebody was sitting beside the driver. I was in the second row then there was one on my left and one on my right and there were somebody behind.

x x x x x x x x x

Q: So what happen (sic) next Mr. witness?
A: I was being blindfolded with my hands handcuffed and they took me after more than an hour to a place that within that time I do not know.

Q: When you arrive at that place what happen?
A: They took me to a small room I think that time was already about 11:00 or 12:00 and during that time they took all my personal belongings, my wallet, my ring, my cellphone.[31]

x x x x x x x x x

Q: How long were you detained by these people?
A: Over all (sic) it's 37 days. During the first two weeks they transfer me to another place.

Q: For clarification, within that two weeks?
A: After two weeks they transferred me to another place which is something like a resort with a swimming pool and I stayed

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[31] TSN, 13 June 2006, pp. 8-12.

there about three nights and after that they took me back to the old place.

Q: During that time you were detained, were you continuously blindfolded?
A: Yes continuously but when I stay in the room alone I used to remove portion of my blindfold.

x x x x x x x x x

Q: Mr. witness, you said you were with them for 37 days, what happen after that end of 37 days?
A: I was able to escape.

Q: Can you explain how you were able to escape?
A: That date was December 30 and it was so quiet and I look on the door and I was able to see that there was only one woman who is sleeping in the sala. It looked so quiet and I peeped outside and I look to the place and there was no movement. You know it is a normal practice that if you are staying there for 37 days you will more or less know the area so I was able to run to the road and I was able to run away.[32]

x x x x x x x x x

Q: Mr. Witness you told us that last time you told us that on November 23, 2003 you were first approached by 3 persons?
A: Yes, sir.

Q: When you came down in the Metropolitan building in the evening and these people identified themselves to you as NBI agents supposedly and then they abducted you. Now, these 3 persons, do you still recognize their faces?
A: Yes, sir.

Q: Are they in the Courtroom today?
A: They're inside the Courtroom.

Q: Can you please point them out to us Mr. Witness?

x x x x x x x x x

[32] *Id*. at 14-18.

ATTY. YOUNG:

You can come down and tap them on the shoulders. Tap them on the shoulder Mr. Witness.

COURT:

Tap them on the shoulders.

ATTY. YOUNG

The 3 persons who approached you on that evening.

INTERPRETER:

Witness has pointed to a (sic) detention prisoners.

COURT

Okay, names?

INTERPRETER:

When asked, their names were Mario Evangelista, Reynante Manzanero and Arthur Fajardo

ATTY. YOUNG:

Q: Mr. Witness please remain there because my next question to you is you also told us that aside from these three (3) there were two (2) other persons inside the van where you were pushed inside. You said that there was a driver and a person seated in front. Is the driver in this Courtroom today?
A: Yes, he's inside.

Q: Can you point to the driver to us?
A: They're inside the Courtroom.

INTERPRETER:

Witness has pointed to a detention prisoner and when asked, his name was Mario Tanyag.

ATTY. YOUNG:

Q:How about the person who was seated in front of the van?
A:He is not around today.[33]

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[33] TSN, 27 July 2006, pp. 19-21.

Even in his cross-examination, Tony remained steadfast in recalling his abduction, to wit:

ATTY. CUDAL:

Q: Mr. Witness, you testified on June 13, 2006 that on November 23, 2003 you were allegedly kidnapped by the accused and at the outset pushed and placed in a Mitsubishi van, is that correct?
A: Yes, sir.

Q: And you also claimed in your testimony on June 13, 2006 is that you were handcuffed by the accused, is that correct?
A: Yes, sir.

Q: And later on you were placed inside this Mitsubishi van Mr. Witness, is that correct?
A: Yes, sir.

Q: And will you please tell us how many persons who held you on the 23rd of November 2003?
A: They are 3 who approached me during the evening – 10:30.

Q: And what did these 3 persons do Mr. Witness?
A: They told me they was (sic) NBI and for investigation and then in a few moment "pinoposas at hinahandcuffed niya ako" and pushed me into the van. That van was parked beside my CRV.

Q: And while inside the van, what happened next Mr. Witness?
A: I saw another 2 in the van and then gina-gamped nila my mouth, my eyes, so then tumakbo yung sasakyan.

Q: How many persons were you insde the van Mr. Witness?
A: Including me, six.

Q: Even including you?
A: Yes six.

Q: And will you tell us what and how you were seated right inside the van Mr. Witness?
A: I was seated in the second row of the van and there is one left and right with me, one at the back and two at the first row that's including a driver and another person.[34]

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[34] TSN, 26 April 2007, pp. 14-15.

Tony never wavered in identifying his abductors despite the rigorous cross-examination by the defense counsel. It is also noteworthy that Tony was able to categorically identify Fajardo and his co-accused as his captors and illustrate their respective positions inside the vehicle. The details he provided on his abduction strengthened the credibility of his testimony.

The Court finds no reason to depart from the probative value the courts *a quo* had attributed to Tony's testimony. After all, the trial court's assessment of facts and credibility of witnesses is heavily respected because the trial court judge had the distinct advantage of personally hearing the accused and the witnesses and observing their demeanor on the witness stand.[35] Further, it is settled that where there is no evidence that the principal witness for the prosecution acted with improper motives, the latter's testimony is entitled to full faith and credit.[36]

Thus, there is sufficient evidence to establish that Fajardo and his co-accused had illegally deprived Tony of his liberty. They were able to do so by simulating public authority when they misrepresented themselves as NBI personnel. Further, Fajardo and his cohorts detained Tony for more than five (5) days because he was only able to escape captivity after 37 days. These facts alone were sufficient to convict Fajardo of the crime of serious illegal detention.

In addition, even if the said qualifying circumstance were not present, serious illegal detention or kidnapping was still consummated. In her testimony, Cynthia recounted how Tony's abductors demanded money for his release, to wit:

ATTY. ABANIA:

Q: What happened after that?
A: I did inform some of our family members and also to my sister in law the wife of my brother Tony. So we waited for the entire night to talk to Tony and yet we were disappointed because his cell phone was already out of reached (sic). Then

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[35] *People v. Gabrino*, 660 Phil. 485, 493 (2011).

[36] *People v. Abatayo*, 477 Phil. 668, 686 (2004).

the following day I received a call from a man who was looking for my sister in law Nancy, that is Tony's wife.

Q: Did the man identify himself?
A: He did not identify himself but he informed us that he was detaining my brother Tony.

Q: What else did he say?
A: And he informed us that he was detaining my brother Tony and then he was looking for my sister in law Nancy. I just pretend to be Tony's wife and he warned us not to report the incident to the police.

x x x x x x x x x

Q: What else did this man tell you?
A: This man told us in tagalong (sic] "Maghanda ka ng 3 million dollars para makalaya ang iyong asawa."[37]

Tony's testimony likewise corroborates that his abductors made a demand to his family.[38] The illegal detention coupled with a demand for money is tantamount to serious illegal detention or kidnapping punishable under Article 267 of the RPC. The demand for ransom consummates the crime of serious illegal detention or kidnapping because the actual payment or receipt by the kidnappers of the money is immaterial.[39]

Proof of Conspiracy

Fajardo argues that aside from the extrajudicial confessions his co-accused executed, the prosecution failed to offer other evidence to prove conspiracy. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[40] Conspiracy need not be express as it can be inferred from the acts of the

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[37] TSN, 6 November 2007, pp. 7-8.

[38] TSN, 13 June 2006, p.16.

[39] *People v. Ramos*, 358 Phil. 261, 279 (1998).

[40] Article 8 of the RPC.

accused themselves when their overt acts indicate a joint purpose and design, concerted action and community of interests.[41] In *People v. Pepino*,[42] the Court explained that the meeting of the minds of the accused need not be expressly proven as it can be deduced from the coordinated actions of the group, to wit:

> Proof of the agreement does not need to rest on direct evidence, as the agreement may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense. Corollarily, it is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out.[43]

Contrary to Fajardo's position, there is evidence to establish conspiracy independent of the extrajudicial confession of his co-accused. Tony's testimony clearly illustrated how Fajardo and his cohorts acted together to achieve their common purpose of detaining him. He narrated the exact participation of the assailants in his abduction. Fajardo, Manzanero, and Mario were the ones who forcibly pushed him into a van where the driver Tanyag was waiting; and all of them were wearing NBI uniforms. Thus, it is readily apparent that Fajardo and his co-accused performed their coordinated actions with the common understanding or intent to detain Tony and demand ransom for his release.

Positive identification of eyewitness is a direct evidence of the commission.

To further his claim of innocence, Fajardo insists that he should not be prejudiced by the extrajudicial confessions of his co-accused under the *res inter alios acta* rule. In addition, he assails that their extrajudicial confessions were inadmissible

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[41] *Quidet v. People*, 632 Phil. 1, 12 (2010).

[42] 777 Phil. 29 (2016).

[43] *Id.* at 61.

because they were not continuously assisted by an independent and competent counsel when they executed the same.

The Court, however, agrees with the observation of the appellate court that even if the extrajudicial confessions of his co-accused were disregarded, there is still sufficient evidence to convict Fajardo of the crime charged. The identification by an eyewitness of a suspect or accused as the perpetrator of the crime constitutes direct evidence thereof. Here, Tony was able to clearly, categorically, and steadfastly identify Fajardo as one of his abductors. Thus, his credible testimony alone would suffice as it is direct evidence against Fajardo; and even if the extrajudicial confessions were discarded, it would not be fatal to the prosecution because it would merely corroborate Tony's testimony.

WHEREFORE, the appeal is **DISMISSED**. The 2 September 2013 Decision of the Court of Appeals in CA-G.R. CR-HC No. 04513 is **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 216922. April 18, 2018]

JAYLORD DIMAL and ALLAN CASTILLO, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; SPECIAL COMPLEX CRIME OF KIDNAPPING WITH MURDER; WHERE THE

PERSON KIDNAPPED IS KILLED IN THE COURSE OF THE DETENTION, REGARDLESS OF WHETHER THE KILLING WAS PURPOSELY SOUGHT OR WAS MERELY AN AFTERTHOUGHT, THE KIDNAPPING AND MURDER OR HOMICIDE CAN NO LONGER BE COMPLEXED, NOR BE TREATED AS SEPARATE CRIMES, BUT SHALL BE PUNISHED AS A SPECIAL COMPLEX CRIME.— Suffice it to state that where a person kidnapped is killed or dies as a consequence of the detention, there is only one special complex crime for which the last paragraph of Article 267 of the Revised Penal Code provides the maximum penalty that shall be imposed, *i.e.*, death. In *People v. Larrañaga*, the Court explained that this provision gives rise to a special complex crime: This amendment introduced in our criminal statutes the concept of "special complex crime" of kidnapping with murder or homicide. It effectively eliminated the distinction drawn by the courts between those cases where the killing of the kidnapped victim was purposely sought by the accused, and those where the killing of the victim was not deliberately resorted to but was merely an afterthought. Consequently, the rule now is: **Where the person kidnapped is killed in the course of the detention**, regardless of whether the killing was purposely sought or was merely an afterthought, **the kidnapping and murder or homicide can no longer be complexed under Art. 48, nor be treated as separate crimes, but shall be punished as a special complex crime** under the last paragraph of Art. 267, as amended by R.A. No. 7659. x x x **Where the law provides a single penalty for two or more component offenses, the resulting crime is called a special complex crime.** Some of the special complex crimes under the Revised Penal Code are x x x (4) **kidnapping with murder** or homicide. x x x. *In a special complex crime, the prosecution must necessarily prove each of the component offenses with the same precision that would be necessary if they were made the subject of separate complaints.*

2. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; A SEARCH WARRANT THAT COVERS SEVERAL COUNTS OF A CERTAIN SPECIFIC OFFENSE DOES NOT VIOLATE THE ONE-SPECIFIC-OFFENSE RULE.— There is no dispute that Search Warrant No. 10-11 was applied for and issued in connection with the crime of kidnapping with murder. Asked by Judge Ong during the hearing as to what particular

offense was committed, search warrant applicant P/Insp. Malixi testified that Dimal "allegedly committed the crime of kidnapping and multiple murder of Lucio and Rosemarie Pua and one Gemma Eugenio on September 6, 2010." It is not amiss to add that a search warrant that covers several counts of a certain specific offense does not violate the one-specific-offense rule.

3. ID.; ID.; ID.; PROBABLE CAUSE FOR THE ISSUANCE OF A SEARCH WARRANT; CONCEPT THEREOF, EXPLAINED.— Neither can petitioners validly claim that the examining judge failed to ask searching questions, and to consider that the testimonies of the applicant and his witnesses were based entirely on hearsay, as they have no personal knowledge of the circumstances relating to the supposed disappearance or murder of the 3 victims. The Court explained in *Del Castillo v. People* the concept of probable cause for the issuance of a search warrant: x x x Probable cause for a search warrant is defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused.

4. ID.; ID.; ID.; IN AN APPLICATION FOR SEARCH WARRANT, THE JUDGE IS MANDATED TO CONDUCT A FULL AND SEARCHING EXAMINATION, WHICH MUST BE PROBING AND EXHAUSTIVE AND NOT MERELY ROUTINARY, GENERAL, PERIPHERAL OR PERFUNCTORY, OF THE APPLICANT AND THE WITNESSES HE MAY PRODUCE.— [T]he Court said in *Oebanda v. People* that in an application for search warrant, the mandate of the judge is for him to conduct a full and searching examination of the complainant and the witnesses he may produce. "The searching questions propounded to the applicant and the witnesses must depend on a large extent upon the discretion of the judge. Although there is no hard-and-fast rule as to how a judge may conduct his examination, it is axiomatic that the said examination must be probing and exhaustive and not merely routinary, general, peripheral or perfunctory. He must make his own inquiry on the intent and factual and legal justifications for a search warrant.

The questions should not merely be repetitious of the averments stated in the affidavits/deposition of the applicant and the witnesses." Having in mind the foregoing principles, the Court agrees with the RTC and the CA in both ruling that Judge Ong found probable cause to issue a search warrant after a searching and probing personal examination of applicant P/Insp. Malixi and his witnesses, Edison, Shaira Mae and Villador. Their testimonies jointly and collectively show a reasonable ground to believe that the 3 victims went to Dimal's compound to sell *palay*, but were probably killed by Dimal, and that they may have left personal belongings within its premises. During the hearing of his application for search warrant, Judge Ong was able to elicit from P/Insp. Malixi the specific crime allegedly committed by Dimal, the particular place to be searched and items to be seized.

5. ID.; ID.; ID.; ID.; THE JUDGE HAS THE PREROGATIVE TO GIVE HIS OWN JUDGMENT ON THE APPLICATION FOR SEARCH WARRANT BY HIS OWN EVALUATION OF THE EVIDENCE PRESENTED BEFORE HIM, AND THE COURT CANNOT SUBSTITUTE ITS OWN JUDGMENT TO THAT OF THE JUDGE, UNLESS THE LATTER DISREGARDED FACTS BEFORE HIM/HER OR IGNORED THE CLEAR DICTATES OF REASON.— As to petitioners' claim that the judge did not ask anymore searching questions after statements were made by Villador, the Court finds that searching and probing questions were indeed propounded by Judge Ong, and that there is no more necessity to ask Villador to describe the position and state of the lifeless bodies, and the specific place in the compound where the bodies were lying. Villador could not have been expected to take a closer look into the bloody bodies on the ground because Dimal was then holding a pistol, and told him to leave if he cannot help. Petitioners would do well to bear in mind that, absent a showing to the contrary, it is presumed that a judicial function has been regularly performed. The judge has the prerogative to give his own judgment on the application [for] search warrant by his own evaluation of the evidence presented before him. The Court cannot substitute its own judgment to that of the judge, unless the latter disregarded facts before him/her or ignored the clear dictates of reason.

6. ID.; ID.; ID.; A DESIGNATION THAT POINTS OUT THE PLACE TO BE SEARCHED TO THE EXCLUSION OF ALL OTHERS,

AND ON INQUIRY UNERRINGLY LEADS THE PEACE OFFICERS TO IT, SATISFIES THE CONSTITUTIONAL REQUIREMENT OF DEFINITENESS.— Contrary to petitioners' submission, the search warrant issued by Judge Ong identified with particularity the place to be searched, namely; (1) the house of Jaylord Dimal and (2) the *palay* warehouse in the premises of the Felix Gumpal Compound at Ipil Junction, Echague, Isabela. x x x. A description of a place to be searched is sufficient if the officer with the warrant can ascertain and identify with reasonable effort the place intended, and distinguish it from other places in the community. A designation that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officers to it, satisfies the constitutional requirement of definiteness. To the Court's view, the above-quoted search warrant sufficiently describes the place to be searched with manifest intention that the search be confined strictly to the place described. At any rate, petitioners cannot be heard to decry irregularity in the conduct of the search of the premises of the Felix Gumpal Compound because, as aptly ruled by the RTC, a Certification of Orderly Search was issued by the *barangay* officials, and the presumption of regularity in the performance of public duty was not sufficiently contradicted by petitioners.

7. **ID.; ID.; ID.; THE OMNIBUS MOTION RULE IS APPLICABLE TO MOTION TO QUASH SEARCH WARRANTS; THE TRIAL COURT COULD ONLY TAKE COGNIZANCE OF AN ISSUE THAT WAS NOT RAISED IN A MOTION TO QUASH IF SAID ISSUE WAS NOT AVAILABLE OR EXISTENT WHEN THE PARTIES FILED THE MOTION TO QUASH THE SEARCH WARRANT, OR THE ISSUE WAS ONE INVOLVING JURISDICTION OVER THE SUBJECT MATTER.—** [T]he objection as to the particularity of the place to be searched was belatedly raised in petitioners' motion for reconsideration of the Order denying their Omnibus Motion to quash. The Court has consistently ruled that the omnibus motion rule under Section 8, Rule 15 is applicable to motion to quash search warrants. In *Abuan v. People*, it was held that "the motion to quash the search warrant which the accused may file shall be governed by the omnibus motion rule, provided, however, that objections not available, existent or known during the proceedings for the quashal of the warrant may be raised in

the hearing of the motion to suppress." Accordingly, the trial court could only take cognizance of an issue that was not raised in a motion to quash if (1) said issue was not available or existent when they filed the motion to quash the search warrant; or (2) the issue was one involving jurisdiction over the subject matter. Because petitioners' objection as to the particularity of the place to be searched was available when they filed their omnibus motion to quash, and there being no jurisdictional issue raised, their objection is deemed waived.

8. ID.; ID.; ID.; PARTICULARITY REQUIREMENT; A SEARCH WARRANT MUST PARTICULARLY DESCRIBE THE THINGS TO BE SEIZED, BUT TECHNICAL PRECISION OF DESCRIPTION IS NOT REQUIRED, AS IT IS ONLY NECESSARY THAT THERE BE REASONABLE PARTICULARITY AND CERTAINTY AS TO THE IDENTITY OF THE PROPERTY TO BE SEARCHED FOR AND SEIZED, SO THAT THE WARRANT SHALL NOT BE A MERE ROVING COMMISSION.— [A] search warrant may be said to particularly describe the things to be seized (1) when the description therein is as specific as the circumstances will ordinarily allow; or (2) when the description expresses a conclusion of fact — not of law by which the warrant officer may be guided in making the search and seizure; (3) and when the things to be described are limited to those which bear direct relation to the offenses for which the warrant is being issued. The purpose for this requirement is to limit the articles to be seized only to those particularly described in the search warrant in order to leave the officers of the law with no discretion regarding what items they shall seize, to the end that no unreasonable searches and seizures will be committed.

9. ID.; ID.; ID.; PERSONAL PROPERTIES TO BE SEIZED; PERSONAL PROPERTIES WHICH HAVE NO DIRECT RELATION TO THE SPECIAL COMPLEX CRIME OF KIDNAPPING WITH MURDER CANNOT BE A PROPER SUBJECT OF A SEARCH WARRANT.— In Search Warrant No. 10-11, only two things were particularly described and sought to be seized in connection with the special complex crime of kidnapping with murder, namely: (1) blood-stained clothes of Gemma Eugenio consisting of a faded pink long sleeves jacket and a black t-shirt, and (2) a 0.9mm caliber pistol. Having no

direct relation to the said crime, the 1,600 sacks of *palay* that were supposedly sold by the victims to Dimal and found in his warehouse, cannot be a proper subject of a search warrant because they do not fall under the personal properties stated under Section 3 of Rule 126, to wit: (a) subject of the offense; (b) stolen or embezzled and other proceeds or fruits of the offense; or (c) those used or intended to be used as the means of committing an offense, can be the proper subject of a search warrant.

10. ID.; ID.; ID.; ID.; A WARRANT WHICH LACKS ANY DESCRIPTION OF THE ITEMS TO BE SEIZED IS DEFECTIVE AND IS NOT CURED BY A DESCRIPTION IN THE WARRANT APPLICATION WHICH IS NOT REFERENCED IN THE WARRANT AND NOT PROVIDED TO THE SUBJECT OF THE SEARCH.— The Court could have rendered a favorable ruling if the application for search warrant and supporting affidavits were incorporated by reference in Search Warrant No. 10-11, so as to enable the warrant officer to identify the specific clothes sought to be searched. This is because under American jurisprudence, an otherwise overbroad warrant will comply with the particularity requirement when the affidavit filed in support of the warrant is physically attached to it, and the warrant expressly refers to the affidavit and incorporates it with suitable words of reference. Conversely, a warrant which lacks any description of the items to be seized is defective and is not cured by a description in the warrant application which is not referenced in the warrant and not provided to the subject of the search.

11. ID.; ID.; ID.; PLAIN VIEW DOCTRINE; OBJECTS FALLING IN PLAIN VIEW OF AN OFFICER WHO HAS A RIGHT TO BE IN A POSITION TO HAVE THAT VIEW ARE SUBJECT TO SEIZURE EVEN WITHOUT A SEARCH WARRANT AND MAY BE INTRODUCED IN EVIDENCE; REQUISITES.— With respect to the items under Return on the Search Warrant indicated as "articles recovered/seized in plain view during the conduct of the search," it is well settled that objects falling in plain view of an officer who has a right to be in a position to have that view are subject to seizure even without a search warrant and may be introduced in evidence. For the "plain view doctrine" to apply, it is required that the following requisites

are present: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of evidence in plain view is inadvertent; and (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure.

12. ID.; ID.; ID.; ID.; REQUISITES, NOT PRESENT; ONCE THE VALID PORTION OF THE SEARCH WARRANT HAS BEEN EXECUTED, THE "PLAIN VIEW DOCTRINE" CAN NO LONGER PROVIDE ANY BASIS FOR ADMITTING THE OTHER ITEMS SUBSEQUENTLY FOUND.— The first requisite of the "plain view doctrine" is present in this case because the seizing officer, P/Insp. Macadangdang, has a prior justification for an intrusion into the premises of the Felix Gumpal Compound, for he had to conduct the search pursuant to a valid warrant. However, the second and third requisites are absent, as there is nothing in the records to prove that the other items not particularly described in the search warrant were open to eye and hand, and that their discovery was unintentional. In fact, out of the 2 items particularly described in the search warrant, only the 2 black t-shirts with suspected blood stain possibly belonging to Gemma were retrieved, but the 9mm caliber pistol was not found. It is also not clear in this case at what instance were the items supposedly seized in plain view were confiscated in relation to the seizure of Gemma's blood-stained clothes — whether prior to, contemporaneous with or subsequent to such seizure. Bearing in mind that once the valid portion of the search warrant has been executed, the "plain view doctrine" can no longer provide any basis for admitting the other items subsequently found, the Court rules that the recovery of the items seized in plain view, which could have been made after the seizure of Gemma's clothes, are invalid.

13. ID.; ID.; ID.; ID.; THE "IMMEDIATELY APPARENT" TEST DOES NOT REQUIRE AN UNDULY HIGH DEGREE OF CERTAINTY AS TO THE INCRIMINATING CHARACTER OF THE EVIDENCE, BUT ONLY THAT THE SEIZURE BE PRESUMPTIVELY REASONABLE, ASSUMING THAT THERE IS A PROBABLE CAUSE TO ASSOCIATE

THE PROPERTY WITH A CRIMINAL ACTIVITY; ITEMS SEIZED UNDER PLAIN VIEW CANNOT BE ADMITTED WHERE POSSESSION THEREOF IS NOT INHERENTLY UNLAWFUL.— It bears emphasis that the "immediately apparent" test does not require an unduly high degree of certainty as to the incriminating character of the evidence, but only that the seizure be presumptively reasonable, assuming that there is a probable cause to associate the property with a criminal activity. In view thereof, the 10 pieces of spent shell of calibre 0.22 ammo cannot be admitted in evidence because they can hardly be used in a 9mm caliber pistol specified in the search warrant, and possession of such spent shells are not illegal *per se*. Likewise, the following items supposedly seized under plain view cannot be admitted because possession thereof is not inherently unlawful: (a) 3 torn cloths; (b) black bag pack; (c) a piece of gold-plated earing; (d) a suspected human hair; (e) a piece of embroidered cloth; (f) 3 burned tire wires; (g) empty plastic of muriatic acid; and (h) white t-shirt.

14. ID.; ID.; ID.; ID.; THE SEIZURE OF GOODS NOT DESCRIBED IN THE WARRANT DOES NOT RENDER THE WHOLE SEIZURE ILLEGAL, AND THE SEIZURE IS ILLEGAL ONLY AS TO THOSE THINGS WHICH WAS UNLAWFUL TO SEIZE, AND THE FACT THAT THE OFFICERS, AFTER MAKING A LEGAL SEARCH AND SEIZURE UNDER THE WARRANT, ILLEGALLY MADE A SEARCH AND SEIZURE OF OTHER PROPERTY NOT WITHIN THE WARRANT DOES NOT INVALIDATE THE FIRST SEARCH AND SEIZURE.— Notwithstanding the inadmissibility in evidence of the items listed x x x, the Court sustains the validity of Search Warrant No. 10-11 and the admissibility of the items seized which were particularly described in the warrant. This is in line with the principles under American jurisprudence: (1) that the seizure of goods not described in the warrant does not render the whole seizure illegal, and the seizure is illegal only as to those things which was unlawful to seize; and (2) the fact that the officers, after making a legal search and seizure under the warrant, illegally made a search and seizure of other property not within the warrant does not invalidate the first search and seizure. To be sure, a search warrant is not a sweeping authority empowering a raiding party to undertake a fishing expedition to confiscate any and all kinds of evidence or articles relating to a crime.

Objects taken which were not specified in the search warrant should be restored to the person from whom they were unlawfully seized.

15. ID.; ID.; ID.; ID.; PERSONAL BELONGINGS WHICH ARE INADMISSIBLE IN EVIDENCE, FOR NOT HAVING BEEN SEIZED IN ACCORDANCE WITH THE "PLAIN VIEW DOCTRINE" SHOULD BE RETURNED TO THE PERSON FROM WHOM THEY WERE UNLAWFULLY SEIZED; EVEN IF THE SEARCH OF PETITIONERS' PREMISES WAS VIOLATIVE OF THE CONSTITUTION AND THE FIREARMS AND AMMUNITION TAKEN THEREFROM ARE INADMISSIBLE IN EVIDENCE, PENDING DETERMINATION OF THE LEGALITY OF SAID ARTICLES, THEY CAN BE ORDERED TO REMAIN IN *CUSTODIA LEGIS* SUBJECT TO APPROPRIATE DISPOSITION AS THE CORRESPONDING COURT MAY DIRECT IN THE CRIMINAL PROCEEDINGS THAT HAVE BEEN OR MAY THEREAFTER BE FILED AGAINST PETITIONERS.— Although the Alien Certificates of Registration of Lucio and Rosemarie and the BDO Passbook in the name of Lucio are inadmissible in evidence, for not having been seized in accordance with the "plain view doctrine," these personal belongings should be returned to the heirs of the respective victims. Anent the live ammo of caliber 0.22 (marked as E-29 with JAM markings), which could not have been used in a 0.9mm caliber pistol, the same shall remain in *custodia legis* pending the outcome of a criminal case that may be later filed against petitioner Dimal. In *Alih v. Castro*, it was held that even if the search of petitioners' premises was violative of the Constitution and the firearms and ammunition taken therefrom are inadmissible in evidence, pending determination of the legality of said articles they can be ordered to remain in *custodia legis* subject to appropriate disposition as the corresponding court may direct in the criminal proceedings that have been or may thereafter be filed against petitioners.

APPEARANCES OF COUNSEL

Office of the Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Court of Appeals (*CA*) Decision[1] dated August 27, 2014 and Resolution[2] dated February 4, 2015 in CA-G.R. SP No. 128355. The CA dismissed the petition for *certiorari* under Rule 65, assailing the Order[3] of the Regional Trial Court (*RTC*) of Quezon City, Branch 87, which denied the Omnibus Motion (Motion to Quash Search Warrant No. 10-11, to Declare the Seized Items as Inadmissible in Evidence) in Criminal Cases Nos. Q-12-175369 to Q-12-175371.

The Facts

At around 6:00 p.m. of September 6, 2010, Lucio Pua, Rosemarie Pua and Gemma Eugenio were scheduled to visit the compound of petitioner Jaylord A. Dimal in Echague, Isabela, to negotiate for the sale of *palay*. At around 7:30 p.m., Lucio's nephew, Edison Pua, went to Dimal's compound, asking for information as to the whereabouts of Lucio, Rosemarie and Gemma. Dimal informed Edison that they had left an hour ago. Unable to locate his relatives, Edison went to the police station in Alicia, Isabela, to report that they were missing, then proceeded to seek assistance from the police station in Echague.

Thereafter, Edison was escorted by two policemen to Dimal's compound, where they allegedly stayed and observed the premises in the absence of Dimal until September 7, 2010. On even date at around 5:30 a.m., Edison and the two policemen supposedly searched without a warrant Dimal's compound, but found no evidence linking him to the disappearances.

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[1] Penned by Associate Justice Socorro B. Inting, with Associate Justices Jose C. Reyes, Jr. and Mario V. Lopez, concurring; *rollo*, pp. 44-50.

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

[3] Presided by Judge Aurora A. Hernandez-Calledo; *id.* at 94-102.

On September 24, 2010, petitioner Allan Castillo was accosted by the Echague Police, and allegedly tortured to implicate Dimal in the killing of Lucio, Rosemarie and Gemma. On September 25, 2010, a certain Eduardo Sapipi was arrested due to the supposed statement made by Castillo. Sapipi purportedly made an uncounseled confession that Dimal shot the three victims, and ordered him, Castillo and one Michael Miranda to cover up the crime by throwing the bodies in a river.

On September 26, 2010, Dimal was arrested by the Echague Police. On September 27,2010, the Echague Police filed with the Office of the Provincial Prosecutor of Ilagan, Isabela, a criminal complaint for Kidnapping for Ransom and Multiple Murder against Dimal, Castillo, Sapipi, Miranda, Marvin Guiao and Robert Baccay.

On October 8, 2010, Police Inspector (*P/Insp.*) Roy Michael S. Malixi, a commissioned officer of the Philippine National Police assigned with the Police Anti-Crime and Emergency Response in Camp Crame Quezon City, filed an Application for the Issuance of a Search Warrant[4] before the RTC Ilagan, Isabela, Branch 17, in connection with the kidnapping and multiple murder of Lucio, Rosemarie and Gemma.

In his application for search warrant, P/Insp. Malixi stated that "he was informed, and verily believed that JAYLORD ARIZABAL DIMAL @ JAY, 28 years old, a resident of Felix Gumpal Compound, Ipil Junction, Isabela and CMJ Building Dubinan East, Santiago City, has in control of the following items" in the said address, to wit:

a. Personal belongings such as:
   1. Driver's License of Lucio Pua;
   2. Alien Certificate of Registration Identification cards of Lucio Pua and Rosemarie Pua;
   3. ATM Cards such as BDO under Lucio Pua's accounts;
   4. Deposit Slips in BDO accounts of Lucio Pua;
   5. Receipts of the *palay* delivered;
   6. Blood-stained clothes of the victims:

[4] *Rollo*, pp. 54-55.

6.1 Rosemarie Pua's green inner garment with black blazer and brownish pedal pants;

6.2 Lucio Pua's black short and pink polo shirt;

6.3 Gemma Eugenio y Estrada's maong pants, faded pink long sleeves jacket, black striped t-shirt and a shoulder bag;

6.4 Polo t-shirt and faded pink jacket seen beside the comfort room inside the compound of the warehouse of Jayson Dimal.

7. Picture of Shaira Mae Eugenio's youngest sister (Queen Sean Eugenio) seen inside the shoulder bag of the victim, Gemma Eugenio.

b. 1,600 sacks of palay inside a warehouse found in the Felix Gumpal Compound, Ipil Junction, Echague, Isabela;

c. Long bolo approximately 16 inches in length; and

d. Glock 9mm caliber pistol.[5]

P/Insp. Malixi stressed that he has personally verified and ascertained the veracity of the information and found the same to be true and correct, as narrated and sworn to by Ernesto Villador, a long-time employee of Dimal, Edison Uy Pua, the nephew of the victims Lucio and Rosemarie Pua, and Shaira Mae Eugenio, daughter of the victim Gemma Eugenio. P/Insp. Malixi claimed that the application was founded on his personal knowledge and that of his witnesses, acquired after conducting surveillance and investigation. P/Insp. Malixi attached to the application as Annexes "A", "B", "C" and "D" the Vicinity/ Location and Floor Map.

After the hearing of the application on October 8, 2010, Judge Bonifacio T. Ong of the RTC of Ilagan, Isabela, Branch 17, issued a Search Warrant, which reads:

The undersigned Presiding Judge personally examined in the form of questions and answers in writing and [under oath], the applicant Police Senior Inspector Roy Michael S. Malixi and the witnesses,

[5] *Id.*

namely: Edison Pua, Shaira Mae Eugenio, and Ernesto Villador, who all collaborated to the fact of death of Lucio Pua, Rosemarie Pua and Gemma Eugenio in Echague, Isabela. That witness Edison Pua went to the house of Jaylord Dimal after the commission of the crime and was able to see the blood-stained clothes of the victims:

1) Lucio Pua's clothes; and

2) [Rosemarie] Pua's clothes;

On the part of Shaira Mae Eugenio, she testified that before her mother Gemma Eugenio left her house, she wore faded pink long sleeves jacket and black T-shirt, and brought with her a shoulder bag and two (2) cellphones which probably are in the house of Jaylord Dimal. In the case of Ernesto Villador, he testified that he saw Jaylord Dimal holding a 9mm caliber pistol and testified that he usually keep said firearm under the computer table or drawers. He likewise testify (sic) that there were 1,600 sacks of palay sold by the victims and brought to the Felix Gumpal Compound.

With the testimony of said witnesses and their Sinumpaang Salaysay and deposition of witness, it would readily show that there is probable cause to believe that in the house, particularly the Felix Gumpal Compound of Jaylord Dimal located at Ipil Junction, Echague, Isabela, said items, to wit: blood-stained clothes of the victims, 1,600 sacks of palay inside the warehouse in the Felix Gumpal Compound and 9mm cal. pistol are found.

The said Application for Search Warrant was filed before this Court due to compelling reasons for security and confidentiality purposes, considering that possibility of leakages of information once the application for search warrant is filed with the court within the area having territorial jurisdiction over it.

In view thereof, you are hereby commanded to search at any time of the day or night the premises of Felix Gumpal Compound located at Ipil Junction, Echague, Isabela, and forthwith seize and take possession of the following properties: blood-stained clothes of Rosemarie Pua, Lucio Pua, and Gemma Eugenio, either to take the 1,600 sacks of palay or just to photograph the same, and the 9mm caliber pistol, and to bring the said articles to the custody of the Provincial Director of Isabela at the Provincial Police Office of Isabela under *custodia legis*, to be dealt with according to law.[6]

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

In the Return on the Search Warrant, P/Insp. Gary Halay-ay Macadangdang, Deputy Chief of Police, Echague Police Station, Echague, Isabela, manifested that (1) Search Warrant No. 10-11 was served at the premises of Dimal at *Barangay* Ipil, Echague, Isabela, on October 9, 2010 at about 9:00 a.m., and (2) the search was conducted in an orderly manner and in the presence of owner/custodian Carlos Dimal, *Barangay* Captain Florencio Miguel, *Barangay Kagawads* Rodolfo Vergara and Mariano Seriban, and BOMBO Radyo reporter Romy Santos. P/Insp. Macadangdang enumerated the items recovered:

The following articles, subject of the warrant, were found by the said Office during the search:

a. Extracted suspected Blood stain (Mark as E-24 with JAM markings)
b. Extracted suspected Blood stain (Mark as E-25 with JAM markings)
c. One (1) Black T-Shirt with suspected blood stain (Mark as E-26 with JAM markings)
d. One (1) Black T-Shirt with red lining with suspected blood stain (Mark as E-15 with JAM markings)
e. One (1) Bra color brown (tiger) (Mark as E-14 with JAM markings)
f. One (1) cell phone spare part (mark as E-16 with JAM markings)
g. One (1) cell phone spare part (mark as E-17 with JAM markings)
h. Palay husk with suspected blood stain (mark as E-28 with JAM markings)
i. Suspected blood stain (mark as E-25-A with JAM markings)

The articles recovered/seized in plain view during the conduct of search are the following:

a. One (1) pc torn cloth (Mark as E-1 with JAM markings)
b. One (1) pc torn cloth (Mark as E-2 with JAM markings)
c. One (1) pc torn cloth (Mark as E-3 with JAM markings)
d. One (1) pc spent shell of caliber 22 (Mark as E-4 with JAM markings)
e. One (1) bag pack color black (Mark as E-5 with JAM markings)
f. One spent shell of caliber 22 (Mark as E-6 with JAM markings)
g. One spent shell of caliber 22 (Mark as E-7 with JAM markings)
h. One spent shell of caliber 22 (Mark as E-8 with JAM markings)

i. One spent shell of caliber 22 (Mark as E-9 with JAM markings)
j. One spent shell of caliber 22 (Mark as E-10 with JAM markings)
k. One spent shell of caliber 22 (Mark as E-11 with JAM markings)
l. One spent shell of caliber 22 (Mark as E-12 with JAM markings)
m. One spent shell of caliber 22 (Mark as E-13 with JAM markings)
n. Two (2) Alien Certificate of Registration of Lucio Pua and Rosemarie Pua, and One (1) BDO Passbook in the name of Lucio Pua (mark as E-15 with JAM markings)
o. One spent shell of caliber 22 (Mark as E-18 with JAM markings)
p. One (1) piece gold-plated earring (mark as E-19 with JAM markings)
q. Suspected human hair (mark as E-20 with JAM markings)
r. A piece of embroider[ed] cloth (mark as E-22 with JAM markings)
s. Three (3) burned Tire wires (mark as E-23 with JAM markings)
t. One (1) empty plastic bottle of Gleam muriatic acid (mark as E-27 with JAM markings)
u. One (1) live ammo of caliber 22 (mark as E-29 with JAM markings)
v. One (1) color white t-shirt (mark as E-30 with JAM markings).[7]

On February 20, 2012, petitioners Dimal and Castillo, together with Michael Miranda, filed an Omnibus Motion[8] to quash Search Warrant No. 10-11 and to declare the seized items as inadmissible in evidence. They argued that the search warrant is invalid because it was issued in connection with, not just one single offense, but two crimes, *i.e.*, kidnapping and multiple murder. They also contended that except for witness Ernesto Villador, applicant P/Insp. Malixi and witnesses Edison and Shaira Mae have no personal knowledge surrounding the two crimes committed; hence, their statements did not provide basis for a finding of probable cause, much less for the issuance of a search warrant. With respect to Villador, petitioners assert that his sworn statement is incredible because he is just an ordinary laborer, who is unfamiliar with the English language, and there is no showing that the contents of his statement were fully explained to him by the Judge who issued the search warrant. Petitioners further posit that the search warrant was invalidly

[7] *Id.* at 82-83, 136-138.

[8] *Id.* at 84-93.

implemented because the raiding team failed to comply with Section 8, Rule 127 of the Rules of Court on the requisite presence of two witnesses during a search of premises, and with Section 10, Rule 126 on the issuance of a receipt of seized properties. Finally, petitioners sought that the items seized which are not covered by the search warrant, should be declared inadmissible in evidence and be ordered returned to the accused.

Meanwhile, on November 22, 2010, three (3) criminal Informations for Kidnapping for Ransom, as defined and penalized under Article 267, paragraph 4 of the Revised Penal Code, as amended by R.A. No. 7659, were filed against petitioners before the RTC of Echague, Isabela, Branch 24, and later re-raffled to the RTC of Ilagan, Isabela, Branch 17. The accusatory portion of the Informations similarly read, save for the names of the 3 victims, as follows:

> That on or about the 6th day of September 2010, and for sometime thereafter, in the Municipality of Echague, Province of Isabela, Philippines and within the jurisdiction of this Honorable Court, the accused Jaylord Arizabal Dimas (sic) and Allan Castillo y Marquez, being the principals therein, conspiring, confederating together and helping one another, did then and there, willfully, unlawfully and feloniously, kidnap and detain one **Lucio Uy Pua (Chinese name: Xinyi Pan)**[9] for the purpose of extorting ransom in the amount of Fifty (50) million pesos, from him and from his relatives.
>
> That during his[/her] detention, the said accused, in pursuance of conspiracy, did then and there, willfully, unlawfully and feloniously, assault, attack and shot with a caliber 9mm pistol the said **Lucio Uy Pua**[10] which had directly caused his death and, thereafter, chopped his body into several pieces and placed them into big plastic containers and ice box, and burned his head and placed the same into a plastic bag, and threw the same on separate rivers located at Santiago City and at the Province of Quirino.
>
> That the accused Michael Miranda Genova alias Mike Miranda being an accessory, took part in the subsequent commission of the

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[9] The names of the 2 victims in the other Informations are Rosemarie P. Pua (Chinese name: Juhua Pan) and Gemma Eugenio *y* Estrada.

[10] *Id.*

crime by providing the vehicle and a container drum used to dispose the chopped body of said **Lucio Uy Pua**[11] and threw the same on the river, in order to conceal the body of the crime, to prevent its discovery.

CONTRARY TO LAW.[12]

Pursuant to Administrative Matter No. 12-1-18-RTC, the criminal cases were re-raffled to Judge Aurora A. Hernandez-Calledo of the RTC of Quezon City, and re-docketed as Criminal Case Nos. Q-12-175369, Q-12-175370 to Q-12-175371.

In an Order[13] dated September 28, 2012, the RTC of Quezon City denied the Motion to Quash Search Warrant No. 10-11 for lack of merit. The RTC ruled that a perusal of the application for search warrant reveals that it was issued by the RTC of Ilagan, Isabela, after conducting searching and probing questions upon the persons of the applicant P/Insp. Malixi, and his witnesses Edison, Shaira Mae and more particularly Villador, and finding probable cause based on their personal knowledge. In rejecting the claim of unreasonableness of the implementation of the search warrant, the RTC noted that the records show that the owner/custodian of the property subject of the warrant by the name of Carlos Dimal, was present, together with the *Barangay Captain*, two *Barangay Kagawads*, and a reporter from *Bombo Radyo*.

Considering that no complaint was filed regarding the implementation of the search warrant, and that a Certification of Orderly Search was issued by the *barangay* officials, the RTC declared that the presumption of regularity in the performance of public duty was not sufficiently contradicted. Anent the claim that the search warrant was not issued in connection with a single offense but with the crimes of Kidnapping and Murder, the RTC said that the nature of the case and the circumstances at the time the search warrant was applied for,

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[11] *Id.*

[12] *Rollo*, pp. 126-129. (Emphasis ours)

[13] *Id.* at 94-102.

justify the issuance of such warrant as the two offenses are allied or closely related to each other because it was reported to the applicant that the victims were kidnapped for ransom and murdered. Finally, the RTC stressed that the claim that no return on the search warrant was submitted must fail because such a return was issued by the executing officer, and was marked as Exhibit "4" for the prosecution during the preliminary conference.

With the RTC's denial of their motion for reconsideration, petitioners filed a petition for *certiorari* before the CA.

In a Decision[14] dated August 27, 2014, the CA dismissed the petition and ruled that the subject search warrant was validly issued, thus:

> A perusal of the records show that Judge Ong, through searching and probing questions, personally examined the (sic) P/lnsp. Malixi and the witnesses, Edison Uy, Ernesto Villador and Shaira Mae Eugenio, on 8 October 2010. The questions that Judge Ong propounded were sufficiently probing, not at all superficial and perfunctory. The facts narrated by the witnesses while under oath, when they were asked by the examining judge, were sufficient justification for the issuance of the subject search warrant.
>
> Furthermore, the subject search warrant specifically designated or described Felix Gumpal Compound, located at Ipil Junction, Echague, Isabela as the place to be searched and enumerated the articles to be seized.
>
> Petitioners['] contention that the subject search warrant which was issued in connection with two (2) separate offenses, Kidnapping and Murder, as indicated therein, cannot stand. However, as aptly pointed out by the People through the Office of the Solicitor General, the crimes of kidnapping and murder are interrelated and points to the commission of a single complex crime known as kidnapping with murder. They cannot be treated as separate crimes.[15]

Petitioners filed a motion for reconsideration, which the CA denied in a Resolution dated February 4, 2015. Hence, this petition for review on *certiorari*.

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[14] *Supra* note 1.

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

Issues

Petitioners argue that the CA gravely erred in failing to pass upon petitioners' allegations (1) that the search warrant is void and its quashal imperative; and (2) that the items seized on the basis of the void search warrant are inadmissible in evidence. They contend that the search warrant was null and void because it was issued in connection with two unrelated offenses, without a finding of probable cause, and without specifying the place to be searched and the items to be seized.

Ruling

The petition is partly meritorious. Search Warrant No. 10-11 was validly issued, but most of the items seized pursuant thereto are inadmissible in evidence, as they were neither particularly described in the warrant nor seized under the "plain view doctrine".

At the outset, there is no merit to petitioners' contention that the search warrant was applied for in connection with two unrelated offenses, *i.e.*, kidnapping and murder, in violation of Section 4, Rule 126 of the Rules of Court which requires that such warrant must be issued in relation to one offense.

Suffice it to state that where a person kidnapped is killed or dies as a consequence of the detention, there is only one special complex crime for which the last paragraph of Article 267 of the Revised Penal Code provides the maximum penalty that shall be imposed, *i.e.*, death.[16] In *People v. Larrañaga*,[17] the Court explained that this provision gives rise to a special complex crime:

This amendment introduced in our criminal statutes the concept of "special complex crime" of kidnapping with murder or homicide.

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[16] With the enactment of R.A. No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," which prohibits the imposition of the death penalty, such penalty is reduced to *reclusion perpetua* without eligibility for parole.

[17] 466 Phil. 324, 384-385 (2004), citing *People v. Ramos*, 357 Phil. 559 (1998), and *People v. Mercado*, 400 Phil. 37 (2000).

It effectively eliminated the distinction drawn by the courts between those cases where the killing of the kidnapped victim was purposely sought by the accused, and those where the killing of the victim was not deliberately resorted to but was merely an afterthought. Consequently, the rule now is: **Where the person kidnapped is killed in the course of the detention**, regardless of whether the killing was purposely sought or was merely an afterthought, **the kidnapping and murder or homicide can no longer be complexed under Art. 48, nor be treated as separate crimes, but shall be punished as a special complex crime** under the last paragraph of Art. 267, as amended by R.A. No. 7659.

x x x x x x x x x

x x x **Where the law provides a single penalty for two or more component offenses, the resulting crime is called a special complex crime.** Some of the special complex crimes under the Revised Penal Code are (1) robbery with homicide, (2) robbery with rape, (3) kidnapping with serious physical injuries, (4) **kidnapping with murder** or homicide, and (5) rape with homicide. *In a special complex crime, the prosecution must necessarily prove each of the component offenses with the same precision that would be necessary if they were made the subject of separate complaints.* As earlier mentioned, R.A. No. 7659 amended Article 267 of the Revised Penal Code by adding thereto this provision: "*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*; and that this provision gives rise to a special complex crime."[18]

There is no dispute that Search Warrant No. 10-11 was applied for and issued in connection with the crime of kidnapping with murder. Asked by Judge Ong during the hearing as to what particular offense was committed, search warrant applicant P/Insp. Malixi testified that Dimal "allegedly committed the crime of kidnapping and multiple murder of Lucio and Rosemarie Pua and one Gemma Eugenio on September 6, 2010."[19] It is

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[18] *Id.* at 385-387. (Italics in the original; emphasis added; citations omitted)

[19] *Rollo*, p. 59.

not amiss to add that a search warrant that covers several counts of a certain specific offense does not violate the one-specific-offense rule.[20]

Neither can petitioners validly claim that the examining judge failed to ask searching questions, and to consider that the testimonies of the applicant and his witnesses were based entirely on hearsay, as they have no personal knowledge of the circumstances relating to the supposed disappearance or murder of the 3 victims.

The Court explained in *Del Castillo v. People*[21] the concept of probable cause for the issuance of a search warrant:

> x x x Probable cause for a search warrant is defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than bare suspicion; it requires less than evidence which would justify conviction. The judge, in determining probable cause, is to consider the totality of the circumstances made known to him and not by a fixed and rigid formula, and must employ a flexible totality of the circumstances standard. The existence depends to a large degree upon the finding or opinion of the judge conducting the examination. This Court, therefore, is in no position to disturb the factual findings of the judge which led to the issuance of the search warrant. A magistrate's determination of probable cause for the issuance of a search warrant is paid great deference by a reviewing court, as long as there was substantial basis for that determination. Substantial basis means that the questions of the examining judge brought out such facts and circumstances as would lead a reasonably discreet and prudent man to believe that an offense has been committed, and the objects in connection with the offense sought to be seized are in the place sought to be searched.

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[20] *Columbia Pictures, Inc. v. Court of Appeals*, 329 Phil. 875, 928 (1996).

[21] 680 Phil. 447, 457-458 (2012).

Corollarily, the Court said in *Oebanda v. People*[22] that in an application for search warrant, the mandate of the judge is for him to conduct a full and searching examination of the complainant and the witnesses he may produce. "The searching questions propounded to the applicant and the witnesses must depend on a large extent upon the discretion of the judge. Although there is no hard-and-fast rule as to how a judge may conduct his examination, it is axiomatic that the said examination must be probing and exhaustive and not merely routinary, general, peripheral or perfunctory. He must make his own inquiry on the intent and factual and legal justifications for a search warrant. The questions should not merely be repetitious of the averments stated in the affidavits/deposition of the applicant and the witnesses."[23]

Having in mind the foregoing principles, the Court agrees with the RTC and the CA in both ruling that Judge Ong found probable cause to issue a search warrant after a searching and probing personal examination of applicant P/Insp. Malixi and his witnesses, Edison, Shaira Mae and Villador. Their testimonies jointly and collectively show a reasonable ground to believe that the 3 victims went to Dimal's compound to sell *palay*, but were probably killed by Dimal, and that they may have left personal belongings within its premises.

During the hearing of his application for search warrant, Judge Ong was able to elicit from P/Insp. Malixi the specific crime allegedly committed by Dimal, the particular place to be searched and items to be seized:

[COURT]:

Q: And in your application for Search Warrant, **what particular place are you going to search in this Search Warrant if ever it will be granted?**

[P/INSP. MALIXI:]

A: According to the Opponent **we are applying to search the Palay Buying Station of Jaylord Dimal located at Felix**

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[22] G.R. No. 208137, June 8, 2016, 792 SCRA 623.

[23] *Id.* at 631-632.

Gumpal Compound, Ipil, Echague, Isabela, and also to search the back portion of a vacant lot within the Felix Gumpal Compound, Your Honor.

Q: The particular place is Felix Gumpal Compound, in Echague, Isabela, no more?
A: No more, Your Honor.

Q: And what particular offense have this Jaylord Dimal committed, if any?
A: He allegedly committed the crime of kidnapping and multiple murder of Lucio and Rosemarie Pua and one Gemma Eugenio on September 6, 2010, Your Honor.

Q: And what particular items are you going to search in that compound of Felix Gumpal?
A: Subject of the offense, the personal belongings of the victims when they went to the Felix Gumpal Compound, where they were reportedly murdered, Your Honor.

Q: What specific items are you going to search from that place?
A: Personal belongings such as Driver's License of Lucio Pua, Alien Certificate of Registration ID of Lucio Pua and Rosemarie Pua, ATM Cards such as BDO under Lucio Pua's account, Deposit slips of BDO accounts of Lucio Pua, receipts of the palay delivered, blood-stained clothes of the victims, such as Rosemarie Pua's green inner garment with black blazer and brownish pedal pants, Lucio Pua's black short and pink polo shirt, Gemma Eugenio's maong pants, faded pink long sleeves jacket, black stripe T-shirt and a shoulder bag of the victim Gemma Eugenio color white, the 1,600 sacks of palay inside the Warehouse of Felix Gumpal Compound, long bolo [which] is approximately 16 inches long, and the 9mm caliber black pistol, your Honor.

Q: Where did you get this information regarding the articles found in the Felix Gumpal Compound?
A: This information was given to me by the Opponents, Your Honor.

Q: And who are they?
A: They are Edison Uy Pua, Ernesto Villador y Yakapin and Shaira Eugenio y Estrada, Your Honor.

Q: How sure are you that these people were able to see these items in Felix Gumpal Compound?
A: Edison Uy Pua and Shaira Mae Eugenio are the relatives of the victims who personally saw the victim's clothes they were wearing right before they went to Jaylord's compound and the victims were seen by Ernesto Villador sprawled lifeless on the floor in the palay buying station of Jaylord Dimal, Your Honor.

Q: You said that there is a gun 9mm pistol, how did they come to know that there was a gun in that place?
A: It was reported to me by Ernesto Villador, Your Honor.[24]

Judge Ong was also able to draw corroborative testimonies from P/Insp. Malixi's witnesses. Edison testified on the circumstances prior to the disappearance of his uncle Lucio and his aunties Rosemarie and Gemma, while Shaira Mae described the clothes and personal belongings of her mother before the latter disappeared, thus:

[COURT]
Q: On September 6, 2010, where were you?

[EDISON]
A: I was at home, Your Honor.

Q: Where?
A: At Antonino, Alicia, Isabela, Your Honor?

Q: Where is Lucio and Rosemarie Pua on that day?
A: They went to Jaylord to collect the payment of the palay, Your Honor.

Q: And you were left in your house in Alicia when your Uncle Lucio and Auntie Rosemarie when they went to Jaylord to collect payment of palay?
A: Yes, Your Honor, I was.

Q: And do you know what happened to your Uncle Lucio and Auntie Rosemarie when they went to Jaylord's place?

A: I know because when they went to collect payments they did not come back anymore, Your Honor.

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[24] *Rollo*, pp. 58-61. (Emphasis added)

Q: And what did you do when you learned that they did not come back anymore?
A: They were already dead and their bodies were chopped into pieces, your Honor.

Q: And what did you do when you learned that they were already dead and chopped into pieces?
A: We went to look for the pieces of the bodies because they said it was thrown to the river, Your Honor.

Q: And what did you do after that?
A: We went to the house of Jaylord, Your Honor.

Q: And what did you do in the house of Jaylord?
A: We saw the T-shirt of my Uncle Lucio Pua and Ate Gemma, Your Honor.

Q: Who is that Gemma?
A: My aunt, the one who canvass palay, your Honor.

Q: What did you see in the house of Jaylord?
A: Polo shirt and Jacket of Auntie Gemma, Your Honor.

Q: What else aside from the Polo shirt and jacket did you see?
A: No more your Honor, we went back to Alicia.

Q: Who were with you when you went to the house of Jaylord?
A: My cousin, Your Honor.

Q: What is the name of your cousin?
A: Harison, Your Honor.

Q: When was that when you went to the house of Dimal?
A: October 5, 2010, Your Honor.[25]

x x x x x x x x x

[COURT]
Q: On September 6, 2010, in the afternoon, at about 4:00 o'clock, do you know where was (sic) your mother then?

[SHAIRA MAE]
A: Yes, sir.

Q: Where?
A: She [Gemma] went to Jaylord Dimal, Your Honor.

[25] *Id.* at 63-66. (Emphasis added)

Q: Do you remember what was (sic) the clothes of your mother and what did she brought (sic) with her when she went to Jaylord Dimal?

A: Yes, Your Honor, the long sleeves is faded pink, the inner shirt is black, and bag is pink, inside it are two (2) cellphones, the picture of my sister and her Driver's License.[26]

While it may be noted that applicant P/Insp. Malixi and his witnesses Shaira Mae and Edison have no personal knowledge how the crimes of kidnapping and multiple murder were committed, their testimonies corroborated that of Villador, who petitioners admitted to have known about the incidents surrounding the commission of such crimes.[27]

Significantly, Judge Ong's inquiry underscored that Villador has a reasonable ground to believe that a crime has been committed at the Felix Gumpal Compound on September 6, 2010. In reply to the queries of Judge Ong, Villador revealed that (1) when Dimal called him inside the house to receive his payment as classifier of *palay*, he saw them [Lucio, Rosemarie and Gemma] talking to each other; and (2) later in the day, Dimal called him to ask for help, but he backed out upon seeing that Dimal was holding a black 0.9 mm pistol amidst people lying bloody on the ground. Thus:

[COURT]:
Q: You said you are a classifier, what is the work of a classifier?

[VILLADOR]
A: We classify the kinds of palay, Your Honor.

Q: Where are you working as a classifier?
A: Jaylord Dimal, Your Honor.

Q: And where is the place of the business of Jaylord Dimal?
A: Junction Ipil at the former compound of Felix Gumpal, Your Honor.

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[26] *Id.* at 69. (Emphasis added)

[27] *Id.* at 125. Motion for Reconsideration dated October 16, 2012, p. 17.

Q: How long have you been a classifier of Jaylord Dimal?
A: It is already two (2) years that every cropping he calls for me to classify, Your Honor.

Q: On September 6, 2010, are (sic) you still a classifier in the business of Jaylord Dimal?
A: Yes, Your Honor.

Q: Where were you on that date?
A: In the compound of Jaylord, Your Honor.

Q: In the afternoon of that date, do you know of any person who went to the place of businessman Dimal?
A: Yes, Your Honor.

Q: Who are they?
A: Lucio, Rosemarie and Gemma, Your Honor.

x x x x x x x x x

Q: Do you know their purpose of going to the place of Jaylord Dimal?
A: They were supposed to collect payment of the palay that Jaylord asked me to gather, Your Honor?

Q: And where are those palay that Jaylord asked you to gather?
A: I was the one discarding the sacks of palay in the bodega of Jaylord, Your Honor.

Q: Who owns these palay that you are discarding?
A: Owned by Lucio and Rosemarie Pua, Your Honor.

Q: And why were they taken to the place of Jaylord Dimal?
A: They asked me to classify those palay and by agreement of Jaylord and the Pua's I discarded the palay in the bodega of Jaylord, Your Honor.

Q: Do you know how many cavans?

x x x x x x x x x

A: 1,600 sacks, Your Honor.

Q: And where are they now those sacks of palay?
A: They are in the bodega or warehouse, Your Honor.

Q: Are those sacks of palay still there up to now?
A: Yes, Your Honor, they are still there.

Q: What happened in the afternoon of September 6, 2010 when Lucio and Rosemarie and Gemma was (sic) there in the house or place of Jaylord Dimal?
A: Jaylord Dimal went out from his house and he called for the three and went inside the house, Your Honor.

Q: And do you know what happened when they were inside the house?
A: Jaylord called for me inside the house when I received my payment as classifier and I saw them talking to each other, Your Honor.

Q: What happened next, if any?
A: Jaylord called me up but I was already in our house and I was busy giving wages to my laborers, when he summoned me to go to his house, "Kuya punta ka sandali dito," meaning "Kuya, please come here for a while."

Q: And did you go to the place of Jaylord?
A: Yes, Your Honor, I rode my motorcycle and went to the place.

Q: And what happened next?
A: When I arrived at the gate he asked me to enter the compound with my motorcycle, Your Honor.

Q: What happened next?
A: I asked him, "Bakit Boss?" meaning, "Why, Boss?"

Q: What happened next?
A: He answered, "Kuya yung mga tao patay na baka pwedeng patulong." Meaning "Kuya the people are already dead please help?"

Q: What did you see from Jaylord [Dimal] when he told you the people were already dead?
A: I saw him holding a black .9mm pistol and when I saw the people lying bloody on the ground, I told him "Sir, hindi ko kaya", meaning "I cannot do it.

Q: How may times have you seen that gun which he was holding on that day September 6, 2010?

A: That night when he called for me, Your Honor.

Q: After the September 6, 2010 incident, have you went (sic) back to the place of Dimal?
A: No more, Your Honor.

Q: What are the things did you see (sic) when Dimal called for you and told you that these persons were already dead?
A: I saw these people lying on the ground bloody and they are already dead and I said, "hindi ko kaya", meaning "I cannot do it" and he replied, "Sige sibat ka na," meaning "okay, just go."

Q: So, it is (sic) still possible that the gun held by Dimal is still in his house?
A: I think so that is still in his house because he keep (sic) it in one place, Your Honor.

Q: And you said he keep (sic) it in one place are you familiar where he is keeping it?
A: What I usually see, he placed it under the table where the laptop is and there drawers in it, Your Honor.[28] (Emphasis ours)

Records clearly show that Judge Ong personally examined under oath applicant P/lnsp. Malixi and his witnesses, Edwin, Shaira Mae and Villador, whose collective testimonies would prompt a reasonably discreet person to believe that the crime of kidnapping with murder was committed at the Felix Gumpal Compound on September 6, 2010, and that specific personal properties sought in connection with the crime could be found in the said place sought to be searched.

As to petitioners' claim that the judge did not ask anymore searching questions after statements were made by Villador,[29] the Court finds that searching and probing questions were indeed propounded by Judge Ong, and that there is no more necessity to ask Villador to describe the position and state of the lifeless

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[28] *Id.* at 71-78. (Emphasis ours)

[29] *Rollo*, p. 120. Motion for Reconsideration October 16, 2012, p. 18.

bodies, and the specific place in the compound where the bodies were lying. Villador could not have been expected to take a closer look into the bloody bodies on the ground because Dimal was then holding a pistol, and told him to leave if he cannot help. Petitioners would do well to bear in mind that, absent a showing to the contrary, it is presumed that a judicial function has been regularly performed.[30] The judge has the prerogative to give his own judgment on the application of the search warrant by his own evaluation of the evidence presented before him.[31] The Court cannot substitute its own judgment to that of the judge, unless the latter disregarded facts before him/her or ignored the clear dictates of reason.[32]

Petitioners submit that the search warrant is also void for failing to identify with particularity the place to be searched and the items to be seized. They assert that Felix Gumpal Compound consists of a very large area, consisting of two houses, one nipa hut, two external bathrooms, one garage, one warehouse utilized as a *palay* depot, and one warehouse utilized to store a *palay* drying machinery. They likewise claim that all the items actually seized were either not among those listed in the warrant or were seized in violation of the "plain view doctrine". Insisting that the search warrant was procured in violation of the Constitution and the Rules of Court, petitioners posit that all the items seized in Dimal's compound are "fruits of the poisonous tree" and inadmissible for any purpose in any proceeding.

Contrary to petitioners' submission, the search warrant issued by Judge Ong identified with particularity the place to be searched, namely; (1) the house of Jaylord Dimal and (2) the *palay* warehouse in the premises of the Felix Gumpal Compound at Ipil Junction, Echague, Isabela. This is evident from the Search Warrant issued by the judge, which reads:

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[30] Section 3, Rule 131 of the Rules of Court.

[31] *Oebanda v. People, supra* note 22, at 642.

[32] *Microsoft Corporation v. Maxicorp, Inc.*, 481 Phil. 550, 563 (2004).

The undersigned Presiding Judge personally examined in the form of questions and answers in writing and under oath, the applicant Police Senior Inspector Roy Michael S. Malixi and the witnesses, namely: Edison Pua, Shaira Mae Eugenio, and Ernesto Villador, who all collaborated to the fact of death of Lucio Pua, Rosemarie Pua and Gemma Eugenio in Echague, Isabela. That witness Edison Pua went to the **house of Jaylord Dimal** after the commission of the crime and was able to see the blood-stained clothes of the victims:

1) Lucio Pua's clothes; and
2) [Rosemarie] Pua's clothes;

On the part of Shaira Mae Eugenio, she testified that before her mother Gemma Eugenio left her house, she wore faded pink long sleeves jacket and black T-shirt, and brought with her a shoulder bag and two (2) cellphones which are probably in **the house of Jaylord Dimal**. In the case of Ernesto Villador, he testified that he saw Jaylord Dimal holding a 9mm caliber pistol and testified that he usually keep said firearm under the computer table or drawers. He likewise testify (sic) that there were 1600 sacks of palay sold by the victims and brought to the **Felix Gumpal Compound**.

With the testimony of said witnesses and their Sinumpaang Salaysay and deposition of witness, it would readily show that there is probable cause to believe that **in the house, particularly the Felix Gumpal Compound of Jaylord Dimal located at Ipil Junction, Echague, Isabela**, said items, to wit: blood-stained clothes of the victims, 1600 sacks of palay inside the **warehouse in the Felix Gumpal Compound** and 9mm cal. pistol are found.

The said Application for Search Warrant was filed before this Court due to compelling reasons for security and confidentiality purposes, considering that possibility of leakages of information once the application for search warrant is filed with the court within the area having territorial jurisdiction over it.

In view thereof, you are hereby commanded to search at any time of the day or night the **premises of Felix Gumpal Compound located at Ipil Junction, Echague, Isabela**, and forthwith seize and take possession of the following properties: blood-stained clothes of Rosemarie Pua, Lucio Pua, and Gemma Eugenio, either to take the 1,600 sacks of palay or just photograph the same, and the 9mm caliber pistol, and to bring the said articles to the custody of the Provincial

Director of Isabela at the Provincial Police Office of Isabela under *custodia legis*, to be dealt with according to law.[33]

A description of a place to be searched is sufficient if the officer with the warrant can ascertain and identify with reasonable effort the place intended, and distinguish it from other places in the community.[34] A designation that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officers to it, satisfies the constitutional requirement of definiteness.[35] To the Court's view, the above-quoted search warrant sufficiently describes the place to be searched with manifest intention that the search be confined strictly to the place described. At any rate, petitioners cannot be heard to decry irregularity in the conduct of the search of the premises of the Felix Gumpal Compound because, as aptly ruled by the RTC, a Certification of Orderly Search was issued by the *barangay* officials, and the presumption of regularity in the performance of public duty was not sufficiently contradicted by petitioners.

Moreover, the objection as to the particularity of the place to be searched was belatedly raised in petitioners' motion for reconsideration of the Order denying their Omnibus Motion to quash. The Court has consistently ruled that the omnibus motion rule under Section 8, Rule 15[36] is applicable to motion to quash search warrants.[37] In *Abuan v. People*,[38] it was held that "the

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[33] *Rollo*, pp. 80-81. (Emphasis and underscoring added on the particular place to be searched and things to be seized, respectively)

[34] *SPO4 Laud (Ret.) v. People*, 747 Phil. 503, 522-523 (2014).

[35] *Del Castillo v. People*, 680 Phil. 447, 458 (2012).

[36] Section 8. *Omnibus Motion*. — Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment or proceeding shall include all objections then available, and all objections not so included shall be deemed waived.

[37] *Pilipinas Shell Corporation v. Romars International Gases Corporation*, 753 Phil. 707, 716 (2015).

[38] 536 Phil. 672, 692 (2006).

motion to quash the search warrant which the accused may file shall be governed by the omnibus motion rule, provided, however, that objections not available, existent or known during the proceedings for the quashal of the warrant may be raised in the hearing of the motion to suppress." Accordingly, the trial court could only take cognizance of an issue that was not raised in a motion to quash if (1) said issue was not available or existent when they filed the motion to quash the search warrant; or (2) the issue was one involving jurisdiction over the subject matter.[39] Because petitioners' objection as to the particularity of the place to be searched was available when they filed their omnibus motion to quash, and there being no jurisdictional issue raised, their objection is deemed waived.

Meanwhile, a search warrant may be said to particularly describe the things to be seized (1) when the description therein is as specific as the circumstances will ordinarily allow; or (2) when the description expresses a conclusion of fact — not of law by which the warrant officer may be guided in making the search and seizure; (3) and when the things to be described are limited to those which bear direct relation to the offenses for which the warrant is being issued.[40] The purpose for this requirement is to limit the articles to be seized only to those particularly described in the search warrant in order to leave the officers of the law with no discretion regarding what items they shall seize, to the end that no unreasonable searches and seizures will be committed.[41]

In *Vallejo v. Court of Appeals*,[42] the Court clarified that technical precision of description is not required. "It is only necessary that there be reasonable particularity and certainty

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[39] *Pilipinas Shell Corporation v. Romars International Gases Corporation, supra* note 37.

[40] *SPO4 Laud (Ret.) v. People, supra*, at 525, citing *Bache and Co. (Phil.) Inc. v. Judge Ruiz*, 147 Phil. 794, 811 (1971).

[41] *Microsoft Corporation v. Maxicorp, Inc., supra* note 32, at 568-569.

[42] 471 Phil. 670 (2004).

as to the identity of the property to be searched for and seized, so that the warrant shall not be a mere roving commission. Indeed, the law does not require that the things to be seized must be described in precise and minute detail as to leave no room for doubt on the part of the searching authorities. If this were the rule, it would be virtually impossible for the applicants to obtain a warrant as they would not know exactly what kind of things to look for."[43]

Under American jurisprudence which has persuasive effect in this jurisdiction, the degree of specificity required in a search warrant's description of the items to be searched for and seized is flexible and will vary depending on the crime involved and the types of items sought.[44] A description is said to be valid if it is as specific as the circumstances and the nature of the activity under investigation will permit. But if the circumstances make an exact description of the property to be seized a virtual impossibility, the searching officer can only be expected to describe the generic class of the items sought. The practical guide to determine whether a specific search warrant meets the particularity requirement is for the court to inquire if the officer reading the description in the warrant would reasonably know what items to be seized.[45]

In Search Warrant No. 10-11, only two things were particularly described and sought to be seized in connection with the special complex crime of kidnapping with murder, namely: (1) blood-stained clothes of Gemma Eugenio consisting of a faded pink long sleeves jacket and a black t-shirt, and (2) a 0.9mm caliber pistol. Having no direct relation to the said crime, the 1,600 sacks of *palay* that were supposedly sold by the victims to Dimal and found in his warehouse, cannot be a proper subject of a search warrant because they do not fall under the personal properties stated under Section 3 of Rule 126, to wit: (a) subject of the offense; (b) stolen or embezzled and other proceeds or

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[43] *Id.* at 687.

[44] 68 Am Jur 2d, §222 (2000).

[45] *Id.*

fruits of the offense; or (c) those used or intended to be used as the means of committing an offense, can be the proper subject of a search warrant.

In fine, the CA committed no reversible error in upholding the denial of the Omnibus Motion to quash because all the Constitutional[46] and procedural[47] requisites for the issuance of a search warrant are still present, namely: (1) probable cause; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized.[48]

Despite the fact that the issuance of Search Warrant No. 10-11 is valid, petitioners are correct that most items listed in

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[46] Section 2, Article III of the 1987 Constitution: 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 such search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place be searched and the persons or things to be seized.

[47] Rule 126 of the Revised Rules of Criminal Procedure: Sec. 4. *Requisites for issuing search warrant.* — A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the 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.

Sec. 5. *Examination of complainant; record.* — The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted.

[48] *Del Castillo v. People, supra* note 35, at 456; *People v. Castillo, Sr.*, G.R. No. 204419, November 7, 2016, 807 SCRA 77, 87-88.

the Return on the Search Warrant are inadmissible in evidence. Since only 2 items were particularly described on the face of the search warrant, namely: (1) the blood-stained clothes of Gemma Eugenio consisting of faded pink long sleeves jacket and black t-shirt; and (2) the 0.9 mm caliber pistol, the Court declares that only two articles under the Return on the Search Warrant are admissible in evidence as they could be the blood-stained clothes of Gemma subject of the warrant:

c. One (1) Black T-Shirt with suspected blood stain (Mark as E-26 with JAM markings)
d. One (1) Black T-Shirt with red lining with suspected blood stain (Mark as E-15 with JAM markings)

It bears stressing that the application for search warrant particularly described the victims' blood-stained clothes as follows: (1) Rosemarie Pua's green inner garment with black blazer and brownish pedal pants; (2) Lucio Pua's black shorts and pink polo shirt; and (3) Gemma Eugenio's maong pants, faded pink long sleeves jacket, and black striped t-shirt. Considering that only Gemma's clothes were described in Search Warrant No. 10-11 as specific as the circumstances will allow, the Court is constrained to hold as inadequately described the blood-stained clothes of Lucio and Rosemarie. Without the aid of the applicant's witnesses who are familiar with the victims' personal belongings, any other warrant officer, like P/Insp. Macadangdang who served the search warrant, will surely be unable to identify the blood-stained clothes of Lucio and Rosemarie by sheer reliance on the face of such warrant.

The Court could have rendered a favorable ruling if the application for search warrant and supporting affidavits were incorporated by reference in Search Warrant No. 10-11, so as to enable the warrant officer to identify the specific clothes sought to be searched. This is because under American jurisprudence, an otherwise overbroad warrant will comply with the particularity requirement when the affidavit filed in support of the warrant is physically attached to it, and the warrant

expressly refers to the affidavit and incorporates it with suitable words of reference. Conversely, a warrant which lacks any description of the items to be seized is defective and is not cured by a description in the warrant application which is not referenced in the warrant and not provided to the subject of the search.[49]

The Court further declares that the following items are inadmissible as they do not bear any direct relation to the 3 items particularly described in Search Warrant No. 10-11:

a. Extracted suspected Blood stain (Mark as E-24 with JAM markings)
b. Extracted suspected Blood stain (Mark as E-25 with JAM markings)
x x x x x x x x x
e. One (1) Bra color brown (tiger) (Mark as E-14 with JAM markings)
f. One (1) cell phone spare part (mark as E-16 with JAM markings)
g. One (1) cell phone spare part (mark as E-17 with JAM markings)
h. Palay husk with suspected blood stain (mark as E-28 with JAM markings)
i. Suspected blood stain (mark as E-25-A with JAM markings)

With respect to the items under Return on the Search Warrant indicated as "articles recovered/seized in plain view during the conduct of the search," it is well settled that objects falling in plain view of an officer who has a right to be in a position to have that view are subject to seizure even without a search warrant and may be introduced in evidence.[50]

For the "plain view doctrine" to apply, it is required that the following requisites are present: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of evidence in plain view is inadvertent; and (c) it is immediately apparent to the officer that the item he

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[49] 68 Am Jur 2d §223 Searches and Seizures (2000).

[50] *Miclat, Jr. v. People*, 672 Phil. 191, 206 (2011).

observes may be evidence of a crime, contraband or otherwise subject to seizure.[51] As explained in *People v. Salanguit*:[52]

> What the 'plain view' cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which he came inadvertently across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification—whether it be a warrant for another object, hot pursuit, search incident to a lawful arrest, or some other legitimate reason for being present unconnected with a search directed against the accused—and permits the warrantless seizure. Of course, the extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them; the 'plain view' doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges.

The first requisite of the "plain view doctrine" is present in this case because the seizing officer, P/Insp. Macadangdang, has a prior justification for an intrusion into the premises of the Felix Gumpal Compound, for he had to conduct the search pursuant to a valid warrant. However, the second and third requisites are absent, as there is nothing in the records to prove that the other items not particularly described in the search warrant were open to eye and hand, and that their discovery was unintentional.

In fact, out of the 2 items particularly described in the search warrant, only the 2 black t-shirts with suspected blood stain possibly belonging to Gemma were retrieved, but the 9mm caliber pistol was not found. It is also not clear in this case at what instance were the items supposedly seized in plain view were confiscated in relation to the seizure of Gemma's blood-stained clothes — whether prior to, contemporaneous with or subsequent to such seizure. Bearing in mind that once the valid portion of the search warrant has been executed, the "plain view doctrine"

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[51] *Id.*

[52] 408 Phil. 817, 834 (2001), citing *Coolidge v. New Hampshire*, 403 U.S. 433, 29 L. Ed. 2d 564 (1971).

can no longer provide any basis for admitting the other items subsequently found,[53] the Court rules that the recovery of the items seized in plain view, which could have been made after the seizure of Gemma's clothes, are invalid.

It is also not immediately apparent to the officer that, except for the Alien Certificates of Registration of Lucio and Rosemarie, the BDO Passbook in the name of Lucio, and the live ammo of caliber 22 (marked as E-29 with JAM markings), the following items may be evidence of a crime, contraband or otherwise subject to seizure:

a. One (1) pc torn cloth (Mark as E-1 with JAM markings)
b. One (1) pc torn cloth (Mark as E-2 with JAM markings)
c. One (1) pc torn cloth (Mark as E-3 with JAM markings)
d. One (1) pc spent shell of caliber 22 (Mark as E-4 with JAM markings)
e. One (1) bag pack color black (Mark as E-5 with JAM markings)
f. One spent shell of caliber 22 (Mark as E-6 with JAM markings)
g. One spent shell of caliber 22 (Mark as E-7 with JAM markings)
h. One spent shell of caliber 22 (Mark as E-8 with JAM markings)
i. One spent shell of caliber 22 (Mark as E-9 with JAM markings)
j. One spent shell of caliber 22 (Mark as E-10 with JAM markings)
k. One spent shell of caliber 22 (Mark as E-11 with JAM markings)
l. One spent shell of caliber 22 (Mark as E-12 with JAM markings)
m. One spent shell of caliber 22 (Mark as E-13 with JAM markings)
x x x x x x x x x
o. One spent shell of caliber 22 (Mark as E18 with JAM markings)
p. One (1) piece gold-plated earring (mark as E-19 with JAM markings)
q. Suspected human hair (mark as E-20 with JAM markings)
r. A piece of embroider[ed] cloth (mark as E-22 with JAM markings)
s. Three (3) burned Tire wires (mark as E-23 with JAM markings)
t. One (1) empty plastic bottle of Gleam muriatic acid (mark as E-27 with JAM markings)
x x x x x x x x x
v. One (1) color white t-shirt (mark as E-30 with JAM markings)

It bears emphasis that the "immediately apparent" test does not require an unduly high degree of certainty as to the incriminating character of the evidence, but only that the seizure

[53] *People v. Salanguit, supra.*

be presumptively reasonable, assuming that there is a probable cause to associate the property with a criminal activity.[54] In view thereof, the 10 pieces of spent shell of calibre 0.22 ammo cannot be admitted in evidence because they can hardly be used in a 9mm caliber pistol specified in the search warrant, and possession of such spent shells are not illegal *per se*. Likewise, the following items supposedly seized under plain view cannot be admitted because possession thereof is not inherently unlawful: (a) 3 torn cloths; (b) black bag pack; (c) a piece of gold-plated earing; (d) a suspected human hair; (e) a piece of embroidered cloth; (f) 3 burned tire wires; (g) empty plastic of muriatic acid; and (h) white t-shirt.

Notwithstanding the inadmissibility in evidence of the items listed above, the Court sustains the validity of Search Warrant No. 10-11 and the admissibility of the items seized which were particularly described in the warrant. This is in line with the principles under American jurisprudence: (1) that the seizure of goods not described in the warrant does not render the whole seizure illegal, and the seizure is illegal only as to those things which was unlawful to seize; and (2) the fact that the officers, after making a legal search and seizure under the warrant, illegally made a search and seizure of other property not within the warrant does not invalidate the first search and seizure.[55] To be sure, a search warrant is not a sweeping authority empowering a raiding party to undertake a fishing expedition to confiscate any and all kinds of evidence or articles relating to a crime.[56] Objects taken which were not specified in the search warrant should be restored[57] to the person from whom they were unlawfully seized.

Although the Alien Certificates of Registration of Lucio and Rosemarie and the BDO Passbook in the name of Lucio are

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[54] *United Laboratories, Inc. v. Isip*, 500 Phil. 342, 363 (2005).

[55] 79 C.J.S. Searches and Seizures §83.

[56] *People v. Nuñez*, 609 Phil. 176, 187 (2009).

[57] *Id.*

inadmissible in evidence, for not having been seized in accordance with the "plain view doctrine," these personal belongings should be returned to the heirs of the respective victims. Anent the live ammo of caliber 0.22 (marked as E-29 with JAM markings), which could not have been used in a 0.9mm caliber pistol, the same shall remain in *custodia legis* pending the outcome of a criminal case that may be later filed against petitioner Dimal. In *Alih v. Castro*,[58] it was held that even if the search of petitioners' premises was violative of the Constitution and the firearms and ammunition taken therefrom are inadmissible in evidence, pending determination of the legality of said articles they can be ordered to remain in *custodia legis* subject to appropriate disposition as the corresponding court may direct in the criminal proceedings that have been or may thereafter be filed against petitioners.

WHEREFORE, premises considered, the petition for review on *certiorari* is **PARTLY GRANTED**. The Court of Appeals Decision dated August 27, 2014 in CA-G.R. SP No. 128355 is **AFFIRMED with MODIFICATION** to declare that the following properties seized under Search Warrant No. 10-11 are inadmissible in evidence for neither having been particularly described in the search warrant nor seized under the "plain view doctrine":

1. Extracted suspected Blood stain (Marked as E-24 with JAM markings)
2. Extracted suspected Blood stain (Marked as E-25 with JAM markings)
3. One (1) Bra color brown (tiger) (Marked as E-14 with JAM markings)
4. One (1) cell phone spare part (marked as E-16 with JAM markings)
5. One (1) cell phone spare part (marked as E-17 with JAM markings)
6. Palay husk with suspected blood stain (marked as E-28 with JAM markings)
7. Suspected blood stain (marked as E-25-A with JAM markings)
8. One (1) pc torn cloth (Marked as E-1 with JAM markings)
9. One (1) pc torn cloth (Marked as E-2 with JAM markings)
10. One (1) pc torn cloth (Marked as E-3 with JAM markings)
11. One (1) pc spent shell of caliber 22 (Marked as E-4 with JAM markings)

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[58] 235 Phil. 270, 278 (1987).

12. One (1) bag pack color black (Marked as E-5 with JAM markings)
13. One spent shell of caliber 22 (Marked as E-6 with JAM markings)
14. One spent shell of caliber 22 (Marked as E-7 with JAM markings)
15. One spent shell of caliber 22 (Marked as E-8 with JAM markings)
16. One spent shell of caliber 22 (Marked as E-9 with JAM markings)
17. One spent shell of caliber 22 (Marked as E-10 with JAM markings)
18. One spent shell of caliber 22 (Marked as E-11 with JAM markings)
19. One spent shell of caliber 22 (Marked as E-12 with JAM markings)
20. One spent shell of caliber 22 (Marked as E-13 with JAM markings)
21. Two (2) Alien Certificate of Registration of Lucio Pua and Rosemarie Pua, and One (1) BDO Passbook in the name of Lucio Pua (mark as E-15 with JAM markings)
22. One spent shell of caliber 22 (Marked as E-18 with JAM markings)
23. One (1) piece gold-plated earring (marked as E-19 with JAM markings)
24. Suspected human hair (marked as E-20 with JAM markings)
25 A piece of embroider[ed] cloth (marked as E-22 with JAM markings)
26. Three (3) burned Tire wires (marked as E-23 with JAM markings)
27. One (1) empty plastic bottle of Gleam muriatic acid (marked as E- with JAM markings)
28. One (1) live ammo of caliber 22 (marked as E-29 with JAM markings)
29. One (1) color white t-shirt (marked as E-30 with JAM markings)

Moreover, the two (2) Alien Certificates of Registration of Lucio Pua and Rosemarie Pua, and One (1) BDO Passbook in the name of Lucio Pua are directed to be returned to the respective heirs of said victims, while the live ammo of caliber 0.22 (marked as E-29 with JAM markings) shall remain in *custodia legis* pending the outcome of the criminal case that may be filed against petitioner Jaylord Dimal.

SO ORDERED.

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

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

FIRST DIVISION

[G.R. No. 220146. April 18, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GLEN ABINA *y* LATORRE and JESUS LATORRE *y* DERAYA,**[*] *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; WHEN THE ACCUSED INVOKES SELF-DEFENSE, HE OR SHE HAS THE BURDEN TO PROVE SUCH JUSTIFYING CIRCUMSTANCE BY CLEAR AND CONVINCING EVIDENCE.— In criminal cases, the prosecution has the burden to establish the guilt of the accused beyond reasonable doubt. Nevertheless, when the accused invokes self-defense, he or she has the burden to prove such justifying circumstance by clear and convincing evidence. Here, the defense miserably failed to discharge its burden to prove self-defense. Its defenses of denial and self-defense were diametrically opposed to each other. In denial, one disavows any involvement in the crime. In contrast, in claiming self-defense, one admits of his/her participation in the crime only that it was done in self-defense. Moreover, no specific details on the claim of self-defense was advanced which, incidentally, was belatedly asserted only during the cross-examination of Jesus. Absent any clear and convincing evidence to establish self-defense, the same cannot be appreciated in favor of Glen. In view of the admission on the part of the defense of having killed the victims and the testimonies of the prosecution witnesses categorically and positively identifying Glen as the author of the crime, we entertain no doubt as to his culpability.

2. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; REQUIREMENTS IN ORDER TO BE APPRECIATED AGAINST THE ACCUSED; THERE IS NO TREACHERY EVEN WHEN

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[*] In the Resolution dated December 5, 2016, the Court dismissed the criminal cases against Jesus Latorre *y* Deraya in view of his demise. (See *rollo,* unpaginated)

THE ATTACK AGAINST THE VICTIM WAS SUDDEN AND UNEXPECTED, WHERE IT WAS NOT SHOWN THAT THE ACCUSED DELIBERATELY AND CONSCIOUSLY ADOPTED SUCH MODE OF ATTACK IN ORDER TO FACILITATE THE KILLING WITHOUT ANY RISK TO HIMSELF ARISING FROM ANY DEFENSE THAT THE VICTIM MIGHT HAVE ADOPTED.— [W]e find that Glen should only be held liable for homicide for the killing of Anthony instead of murder, there being no proof that treachery attended the commission of the crime, contrary to the findings of both the RTC and the CA. Article 14(16) of the Revised Penal Code defines treachery in this manner: There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. There are two requirements in order that treachery may be appreciated: (1) the victim was in no position to defend himself or herself when attacked; and, (2) the assailant *consciously* and *deliberately* adopted the methods, means, or form of one's attack against the victim. In *People v. Vilbar,* the Court held that there is no treachery when the attack against the victim was impulsive, even if the same was sudden and unexpected. It added that treachery cannot be appreciated where the accused did not make any preparation to kill the victim in such a way that he or she insures the commission of the crime, or that it was impossible, or at the least, difficult for the victim to retaliate or defend himself or herself. x x x. In this case, while Glen suddenly and unexpectedly attacked Anthony, there was no showing that he deliberately and consciously adopted such mode of attack in order to facilitate the killing without any risk to himself arising from any defense that Anthony might have adopted. x x x. As such, in the absence of the qualifying circumstance of treachery, the crime committed was only homicide.

3. **ID.; ID.; HOMICIDE; PROPER IMPOSABLE PENALTY.—** Under Article 249 of the Revised Penal Code, the prescribed penalty for homicide is *reclusion temporal,* which ranges from twelve (12) years and one (1) day to twenty (20) years. Pursuant to the Indeterminate Sentence Law, the maximum term to be imposed shall be based on the attending circumstances, and the minimum term of the sentence shall be within the range of

the penalty next lower to that prescribed by the Revised Penal Code, which is *prision mayor* which ranges from six (6) years and one (1) day to twelve (12) years. There being no modifying circumstance which attended the killing of both Anthony and Rodolfo, we hereby impose on Glen the indeterminate penalty of seven (7) years and four (4) months of *prision mayor* as minimum, to seventeen (17) years and four (4) months *of reclusion temporal* as maximum on each count of homicide.

4. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— x x x [P]ursuant to prevailing jurisprudence, the Court hereby orders Glen to pay the heirs of Anthony and Rodolfo civil indemnity, moral damages, and temperate damages in the amount of ₱50,000.00 each. The legal interest of 6% *per annum* shall be imposed on all these awards from the finality of this Decision until paid in full.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

On appeal is the December 10, 2014 Decision[1] of the Court of Appeals (CA) in CA-GR. CR HC No. 01302, which affirmed the December 29, 2010 Joint Judgment[2] of the Regional Trial Court (RTC) of Calbiga, Samar, Branch 33 finding Glen Abina *y* Latorre (Glen) and Jesus Latorre *y* Deraya (Jesus) guilty of murder in Criminal Case No. CC-2008-1695, and homicide in Criminal Case No. CC-2008-1696.[3]

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[1] CA *rollo,* pp. 106-120; penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla.

[2] Records in Crim. Case No. C-2008-1695, pp. 146-159; penned by Acting Presiding Judge Yolanda U. Dagandan.

[3] Also referred to as Criminal Case Nos. C-2008-1695 and C-2008-1696, respectively.

Factual Antecedents

Glen and Jesus were charged with murder for the killing of Anthony Asadon (Anthony) and Rodolfo Mabag (Rodolfo). The Informations read:

[Criminal Case No. CC-2008-1695]

That on or about the 1st day of February, 2008, at around 5:00 o'clock in the afternoon, more or less, in Barangay Concord, Municipality of Hinabangan, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with deliberate intent to kill and with treachery, thereby qualifying the offense to murder, did, then and there, willfully, unlawfully and feloniously attack, assault, shoot, stab and hack several times one ANTHONY ASADON with the use of a long bladed weapon locally known as 'sundang' and unlicensed homemade hand gun with which the accused provided themselves for the purpose, thereby inflicting upon the victim fatal wounds, which resulted to his death.

CONTRARY TO LAW.[4]

[Criminal Case No. CC-2008-1696]

That on or about the 1st day of February, 2008, at around 5:00 o'clock in the afternoon, more or less, in Barangay Concord, Municipality of Hinabangan, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with deliberate intent to kill and with treachery, thereby qualifying the offense to murder, did, then and there, willfully, unlawfully and feloniously attack, assault, shoot, stab and hack several times one RODOLFO MABAG with the use of a long bladed weapon locally known as 'sundang' with which the accused provided themselves for the purpose, thereby inflicting upon the victim fatal wounds, which resulted to his death.

CONTRARY TO LAW.[5]

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[4] Records in Crim. Case No. CC-2008-1695, p. 1.

[5] Records in Crim. Case No. CC-2008-1696, p. 1.

Glen and Jesus pleaded "Not Guilty"[6] to the charges against them. Trial on the merits thereafter ensued.

Version of the Prosecution

At about 1:00 p.m. on February 1, 2008, Anthony Asadon (Anthony) and his wife, Jonalyn Asadon (Jonalyn), were at Glen's house for his birthday celebration. During that time, Glen, Jesus, Pio Jongaya, and victims Anthony and Rodolfo Mabag (Rodolfo) were having a drinking spree.[7]

At about 5:00 p.m., Jonalyn and Anthony asked permission to leave the party; however, Glen disapproved of it because they would still buy liquor.[8] When Jonalyn and Anthony proceeded to leave, Glen suddenly took his gun and shot Anthony, hitting his right eye.[9]

When Anthony fell on the ground, Jesus stabbed him with a bolo. Seeing his cousin Anthony being assaulted, Rodolfo drew his bolo and hit Glen at his chin. In turn, Glen and Jesus hacked and stabbed Rodolfo on his arms, forehead and face.[10]

Both Anthony and Rodolfo died.[11]

Version of the Defense

As summarized by the CA, the version of the defense is as follows:

JESUS LATORRE Y DERAYA averred that on February 1, 2008, particularly at 4:00 o'clock in the afternoon, he was in his house; by 5:00 o'clock in the afternoon he went to his farm located about 300 meters away. After a while, he went home. On his way home, he noticed a birthday party in the house of Glen Abina. When he was

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[6] Records in Crim. Case No. CC-2008-1695, pp. 22-23.

[7] TSN, June 4, 2009, pp. 7-8; September 10, 2009, p. 5.

[8] *Id*. at 12; *Id*. at 6-7.

[9] TSN, June 4, 2009, pp. 13-16.

[10] TSN, June 4, 2009; pp. 18-23; November 19, 2009, pp. 19-22.

[11] TSN, June 4, 2009, pp. 6, 26.

already in his house, he saw Roberto Jongaya alias Dondon with a gun directed at Anthony Asadon and Rodolfo Mabag. Hence, he admonished Dondon to stop because the two were drunk. Dondon at that time was four meters away from Anthony and Rodolfo while he was about 10 meters when he first saw Dondon aiming the gun. Unfortunately, Dondon did not heed his advice and eventually shot Anthony on the forehead while Rodolfo was hit at the right side of his head, just below his right ear. When the two fell down, Glen and Dondon immediately stabbed the two. Glen used a 22 inches bolo while Dondon used a 26 inches, left handed bolo. After grabbing the bolos from the hands of Glen and Dondon, he placed it inside the sack. He also picked up the gun thrown by Dondon in the cogonal area and kept it in the same sack. Thereafter, he delivered the weapons to Eddie, the Brgy. Captain of Concord. He informed Eddie about the incident. Thereafter, he went home. Glen, who was injured in his right ankle just stayed in his house while Dondon went to the barangay proper.

He was arrested that evening by some barangay tanod and members of the Philippine Army. The military men warned him that if he will not surrender his house will be strafed. He did explain to them that he was not the principal of the crime; that he only helped by carrying the weapons to the Brgy. Captain. However, the military men handcuffed him and brought him to the barangay proper. At the barangay plaza, he was interrogated; they wanted him to admit the commission of the crime. Glen was also arrested. On the other hand, Dondon and Roberto Jongaya escaped.[12]

However, during his cross-examination, Jesus admitted that he and Glen killed Anthony and Rodolfo but only to defend themselves.[13]

Ruling of the Regional Trial Court

In its December 29, 2010 Joint Judgment, the RTC convicted Glen and Jesus of murder, for the death of Anthony, and homicide, for the death of Rodolfo. The dispositive portion reads:

WHEREFORE, premises considered, the Court finds the two (2) accused GLEN ABINA y LATORRE and JESUS LATORRE *y* DERAYA

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[12] CA *rollo,* pp. 109-110.

[13] TSN, May 7, 2009, p. 20.

GUILTY BEYOND REASONABLE DOUBT as principals of the crime[s] of:

A. MURDER x x x in Criminal Case No. CC-2008-1695 and x x x hereby sentences them to suffer imprisonment of RECLUSION PERPETUA; to indemnify jointly and solidarily the [h]eirs of Anthony Asadon Php75,000.00 as civil indemnity for his death; Php50,000.00 as moral damages and Php30,000.00 as exemplary damages and to pay the costs of this suit.

x x x x x x x x x

B. HOMICIDE x x x in Criminal Case No. CC-2008-1696 and x x x hereby sentences them to suffer imprisonment of an indeterminate penalty ranging from TEN (10) YEARS of Prision Mayor as minimum to FOURTEEN (14) YEARS FOUR (4) MONTHS AND ONE (1) DAY of Reclusion Temporal as maximum; to indemnify jointly and solidarily the [h]eirs of Rodolfo Mabag Php50,000.00 as civil indemnity for his death and to pay the costs of this suit.

x x x x x x x x x[14]

The RTC did not consider the defense's claim of self-defense. It held that their denial of their involvement in the killing was inconsistent with their claim of self-defense; they in turn failed to prove unlawful aggression on the part of the victims which is an essential element of self-defense. Instead, the RTC gave weight to the positive, credible, and logical testimonies of the prosecution witnesses who positively identified Glen and Jesus as the persons who killed Anthony and Rodolfo.

The RTC further ruled that the killing of Anthony was attended by treachery, which qualified the crime to murder. It explained that Anthony was attacked in a sudden and unexpected manner that afforded him no opportunity to defend himself. It also found conspiracy between Glen and Jesus in killing Anthony as their concerted acts showed unity of purpose and design.

On the other hand, the RTC held that the killing of Rodolfo only amounted to homicide. It explained that Rodolfo was hacked

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[14] Records in Crim. Case No. CC-2008-1695, pp. 158-159.

and stabbed only after he joined the melee. According to the RTC, in the absence of treachery, appellants were only liable for homicide for the killing of Rodolfo.

Ruling of the Court of Appeals

The CA concurred with the finding of the RTC that appellants failed to establish the elements of self-defense, especially the presence of unlawful aggression. Like the RTC, it noted that Jesus' denial was inconsistent with their claim of self-defense. The CA ratiocinated that a person who invokes self-defense necessarily admits authorship of the crime which is completely inconsistent with their defense of denial.

The CA also stressed that aside from failing to support their defense of denial, Jesus even admitted, during cross-examination, that he and Glen killed the victims. Necessarily, such admission would work against them.

The CA similarly ruled that the killing of Anthony was treacherous which qualified the crime to murder. It held that Glen and Jesus deprived Anthony of means to repel the sudden and unexpected attack against him. It pointed out that Glen suddenly shot Anthony when the latter was about to leave, which rendered him (Anthony) defenseless; and subsequently, Jesus joined the fray by stabbing him. Taken together, the means employed by Glen and Jesus assured them of no risk from any defense that Anthony might have adopted against them.

With regard to the killing of Rodolfo, the CA agreed with the RTC that the same only amounted to homicide because of the absence of treachery. It ruled that Rodolfo was attacked only after he came to the aid of Anthony. Given these circumstances, the CA concluded that treachery did not attend the killing of Rodolfo.

Hence, this appeal.

In our Resolution[15] dated December 5, 2016, the Court already dismissed the case against Jesus in view of his death. Hence,

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[15] *Rollo,* unpaginated.

we will only resolve the issue of Glen's culpability.

Issue

Whether the CA correctly affirmed the conviction of Glen for the crimes of murder and homicide.

Ruling

In criminal cases, the prosecution has the burden to establish the guilt of the accused beyond reasonable doubt. Nevertheless, when the accused invokes self-defense, he or she has the burden to prove such justifying circumstance by clear and convincing evidence. Here, the defense miserably failed to discharge its burden to prove self-defense. Its defenses of denial and self-defense were diametrically opposed to each other. In denial, one disavows any involvement in the crime. In contrast, in claiming self-defense, one admits of his/her participation in the crime only that it was done in self-defense. Moreover, no specific details on the claim of self-defense was advanced which, incidentally, was belatedly asserted only during the cross-examination of Jesus. Absent any clear and convincing evidence to establish self-defense, the same cannot be appreciated in favor of Glen.[16]

In view of the admission on the part of the defense of having killed the victims and the testimonies of the prosecution witnesses categorically and positively identifying Glen as the author of the crime, we entertain no doubt as to his culpability.

However, we find that Glen should only be held liable for homicide for the killing of Anthony instead of murder, there being no proof that treachery attended the commission of the crime, contrary to the findings of both the RTC and the CA.

Article 14(16) of the Revised Penal Code defines treachery in this manner:

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the

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[16] *People v. Tuardon,* G.R. No. 225644, March 1, 2017.

execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

There are two requirements in order that treachery may be appreciated: (1) the victim was in no position to defend himself or herself when attacked; and, (2) the assailant *consciously* and *deliberately* adopted the methods, means, or form of one's attack against the victim.[17]

In *People v. Vilbar,*[18] the Court held that there is no treachery when the attack against the victim was impulsive, even if the same was sudden and unexpected. It added that treachery cannot be appreciated where the accused did not make any preparation to kill the victim in such a way that he or she insures the commission of the crime, or that it was impossible, or at the least, difficult for the victim to retaliate or defend himself or herself.

Similarly, in *Rustia, Jr. v. People,*[19] the Court elucidated that in order for treachery to be appreciated, it should not be based on the sole fact that the victim was unable to defend himself or herself. The prosecution must establish the conscious adoption on the part of the accused of such mode of attack that would result to the killing without any risk to the accused.

In *People v. Calinawan,*[20] the Court again stressed that mere suddenness or unexpectedness of the attack is not sufficient to establish treachery. It ruled that "treachery could not be presumed and must be proved by clear and convincing evidence or as conclusively as the killing itself."[21] The prosecution must describe the whole scenario especially the manner of the killing in order to deduce the presence (or absence) of treachery.

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[17] *People v. Calinawan,* G.R. No. 226145, February 13, 2017.

[18] 680 Phil. 767, 785-786 (2012).

[19] G.R. No. 208351, October 5, 2016, 805 SCRA 311.

[20] *Supra*.

[21] *Id*., citing *People v. Silva,* 378 Phil. 1267 (1999).

In this case, while Glen suddenly and unexpectedly attacked Anthony, there was no showing that he deliberately and consciously adopted such mode of attack in order to facilitate the killing without any risk to himself arising from any defense that Anthony might have adopted.

Glen suddenly shot Anthony in the presence of the latter's wife and the other guests at the party. If Glen deliberately intended that no risk would come to him, he could have chosen another time and place to attack Anthony. As it is, the location and time of the attack did not discount the possibility of retaliation coming from the other guests. In addition, the shooting and stabbing incident transpired at around 5:00 p.m. or during such time that Glen could still be easily seen and recognized as the perpetrator of the crime. From all indications, it thus appeared that Glen did not consciously intend to employ a particular mode of attack to kill Anthony. The attack was a spur of the moment decision caused by sheer annoyance when Anthony and his wife left while the party was still on-going.

As such, in the absence of the qualifying circumstance of treachery, the crime committed was only homicide.

Under Article 249 of the Revised Penal Code, the prescribed penalty for homicide is *reclusion temporal,* which ranges from twelve (12) years and one (1) day to twenty (20) years. Pursuant to the Indeterminate Sentence Law, the maximum term to be imposed shall be based on the attending circumstances, and the minimum term of the sentence shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code,[22] which is *prision mayor* which ranges from six (6) years and one (1) day to twelve (12) years.

There being no modifying circumstance which attended the killing of both Anthony and Rodolfo, we hereby impose on Glen the indeterminate penalty of seven (7) years and four (4) months of *prision mayor* as minimum, to seventeen (17) years and

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[22] *People v. Calinawan, supra* note 17.

four (4) months of *reclusion temporal* as maximum on each count of homicide.

Finally, pursuant to prevailing jurisprudence, the Court hereby orders Glen to pay the heirs of Anthony and Rodolfo civil indemnity, moral damages, and temperate damages in the amount of ₱50,000.00 each. The legal interest of 6% *per annum* shall be imposed on all these awards from the finality of this Decision until paid in full.[23]

WHEREFORE, the appeal is **DISMISSED.** The assailed December 10, 2014 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 01302 is **AFFIRMED** with the following **MODIFICATIONS:**

(1) Accused-appellant Glen Abina *y* Latorre is found **GUILTY** of two counts of homicide for the killing of Anthony Asadon and Rodolfo Mabag. He is sentenced to suffer the indeterminate penalty of seven (7) years and four (4) months of *prision mayor,* as minimum, to seventeen (17) years and four (4) months of *reclusion temporal,* as maximum, for each count of homicide; and,

(2) Accused-appellant Glen Abina *y* Latorre is **ORDERED** to pay the respective heirs of Anthony Asadon and Rodolfo Mabag moral damages, temperate damages, and civil indemnity in the amount of ₱50,000.00 each. All these damages awarded shall earn interest of 6% *per annum* from finality of this Decision until fully paid.

SO ORDERED.

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

Sereno, C.J., on leave.

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[23] *People v. Calinawan,* G.R. No. 226145, February 13, 2017.

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

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

SECOND DIVISION

[G.R. No. 226481. April 18, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAYCENT MOLA *y* SELBOSA *a.k.a. "OTOK"*,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); SECTION 21 THEREOF; CHAIN OF CUSTODY RULE; PROCEDURE IN THE HANDLING AND CUSTODY OF THE CONFISCATED AND/OR SEIZED ITEMS.— 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 of 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." 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 by Mola on January 14, 2012.

2. ID.; ID.; ID.; ID.; THE GAP IN THE CHAIN OF CUSTODY CREATES DOUBT AS TO WHETHER THE *CORPUS DELICTI* OF THE CRIME HAD BEEN PROPERLY PRESERVED.— [I]n

dispensing with the testimony of the forensic chemist, it is evident that the prosecution failed to show another link in the chain of custody. Since her testimony was limited to the result of the examination she conducted and not on the source of the substance, PS/Insp. Malojo-Todeño failed to certify that the chemical substance presented for laboratory examination and tested positive for *shabu* was the very same substance recovered from Mola. The turnover and submission of the marked illegal drugs seized from the forensic chemist to the court was also not established. Neither was there any evidence to indicate how the sachet of *shabu* was handled during and after the laboratory examination and on the identity of the person/s who had custody of the item before it was presented to the court as evidence. Without the testimonies or stipulations stating the details on when and how the seized sachet of *shabu* was brought from the crime laboratory to the court, as well as the specifics on who actually delivered and received the same from the crime laboratory to the court, it cannot be ascertained whether the seized item presented in evidence was the same one confiscated from Mola upon his arrest. This gap in the chain of custody creates doubt as to whether the *corpus delicti* of the crime had been properly preserved.

3. **ID.; ID.; ID.; ID.; THE ILLEGAL DRUGS BEING THE *CORPUS DELICTI*, IT IS ESSENTIAL FOR THE PROSECUTION TO ESTABLISH WITH MORAL CERTAINTY AND PROVE BEYOND REASONABLE DOUBT THAT THE ILLEGAL DRUGS PRESENTED AND OFFERED IN EVIDENCE BEFORE THE TRIAL COURT ARE THE SAME ILLEGAL DRUGS LAWFULLY SEIZED FROM THE ACCUSED, AND TESTED AND FOUND TO BE POSITIVE FOR DANGEROUS SUBSTANCE.—** The illegal drugs being the *corpus delicti*, it is essential for the prosecution to establish with moral certainty and prove beyond reasonable doubt that the illegal drugs presented and offered in evidence before the trial court are the same illegal drugs lawfully seized from the accused, and tested and found to be positive for dangerous substance. At bar, evidence at hand do not support the conclusion that the integrity and evidentiary value of the subject sachet of *shabu* were successfully and properly preserved and safeguarded through an unbroken chain of custody. The prosecution manifestly failed to prove that the marked and inventoried illegal substance was

the very same object taken from Mola and that the one found positive for *shabu* by the crime laboratory was the same sachet of illegal drugs that was delivered to and received by the court.

4. ID.; ID.; ID.; ID.; THE FAILURE OF THE PROSECUTION TO FOLLOW THE MANDATED PROCEDURE LAID DOWN IN SECTION 21 OF R.A. NO. 9165, AS AMENDED MUST BE ADEQUATELY EXPLAINED AND MUST BE PROVEN AS A FACT IN ACCORDANCE WITH THE RULES ON EVIDENCE.— Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the **positive duty** to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must **initiate** in acknowledging and justifying any perceived deviations from the requirements of the law. Its failure to follow the mandated procedure must be **adequately explained** and must be **proven as a fact** in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item. A stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.

5. ID.; ID.; ID.; ID.; THE FACT THAT THE ACCUSED RAISED HIS OR HER OBJECTIONS AGAINST THE INTEGRITY AND EVIDENTIARY VALUE OF THE DRUGS PURPORTEDLY SEIZED FROM HIM OR HER ONLY FOR THE FIRST TIME ON APPEAL DOES NOT PRECLUDE THE COURT OF APPEALS OR THE SUPREME COURT FROM PASSING UPON THE SAME.— The fact that the accused raised his or her objections against the integrity and evidentiary value of the drugs purportedly seized from him or her only for the first time on appeal **does not preclude** the CA or this Court from passing upon the same. If doubt surfaces on the sufficiency of the evidence to convict, regardless that it does only at the stage of an appeal, our courts of justice should nonetheless rule in favor of the accused, lest it betray its duty to protect individual liberties within the bounds of law.

6. **ID.; ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY MAY ONLY ARISE WHEN THERE IS A SHOWING THAT THE APPREHENDING OFFICER/TEAM FOLLOWED THE REQUIREMENTS OF SECTION 21 OF R.A. NO. 9165, OR WHEN THE SAVING CLAUSE IS SUCCESSFULLY TRIGGERED.—** The presumption of regularity in the performance of official duty cannot work in favor of the law enforcers since the records reveal inexcusable lapses, which are affirmative proofs of irregularity, in observing the requisites of the law. The presumption may only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21 or when the saving clause is successfully triggered. In this case, the presumption of regularity, which is disputable by contrary proof, had been contradicted and overcome by evidence of non-compliance with the law.

7. **REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHTS OF ACCUSED; PRESUMPTION OF INNOCENCE; THE PRESUMPTION OF REGULARITY WILL NEVER BE STRONGER THAN THE PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED; OTHERWISE, A MERE RULE OF EVIDENCE WILL DEFEAT THE CONSTITUTIONALLY ENSHRINED RIGHT OF AN ACCUSED.—** Neither is lack of improper motive on the part of the policemen helpful to convict Mola. x x x In *People v. Andaya*, therefore, we have precisely warned against judicially pronouncing guilty the person arrested by law enforcers just because he could not impute any ill motives to them for arresting him, and have cautioned against presuming the regularity of the arrest on that basis alone; stating: x x x. x x x. Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime. The criminal accusation against a person must be substantiated by

proof beyond reasonable doubt. The Court should steadfastly safeguard his right to be presumed innocent. Although his innocence could be doubted, for his reputation in his community might not be lily-white or lustrous, he should not fear a conviction for any crime, least of all one as grave as drug pushing, unless the evidence against him was clear, competent and beyond reasonable doubt. Otherwise, the presumption of innocence in his favor would be rendered empty. To repeat, the presumption of regularity "will never be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right of an accused."

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.*:

On appeal is the April 15, 2016 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 07419, which affirmed the March 9, 2015 Decision[2] of Regional Trial Court (*RTC*), Branch 44, Dagupan City, Pangasinan, in Criminal Case No. 2012-0027-D, convicting appellant Jaycent Mola *y* Selbosa a.k.a. "*Otok*" (*Mola*) for illegal sale of Methamphetamine Hydrochloride, commonly known as *shabu*, in violation of Section 5, Article II of Republic Act (*R.A.*) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

The Information dated January 16, 2012 charged Mola as follows:

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[1] Penned by Associate Justice Socorro B. Inting, with Associate Justices Remedios A. Salazar-Fernando and Jhosep Y. Lopez, concurring (*Rollo*, pp. 2-9; CA *rollo*, 84-91).

[2] Records, pp. 135-140; CA *rollo*, pp. 47-52.

That on or about the 14th day of January, 2012, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **JAYCENT MOLA *y* Selbosa @ Otok**, did then and there, willfully, unlawfully and criminally, sell and deliver to a poseur-buyer a Methamphetamine Hydrochloride (Shabu) contained in one (1) heat seated plastic sachet weighing more or less 0.04 grams, in exchange of ₱500.00, without authority to do so.

Contrary to Article II, Section 5, R.A. 9165.[3]

In his arraignment, Mola entered a plea of ''Not Guilty."[4] He was detained at the city jail during the trial of the case.[5]

The prosecution presented SPO4 Enrique Columbino (*Columbino*), PO2 Joeffrey Fulido (*Fulido*), SPO1 Salvador Cacho (*Cacho*), SPO3 Dante Marmolejo (*Marmolejo*), and PS/Insp. Myrna C. Malojo-Todeño (*Malojo-Todeño*). Only Mola testified for the defense.

SPO4 Columbino testified that: he was assigned as an Intelligence Operative at the Dagupan City Police Station; acting on a confidential information, he conducted a buy-bust operation on January 14, 2012 against Mola in *Sitio* Kamanang, Bonuan Tondaligan, Dagupan City; prior to the operation, he communicated to his superior, PCI Giovanni Mangonon, and prepared the marked money by using his own ₱500 bill; he coordinated with PCI Mangonon while he was accompanied by a civilian asset in Bonuan Gueset; it was past 5 to 6 o'clock in the afternoon when he was instructed to proceed to *Sitio* Kamanang; he boarded a tricycle going to the area together with the civilian asset and companions from the Police Community Precinct (*PCP*) of Bonuan Tondaligan; upon arrival thereat, the civilian asset pointed to him Mola, who was about seven (7) meters away and staying in front of Jerry Cayabyab's (*Cayabyab*) store; while inside the tricycle, he waived to Mola with the use of the marked money, extending his finger and

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[3] Records, pp. 1-2.

[4] *Id.* at 38-40.

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

putting it under his nose to signify the use of shabu; Mola waived back at him and entered an alley; he waited for him in front of the store and, after a few minutes, Mola went out of the alley and gave him a sachet of *shabu* in exchange of the ₱500 bill; thereafter, he held Mola's hands and identified himself as a police officer; by that time, Cayabyab alighted from a passenger jeepney and asked, "*Akin tan? Akin tan?*" (*What is that? What is that?*); he showed him the seized sachet of shabu and told him to inform Mola's relatives to follow him to the PCP Tondaligan, where he marked the seized items and prepared the confiscation/inventory receipt; they proceeded to the Dagupan City Police Station, where he turned over Mola, the sachet of shabu, the buy-bust money, and the confiscation/inventory receipt to Duty Investigator SPO3 Marmolejo; the following day, he got back the sachet of *shabu* from SPO3 Marmolejo and brought it to the PNP Crime Laboratory in Lingayen, Pangasinan, on the basis of the letter-request prepared by SPO3 Marmolejo; and he returned to Cayabyab's store to ask him to sign the confiscation/inventory receipt, which the latter did by printing his name on it.

PO2 Fulido attested to the fact that he was the Blotter Book Custodian in relation to Entry Nos. 747 and 748 of Volume 93, Series of 2011 of the Blotter Book of the Dagupan City Police Station since PO3 Crisostomo Benevente, the one who recorded the incident, had retired from service.[6] After he read the contents of the Blotter Book, the defense counsel admitted that the Certification attached to the case records is a faithful reproduction of the entries in the Blotter Book.[7]

The testimonies of the following witnesses were dispensed with in view of the admission of the defense counsel:

SPO1 Cacho – He was the one who prepared the letter request for laboratory examination, coordination form, pre-operation report, and letter to the Dangerous Drugs Board as well as the one who took the pictures on Molo's arrest.[8]

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[6] *Id*. at 91.

[7] *Id*.

[8] *Id*. at 102.

SPO3 Marmolejo – On January 14, 2012, he was the Duty Investigator in tandem with SPO1 Cacho; on said date, he received from SPO4 Columbino one (1) plastic sachet of *shabu* for safekeeping after Mola was arrested; and on the next day, he returned said plastic sachet of *shabu* to SPO4 Columbino for the latter to bring it for laboratory examination.[9]

PS/Insp. Malojo-Todeño – She was the Forensic Chemist who received the letter-request as well as the specimen submitted which was one (1) heat-sealed plastic sachet of shabu; upon receipt thereof, she conducted a qualitative examination on the specimen, which yielded positive result to the test of Methamphetamine Hydrochloride; and said result was reduced into writing, evidenced by Initial Laboratory Report and Final Chemistry Report.[10]

In his defense, Mola denied the accusation that he sold *shabu* to SPO4 Columbino. Instead, he testified that around 6:30 p.m. on January 14, 2012 he was at the store owned by Cayabyab to buy cigarettes; the store was about twenty (20) meters away from his house located in *Sitio* Kamanang, Bonuan Gueset; he just finished eating and went to the store when he saw a tricycle stopped behind his back and its driver pointed at him; a passenger then got off from the tricycle, immediately held his right hand, and brought him inside; both the tricycle driver and the passenger, whose identities are unknown to him, were not in police uniform; he did not protest or shout but inquired on why he was being taken away; when they arrived at the Tondaligan Police Station, the tricycle driver opened his belt bag and brought out a ₱500 bill and a plastic sachet of *shabu*; despite having seen this, he did not disclose the matter to the investigator; and from the Bonuan Police Precinct, he was transferred to the police headquarters in Babaliwan, where he first met SPO4 Columbino and learned that he was being indicted for sale of dangerous drugs.

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[9] *Id*. at 105.

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

On March 9, 2015, the RTC found Mola guilty of the crime charged. He was sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00) as well as the costs of suit.

Mola appealed to the CA on the grounds that:

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE FAILURE OF THE BUY-BUST TEAM TO COMPLY WITH SECTION 21, ARTICLE II OF R.A. NO. 9165.

II

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH AN UNBROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY SEIZED DANGEROUS DRUGS.[11]

It was contended that the prosecution failed to comply with Section 21 (1), Article II of R.A. No. 9165. In particular: (1) SPO4 Columbino did not immediately mark the seized sachet of *shabu* even if he could have easily done so at the place of arrest; (2) the confiscation report shows that no representatives from the Department of Justice (*DOJ*), the local government, and the media attended the marking and inventory of the seized items; (3) together with the seized illegal drugs, SPO4 Columbino went back to Cayabyab's house for the latter's signing of the confiscation receipt; (4) after turning over the plastic sachet and inventory receipt to the investigating officer, SPO4 Columbino once again took possession of the alleged *shabu* for the purpose of bringing the same to the forensic chemist; and (5) there is no testimony or a stipulation to the effect that the forensic chemist received the seized article as marked, properly sealed and intact, that she resealed it after examination of the content, and that she placed her own marking on the same to ensure that it could not be tampered pending trial.

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[11] *Rollo*, pp. 5-6.

The conviction of Mola was sustained. For the appellate court, the recovery and handling of the seized illegal drugs were more than satisfactorily established. Considering that the integrity of the confiscated sachet of *shabu* has been maintained, it was held that the absence of an elected public official and representatives from the media and the DOJ during the inventory-taking and photograph is not deemed as fatal to the prosecution's case. Moreover, R.A. No. 9165 and its Implementing Rules and Regulations (*IRR*) expressly authorizes the marking and inventory-taking of the seized contraband "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable," in case of a warrantless seizure resulting from a buy-bust operation.

Before Us, both Mola and the People manifested that they would no longer file a Supplemental Brief, taking into account their discussions on the issues in their respective Briefs before the CA.[12]

The appeal is meritorious.

To ensure an unbroken chain of custody, Section 21 (1) of R.A. No. 9165[13] 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, physically

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[12] *Id*. at 20-24, 27-31.

[13] Took effect on July 4, 2002.

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."[14] 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."[15] In addition, "[t]he requirement that inventory is required to be done in a police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended."[16]

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."[17] 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.
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> 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

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[14] Senate Journal. Session No. 80. 16th Congress, 1st Regular Session. June 4, 2014, p. 348.

[15] *Id.* at 348.

[16] *Id.*

[17] *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 enforement 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.[18]

The foregoing legislative intent has been taken cognizance of in a number of cases. Just recently, We opined in *People v. Miranda*:[19]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said

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[18] *Id*. at 349-350. (Emphasis supplied)

[19] G.R. No. 229671, January 31, 2018. (Emphasis and underscoring ours)

inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**; Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, **the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved.** Also, in *People v. De Guzman*, it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**[20]

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 of 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

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[20] 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.

irregularity."[21] 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 by Mola on January 14, 2012.

A review of the records yielded no justifiable reason for the prosecution's non-compliance with the first link in the chain of custody of evidence, *i.e.*, the marking by the apprehending officer of the dangerous drug seized from the accused. The one advanced by SPO4 Columbino as to why it was impractical for him to conduct the marking and inventory of the sachet of alleged *shabu* at the place of arrest and seizure is unconvincing. His assertion that he opted to go to the PCP Tondaligan, which was the nearest police station, because he was "only one" and "there were many persons" is but a hollow excuse. The insinuation that the safety and security of his person or of the items seized was under immediate or extreme danger was self-serving as it was not substantiated or corroborated by evidence. To note, it appears that his claim is contrary to his statement during the direct examination that he was with the civilian asset and his companions from the PCP Tondaligan when he proceeded to *Sitio* Kamanang for the buy-bust operation.[22]

Likewise, the only person who claimed to have seen the sachet of alleged *shabu* at the time it was seized from Mola was Cayabyab. Obviously, he is not one of the persons required by law to observe the marking and inventory-taking. The prosecution was silent on why the required witnesses were unavailable. It was never alleged and proved, to cite a few,

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[21] *People v. Sagana*, G.R. No. 208471, August 2, 2017.

[22] TSN, April 4, 2013, pp. 3-4, 7.

that their attendance was impossible because the place of arrest was a remote area; that their safety during the inventory and photograph of the seized illegal drugs were threatened by an immediate retaliatory action of the accused or any person/s acting for and in his or her behalf; or that the elected officials themselves were involved in the punishable acts sought to be apprehended.

Assuming that Cayabyab's presence counts, the manner how he served as a witness cannot be considered as substantial compliance. During the trial, SPO4 Columbino disclosed:

Q What about the son of Jerry Cayabyab?
A When I arrested Jaycent Mola, the son of Jerry Cayabyab did not come out of the store.

Q While you were having a transaction after Jaycent Mola came out of the alley, where was this son of Jerry Cayabyab?
A He was inside the store.

Q So he saw the incident?
A Yes, Ma'am.

Q Jerry Cayabyab just arrived after you already arrested Jaycent?
A Yes, Ma'am, then I showed to him the sachet of *shabu*.

Q With respect to the confiscation receipt, you prepared this while you were in front of the store?
A No, Ma'am, at PCP Bonuan Tondaligan.

Q This Jerry Cayabyab was with you when you prepared this confiscation/inventory receipt at your precinct?
A No, Ma'am, I went to his store.

Q And you asked him to sign?
A Yes, Ma'am. Because I know Jerry Cayabyab.

Q But he did not sign in the confiscation receipt, Mr. Witness?
A The printed, Ma'am.

Q This printed name of Jerry Cayabyab is already his signature?
A Yes, Ma'am.

Q So when you asked him to sign, you did not bring with you the small plastic sachet of shabu because it was already left at your precinct?

A Yes, Ma'am, but before I brought that sachet of shabu to the PCP, I showed it to Jerry Cayabyab.

Q But the inventory of said item was done at your precinct?
A PCP Tondaligan, Ma'am.

Q PCP Tondaligan. Without the presence of Jerry because you returned to Jerry's store only for him to sign the confiscation receipt?
A Yes, Ma'am.

Q He was not able to witness the inventory?
A No, Ma'am.

Q You simply asked him to sign?
A He just read the contents of the confiscation receipt.

Q You did not let the son of Jerry be a witness.
A No, Ma'am.[23]

While Cayabyab witnessed the seizure of a sachet of alleged *shabu* from Mola, he did not see the actual marking and physical inventory of all the confiscated items. As SPO4 Columbino admitted, he (Cayabyab) was not present at the PCP Tondaligan, where the procedures required by law were done. His only participation was that he signed, by writing his name in printed form, the accomplished confiscation/inventory receipt at his store. Despite SPO4 Columbino's claim that the sachet of *shabu* was in his possession when he returned to Cayabyab's place, there was no testimony that he had shown the same to him.[24] These considering, it cannot be said with certainty that Cayabyab could attest to the fact that the marked sachet of *shabu* was the same item that was seized from Mola at the time of his arrest.

Moreover, in dispensing with the testimony of the forensic chemist, it is evident that the prosecution failed to show another link in the chain of custody. Since her testimony was limited to the result of the examination she conducted and not on the

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[23] TSN, September 3, 2013, pp. 4-5.

[24] *Id*. at 6.

source of the substance, PS/Insp. Malojo-Todeño failed to certify that the chemical substance presented for laboratory examination and tested positive for *shabu* was the very same substance recovered from Mola.[25] The turnover and submission of the marked illegal drugs seized from the forensic chemist to the court was also not established.[26] Neither was there any evidence to indicate how the sachet of *shabu* was handled during and after the laboratory examination and on the identity of the person/s who had custody of the item before it was presented to the court as evidence.[27] Without the testimonies or stipulations stating the details on when and how the seized sachet of *shabu* was brought from the crime laboratory to the court, as well as the specifics on who actually delivered and received the same from the crime laboratory to the court, it cannot be ascertained whether the seized item presented in evidence was the same one confiscated from Mola upon his arrest.[28] This gap in the chain of custody creates doubt as to whether the *corpus delicti* of the crime had been properly preserved.

The illegal drugs being the *corpus delicti*, it is essential for the prosecution to establish with moral certainty and prove beyond reasonable doubt that the illegal drugs presented and offered in evidence before the trial court are the same illegal drugs lawfully seized from the accused, and tested and found to be positive for dangerous substance.[29] At bar, evidence at hand do not support the conclusion that the integrity and evidentiary value of the subject sachet of *shabu* were successfully and properly preserved and safeguarded through an unbroken chain of custody. The prosecution manifestly failed to prove that the

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[25] See *People v. Gayoso*, G.R. No. 206590, March 27, 2017.

[26] *People v. Gayoso, supra*.

[27] See *People v. Abelarde*, G.R. No. 215713, January 22, 2018.

[28] See *People v. Dumagay*, G.R. No. 216753, February 7, 2018.

[29] See *People v. Sic-Open*, G.R. No. 211680, September 21, 2016, 804 SCRA 94, 111.

marked and inventoried illegal substance was the very same object taken from Mola and that the one found positive for *shabu* by the crime laboratory was the same sachet of illegal drugs that was delivered to and received by the court.

Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended.[30] It has the **positive duty** to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must **initiate** in acknowledging and justifying any perceived deviations from the requirements of the law.[31] Its failure to follow the mandated procedure must be **adequately explained** and must be **proven as a fact** in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item.[32] A stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.[33]

On the other hand, the fact that the accused raised his or her objections against the integrity and evidentiary value of the drugs purportedly seized from him or her only for the first time on appeal **does not preclude** the CA or this Court from passing upon the same.[34] If doubt surfaces on the sufficiency of the

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[30] See *People v. Macapundag, supra* note 20.

[31] See *People v. Miranda, supra* note 19; *People v. Paz, supra* note 20; *People v. Mamangon, supra* note 20; and *People v. Jugo, supra* note 20.

[32] *People v. Saragena*, G.R. No. 210677, August 23, 2017.

[33] See *People v. Abelarde, supra* note 27; *People v. Macud*, G.R. No. 219175, December 14, 2017; *People v. Arposeple*, G.R. No. 205787, November 22, 2017; *Aparente v. People*, G.R. No. 205695, September 27, 2017; *People v. Cabellon*, G.R. No. 207229, September 20, 2017; *People v. Saragena, supra*; *People v. Saunar*, G.R. No. 207396, August 9, 2017; *People v. Sagana, supra* note 21; *People v. Segundo*, G.R. No. 205614, July 26, 2017; and *People v. Jaafar*, G.R. No. 219829, January 18, 2017.

[34] See *People v. Miranda*, *supra* note 19.

evidence to convict, regardless that it does only at the stage of an appeal, our courts of justice should nonetheless rule in favor of the accused, lest it betray its duty to protect individual liberties within the bounds of law.[35]

The presumption of regularity in the performance of official duty cannot work in favor of the law enforcers since the records reveal inexcusable lapses, which are affirmative proofs of irregularity, in observing the requisites of the law. The presumption may only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21 or when the saving clause is successfully triggered. [36] In this case, the presumption of regularity, which is disputable by contrary proof, had been contradicted and overcome by evidence of non-compliance with the law.[37]

Neither is lack of improper motive on the part of the policemen helpful to convict Mola.

x x x In *People v. Andaya*, therefore, we have precisely warned against judicially pronouncing guilty the person arrested by law enforcers just because he could not impute any ill motives to them for arresting him, and have cautioned against presuming the regularity of the arrest on that basis alone; stating:

> x x x We should remind ourselves that we cannot presume that the accused committed the crimes they have been charged with. The State must fully establish that for us. If the imputation of ill motive to the lawmen is the only means of impeaching them, then that would be the end of our dutiful vigilance to protect our citizenry from false arrests and wrongful incriminations. We are aware that there have been in the past many cases of false arrests and wrongful incriminations, and that should heighten our resolve to strengthen the ramparts of judicial scrutiny.

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[35] *People v. Miranda*, *id*.

[36] *Id.*

[37] See *People v. Gajo*, G.R. No. 217026, January 22, 2018 and *People v. Ramirez*, G.R. No. 225690, January 17, 2018.

> Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime.
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> The criminal accusation against a person must be substantiated by proof beyond reasonable doubt. The Court should steadfastly safeguard his right to be presumed innocent. Although his innocence could be doubted, for his reputation in his community might not be lily-white or lustrous, he should not fear a conviction for any crime, least of all one as grave as drug pushing, unless the evidence against him was clear, competent and beyond reasonable doubt. Otherwise, the presumption of innocence in his favor would be rendered empty.[38]

To repeat, the presumption of regularity "will never be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right of an accused."[39]

WHEREFORE, premises considered, the April 15, 2016 Decision of the Court of Appeals in CA-G.R. CR HC No. 07419, which affirmed the March 9, 2015 Decision of Regional Trial Court, Branch 44, Dagupan City, Pangasinan, in Criminal Case No. 2012-0027-D, is **REVERSED and SET ASIDE**. Appellant Jaycent Mola *y* Selbosa a.k.a. "*Otok*" is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered **IMMEDIATELY RELEASED** from

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[38] *Casona v. People*, G.R. No. 179757, September 13, 2017 (Citations omitted).

[39] *People v. Segundo, supra* note 33 and *People v. Diputado*, G.R. No. 213922, July 5, 2017. See also *Casona v. People, supra* note 38.

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

SECOND DIVISION

[G.R. No. 228890. April 18, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BASHER TOMAWIS *y* ALI,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DRUGS; ELEMENTS.— For a successful prosecution for the crime of illegal sale of drugs under Section 5 of RA 9165, the following must be proven: (a) the identities of the buyer, seller, object, and consideration; and (b) the delivery of the thing sold and the payment for it. In cases involving dangerous drugs, the drug itself constitutes the *corpus delicti* of the offense. Thus, it is of paramount importance that the prosecution prove that the identity and integrity of the seized drugs are

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

preserved. Each link in the chain of custody of the seized drugs must be established.

2. ID.; ID.; SECTION 21, ARTICLE II AND THE IMPLEMENTING RULES AND REGULATIONS OF RA NO. 9165; PROCEDURE IN THE CUSTODY AND HANDLING OF CONFISCATED ILLEGAL DRUGS AND/OR PARAPHERNALIA; MUST BE COMPLIED WITH FOR A SUCCESSFUL PROSECUTION FOR THE CRIME OF ILLEGAL SALE OF DRUGS; ANY DEVIATION IN THE MANDATORY PROCEDURE SHALL NOT RENDER VOID AND INVALID THE SEIZURES AND CUSTODY OVER THE CONFISCATED ITEMS, UNDER JUSTIFIABLE GROUNDS, AS LONG AS THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING TEAM.— Section 21, Article II of RA 9165 outlines the procedure to be followed by a buy-bust team in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia. x x x. Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR) filled in the details as to place of inventory and added a saving clause in case of non-compliance with the requirements under justifiable grounds x x x. [The] provisions impose the following requirements in the manner of handling and inventory, time, witnesses, and of place after the arrest of the accused and seizure of the dangerous drugs: 1. The initial custody requirements must be done **immediately after seizure or confiscation**; 2. The **physical inventory and photographing** must be done in the presence of: a. the **accused or his representative or counsel**; b. a representative from the **media**; c. a representative from the **DOJ**; and d. any **elected public official**. 3. The conduct of the physical inventory and photograph shall be done at the: a. **place where the search warrant is served;** or b. **at the nearest police station;** or c. **nearest office of the apprehending officer/team**, whichever is practicable, in case of warrantless seizure. All the above requirements must be complied with for a successful prosecution for the crime of illegal sale of drugs under Section 5 of RA 9165. Any deviation in the mandatory procedure must be satisfactorily justified by the buy-bust team. Under Section 21 of the IRR, the Court may allow deviation from the procedure only where the following requisites are present: (1) the existence of justifiable grounds to allow departure from the rule on strict

compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. If these two elements are present, the seizures and custody over the confiscated items shall not be rendered void and invalid.

3. ID.; ID.; ID.; THE PATENT PROCEDURAL LAPSES COMMITTED BY THE BUY-BUST TEAM IN THE CONDUCT OF THE SEIZURE, INITIAL CUSTODY, AND HANDLING OF THE SEIZED DRUG CREATE REASONABLE DOUBT AS TO THE IDENTITY AND INTEGRITY OF THE DRUGS AND, CONSEQUENTLY, REASONABLE DOUBT AS TO THE GUILT OF THE ACCUSED. — Jurisprudence states that the procedure enshrined in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. For indeed, however noble the purpose or necessary the exigencies of the campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law. In this case, the buy-bust team committed several and patent procedural lapses in the conduct of the seizure, initial custody, and handling of the seized drug which thus created reasonable doubt as to the identity and integrity of the drugs and, consequently, reasonable doubt as to the guilt of the accused.

4. ID.; ID.; ID.; REQUIREMENT OF PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED DRUGS; ELABORATED; PHRASE "IMMEDIATELY AFTER SEIZURE AND CONFISCATION", CONSTRUED.— Section 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. In addition, the inventory must be done **in the presence of the accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official**, who shall be required to sign the copies of the inventory and be given a copy thereof. The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable, the IRR allows that the inventory and photographing could be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. By the

same token, however, this also means that the three required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses. The buy-bust team in this case utterly failed to comply with these requirements.

5. ID.; ID.; ID.; ID.; THREE-WITNESS RULE; NOT COMPLIED WITH.— While the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension, is not dispensed with. The reason is simple, it is at the time of arrest—or at the time of the drugs' "seizure and confiscation" —that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence. There are police stations closer to Starmall, Alabang, in Muntinlupa City and the office of the PDEA is also in Pinyahan, Quezon City. And yet, the inventory was conducted in the barangay hall of Pinyahan, Quezon City— which is not one of the allowed alternative places provided under Section 21 of the IRR. More importantly, there was no compliance with the three-witness rule. There were no witnesses from the DOJ or the media. Only two witnesses who were elected barangay officials were present. It thus becomes evident that the buy-bust team did not prepare or bring with them any of the required witnesses at or near the place of the buy-bust operation and the witnesses were a mere afterthought. Based on the testimonies of barangay councilors Burce and Gaffud, they were not present during the seizure of the drugs. They were only called to go to the barangay hall of Pinyahan, Quezon City—after the arrest and seizure that had been done in Starmall, Alabang—to "witness" the inventory made by the PDEA at the barangay hall.

6. ID.; ID.; ID.; ID.; RATIONALE FOR THE THREE-WITNESS RULE; THE PRESENCE OF THE THREE WITNESSES AT THE TIME OF SEIZURE AND CONFISCATION OF THE DRUGS MUST BE SECURED AND COMPLIED WITH AT THE TIME OF THE WARRANTLESS ARREST. — The presence of the

witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the 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 subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165. The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so— and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished—does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs. To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."

7. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; CHAIN OF CUSTODY, DEFINED; THE INTEGRITY AND EVIDENTIARY VALUE OF SEIZED ITEMS ARE PROPERLY PRESERVED FOR AS LONG AS THE *CHAIN OF CUSTODY* OF THE SAME

IS DULY ESTABLISHED.— [T]here is a saving clause in Section 21 of the IRR, which is the provision that states: "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 and custody over said items." In *People v. Alviz*, the Court held that the integrity and evidentiary value of seized items are properly preserved for as long as the *chain of custody* of the same is duly established. *Chain of custody* is defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002: b. "Chain of Custody" means the **duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction**. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.] In the present case, there are gaps in the chain of custody of the seized drugs which creates reasonable doubt as to the identity and integrity thereof.

8. ID.; ID.; ID.; ID.; THE UNCERTAINTIES AND INCONSISTENCIES IN THE TESTIMONY OF THE BUY- BUST TEAM AND LACK OF INFORMATION AT SPECIFIC STAGES OF THE SEIZURE, CUSTODY, AND EXAMINATION OF THE SEIZED DRUGS CREATE DOUBT AS TO THE IDENTITY AND INTEGRITY THEREOF.— There are unexplained gaps in the custody of the seized drugs. The transfer and movement of the seized drugs between IO1 Alejandro, IO1 Lacap, and IO1 Alfonso was not established. It is unclear as to who held custody of the seized drugs from the place of arrest in Starman, Alabang to Brgy. Pinyahan, Quezon City and from Brgy. Pinyahan, Quezon City to the PDEA office. It was not clarified as to how and when the seized drugs were returned to IO1 Alejandro after the inventory was conducted by IO1 Alfonso. There was also no testimony as to who received the seized drugs from IO1 Alejandro at the laboratory, and to whom they were given after the testing

was conducted. During pre-trial, the delivery by IO1 Alejandro to the laboratory was stipulated upon. However, there was no evidence presented as to who at the laboratory received the seized drugs from IO1 Alejandro and as to who held custody thereof after the examination was conducted. Thus, the prosecution was unable to establish the unbroken chain of custody. The uncertainties and inconsistencies in the testimony of the buy-bust team and lack of information at specific stages of the seizure, custody, and examination of the seized drugs create doubt as to the identity and integrity thereof. Each link in the chain of custody must be proved by the prosecution and cannot be conveniently explained by the invocation of presumption of regularity.

9. ID.; ID.; ID.; ID.; IMPORTANCE OF ESTABLISHING THE CHAIN OF CUSTODY, EXPLAINED.— The importance of establishing the *chain of custody* in drugs cases was explained in *Mallillin v. People*: A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases—by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with. As the drug itself is the *corpus delicti* in drugs cases, it is of utmost importance that there be no doubt or uncertainty as to its identity and integrity.

10. ID.; ID.; ID.; ID.; REQUIREMENT OF PHOTOGRAPHING OF THE SEIZED DRUGS; THE SEIZED DRUG ITSELF MUST BE PHOTOGRAPHED AND NOT THE ACCUSED AND THE WITNESSES.— The buy-bust team also failed to take photographs of the seized drugs. The only photo, submitted as Exhibit "O" for the prosecution, was a black and white

photocopy of pictures of Tomawis and barangay councilors Burce and Gaffud at the barangay hall. **The law requires photographs of the seized drug itself and not of the accused and the witnesses.**

11. ID.; ID.; ID.; ID.; ID.; THE FAILURE OF THE APPREHENDING TEAM TO COMPLY WITH THE REQUIREMENTS OF INVENTORY, MARKING, AND PHOTOGRAPH OF THE SEIZED DRUGS GREATLY DIMINISHED THE EVIDENTIARY VALUE THEREOF.— [T]he seized drug is the *corpus delicti* of the crime itself. Thus, it is crucial for the prosecution to prove the identity and integrity of the seized drugs. The apprehending officers must account for each and every item that was seized from the accused. The process of the inventory, marking, and photograph of the seized drugs imposes another layer of protection to ensure that the substance seized from the accused is the same one that is presented and submitted in evidence. The failure of the apprehending team to comply with these requirements greatly diminished the evidentiary value of the seized drugs.

12. ID.; ID.; ID.; ID.; IN DRUG CASES, THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY SHOULD ARISE ONLY WHEN THERE IS A SHOWING THAT THE APPREHENDING OFFICER/BUY-BUST TEAM FOLLOWED THE REQUIREMENTS OF SECTION 21 OF R.A. NO. 9165, OR WHEN THE SAVING CLAUSE MAY BE PROPERLY APPLIED, FOR GAPS IN THE CHAIN OF CUSTODY CANNOT BE FILLED IN BY THE MERE INVOCATION OF THE PRESUMPTION OF REGULARITY.— The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right. The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged. On the other hand, public officers generally enjoy the presumption of regularity in the performance of official functions. This is a disputable presumption provided under Section 3(m) of Rule 131 of the Rules of Court. The presumption of regularity in the performance of duties can be overturned only if evidence is presented to prove that the public officers were not properly performing their duty or they were inspired by improper motive. In this case, both the RTC and CA used the presumption of regularity in giving full faith and credence

to the testimonies of the buy-bust team and to justify the deviation from the procedure. However, in drugs cases, more stringent standards must be used for the presumption of regularity to apply. **The presumption should arise only when there is a showing that the apprehending officer/buy-bust team followed the requirements of Section 21, or when the saving clause may be properly applied. Gaps in the chain of custody cannot be filled in by the mere invocation of the presumption of regularity.**

13. ID.; ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY CANNOT BE APPLIED WHERE THERE ARE MULTIPLE UNEXPLAINED LAPSES IN THE PROCEDURES UNDERTAKEN BY THE AGENTS OF THE LAW, WHICH ARE AFFIRMATIVE PROOFS OF IRREGULARITY.— Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. In *People v. Enriquez*, the Court held: x x x [A]ny divergence from the prescribed procedure must be justified and should not affect the integrity and evidentiary value of the confiscated contraband. Absent any of the said conditions, the **non-compliance is an irregularity**, a red flag, that casts reasonable doubt on the identity of the *corpus delicti*. This means that even in the event that the presumption of regularity may stand, it will not be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. Trial courts have been directed by the Court to apply this differentiation. In this case, the presumption of regularity cannot be applied due to the glaring disregard of the established procedure under Section 21 of RA 9165 and its IRR, committed by the buy-bust team. [T]he prosecution failed to prove the *corpus delicti* of the offense of sale of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug. Thus, the prosecution was not able to overcome the presumption of innocence of Tomawis.

14. ID.; ID.; ID.; ID.; THE FACT THAT ANY ISSUE REGARDING COMPLIANCE WITH THE PROCEDURE SET FORTH IN

SECTION 21 OF R.A. NO. 9165, AS AMENDED, WAS NOT RAISED, OR EVEN THRESHED OUT IN THE COURT/S BELOW, WOULD NOT PRECLUDE THE APPELLATE COURT, INCLUDING THE SUPREME COURT, FROM FULLY EXAMINING THE RECORD/S 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.— The Court reiterates the reminder it has given in recent jurisprudence on the subject matter: The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection that 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 rights of the individual in the name of order. [For indeed,] [o]rder is too high a price for the loss of liberty. x x x In the same vein, the Court likewise reiterates: In this light, prosecutors are strongly reminded that they have the positive duty to prove compliance with the procedure set forth in Section 21 of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court**. Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the record/s 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

CAGUIOA, *J.*:

In our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt.[1]

The role of the Court in the fight against the illegal drug menace is to ensure that the guilty is convicted and that the appropriate penalty is imposed. In the discharge of this task, the Court must be mindful that the rights of the individual must, at all times, be safeguarded. As Blackstone's *ratio* goes, it is better that 100 guilty persons should escape than that one innocent person should suffer.

The Facts

Before the Court is an appeal[2] filed pursuant to Section 13(c), Rule 124 of the Revised Rules on Criminal Procedure by accused-appellant Basher Tomawis y Ali (Tomawis) assailing the Decision[3] dated June 6, 2016 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06662, which affirmed the Judgment[4] dated January 29, 2014 of the Regional Trial Court (RTC), Branch 204, Muntinlupa City in Crim. Case No. 08-636, finding

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[1] *People v. Pagaura*, 334 Phil. 683, 690 (1997); *People v. Salangga*, 304 Phil. 571, 589 (1994); italics supplied.

[2] *Rollo*, pp. 17-19.

[3] *Id*. at 2-16. Penned by Associate Justice Noel G. Tijam (now a Member of this Court) and concurred in by Associate Justices Francisco B. Acosta and Eduardo B. Peralta, Jr.

[4] CA *rollo*, pp. 57-70. Penned by Presiding Judge Juanita T. Guerrero.

him guilty beyond reasonable doubt of violating Section 5,[5] Article II of Republic Act No. (RA) 9165,[6] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The accusatory portion of the Information[7] against Tomawis states:

> That, on August 21, 2008 at around 6:30 P.M. at Alabang, Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been lawfully authorized, did then and there willfully, unlawfully and feloniously sold, traded and delivered to a PDEA agent a methamphetamine hydrochloride, otherwise known as "shabu", a dangerous drug, with a net weight of 12.74 grams as evidenced by Chemistry Report Number DD-153-08 in violation of the aforecited law.
>
> CONTRARY TO LAW.[8]

Upon his arraignment, Tomawis pleaded not guilty.[9] During the pre-trial conference, the following facts were stipulated upon: (1) the identity of the accused and jurisdiction of the RTC over his person; (2) the qualification of the forensic chemist who conducted the drug test; (3) the sample examined by the

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[5] SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

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

[7] Records, pp. 2-4.

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

[9] *Id*. at 44-46.

forensic chemist tested positive for methylamphetamine hydrochloride with a weight of 12.7402 grams; and (4) the sample was delivered by Intelligence Officer 1 (IO1) Mabel Alejandro (IO1 Alejandro).[10]

Version of the Prosecution

The Prosecution presented as witnesses Philippine Drug Enforcement Agency (PDEA) agents IO1 Alejandro, IO1 Beltran Lacap, Jr. (IO1 Lacap), and two Barangay councilors of Brgy. Pinyahan, Quezon City, Jonathan B. Burce (Burce) and Melinda S. Gaffud (Gaffud). Their testimonies, as summarized by the CA, are as follows:

> Alejandro testified that a walk-in confidential informant appeared in their office and reported that a certain alias Salim was engaged in illegal drug activities and operated in Muntinlupa, Alabang. She called her team leader and an anti-buy (*sic*) bust operation was coordinated. On August 21, 2008, their team leader conducted a briefing on the buy-bust operation. Alejandro was assigned as the poseur buyer and was given two genuine five hundred peso bills which she marked with her initials MCA as buy bust money. The two five hundred peso bills were placed on top of boodle money, folded and tied together and placed in a white envelope.
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> Thereafter, they went to Metropolis [Starmall], Alabang to meet with alias Salim. The confidential informant introduced Alejandro to alias Salim and she told him that she wanted to buy shabu. Alias Salim, who was later identified as Tomawis, said that he wanted to see the money first so she showed him the money. He told her that he will get the shabu somewhere and will meet her in the food court. After ten to fifteen minutes, Tomawis returned and they simultaneously exchanged the money for the shabu. After getting the shabu, Alejandro removed her jacket which was their pre-arranged signal. Immediate back up came to arrest Tomawis.
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> A commotion occurred during the arrest because bystanders inside the food court wanted to help Tomawis who shouted "*Tulungan niyo ako papatayin nila ako*." They were not able to put markings on the evidence in the vicinity because of the commotion. After

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[10] Pre-Trial Order dated August 20, 2009, *id*. at 118 to 119-A.

Tomawis was arrested, he was read of (*sic*) his constitutional rights and brought together with the evidence to Brgy. Pinyahan, Quezon City.

Upon reaching Brgy. Pinyahan, they immediately conducted the inventory which was done before the barangay officials of the said barangay. Alejandro handed the seized item to Alfonso Romano who was the inventory officer, but she was present during the inventory process.

Lacap corroborated the testimony of Alejandro. x x x

[Burce] testified that he was a kagawad of Brgy. Pinyahan, Quezon City and that he was called to be present during the inventory of evidence acquired from a buy bust operation. When he reached the office, the confiscated items were placed on top of the table. They asked Tomawis if the items were recovered from him, to which he assented to. The same was corroborated by Gaffud.[11]

Version of the Defense

The defense's version of events, as summarized by the CA, is as follows:

For the defense, Tomawis testified that he was with his mother in Starmall-Alabang when they were accosted by two men. One of them wrung his neck and he could not breathe. His mother tried to help him but was unable to do so. When he was trying to get away from the man holding him, the other man punched his stomach and grabbed his cellular phone. A seller in Starmall-Alabang, who knew him, tried to help him but was unable to do so because the two men brought out their guns. He was brought out to the parking lot and into a vehicle where his hands were handcuffed and his wallet containing ₱13,500.00 was taken.

There were six men in the vehicle, none of which he knew. The van stopped in front of the mall, and a man peeped inside and said "*bro, hindi yan iyong subject*." One of them inside the van laughed and replied "*pare-parehas lang ang mga muslim*." They stopped by a toll gate where two policemen carrying guns arrived. One of them said "*pare, ibaba mo na muna yan kausapin mo*." The men

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[11] *Rollo*, pp. 4-6.

got out and talked for a few minutes and when they returned, said, "*pare, panindigan na lang natin na yan iyong subject*."

Tomawis was told that in exchange of his money, he will be released. When he asked what his violation was, they answered that it was because he resisted.

He later found out that he was brought to the Philippine Drug Enforcement Agency (PDEA) Office where he was again punched in the stomach. He was told to call his relatives so he called his mother. He was brought to Brgy. Pinyahan where he was ordered to point to the money and something wrapped in plastic. He did not complain about the illegal arrest and taking of his wallet to the barangay officials because he was afraid. He was photographed and then brought back to the PDEA Office.

In the PDEA Office, his wife and mother told him that he will be charged with an illegal drug related case. He denied the allegations and said that he was being falsely charged because the PDEA officers knew he was selling cellular phones inside the mall. He cannot think of any other motive why the PDEA officers would file a case against him. His urine was tested and yielded a negative result. Tomawis's mother corroborated his testimony.[12]

The Ruling of the RTC

On January 29, 2014, the RTC, Branch 204, Muntinlupa City, rendered judgment[13] convicting Tomawis of violation of Section 5 of RA 9165 and sentencing him to life imprisonment and to pay a fine of ₱500,000.00.

The trial court gave full credence to the testimony of the prosecution witnesses on the reason that they enjoyed the presumption of regularity in the performance of their official functions. The RTC also held that the prosecution was able to preserve the integrity of the seized drugs. The RTC further ruled that the conduct of the inventory and photographing was justifiably done in a different place because of the commotion

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[12] *Id*. at 6-7.

[13] *Supra* note 4.

that ensued in the place of arrest. The defense proffered by Tomawis being a mere denial, cannot prevail over the positive assertions of the arresting officers.[14]

The Ruling of the CA

Undaunted, Tomawis elevated the case to the CA.[15] He argued that the prosecution failed to prove the identity and integrity of the alleged seized drugs due to the following irregularities in the conduct of the buy- bust operation: (1) failure to present the testimony of l01 Romano Alfonso (IO1 Alfonso), who received the *shabu* from IO1 Alejandro; (2) failure to immediately mark the *shabu* at the time of seizure and initial custody; and (3) the conduct of the inventory and marking at the barangay hall of Brgy. Pinyahan, Quezon City.[16]

The CA affirmed the judgment of the RTC *in toto*.[17]

The appellate court held that the prosecution was able to prove all the elements of the crime of sale of illegal drugs as punished under Section 5, RA 9165. The CA held that IO1 Alejandro's testimony, which was corroborated by IO1 Lacap and supported by documentary evidence, rendered a clear and complete narration of the details of the buy-bust operation. The CA also held that the chain of custody was sufficiently established. Absent any showing of ill-motive or bad faith on the part of the buy-bust team, the presumption of regularity in the performance of official functions prevails.[18]

Thus, Tomawis filed his Notice of Appeal[19] of the CA Decision on June 28, 2016.

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[14] CA *rollo*, pp. 66-69.

[15] Notice of Appeal dated February 4, 2014, records, p. 389.

[16] See Brief for the Accused-Appellant, CA *rollo*, pp. 29-56.

[17] CA Decision dated June 6, 2016, *supra* note 3.

[18] *Id*. at 9-15.

[19] *Supra* note 2.

Issue

Whether or not Tomawis' guilt for violation of Section 5 of RA 9165 was proven beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious.

After a review of the records, the Court resolves to acquit Tomawis as the prosecution utterly failed to prove that the buy-bust team complied with the mandatory requirements of Section 21 of RA 9165 and for their failure to establish the chain of custody of the seized drugs.

For a successful prosecution for the crime of illegal sale of drugs under Section 5 of RA 9165, the following must be proven: (a) the identities of the buyer, seller, object, and consideration; and (b) the delivery of the thing sold and the payment for it.[20] In cases involving dangerous drugs, the drug itself constitutes the *corpus delicti* of the offense.[21] Thus, it is of paramount importance that the prosecution prove that the identity and integrity of the seized drugs are preserved. Each link in the chain of custody of the seized drugs must be established.

The requirements of paragraph 1, Section 21, Article II of RA 9165

Section 21, Article II of RA 9165 outlines the procedure to be followed by a buy-bust team in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia. RA 9165 was amended by RA 10640[22] which imposed less

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[20] *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 251.

[21] *People v. Suan*, 627 Phil. 174, 188 (2010).

[22] 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."

stringent requirements in the procedure. The amendment was approved on July 15, 2014. As the alleged crime in this case was committed on August 21, 2008, the original version of Section 21 is applicable:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR) filled in the details as to place of inventory and added a saving clause in case of non-compliance with the requirements under justifiable grounds, thus:

SECTION 21. ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*****.**—- The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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 personls 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)

Parsed, the above provisions impose the following requirements in the manner of handling and inventory, time, witnesses, and of place after the arrest of the accused and seizure of the dangerous drugs:

1. The initial custody requirements must be done **immediately after seizure or confiscation**;

2. The **physical inventory and photographing** must be done in the presence of:

   a. the **accused or his representative or counsel**;
   b. a representative from the **media**;
   c. a representative from the **DOJ**; and
   d. any **elected public official**.

3. The conduct of the physical inventory and photograph shall be done at the:

   a. **place where the search warrant is served;** or
   b. **at the nearest police station;** or
   c. **nearest office of the apprehending officer/team**, whichever is practicable, in case of warrantless seizure.

All the above requirements must be complied with for a successful prosecution for the crime of illegal sale of drugs under Section 5 of RA 9165. Any deviation in the mandatory procedure must be satisfactorily justified by the buy-bust team. Under Section 21 of the IRR, the Court may allow deviation from the procedure only where the following requisites are present: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. If these two elements are present, the seizures and custody over the confiscated items shall not be rendered void and invalid.[23]

Jurisprudence states that the procedure enshrined in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[24] For indeed, however noble the purpose or necessary the exigencies of the campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.[25]

In this case, the buy-bust team committed several and patent procedural lapses in the conduct of the seizure, initial custody, and handling of the seized drug - which thus created reasonable doubt as to the identity and integrity of the drugs and, consequently, reasonable doubt as to the guilt of the accused.

The buy-bust team failed to comply with the three-witness rule

Section 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. In addition, the inventory must be done **in the presence of the**

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[23] See *People v. Cayas*, 789 Phil. 70, 79-80 (2016).

[24] *Gamboa v. People*, G.R. No. 220333, November 14, 2016, 808 SCRA 624, 637, citing *People v. Umipang*, 686 Phil. 1024, 1038-1039 (2012).

[25] *Id.* at 637-638.

accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official, who shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable, the IRR allows that the inventory and photographing could be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. By the same token, however, this also means that the three required witnesses should already be physically present at the time of apprehension—a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses.

The buy-bust team in this case utterly failed to comply with these requirements. To start, the conduct of the inventory in this case was not conducted immediately at the place of arrest but at the barangay hall of Pinyahan, Quezon City. As explained by the buy-bust team of the PDEA, IO1 Alejandro and IO1 Lacap, they could not conduct the inventory at Starmall, Alabang, because a commotion ensued as bystanders in the food court tried to assist Tomawis who shouted for help. Evidently, this happened because the buy-bust operation was conducted in a shopping mall.

While the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension, is not dispensed with. The reason is simple, it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.

There are police stations closer to Starmall, Alabang, in Muntinlupa City and the office of the PDEA is also in Pinyahan, Quezon City. And yet, the inventory was conducted in the barangay hall of Pinyahan, Quezon City — which is not one of the allowed alternative places provided under Section 21 of the IRR.

More importantly, there was no compliance with the three-witness rule. There were no witnesses from the DOJ or the media. Only two witnesses who were elected barangay officials were present. It thus becomes evident that the buy-bust team did not prepare or bring with them any of the required witnesses at or near the place of the buy-bust operation and the witnesses were a mere afterthought. Based on the testimonies of barangay councilors Burce and Gaffud, they were not present during the seizure of the drugs. They were only called to go to the barangay hall of Pinyahan, Quezon City — after the arrest and seizure that had been done in Starmall, Alabang — to "witness" the inventory made by the PDEA at the barangay hall.

Barangay councilor Burce testified:

[Cross-examination of barangay councilor Burce by Atty. Jaime Felicen (Atty. Felicen), counsel for Tomawis]

[*Clarificatory questions by the Court:*]

[Q] - Will you please tell us how you came to sign the Certificate of Inventory?

A - **Your Honor, I just like to inform you that I was not part in the Operation of PDEA but according to the Book of PDEA any Government or Local Officials that they have a responsibility to sign as witness in the Inventory.**

[Q] - How were you called by PDEA to sign the inventory?

A - I was at the Basketball Court your Honor, when they called me.

[Q] - What did they inform you?

A - **That they conducted a buy-bust operation your honor and they presented to us the evidence they recovered and the person who were arrested.**

[Q] - Who were present during the Inventory of the drug evidence, aside from you?

A - Kagawad Minda Gaffud, your Honor.

[Q] - Who else?

A - The PDEA, your Honor.

x x x x x x x x x

[Q] - How about the accused was he present during the Inventory?

A - Yes, your Honor.

x x x x x x x x x

ATTY. FELICEN:

[Q] - Who was in possession of the items brought to the Brgy. when it was Inventoried?

A - **When I reached the office, the confiscated items were already placed on the top of the table and then the items were presented there and then we even asked the accused if the items were recovered from him, sir.**

x x x x x x x x x

[Q] - So, what you did is you just affixed your signature in this Certificate of Inventory without knowing where the items came from?

A - I was informed by the PDEA Operatives sir, that the items were recovered from a buy-bust operation conducted at the Metropolis.

Q - Aside from the information from the PDEA you have no other personal knowledge?

A - Yes, sir.

Q - You even do not know who was the person who put those items on top of the table?

A - No, sir.[26] (Emphasis supplied)

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[26] TSN, June 20, 2012, pp. 5-8.

Barangay councilor Gaffud testified similarly:

[Cross-examination of barangay councilor Gaffud by Atty. Felicen]

Q - Who in particular told you to witness the Inventory?

A - **I was called by one of the Brgy. Tanod and I was informed that the PDEA Operatives arrived at the office sir, and they need one Brgy. Official to witness the Inventory, sir.**

Q - So, when you were about to witness the inventory, you just saw the items to be inventory (*sic*) at that time on top of the table also?

A - The items were not yet at the table, when I arrived, they got the items from one of the PDEA Operatives, sir.

Q - From where did that member of the PDEA got (*sic*) the items?

A - They were holding a plastic sir, and they brought out the content of the plastic sir, and they place it on top of the table, sir.[27] (Emphasis supplied)

From the above testimonies, it can be gleaned that barangay councilors Burce and Gaffud were not present near to or at the place of arrest. They were merely called to witness the inventory at the Pinyahan barangay hall and then the drugs were shown to them by the PDEA agents. They did not even have prior knowledge of the buy-bust operation.

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,[28] without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the 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

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[27] *Id*. at 13.

[28] 736 Phil. 749 (2014).

integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.[29]

The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."

The prosecution failed to establish the chain of custody of the seized drugs.

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[29] *Id.* at 764.

As stated earlier, there is a saving clause in Section 21 of the IRR, which is the provision that states: "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 and custody over said items."[30]

In *People v. Alviz*,[31] the Court held that the integrity and evidentiary value of seized items are properly preserved for as long as the *chain of custody* of the same is duly established.

Chain of custody is defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

> b. "Chain of Custody" means the **duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction**. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.] (Emphasis supplied)

In the present case, there are gaps in the chain of custody of the seized drugs which creates reasonable doubt as to the identity and integrity thereof.

There are glaring inconsistencies in the testimonies of the buy-bust team. It is unclear as to who actually recovered the seized drugs from Tomawis and who held custody of the drugs from the place of the arrest in transit to Brgy. Pinyahan. There is also no testimony as to who held the drugs from the time of inventory at Brgy. Pinyahan to the PDEA office; from the PDEA

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[30] IRR of RA 9165, Sec. 21(a).

[31] 703 Phil. 58, 73 (2013).

office until it was delivered to the laboratory; and until its presentation in court as evidence of the *corpus delicti*.

The poseur-buyer, IO1 Alejandro, testified as follows:

[Direct examination of IO1 Alejandro by Fiscal Romeo B. Senson (Fiscal Senson)]

Q: And after the accused went back after ten minutes, what happened next?

A: He asked me the money again and then I said, where is the shabu? **When he showed me the shabu I gave him the money and he gave me the shabu.**

Q: And after that he gave you the shabu what happened next?

A: I already gave my pre-arranged signal, your Honor.

Q: And after you gave the pre-arranged signal, what happened next, Ms. Witness?

A: My immediate back-up came to arrest Mr. Basher Tomawis, sir.

Q: And who is this back-up, Ms. Witness?

A: IO1 Beltran Lacap, Jr.

Q: And after the accused was arrested, what happened next?

A: We stated his constitutional rights, you Honor.

Q: And after the accused was apprehended, what did you do next, Ms. Witness?

A: We were not able to put markings on the evidence in the vicinity, your Honor, because of the commotion happened when we arrested the accused Mr. Basher Tomawis, your Honor.

Q: What commotion happened, Ms. Witness?

A: The bystanders inside the food court, your Honor, inside the mall, wanted to help Mr. Basher Tomawis.

Q: And what did you do if any?

A: Our Team Leader immediately ordered us to vacate the area, your Honor, so that we can avoid any incident that may happen inside the mall, sir.

x x x x x x x x x

Q: And after that, what happened next?

A: **We brought the said evidence to Brgy. Pinyahan, your Honor, to properly make the inventory of the seized evidence, your Honor.**

Q: And where is this Brgy. Pinyahan?

A: At the V. Luna, Quezon City, your Honor.

Q: And was this inventory reduced into writing?

A: Yes, in the case folder, your Honor.

x x x x x x x x x

Q: Ms. Witness in this inventory you made mention of plastic containing crystalline substance suspected to be shabu. What happened to this item, Ms. Witness?

A: We brought it to the PDEA Laboratory, sir.

Q: And who brought this item to the laboratory, Ms. Witness?

A: I was the one who brought this, sir.

x x x x x x x x x

Q: If I will show you the item that you brought to the laboratory for examination, would you be able to identify it, Ms. Witness?

A: Yes, sir.

Q: Will you please tell us what identifying marks did you put it if any?

A: My initial, your Honor, the initial MCA and the initial of Beltran Lacap, Jr., BTL.

x x x x x x x x x

Q: Will you please explain to us, Ms. Witness, why did you not affix your own signature in the inventory marked as Exhibit "F"?

A: The reason why, your Honor, because I was the poseur buyer and **my colleague was assigned as Inventory Officer. He is the Inventory Officer in our office, your Honor. All the seized items for inventory after brought to the barangay and before bringing the said items to the PDEA Laboratory, IO1 Romano Alfonso was the one who kept them your Honor.**[32] (Emphasis and underscoring supplied)

IO1 Alejandro testified that she received the drugs from Tomawis and that she submitted the same to the laboratory for testing. The inventory was conducted by the assigned Inventory Officer, IO1 Alfonso. However, there is no testimony as to the movement of the drugs from IO1 Alejandro to IO1 Alfonso, and supposedly back again from IO1 Alfonso to IO1 Alejandro for the submission of the seized drugs to the crime laboratory.

Meanwhile, IO1 Lacap, also claimed to have received the seized drugs from Tomawis. He also contradicted IO1 Alejandro's testimony as he said that IO1 Alfonso was the one who had custody of the drugs prior to the delivery to the crime laboratory.

IO1 Lacap, testified as follows:

[Direct examination of IO1 Lacap by Fiscal Senson]

Q: What was recovered from the accused if any?

A: **A maroon pouch, sir, with folka (*sic*) dots and inside is a suspected shabu placed in a knot tied plastic sachet, sir.**

Q: And who recovered this pouch, Mr. Witness?

A: I was, sir.

Q: If will be shown to you again this pouch, can you identify it?

A: Yes, sir.

Q: And from whom did you recover this pouch?

A: The pouch belonged to Alejandro, sir.

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[32] TSN, September 23, 2009, pp. 9-13, 20.

Q: The pouch was recovered by Agent Alejandro. What did you recover if any, Mr. Witness?

A: The buy bust money placed in a white envelope, sir.

x x x x x x x x x

Q: How come you did not have time to make the inventory in the area?

A: At that time, sir, the vendors around who knew the accused tried to help the accused, sir. There was a little scuffle, sir.

x x x x x x x x x

Q: **Where did you go Mr. Witness?**

A: **To the National Headquarters, PDEA, sir.**

Q: **When arrived (sic) thereat, what happened next?**

A: **Before that we went to barangay in Quezon City for the purpose of inventory of evidence.**

Q: **And what happened at the barangay office?**

A: **Kagawad Gaffud and Kagawad Burce witnessed the inventory, sir.**[33] (Emphasis supplied)

x x x x x x x x x

[Cross-examination of IO1 Lacap by Atty. Felicen]

Q: And so it was Alejandro who was in the possession of the item shabu allegedly recovered from the accused at the Metropolis to Brgy[.] Pinyahan?

A: Yes, sir.

Q: And surprisingly, however, the officer who conducted the inventory was IO1 Romano?

A: Yes, sir.

Q: **IO1 Romano was not part of the actual operation inside the Metropolis?**

A: **No, sir.**

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[33] TSN, November 4, 2010, pp. 10-13.

Q: Was he inside the [M]etropolis?

A: He is also a member of the support team.

Q: Was he inside?

A: Yes, sir.

Q: <u>Meaning, that IO1 Alejandro turn-over (*sic*) the item to IO1 Romano?</u>

A: <u>No, sir, until we brought it to the crime laboratory for examination.</u>

Q: So despite that Mabel Alejandro was the one who personally allegedly recovered the item from the suspect she did not sign the inventory including you and IO1 Romano?

A: Yes, sir. We signed as witness, sir, but Agent Romano Alfonso was designated as Inventory Officer.

Q: Are you sure that he signed the inventory or you are not sure?

A: That is what I know.

Q: The truth is that you did not witness the signing of the inventory, is that correct?

A: Only Agent Romano, sir.[34] (Emphasis and underscoring supplied)

Thus, based on the above testimonies, only the following circumstances were established: the drugs were seized from Tomawis at Starmall, Alabang; the inventory and photographing were not conducted there because a commotion ensued when Tomawis was arrested; the buy-bust team brought Tomawis to the barangay hall of Brgy. Pinyahan; the inventory was conducted by the designated Inventory Officer, IO1 Alfonso; barangay councilors Burce and Gaffud were present at the barangay hall; after the inventory, the buy-bust team, together with Tomawis, proceeded to the PDEA office; IO1 Alejandro delivered the seized drugs to the laboratory for testing.

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[34] TSN, December 8, 2010, pp. 6-7.

There are lacking information and glaring inconsistencies in the statements of IO1 Alejandro and IO1 Lacap. IO1 Alejandro testified that only she handled the seized drug. However, IO1 Lacap mentioned that he also recovered the seized drug from IO1 Alejandro. IO1 Alejandro testified that she handed the seized drug to IO1 Alfonso for inventory and he was the one who kept the seized drug since it was brought to the barangay hall and before bringing it to PDEA laboratory; but IO1 Lacap also testified that IO1 Alejandro was the one who kept the drugs until they were delivered to the laboratory.

There are unexplained gaps in the custody of the seized drugs. The transfer and movement of the seized drugs between IO1 Alejandro, IO1 Lacap, and IO1 Alfonso was not established. It is unclear as to who held custody of the seized drugs from the place of arrest in Starmall, Alabang to Brgy. Pinyahan, Quezon City and from Brgy. Pinyahan, Quezon City to the PDEA office. It was not clarified as to how and when the seized drugs were returned to IO1 Alejandro after the inventory was conducted by IO1 Alfonso. There was also no testimony as to who received the seized drugs from IO1 Alejandro at the laboratory, and to whom they were given after the testing was conducted.

During pre-trial, the delivery by IO1 Alejandro to the laboratory was stipulated upon. However, there was no evidence presented as to who at the laboratory received the seized drugs from IO1 Alejandro and as to who held custody thereof after the examination was conducted.

Thus, the prosecution was unable to establish the unbroken chain of custody. The uncertainties and inconsistencies in the testimony of the buy-bust team and lack of information at specific stages of the seizure, custody, and examination of the seized drugs creates doubt as to the identity and integrity thereof. Each link in the chain of custody must be proved by the prosecution and cannot be conveniently explained by the invocation of presumption of regularity.

The importance of establishing the *chain of custody* in drugs cases was explained in *Mallillin v. People*:[35]

> A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise—in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[36]

As the drug itself is the *corpus delicti* in drugs cases, it is of utmost importance that there be no doubt or uncertainty as to its identity and integrity.

Other breaches of procedure in the handling, marking, and photographing of the seized drugs

The buy-bust team also failed to take photographs of the seized drugs. The only photo, submitted as Exhibit "O" for the prosecution, was a black and white photocopy of pictures of Tomawis and barangay councilors Burce and Gaffud at the barangay hall. **The law requires photographs of the seized drug itself and not of the accused and the witnesses.**

It was also not established where the marking was done by IO1 Alejandro. She only mentioned that they were not able to mark the seized drugs at the place of arrest due to the commotion caused thereat. This is excusable due to the occurrence of the commotion. However, it is not clear if the marking was done

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[35] 576 Phil. 576 (2008).

[36] *Id.* at 588-589.

at the barangay hall of Pinyahan, Quezon City or at the PDEA office. Neither was it specified if the marking was done in the presence of the accused and the witnesses.

Inconsistency in description of seized drugs

Notably, the Inventory of Seized Evidence[37] prepared by IO1 Alfonso merely describes the seized drugs as "1 knot tied plastic containing crystalline substance suspected to be 'shabu'," without reference to any markings made thereon. The weight of the seized drug is also not specified.

In addition, there is no mention of a maroon pouch,[38] which is inconsistent with the testimony of IO1 Alejandro and Lacap who had testified that the seized drugs were inside a pouch. The maroon pouch is mentioned again only in the Memorandum[39] from the PDEA referring the seized drugs for testing and in the Chemistry Report.[40] There is also no testimony from any of the witnesses, barangay councilors Burce and Gaffud, as to the condition of the seized drugs during the inventory at the barangay hall. Gaffud testified that the buy-bust team was holding a plastic bag without mention of a maroon pouch or any markings thereon.

At the risk of repetition, the seized drug is the *corpus delicti* of the crime itself. Thus, it is crucial for the prosecution to prove the identity and integrity of the seized drugs. The apprehending officers must account for each and every item that was seized from the accused. The process of the inventory, marking, and photograph of the seized drugs imposes another layer of protection to ensure that the substance seized from the accused is the same one that is presented and submitted

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[37] Exhibit "F", records p. 18.

[38] Described as "red polka dots pouch" in the Request for Laboratory Examination (Exhibit "H") and "gold and red with white polka dots pouch" in the Chemistry Report (Exhibit "I"), *id*. at 20-21.

[39] Request for Laboratory Examination, Exhibit "H", *id*. at 20.

[40] Exhibit "I", *id.* at 21.

in evidence. The failure of the apprehending team to comply with these requirements greatly diminished the evidentiary value of the seized drugs.

The presumption of innocence of the accused vis-à-vis the presumption of regularity in performance of official duties

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.[41] The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged.[42]

On the other hand, public officers generally enjoy the presumption of regularity in the performance of official functions. This is a disputable presumption provided under Section 3(m)[43] of Rule 131 of the Rules of Court. The presumption of regularity in the performance of duties can be overturned only if evidence is presented to prove that the public officers were not properly performing their duty or they were inspired by improper motive. In this case, both the RTC and CA used the presumption of regularity in giving full faith and credence to the testimonies of the buy-bust team and to justify the deviation from the procedure.

However, in drugs cases, more stringent standards must be used for the presumption of regularity to apply. **The presumption should arise only when there is a showing that the apprehending officer/buy-bust team followed the**

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[41] See 1987 CONSTITUTION, Art. III, Sec. 14(2) which provides:

Sec. 14. x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x.

[42] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[43] SEC. 3. *Disputable presumptions.* — x x x

x x x x x x x x x

(m) That official duty has been regularly performed[.]

requirements of Section 21, or when the saving clause may be properly applied. Gaps in the chain of custody cannot be filled in by the mere invocation of the presumption of regularity.

Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.[44] In *People v. Enriquez*,[45] the Court held:

> x x x [A]ny divergence from the prescribed procedure must be justified and should not affect the integrity and evidentiary value of the confiscated contraband. Absent any of the said conditions, the **non-compliance is an irregularity**, a red flag, that casts reasonable doubt on the identity of the *corpus delicti*."[46] (Emphasis supplied)

This means that even in the event that the presumption of regularity may stand, it will not be stronger than the presumption of innocence in favor of the accused.[47] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[48] Trial courts have been directed by the Court to apply this differentiation.[49]

In this case, the presumption of regularity cannot be applied due to the glaring disregard of the established procedure under Section 21 of RA 9165 and its IRR, committed by the buy-bust team.

All told, the prosecution failed to prove the *corpus delicti* of the offense of sale of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust

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[44] See *People v. Mendoza*, *supra* note 28, at 770.

[45] 718 Phil. 352 (2013).

[46] *Id.* at 366.

[47] See *People v. Mendoza*, *supra* note 28, at 770.

[48] *Id.*

[49] *Id.*

team in the seizure, custody, and handling of the seized drug. Thus, the prosecution was not able to overcome the presumption of innocence of Tomawis.

As a final note, the Court reiterates the reminder it has given in recent jurisprudence on the subject matter:

> The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection that 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 rights of the individual in the name of order. [For indeed,] [o]rder is too high a price for the loss of liberty. x x x[50]

In the same vein, the Court likewise reiterates:

> In this light, prosecutors are strongly reminded that they have the positive duty to prove compliance with the procedure set forth in Section 21 of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court**. Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the record/s 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.[51]

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[50] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

[51] *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

WHEREFORE, premises considered, the Decision dated June 6, 2016 of the Court of Appeals in CA-G.R. CR-H.C. No. 06662 is **REVERSED** and **SET ASIDE**. Accused-appellant Basher Tomawis y Ali is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Decision, the action he has taken. A copy shall also be furnished to the Director General of Philippine National Police for his information.

SO ORDERED.

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

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

FIRST DIVISION

[G.R. No. 189590. April 23, 2018]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **HON. SANDIGANBAYAN, ROMEO G. PANGANIBAN, FE L. PANGANIBAN, GERALDINE L. PANGANIBAN, ELSA P. DE LUNA and PURITA P. SARMIENTO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; IN THE BROADER INTEREST OF JUSTICE, THE COURT MAY ALLOW THE INSTITUTION OF A SPECIAL CIVIL ACTION FOR *CERTIORARI* INSTEAD OF THE PROPER MODE OF REVIEW UNDER RULE 45 OF THE RULES OF COURT, CONSIDERING THAT RULES OF PROCEDURE ARE SUBSERVIENT TO SUBSTANTIVE RIGHTS, AND IN ORDER TO FINALLY WRITE *FINIS* TO A PROLONGED LITIGATION; CASE AT BAR.—** We note at the outset that petitioner Republic instituted the wrong mode of review of public respondent Sandiganbayan's assailed resolutions. Forfeiture proceedings filed under Republic Act No. 1379 are civil in nature, thus, the proper mode of review being a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, and not a special civil action of *certiorari* under Rule 65 thereof. This Court has previously explained in *Condes v. Court of Appeals* the nature and purpose of a demurrer to evidence, x x x And an order granting demurrer to evidence is a judgment on the merits. x x x Nevertheless, considering that rules of procedure are subservient to substantive rights, and in order to finally write *finis* to this prolonged litigation, the Court hereby dispenses with the foregoing lapses in the broader interest of justice. The Court has repeatedly favored the resolution of disputes on the merits, rather than on procedural defects, especially where the case is undeniably ingrained with immense public interest, public policy and/or deep historical repercussions, *certiorari* is allowed notwithstanding the existence and availability of the remedy

of appeal. We thus take cognizance of this case and settle with finality the issues raised.

2. ID.; CIVIL PROCEDURE; DEMURRER TO EVIDENCE; WHAT SHOULD BE RESOLVED IN A DEMURRER TO EVIDENCE IS WHETHER OR NOT THE PLAINTIFF IS ENTITLED TO THE RELIEF BASED ON FACTS AND THE LAW.— Section 1, Rule 33 of the Rules of Court, as amended, provides that: Section 1. *Demurrer to evidence*. — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal **on the ground that upon the facts and the law the plaintiff has shown no right to relief**. x x x From above, what should be resolved in a demurrer to evidence is whether or not the plaintiff is entitled to the relief based on the facts and the law. The evidence to be considered pertains to the merits of the case, which does not include technical aspects thereof, *i.e*., capacity to sue. But, the plaintiff's evidence is not the sole basis in resolving a demurrer to evidence. The "facts," contemplated by the rule should include all the means sanctioned by the Rules of Court in ascertaining matters in judicial proceedings, *i.e*., judicial admissions, matters of judicial notice, stipulations made during the pre-trial and trial, admissions, and presumptions, the only exclusion being the defendant's evidence.

3. ID.; EVIDENCE; JUDICIAL ADMISSIONS; WHEN THE GENUINENESS AND DUE EXECUTION OF AN INSTRUMENT ARE DEEMED ADMITTED BECAUSE OF ADVERSE PARTY'S FAILURE TO MAKE A SPECIFIC VERIFIED DENIAL THEREOF, THE INSTRUMENT NEED NOT BE PRESENTED FORMALLY IN EVIDENCE FOR IT MAY BE CONSIDERED AN ADMITTED FACT; CASE AT BAR.— In Republic v. Sandiganbayan, this Court settled that judicial admissions may be made: (a) in the pleadings filed by the parties; (b) in the course of the trial either by verbal or written manifestations or stipulations; or (c) in other stages of judicial proceedings, as in the pre-trial of the case. Hence, in the instant case, facts pleaded in the petition and answer/joint answer are deemed admissions of petitioner Republic and private respondents Romeo, *et al*., respectively, who are not permitted to contradict them or subsequently take a position contrary to or inconsistent with such admissions. Though the title to the property was initially filed in court through the Joint Answer, however,

petitioner Republic failed to refute the same, and even marked it during pre-trial. Hence, petitioner Republic already admitted its genuineness and due execution. Such judicial admission was correctly considered by public respondent Sandiganbayan in resolving the demurrer to evidence. When the due execution and genuineness of an instrument are deemed admitted because of the adverse party's failure to make a specific verified denial thereof, the instrument need not be presented formally in evidence for it may be considered an admitted fact. x x x As similarly discussed above, the admission of private respondent Romeo in his Answer that the Los Angeles property was bought by his wife, private respondent Fe, and his daughter, Geraldine, is a judicial admission that necessarily formed part of the facts of the case, which did not require proof to be sufficiently considered in the resolution of the demurrer to evidence. Moreover, the denial by private respondent Romeo of his ownership of the subject property is pregnant with an admission, *i.e.*, that he has an interest in his wife's share in the property by virtue of their marital union. This is a negative pregnant, which is a form of negative expression which carries with it an affirmation or at least an implication of some kind favorable to the adverse party.

APPEARANCES OF COUNSEL

Dante F. Vargas for private respondents.

D E C I S I O N

LEONARDO-DE CASTRO,[*] *J.*:

This Petition for *Certiorari* under Rule 65 of the Rules Court, as amended, seeks the nullification and setting aside of the portion of the Resolutions dated March 18, 2009[1] and July 31, 2009[2] of the Sandiganbayan in Civil Case No. 0192, entitled

[*] Per Special Order No. 2540 dated February 28, 2018.

[1] *Rollo*, pp. 43-47; penned by Sandiganbayan Associate Justice Edilberto G. Sandoval with Associate Justices Teresita V. Diaz-Baldos and Samuel R. Martires (now a member of this Court) concurring.

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

"*Republic of the Philippines v. Romeo Gatdula Panganiban, et al.*" The Resolution dated March 18, 2009 partly granted the Demurrer to Evidence filed by private respondents Romeo Panganiban (Romeo), Fe Labunos Panganiban (Fe), Geraldine Labunos Panganiban (Geraldine), Elsa Panganiban De Luna (Elsa), and Purita Panganiban Sarmiento (Purita) (Romeo, *et al.*); while the Resolution dated July 31, 2009 denied petitioner Republic of the Philippines' (Republic) motion for reconsideration thereto.

The Facts of the Case

On September 27, 2004, petitioner Republic, through the Office of the Ombudsman (Ombudsman), filed before public respondent Sandiganbayan a petition[3] for the forfeiture of unlawfully acquired properties of private respondents Romeo, *et al.*, including Geraldine Labunos Panganiban, pursuant to Section 2 of Republic Act No. 1379, entitled "*An Act Declaring Forfeiture In Favor Of The State Any Property Found To Have Been Unlawfully Acquired By Any Public Officer Or Employee And Providing For The Proceedings Therefor.*" Particularly, petitioner Republic sought the forfeiture of five real properties described[4] as follows, which are claimed to be valued at not less than Forty Million Seven Hundred Sixty-Six Thousand Three Hundred Pesos (₱40,766,300.00):

Description	**Acquisition Cost/Value**	**Annex(es)**
a. Residential House and Lot covered by, and described under, TCT No. 307495 in the name of Spouses Romeo G. Panganiban and Fe L. Panganiban, consisting of 256 square meters, located at Grand Villas, Batong Malake, Los Baños, Laguna [hereinafter referred to as the ***"Los Baños Property"***] x x x.	₱1,280,000.00	"D & E"

[3] Records, pp. 1-12.

[4] *Rollo*, pp. 54-55.

b. Commercial Four-Storey Building and Lots covered by Tax Declarations (sic) No. (sic) 1999-25-003-00041 and 1999-25-003-00042, and described under TCT No. 150693 and TCT No. 150694, [in the name of Romeo Panganiban] located at Regional St., Sta. Cruz, Laguna [hereinafter referred to as the ***"Sta. Cruz Property"***] x x x.	₱2,000,000.00	"F, G, H & I"
c. Residential House and Lot located at No. 430 San Bartolome St., Ayala Alabang Village, Muntinlupa City covered by, and described under, TCT No. 1577 and Tax Declaration (RPA Form) No. 126-00-009-39-012-0000 [in the name of Elsa P. De Luna, hereinafter referred to as the ***"Ayala Alabang Property"***].	₱24,800,000.00	"J & K"
d. Three-bedroom House and Lot located at No. 2840 Heritage Drive, Pasadena, Los Angeles, California, [registered in the name of "Fe Panganiban and Geraldine Panganiban," hereinafter referred to as the ***"Los Angeles Property"***].	₱12,540,300.00	"L"
e. Residential Lot, consisting of 200 square meters, located at Barangay Callos, Sta. Cruz, Laguna, covered by Tax Declaration No. 1999-25-007-01027 and described under TCT No. T-110804 [declared in the name of "Spouses Romeo and Fe Panganiban," hereinafter referred to as the ***"Callos-Sta. Cruz Property"***].	₱146,000.00	"M" & "N"

as well as such other additional properties amounting to, or in the value of, Ten Million Two Hundred Thirty-Six Thousand Seven Hundred Seventy-One Pesos and Sixty Centavos (₱10,236,771.60).

In seeking the forfeiture of the aforementioned properties, petitioner Republic alleged that private respondent Romeo owned the same and that they were unlawfully acquired during his incumbency as *Regional Director* at the Department of Public Works and Highways.[5] Private respondents *Fe* (Romeo's wife), *Elsa* and *Purita* (Romeo's sisters), including *Geraldine* (Romeo's daughter), were made party respondents to the forfeiture case on the basic premise that they were holding said properties for and on behalf of private respondent Romeo.

Petitioner Republic anchored its prayer for forfeiture on the fact that private respondent Romeo's networth in *1986* per his *Statement of Assets, Liabilities and Networth* (SALN) was only **₱455,000.00**; but in his *2001* SALN, it had already ballooned to **₱13,208,590.50**. The bloat could not be explained by private respondent Romeo's Service Record showing the total amount of government salary that he earned from January 1, 1986 to December 31, 2001 to be just **₱2,516,818.90** — which is ₱10,236,771.60[6] less than his stated networth by the end of 2001.

And juxtaposed with the supposed value of the five real properties, *i.e.*, ₱40,766,300.00, the latter is way out of proportion to private respondent Romeo's 15-year accumulated income of ₱2,516,818.90. Petitioner Republic also took note of the fact that private respondent Romeo made eight foreign travels between 1999 and 2004; while his wife, private respondent Fe, made 28 travels abroad during the same period.

Petitioner Republic concluded that the discrepancy of ₱10,236,771.60,[7] plus the aggregate ₱40,766,300.00 value of the five real properties, all constituted ill-gotten wealth.

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[5] *Id.* at 3.

[6] Private respondent Romeo's 2001 networth less the total amount of his government salary by end of 2001.

[7] Private respondent Romeo's networth in 2001 is *₱13,208,590.50* per

Thus, the Republic prayed –

1. Before hearing, a writ be issued commanding respondents to show cause why their assets, more particularly enumerated in paragraph 5 hereof amounting to at least FORTY MILLION SEVEN HUNDRED SIXTY-SIX THOUSAND THREE HUNDRED PESOS (₱40,766,300.00), and such other additional properties amounting, or the value of which is equivalent to, TEN MILLION TWO HUNDRED THIRTY-SIX THOUSAND SEVEN HUNDRED SEVENTY-ONE AND 60/100 PESOS (₱10,236,771.60) or a total of at least FIFTY-ONE MILLION THREE THOUSAND SEVENTY-ONE AND 60/100 PESOS (₱51,003,071.60), which are in excess of respondent Romeo G. Panganiban's lawful and legitimate income, should not be forfeited in favor of the government; and

2. After trial, the above-described real properties enumerated in paragraph 5 hereof amounting to at least FORTY MILLION SEVEN HUNDRED SIXTY-SIX THOUSAND THREE HUNDRED PESOS (₱40,766,300.00), and such other additional properties amounting, or the value of which is equivalent to, TEN MILLION TWO HUNDRED THIRTY-SIX THOUSAND SEVEN HUNDRED SEVENTY-ONE AND 60/100 PESOS (₱10,236,771.60), be declared forfeited in favor of the petitioner.[8]

In his *Answer*, private respondent Romeo denied the allegations, and averred that his wife and his sisters had the financial capacity to purchase the real estate properties registered in their names; and that private respondent Fe contributed substantially to the family income as a business owner. He disavowed any personal participation in the purchase of the Ayala Alabang and Los Angeles properties. But he admitted that the Los Angeles property was actually purchased by his daughter Geraldine and his wife.[9]

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his SALN of that year, less ~~₱~~*2,516,818.90*, the total government salary received by him from January 1, 1986 to December 31, 2001 per his Service Record.

[8] *Rollo*, pp. 59-60.

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

Private respondents Fe, Elsa, and Purita filed a *Joint Answer* echoing the same denial and special and affirmative defenses raised by private respondent Romeo.

Geraldine, however, did not file any *Answer*; thus, she was declared in default by the Sandiganbayan.

Upon the conclusion of the presentation of petitioner Republic's evidence-in-chief, it filed its Formal Offer of Exhibits.[10]

EXHIBIT	DESCRIPTION	PURPOSE
A	Original copy of Romeo G. Panganiban's service record dated April 28, 2005	1. To prove that respondent Romeo was a public officer and held various positions in the government until he was dismissed from office by virtue of the Court of Appeals decision in a case for grave misconduct and dishonesty; and 2. As part of the testimony of Eduardo Dimaculangan, who checked, verified, and certified the documents.
B	Certified photocopy of Romeo G. Panganiban's appointment dated March 8, 2000	
C	Certified photocopy of Romeo G. Panganiban's *Panunumpa sa Katungkulan* dated March 22, 2000	
D	Original copy of Analytical Presentation of the Net Worth of Romeo G. Panganiban in Relation to his Income from Employment in Government and Assets Declared	1. To show that there are great disparities between respondent Romeo's lawful income and the increase in his assets; 2. To prove that respondent Romeo has acquired assets during his incumbency, the

[10] *Id.* at 88-114.

		amount of which is manifestly out of proportion to his salary and other lawful income; and 3. As part of the testimony of David Lucero, who prepared the document and is the Associate Graft Investigating Officer IV of the Office of the Ombudsman.
E	Certified photocopy of Romeo G. Panganiban's SALN dated December 31, 2001	1. To prove the disparities in respondent Romeo's lawful income and the increase in his reported properties; 2. As part of the testimony of Rolando M. Boñe, who certified the document and is the Chief of the Records Division of DPWH, Central Office; and 3. Respondents admitted the existence, authenticity, and due execution of the document.
F	Certified photocopy of TCT T-307495 which is the land title of Saccay Grand Villas house and lot in Los Banos, Laguna	1.To prove the acquisition by respondent Romeo of the Saccay Grand Villas

G	Certified photocopy of Deed of Absolute Sale dated June 28, 1994 executed by Crescent Holdings Corporation in favor of Spouses Panganiban	property under the name of Spouses Romeo and Fe Panganiban for ₱1,280,000.00 on September 9,1994; 2. To prove that as of March 2005, the title of Saccay Grand Villas property is in the name of respondents Romeo and Fe; 3. As part of the testimony of Chona Undasan, Records Officer III of the Registry of Deeds of Calamba, Laguna; and 4. Respondents admitted the existence, authenticity, and due execution of these documents.
H	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Property Index No. 023-11-005-27-270 (246)	1. To prove that the tax declaration of the Saccay Grand Villas Property is in the name of Spouses Romeo and Fe and that they are paying the real estate tax of said property; 2. As part of the testimony of Noel L. Veracruz,
I	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Property Index No. 023-11-005-27-270 (246) and Tax Declaration No. 005-3621	

J	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Property Index No. 023-11-005-27-270 (246) and Tax Declaration No. 005-3395	Provincial Assessor of Laguna; and 3. Respondents admitted that it is a faithful reproduction of its original.
K	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Property Index No. 023-11-005-27-270 (246) and Tax Declaration No. 005-4509	
L	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Property Index No. 023-11-005-27-270 (246) and Tax Declaration No. 005-4195	
M	**Certified photocopy of Deed of Sale executed by Walfrido T. Hicban in favor of Romeo Panganiban dated June 2, 1994**	**1. To prove that the two parcels of land situated in Regidor St., Sta. Cruz, Laguna and covered by a Deed of Sale was sold to respondent Romeo on June 2, 1994 for ₱200,000.00;** **2. As part of the testimony of Atty. Julius Hidalgo, Register of Deeds of Sta. Cruz, Laguna; and**
N	**Certified photocopy of TCT No. T-150693 in the name of Romeo Panganiban dated June 21, 1994**	

		3. Respondents admitted its existence, due execution, and authenticity
O	Certified photocopy of Declaration of Real Property of Romeo Panganiban with Property Index No. 023-25-003-01-023 and Tax Declaration No. 0294	1. To prove that the lot covered by TCT T-150693 located in Regidor St., Sta. Cruz, Laguna is declared in the name of respondent Romeo for tax purposes; 2. As part of the testimony of Noel L. Veracruz, Provincial Assessor of Laguna; and 3. Respondent admitted that it is a faithful reproduction of the original.
P	Certified photocopy of Declaration of Real Property of Romeo Panganiban with Property Index No. 023-25-003-01-023 and Tax Declaration No. 0041	
Q	Certified photocopy of Declaration of Real Property of Romeo Panganiban with Property Index No. 023-25-003-01-023 and Tax Declaration No. 0041	
R	Certified photocopy of TCT No. T-150694 in the name of Romeo Panganiban dated June 21, 1994	1. To prove that the property in Regidor St., Sta. Cruz, Laguna is in the name of respondent Romeo and it was issued on June 21, 1994; 2. As part of the testimony of Atty. Julius Hidalgo, Register of Deeds of Sta. Cruz, Laguna; and

		3.Respondent admitted its existence, authenticity, and due execution.
S	Certified photocopy of Declaration of Real Property of Romeo Panganiban with Property Index No. 023-25-003-01-024 and Tax Declaration No. 0295	1. To prove that the other lot covered by TCT T-150694 located in Regidor St., Sta. Cruz, Laguna is declared in the name of respondent Romeo for tax purposes; 2. As part of the testimony of Noel L. Veracruz, Provincial Assessor of Laguna; and 3. Respondent admitted that it is a faithful reproduction of the original
T	Certified photocopy of Declaration of Real Property of Romeo Panganiban with Property Index No. 023-25-003-01-024 and Tax Declaration No. 0042	
U	Certified photocopy of Declaration of Real Property of Romeo Panganiban with Property Index No. 023-25-003-01-024 and Tax Declaration No. 0042	1. As part of the testimony of Noel L. Veracruz; and 2. Respondent admitted its existence, authenticity, and due execution.
V	Certified photocopy of Declaration of Real Property of Romeo Panganiban with Property Index No. 023-25-003-01-024-1001 and Tax Declaration No. 0043	
W	Original copy of a letter addressed to the Office of Special Prosecutor, Office of the Ombudsman dated	1.To prove the existence of building permits issued to Fe Panganiban of

	April 6, 2005 from Engr. Pablo M. Magpily, Jr., Municipal Engineer, Office of the Municipal Engineer and Building Official, Municipality of Sta. Cruz, Province of Laguna	Regidor St., Sta. Cruz, Laguna, for a three-storey commercial building; 2. The estimated construction cost of the three-storey building is ₱2,150,000.00; and 3. This building was not reported by respondent Romeo in his SALNs.
X	Highlighted portion of the certified photocopy of record of Building Permit No. 94-0111 granted to Fe Panganiban dated August 5, 1994	
Y	Certified photocopy of record of Building Permit Application of Fe Panganiban	
Z	NONE	
AA	**Photocopy of Property Profile in the name of Fe and Geraldine Panganiban with address at 2840 Heritage Drive, Pasadena, California, USA**	**1. To prove that the house and lot at 2840 Heritage Drive, Pasadena, California, USA was acquired by the family of respondent Romeo on May 24, 2000 in the name of Fe and Geraldine Panganiban, the latter being 22 years old at the time of the sale;** **2. Respondent admitted the purchase in his counter-affidavit dated October 17, 2003 and submitted to the Office of the Ombudsman**
BB	**Photocopy of Sales Comparables indicating the name of Fe and Geraldine Panganiban with address at 2840 Heritage Drive, Pasadena, California, USA**	

CC	Certified photocopy of TCT No. T-110804 dated June 16, 1988 in the name of Spouses Romeo and Fe Panganiban	1. To prove that respondent Romeo owns a 200 sq. m. lot in Sta. Cruz, Laguna; 2. As part of the testimony of Atty. Julius Hidalgo, Register of Deeds of Sta. Cruz, Laguna; and 3. Respondent admitted the existence, authenticity, and due execution of the document
DD	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Tax Declaration No. 25669	1. To prove that the 200 sq. m. lot in Bagumbayan, Sta. Cruz, Laguna covered by TCT No. T-110804 is in the name of Spouses Romeo and Fe Panganiban for tax purposes; 2. As part of the testimony of Noel L. Veracruz, Provincial Assessor of Laguna; and 3. Admitted as faithful reproduction of the original
EE	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Tax Declaration No. 0922	
FF	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Tax Declaration No. 0989	
GG	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Tax Declaration No. 01027	

HH	Certified true copy of SALN of Romeo G. Panganiban as of Dec. 31, 1986	1. To prove that these are the existing records of SALN of respondent Romeo in the Office of the Ombudsman; 2. These SALNs were attached to an undated letter of respondent Romeo to Atty. Ferwin Macabenta, Graft Investigation Officer of the Office of the Ombudsman and a member of the OMB Task Force of Public Works and Highways. The letter was submitted in connection with OMB Case No. 0-93-9030 entitled Anonymous v. Romeo Panganiban; and 3. As part of the testimony of Jesus Salvador, Records Officer of the Office of the Ombudsman
II	Certified true copy of SALN of Romeo G. Panganiban as of Dec. 31, 1987	
JJ	Certified true copy of SALN of Romeo G. Panganiban as of Dec. 31, 1988	
KK	Certified true copy of SALN of Romeo G. Panganiban as of Dec. 31, 1989	
LL	Certified true copy of SALN of Romeo G. Panganiban as of Dec. 31, 1990	
MM	Certified true copy of SALN of Romeo G. Panganiban as of Dec. 31, 1991	
NN	Certified true copy of SALN of Romeo G. Panganiban as of Dec. 31, 1992	
OO	Certified true copy of SALN of Romeo G. Panganiban as of Dec. 31, 1993	1. To show that there has been a pattern of substantial increases in the net worth of respondent Romeo from 1986 to 2001; 2. As part of the records of preliminary investigation; and

		3. As one of the basis of Exhibit "D," the Analytical Presentation of the Net Worth of Romeo Panganiban.
PP	Certified true copy of SALN of Romeo G. Panganiban as of Dec. 31, 1994	1. To prove that there is substantial increases in respondent Romeo's net worth, which is not proportionate to the increase in his salary. These exhibits were the basis of the computations in Exhibit D; 2. As part of the testimony of Eduardo Dimaculangan, Human Resource Management Officer of DPWH Central Office; and 3. To prove that Dimaculangan verified and reviewed these documents which are under his custody and forms part of the personnel records of respondent Romeo at the DPWH Central Office
QQ	Certified true copy of SALN of Romeo G. Panganiban as of Dec. 31, 1995	
RR	Certified true copy of SALN of Romeo G. Panganiban as of Dec. 31, 1996	
SS	Certified true copy of SALN of Romeo G. Panganiban as of Dec. 31, 1997	
TT	Certified true copy of SALN of Romeo G. Panganiban as of Dec. 31, 1998	
UU	Certified true copy of SALN of Romeo G. Panganiban as of Dec. 31, 1999	1. As part of the testimony of Sofia G. Salinas, Records Officer of DPWH Regional Office IV-A, EDSA, Quezon City 2. To prove the substantial increase

VV	Certified true copy of SALN of Romeo G. Panganiban as of Dec. 31, 2000	in the networth of respondent Romeo which are not proportionate to the increase in his salary; and 3. Respondent admitted the existence, authenticity, and due execution of these documents
WW	Certified true copy of SALN of Romeo G. Panganiban as of Dec. 31, 2002	1.As part of the testimony of Rolando M. Boñe, Chief of the Records Division of DPWH, Central Office; 2.To prove the substantial increases in the networth of respondent Romeo which are not proportionate to the increase in his salary; 3. Respondent admitted the existence, authenticity, and due execution of these documents
XX	Certified true copy of SALN of Purita P. Sarmiento as of Dec. 31, 2001	1.As part of the testimony of Arnel Larrobis of OMB-Luzon; 2.To prove that respondent Purita, sister of respondent Romeo, never declared the Saccay Grand Villas property
YY	Certified true copy of SALN of Purita P. Sarmiento as of Dec. 31, 2002	
ZZ	Certified true copy of SALN of Purita P.	

	Sarmiento as of Dec. 31, 2003	in her SALN despite their claim that she purchased it from her brother Romeo in December 1994
AAA	**Photocopy of certification dated March 31, 2005 issued by Joseph Garret L. Suyao, Section Head-Collections, Home Cable**	**1. As part of the testimony of Joseph Garret L. Suyao;** **2. To prove that the cable subscription of the house at 430 San Bartolome St., Ayala Alabang Village, Muntinlupa is in the name of respondent Fe Panganiban, wife of respondent Romeo**
BBB	Original copy of certification dated March 21, 2005 issued by Elias S. Olasiman, Bureau of Immigration	1. To prove that the travel records of respondent Spouses Romeo and Fe were prepared and certified by an authorized officer; 2.To prove that respondent Fe used the address of the Ayala Alabang property in her travel records; 3. To prove that within January 1, 1992 to March 15, 2005, respondent Romeo had a total of 28 travels, while his wife, respondent Fe, had a total of 60 travels within January 1, 1993 to March 2005;
CCC	Attachment list of Exhibit BBB	
DDD	Original copy of certification dated March 21, 2005 issued by Elias S. Olasiman, Bureau of Immigration	
EEE	Attachment list of Exhibit DDD	

		4. Respondent stipulated on the above manifestations made by the prosecution; and 5. As part of the testimony of Elias Olasiman
FFF	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Tax Declaration No. 2236	1. As part of the testimony of Noel L. Veracruz, Provincial Assessor of Laguna; 2. To prove that the following properties are declared in the name of Spouses Romeo and Fe for tax purposes: a. Lot No. 2217 situated at Brgy. Calios, Sta. Cruz, Laguna; b. Lot and house covered by TCT 341189 situated at Batong Malake, Los Banos, Laguna, c. Lot No. 2219-E situated at Brgy. Calios, Sta. Cruz, Laguna; and 3. Respondent admitted all the documents as faithful reproduction of the original
GGG	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Tax Declaration No. 01517	
HHH	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Property Index No. 023-11-005-27-238 and Tax Declaration No. 005-4637;	
III	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Property Index No. 023-11-005-27-238 and Tax Declaration No. 005-4313	
JJJ	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Tax Declaration No. 15382	
KKK	Certified photocopy of Declaration of Real	

	Property of Spouses Romeo and Fe Panganiban with Tax Declaration No. 2465	
LLL	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Tax Declaration No. 1487	
MMM	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Tax Declaration No. 1534	
NNN	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Tax Declaration No. 01518	
OOO	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Tax Declaration No. 24975	
PPP	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Tax Declaration No. 0923	
QQQ	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Tax Declaration No. 0990	

RRR	Certified photocopy of Declaration of Real Property of Spouses Romeo and Fe Panganiban with Tax Declaration No. 01028	
SSS	Duplicate original copy of undated letter from respondent Romeo addressed to Atty. J. Celrin M. Macavinta, GIO I, Member, OMB Task Force on Public Works and Highways	1.To prove that respondent Romeo submitted copies of his SALNs attached to the original copy of the letter. The SALNs submitted cover the years 1986 to 1992; and 2.As part of the testimony of Jesus G. Salvador
TTT	Original copy of memorandum for Melchor Arthur H. Carandang, OIC-Asst. Ombudsman, FIRO from David A. Lucero, AGIO I dated March 19, 2004	1.As part of the testimony of David Lucero, Associate Graft Investigation Officer IV of the Office of the Ombudsman; and 2. To prove that a fact-finding investigation was conducted by the Fact-Finding and Intelligence Bureau of the Office of the Ombudsman
UUU	**Original copy of a letter dated July 23, 2003 addressed to respondent Romeo G. Panganiban from Atty. Virgilio T. Pablico, Chief, Special Investigation Branch, Anti-fraud and Commercial Crimes Division, PNP CIDG**	**1.As part of the testimony of Januario G. Mendoza who testified that respondent Romeo's sister, respondent Elsa, actually resides in her house at Moonwalk,**

VVV	**Original copy of a letter dated July 23, 2003 addressed to respondent Elsa P. De Luna from Atty. Virgilio T. Pablico, Chief, Special Investigation Branch, Anti-fraud and Commercial Crimes Division, PNP CIDG**	**Parañaque and not in Ayala Alabang, and that Januario Mendoza personally delivered Exhibit VVV to respondent Elsa;** **2. To prove that the CIDG conducted an investigation on respondent Romeo's properties; and** **3. To prove that the house and lot in Ayala Alabang is actually purchased, owned, and is being used by respondent Romeo**
WWW	**Original copy of memorandum for C. Lo dated July 24, 2003 from Januario G. Mendoza, Crime Investigator II, DY Legal Office, CIDG**	

Public respondent Sandiganbayan admitted all of petitioner Republic's documentary exhibits except Exhibit "AA," or the *Property Profile in the name of Fe and Geraldine Panganiban with address at No. 2840 Heritage Drive, Pasadena, Los Angeles, California*; and Exhibit "BB," or the *Sales Comparables indicating the name of Fe and Geraldine Panganiban with address at No. 2840 Heritage Drive, Pasadena, Los Angeles, California* – both for being mere photocopies.[11]

Thereafter, private respondents Romeo, *et al*., filed a *Demurrer to Evidence* with leave of court seeking the dismissal of the petition on the ground that petitioner Republic failed to sufficiently prove that private respondent Romeo unlawfully acquired the five real properties and other amounts subject of the forfeiture proceeding. In addition, they argued that petitioner Republic failed to refute the legitimate and legally binding

[11] *Id*. at 14.

ownership of private respondent Purita of the Los Baños Property, and private respondent Elsa of the Ayala Alabang Property.[12]

The Ruling of the Sandiganbayan

In a Resolution dated March 18, 2009, the Sandiganbayan partly granted the demurrer to evidence, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Demurrer to Evidence is partly granted in that for the property listed in pages 5 and 6 of the petition, there is a need to present countervailing evidence by the respondents with respect to the property described in par (a)[13] — the Residential House and Lot covered by TCT No. 307495 in the name of spouses Romeo G. Panganiban and Fe L. Panganiban and par (b)[14] — the Commercial three-storey Bldg. covered by TCT No. 150693 and TCT No. 150694.
>
> Respondents are likewise directed to present proofs to fully explain how they were able to finance the many foreign travels specified in paragraphs 8 and 9 of the Petition.
>
> With respect to the other properties[15] alleged in the Petition, We accord affirmative relief to the prayer in Respondents' Demurrer to Evidence and hereby dismiss the Petition insofar as the same are concerned.[16]

The Sandiganbayan made the following findings:

> Let us first tackle the **Residential House and Lot located at No. 430 San Bartolome St., Ayala Alabang Village, Muntinlupa City** covered by, and described under, TCT No. 1577 and Tax Declaration No. 126-00-009-39-012-0000 with a value of ₱24,800,[000].00 x x x. The said property is in the name of Elsa P. de Luna widow under TCT No. 1577 (Exh. "8") and was acquired through a Deed of Absolute

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

[13] The Los Baños Property.

[14] The Sta. Cruz Property.

[15] The Ayala Alabang, Los Angeles and Callos-Sta. Cruz Properties.

[16] *Rollo*, p. 47.

Sale from spouses Jose and Concepcion Singson as early as September 29, 1999 (Exh. "4"). The only evidence adduced by the plaintiff to support its claim that the said property belonged to respondent Romeo Panganiban was that his wife Fe Panganiban has listed the property in her travel documents as her address, and that there was a [S]ky [C]able account with the same address of the said property in the name of respondent['s] wife Fe Panganiban. We can not sustain the assertion of the plaintiff. Those facts can not defeat the ownership of the property evidenced by a Torrens Title, and a Deed of Absolute Sale from the former owner. The usage of the said premises [by Romeo and Fe] is not unnatural considering that the public respondent and his wife Fe Panganiban are residing in Callos, Sta. Cruz, Laguna, and respondent Elsa Panganiban de Luna is the sister of Romeo Panganiban. Being siblings it is natural and proper for the brother and sister to make things convenient for each other.

Petitioner would also asseverate that the property located in Los Angeles California — that is a **three-bedroom house and lot at 2840 Heritage Drive, Pasadena, Los Angeles, California, U.S.A.** with a value of Twelve Million Five Hundred Forty Thousand Three Hundred Pesos (₱12,540,300.00) x x x is respondent Romeo Panganiban's property in excess of his lawful income. As proof of its claim, petitioner presented Exhibit "AA" which is a mere photocopy of Property Profile in the name of Fe and Geraldine Panganiban, and Exh. "BB" which is a photocopy of Sales Comparables indicating the name of Fe and Geraldine Panganiban with the allegation that there was an admission by the public respondent of supposed purchase in his counter-affidavit. Since we denied admission of Exhibits "AA" and "BB", and the alleged counter-affidavit was not even marked by the petitioner as its exhibit, We can not rule and resolve that this property was acquired by the [private] respondent while he was a public [officer] and even before or after he was a public officer. Petition for forfeiture of property must be supported and sustained by evidence admissible under the Rules of Court just like any other case. **The Courts ruling denying the admission of Exhs. "AA" and "BB" was not even questioned by the petitioner.**

With respect to the Residential House and Lot covered by and described under TCT No. 307495 in the name of spouses Romeo and Fe Panganiban consisting of 256 sq. meters located at Grand Villas, Batong Malake, Los Baños, Laguna x x x, We resolve there is a need for respondent Romeo Panganiban to explain the circumstances surrounding the same. If as appearing in Exhibit "1" of the defense

that the same has been sold to respondent Purita Sarmiento even as early as December 1994, We can not understand why up to the present the same has not been transferred in the name of the vendee. The consideration of the Deed of Absolute Sale between Crescent Holdings Corp. and spouses Romeo and Fe Panganiban amounted to One Million Two Hundred Eighty Thousand (₱1,280,000.00) pesos which could be considered a considerable amount at that time, it is, we feel, unnatural and not in accordance with human behavior why up to the time the petition for forfeiture was filed, there has been no move on the part of the respondent Purita Sarmiento, the supposed transferee of the property from Romeo and Fe Panganiban, to effect the eventual transfer in her name of the property.

Let us now consider the three-storey commercial bldg. and the lots on which it is located. Per proof of the petitioner, the three-storey building is sitting on two lots with areas of 64 and 84 sq. meters with a valuation of ₱2.15 million (Exhs. "X" and "Y" with their sub-markings). And while the two (2) lots purchased from Walfrido T. Hicban had only a consideration of ₱200,000.00, they were acquired in June 1994 (Exh. "M") at a time when the gross salary of respondent Romeo Panganiban was only ₱147,768 (Exh. "D"). the petitioner has driven its point that unless sufficiently explained by the respondents, the circumstances would warrant forfeiture of the property.

We find the **residential lot consisting of 200 sq. meters covered by TCT No. T-110804 in the names of spouses Romeo Panganiban and Fe Labunas** upon which the petitioner placed the value at ₱146,000 can be very well acquired by the salaries and income of respondent Romeo Panganiban. In petitioner's Exh. "DD", the market value was only ₱16,000.00 in the year 1989, and in Exh. "EE" it was only ₱40,000.00 in the year 1994, while in Exh. "FF" in the year 1997 the market value was only ₱110,000.00. Lastly, in Exh. "GG" Tax Declaration for the year 2000, the market value was pegged at ₱146,000.00.

For the many foreign travels made by the respondents we rule and hold that the respondents should be made to explain how they were able to finance the same.[17] (Emphases supplied.)

Petitioner Republic moved for the partial reconsideration of the Resolution on the following arguments: (*i*) relative to the **Ayala Alabang property**, the Sandiganbayan failed to appreciate

[17] *Id*. at 45-47.

the testimony of an investigator of the Philippine National Police (PNP) Criminal Investigation and Detection Group (CIDG) that private respondent Elsa admitted that the subject property really belonged to private respondent Romeo; (*ii*) as to the **Los Angeles property**, the Sandiganbayan overlooked the fact that if private respondent Fe co-owned the Los Angeles property, then it would similarly make private respondent Romeo a co-owner thereof being the spouse of Fe; and (*iii*) the finding that the value of **Callos-Sta. Cruz property** was well within the means of private respondent Romeo to procure it deserved closer examination.[18]

On July 31, 2009, the Sandiganbayan denied petitioner Republic's partial motion for reconsideration.[19]

Hence, the instant petition for *certiorari* under Rule 65 of the Rules of Court, as amended.

The Issue

Petitioner Republic raises the following issues for this Court's consideration, to wit:

6.1 PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT CONSIDERED IN FAVOR OF ROMEO, FE AND ELSA A PURPORTED CERTIFICATE OF TITLE AND AN ALLEGED DEED OF SALE WHICH WERE NOT FORMALLY OFFERED IN EVIDENCE, AND DISREGARDED THE UNREBUTTED EVIDENCE THAT ROMEO AND FE ARE THE BENEFICIAL OWNERS OF THE SUBJECT PROPERTY IN AYALA ALABANG.

6.2 PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT DISREGARDED THE JUDICIAL ADMISSION OF ROMEO IN HIS ANSWER TO THE PETITION THAT THE PROPERTY IN PASADENA, LOS ANGELES, CALIFORNIA WAS JOINTLY ACQUIRED BY HIS DAUGHTER GERALDINE AND WIFE FE, MAKING HIM A CO-OWNER.

6.3 PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT PREMATURELY RULED THAT THE SUBJECT PROPERTY IN STA. CRUZ, LAGUNA CAN BE VERY WELL ACQUIRED BY ROMEO WITH HIS SALARIES AND INCOME.[20]

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

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

[20] *Id*. at 21-22.

The Court's Ruling

The petition is partly granted.

Procedural Matter

We note at the outset that petitioner Republic instituted the wrong mode of review of public respondent Sandiganbayan's assailed resolutions. Forfeiture proceedings filed under Republic Act No. 1379 are civil in nature,[21] thus, the proper mode of review being a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, and not a special civil action of *certiorari* under Rule 65 thereof.[22]

This Court has previously explained in *Condes v. Court of Appeals*[23] the nature and purpose of a demurrer to evidence, to wit:

> A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence and is filed after the plaintiff rests his case. It is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced, is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The question in a demurrer to evidence is whether the plaintiff, by his evidence in chief, has been able to establish a *prima facie* case. (Citation omitted.)

And an order granting demurrer to evidence is a judgment on the merits.[24] 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

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[21] *Garcia v. Sandiganbayan*, 618 Phil. 346, 362-363 (2009).

[22] *Republic v. Gimenez*, G.R. No. 174673, January 11, 2016, 778 SCRA 261, 288.

[23] 555 Phil. 311, 323 (2007).

[24] *Oropesa v. Oropesa*, 686 Phil. 877, 888 (2012).

authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition x x x shall raise only questions of law, which must be distinctly set forth x x x.

Nevertheless, considering that rules of procedure are subservient to substantive rights, and in order to finally write *finis* to this prolonged litigation, the Court hereby dispenses with the foregoing lapses in the broader interest of justice. The Court has repeatedly favored the resolution of disputes on the merits, rather than on procedural defects,[25] especially where the case is undeniably ingrained with immense public interest, public policy and/or deep historical repercussions, *certiorari* is allowed notwithstanding the existence and availability of the remedy of appeal.[26] We thus take cognizance of this case and settle with finality the issues raised.

Substantive Matters

Going into the propriety of the Resolutions dated March 18, 2009 and July 31, 2009 issued by public respondent Sandiganbayan, the following guidelines will be the yardstick by which this Court shall evaluate the action taken by the latter on the demurrer to evidence filed by herein private respondents Romeo, *et al.*, to wit:

A demurrer to evidence may be issued when, upon the facts and the law, the plaintiff has shown no right to relief. **Where the plaintiffs evidence, together with such inferences and conclusions as may reasonably be drawn therefrom does not warrant recovery against the defendant, a demurrer to evidence should be sustained.** A demurrer to evidence is likewise sustainable when, **admitting every proven fact favorable to the plaintiff and indulging in his favor all conclusions fairly and reasonably inferable therefrom, the plaintiff has failed to make out one or more of the material elements of his case,** or when **there is no evidence to support an allegation necessary to his claim**. It should be sustained where the plaintiffs evidence is *prima facie* insufficient for recovery.[27] (Citations omitted.)

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[25] *Republic v. De Borja*, G.R. No. 187448, January 9, 2017.

[26] *Republic v. Sandiganbayan*, 453 Phil. 1059, 1087 (2003).

[27] *Heirs of Emilio Santioque v. Heirs of Emilio Calma*, 536 Phil. 524, 540-541 (2006).

Ayala Alabang Property

Petitioner Republic argues that public respondent Sandiganbayan put much stock on private respondent Elsa's *Certificate of Title and Deed of Sale*, which had not been formally offered in evidence as private respondent Romeo, *et al.*, had not even commenced presenting their evidence yet. Hence, public respondent Sandiganbayan should not have considered the two documents in resolving the demurrer to evidence pursuant to Section 34, Rule 132 of the Rules of Court, as amended, which states that "*the court shall consider no evidence which has not been formally offered.*" It also asserts that in *Tan v. Bantegui*,[28] this Court held that "*the incontrovertible nature of a certificate of title applies only when the issue involved is the validity of the original and not of the transfer.*" In this case, public respondent Sandiganbayan considered a transfer certificate of title as an absolute and indefeasible evidence of ownership.

Petitioner Republic also insists that from *Yuchengco v. Sandiganbayan*,[29] even if a respondent is not the registered owner of a property if it could be shown by preponderance of evidence that the property is ill-gotten and that he/she is the beneficial owner, thus, the subject property could still be forfeited in favor of the State.[30] It insists that private respondents Romeo and Fe are the actual and beneficial owners of the Ayala Alabang property.

Lastly, petitioner Republic avers that public respondent Sandiganbayan merely speculated when it ruled that "*being siblings, it is natural and proper for the brother and sister to make things convenient for each other*";[31] that speculation should not be allowed to supplant hard evidence; and that private respondents Romeo, *et al.*, should present evidence to show

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[28] 510 Phil. 434, 447 (2005).

[29] 515 Phil. 1 (2005).

[30] *Rollo*, p. 45.

[31] *Id.* at 24-25.

that it was really private respondent Elsa who purchased the Ayala Alabang property, and she lent it to her brother.

Private respondents Romeo, *et al.*, counters that, "the petitioner's evidence as to the usage by private respondents Romeo and Fe Panganiban of the same property cannot defeat the ownership documents of [private respondent] Ms. Elsa P. de Luna,"[32] which documents, *i.e.*, Revised Tax Declaration Form and Deed of Absolute Sale, were attached to the Petition for Forfeiture as Annexes "J" and "K", respectively, and made integral parts thereof. They also countered that the testimonial evidence given by its witness Januario Mendoza – to the effect that when he went to a residence in Moonwalk Village in Paranaque City to serve a letter of invitation to private respondent Elsa, the latter admitted to him that the residential property in Ayala Alabang is actually owned by private respondents Romeo and Fe – is of doubtful veracity because witness Mendoza narrated that when he was ushered inside the house at Moonwalk Village, private respondent Elsa walked towards him, which is improbable because private respondent Elsa has been wheelchair-bound since before the petition for forfeiture was filed.

In dismissing the forfeiture complaint as to the Ayala Alabang property, public respondent Sandiganbayan held that the evidence adduced by petitioner Republic – travel documents of private respondent Fe and the Sky Cable account documents both listing such property as the latter's given address – failed to defeat the presumed ownership of private respondent Elsa whose name appears on the TCT and the Deed of Absolute Sale pertaining to the subject property.

We agree with public respondent Sandiganbayan that the facts of the case fail to substantiate the assertion that the real owners of the Ayala Alabang property are private respondents Romeo and Fe, especially when contrasted with the Deed of Absolute Sale, Revised Tax Declaration Form and the Transfer Certificate of Title all stating therein that the owner is one Elsa P. De Luna.

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[32] *Id.* at 168.

While it is true that public respondent Sandiganbayan incorrectly made mention of Exhibits "4" (Deed of Absolute Sale) and "8" (Transfer Certificate of Title) of the private respondents, however, a certified true copy of the same Deed, including the Revised Tax Declaration Form covering the subject property were earlier attached to the Petition for Forfeiture and made integral parts thereof; and a copy of the title was attached as Annex "3" of the Joint Answer of private respondents Fe, Elsa and Purita.

Again, Section 1, Rule 33 of the Rules of Court, as amended, provides that:

> Section 1. *Demurrer to evidence*. — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal **on the ground that upon the facts and the law the plaintiff has shown no right to relief**. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence. (Emphasis supplied.)

From above, what should be resolved in a demurrer to evidence is whether or not the plaintiff is entitled to the relief based on the facts and the law. The evidence to be considered pertains to the merits of the case, which does not include technical aspects thereof, *i.e.*, capacity to sue. But, the plaintiff's evidence is not the sole basis in resolving a demurrer to evidence. The "facts," contemplated by the rule should include all the means sanctioned by the Rules of Court in ascertaining matters in judicial proceedings, *i.e.*, judicial admissions, matters of judicial notice, stipulations made during the pre-trial and trial, admissions, and presumptions, the only exclusion being the defendant's evidence.[33]

Section 4, Rule 129 of the Rules of Court, as amended, provides:

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[33] *Casent Realty Development Corporation v. Philbanking Corporation*, 559 Phil. 793, 802 (2007), citing *Celino v. Heirs of Alejo Santiago*, 479 Phil. 617, 623 (2004).

Section 4. *Judicial admissions*. — An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

In *Republic v. Sandiganbayan*,[34] this Court settled that judicial admissions may be made: (a) in the pleadings filed by the parties; (b) in the course of the trial either by verbal or written manifestations or stipulations; or (c) in other stages of judicial proceedings, as in the pre-trial of the case.

Hence, in the instant case, facts pleaded in the petition and answer/joint answer are deemed admissions of petitioner Republic and private respondents Romeo, *et al*., respectively, who are not permitted to contradict them or subsequently take a position contrary to or inconsistent with such admissions.[35]

Though the title to the property was initially filed in court through the Joint Answer, however, petitioner Republic failed to refute the same, and even marked it during pre-trial. Hence, petitioner Republic already admitted its genuineness and due execution. Such judicial admission was correctly considered by public respondent Sandiganbayan in resolving the demurrer to evidence. When the due execution and genuineness of an instrument are deemed admitted because of the adverse party's failure to make a specific verified denial thereof, the instrument need not be presented formally in evidence for it may be considered an admitted fact.[36]

As to the cable television subscription and travel documents wherein private respondent Fe used the Ayala Alabang property as her given address, what they simply proved is that private respondent Fe resides in the said property, nothing more. They

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[34] *Supra* note 26 at 1129.

[35] *Id*., citing Moran, *Comments on the Rules of Court*, Volume V (1980 ed.), p. 64.

[36] *Philippine American General Insurance Co., Inc. v. Sweet Lines, Inc*., 287 Phil. 213, 221-222 (1992).

are not sufficient to prove that private respondents Romeo and Fe are the actual and beneficial owners of the property, much less that they unlawfully acquired it.

Los Angeles Property

Petitioner Republic argues that private respondent Romeo already admitted in his *Answer* that the Los Angeles property was jointly acquired by his wife and daughter, private respondent Fe and Geraldine, respectively.[37] It insists that the existence of the said property and the fact that his wife is a co-owner does not require proof pursuant to Section 4, Rule 129 of the Rules of Court, as amended and *Republic v. Sandiganbayan*.[38]

Petitioner Republic reasons that whether the property relation of private respondents Romeo and Fe is governed by the system of absolute community of property or conjugal partnership of gains, private respondent Romeo stands as a co-owner of his wife's interest in the Los Angeles property.[39]

Petitioner Republic concludes that it was premature of public respondent Sandiganbayan to conclude that private respondent Romeo had no participation in the purchase of the said property, which is his defense that he needed to prove during trial.[40]

Private respondents Romeo, *et al.*, on the other hand, simply insists that any admission on the ownership of the Los Angeles property that may have been made (in the answer/joint answer) is not sufficient basis to find that the said property belonged to private respondent Romeo, much less illegally acquired by him.

Public respondent Sandiganbayan ordered the dismissal of the petition for forfeiture as to the Los Angeles property on the ground that the two documentary evidence, Annexes "AA"

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[37] *Rollo*, p. 30.

[38] *Supra* note 26.

[39] *Rollo*, p. 31.

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

and "BB," though formally offered by petitioner Republic, were mere photocopies; therefore, inadmissible in evidence. And that the latter failed to formally offer the. counter-affidavit[41] of private respondent Romeo.

In this instance, this Court disagrees with public respondent Sandiganbayan.

As similarly discussed above, the admission of private respondent Romeo in his Answer that the Los Angeles property was bought by his wife, private respondent Fe, and his daughter, Geraldine, is a judicial admission that necessarily formed part of the facts of the case, which did not require proof to be sufficiently considered in the resolution of the demurrer to evidence.

Moreover, the denial by private respondent Romeo of his ownership of the subject property is pregnant with an admission, *i.e.*, that he has an interest in his wife's share in the property by virtue of their marital union. This is a negative pregnant, which is a form of negative expression which carries with it an affirmation or at least an implication of some kind favorable to the adverse party.[42]

In his Answer, private respondent Romeo alleged that, "*respondent reiterates that he had no participation whatsoever in the purchase of that residential house and lot located at No. 2840 Heritage Drive, Pasadena, Los Angeles, as the same was actually purchased by his daughter, Geraldine, who is U.S. based, together with her mother, Fe*."[43] On the other hand, private respondent Fe claimed in her Joint Answer that, she "*vehemently denies that the residential house and lot located at No. 2840 Heritage Drive, Pasadena, Los Angeles, belongs to respondent Romeo Panganiban as the same was actually purchased by her daughter, Geraldine,*

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[41] This should be the Answer.

[42] *Republic v. Sandiganbayan, supra* note 26.

[43] *Rollo*, p. 64.

who is U.S. based, and that her name as co-owner of the property was indicated to enable Geraldine to secure approval for a loan to finance [the] purchase of the property."[44]

Although private respondents Romeo and Fe aver that the former had nothing to do in the transaction, the fact that they are spouses makes the Los Angeles property part of their property regime, be it an absolute community or conjugal property of gains. Article 91 of the Family Code states that *unless otherwise provided in this Chapter or in the marriage settlements, the community property shall consist of all the property owned by the spouses at the time of the celebration of the marriage or acquired thereafter.*

On the other hand, Articles 106, 116, and 117 of the Family Code provide what constitutes the conjugal property of the spouses.

Art. 106. Under the regime of conjugal partnership of gains, the husband and wife place in a common fund the proceeds, products, fruits and income from their separate properties and those acquired by either or both spouses through their efforts or by chance, and, upon dissolution of the marriage or of the partnership, the net gains or benefits obtained by either or both spouses shall be divided equally between them, unless otherwise agreed in the marriage settlements.

Art. 116. All property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved.

Art. 117. The following are conjugal partnership properties:

(1) Those acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;

(2) Those obtained from the labor, industry, work or profession of either or both of the spouses;

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[44] *Id.* at 71.

(3) The fruits, natural, industrial, or civil, due or received during the marriage from the common property, as well as the net fruits from the exclusive property of each spouse;

(4) The share of either spouse in the hidden treasure which the law awards to the finder or owner of the property where the treasure is found;

(5) Those acquired through occupation such as fishing or hunting;

(6) Livestock existing upon the dissolution of the partnership in excess of the number of each kind brought to the marriage by either spouse; and

(7) Those which are acquired by chance, such as winnings from gambling or betting. However, losses therefrom shall be borne exclusively by the loser-spouse.

Just as public respondent Sandiganbayan gave weight to the admission of private respondents Romeo, *et al*., as to the registered owners on the certificate of title to the Ayala Alabang property, then it should have accorded the same credence to their admission as to the owners of the Los Angeles property, otherwise, the application of the rules on evidence is arbitrary and tantamount to grave abuse of discretion. Based on the evidence on record, the Los Angeles property is co-owned in equal shares by private respondent Fe and Geraldine, and by law, the half share therein of respondent Fe is deemed to pertain to both private respondents Romeo and Fe as spouses.

And as a consequence of Our reversal of the resolution granting the demurrer to evidence *vis-à-vis* one-half of the Los Angeles property, or that portion pertaining to the undivided share of private respondent Fe, private respondents Romeo, *et al.*, are deemed to have waived the right to present countervailing evidence that such one-half was not unlawfully acquired.[45]

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[45] *Regional Container Lines of Singapore v. The Netherlands Insurance Co. (Philippines), Inc.*, 614 Phil. 485 (2009); Rule 33, Section 1. *Demurrer to evidence*. — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied he shall have the right to present evidence. **If the motion is**

Callos-Sta. Cruz Laguna Property

Petitioner Republic argues that private respondents Romeo and Fe did not deny the acquisition of the said property in their Answers; thus, they now have the burden to show that the same was not unlawfully acquired.[46]

Private respondents Romeo, *et al.*, counter-argue that petitioner Republic's very own evidence show the value of the subject property to be well within private respondent Romeo and Fe's financial capacity to purchase; therefore, it has not been proved to have been unlawfully acquired.

This Court finds that public respondent Sandiganbayan correctly dismissed the petition for forfeiture with respect to the Callos-Sta. Cruz property. Petitioner Republic's pieces of documentary evidence failed to sufficiently prove that the subject property was unlawfully acquired, or that private respondent Romeo could not have afforded the said property.

Further, petitioner Republic claims that the assailed resolutions *deserve closer examination*, without actually stating upon what ground public respondent Sandiganbayan abused its discretion in granting the demurrer to evidence concerning the Callos-Sta. Cruz property. Where a petition for certiorari under Rule 65 of the Rules of Court, as amended, alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. This is so because "grave abuse of discretion" is well-defined and not an amorphous concept that may easily be manipulated to suit one's purpose.

Conclusion

This Court finds that the pieces of evidence adduced by petitioner Republic *vis-à-vis* the Ayala Alabang and Callos-

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granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence. (Rules of Court.)

[46] *Rollo*, pp. 33, 197-202.

Sta. Cruz properties are wholly insufficient to support the allegations of the petition for forfeiture in Civil Case No. 0192. Thus, for failure of petitioner Republic to show any right to the relief sought, this Court partly affirms the assailed resolutions.

WHEREFORE, the petition is **PARTLY GRANTED**. The portion of the Resolutions dated March 18, 2009 and July 31, 2009 by public respondent Sandiganbayan in Civil Case No. 0192 dismissing the petition for forfeiture as to the three-bedroom house and lot property located at No. 2840 Heritage Drive, Pasadena, Los Angeles, California is **ANNULLED and SET ASIDE**, but only as to one-half portion of said property. Pursuant to Section 1, Rule 33 of the Rules of Court, as amended, private respondents Romeo Panganiban, *et al*., are deemed to have waived the right to present evidence relative thereto. In all other respect, the said Resolutions are **AFFIRMED**.

SO ORDERED.

Del Castillo, Jardeleza, and *Tijam, JJ.*, concur.

Sereno, C.J., on leave.

SECOND DIVISION

[G.R. No. 193499. April 23, 2018]

BANCO DE ORO UNIBANK, INC., *petitioner, vs.* **VTL REALTY, INC.,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; PRINCIPLE OF IMMUTABILITY OF JUDGMENT; FINAL AND EXECUTORY

JUDGMENTS CAN NO LONGER BE ATTACKED OR MODIFIED.— "It is axiomatic that final and executory judgments can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land." "The noble purpose is to write finis to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations."

APPEARANCES OF COUNSEL

Isip San Juan Guirnalda & Associates for petitioner.
Mamerto L. Avila, Jr. for respondent.

D E C I S I O N

REYES, JR., *J.*:

The following facts gave rise to the present controversy.

Victor T. Bollozos (Bollozos) was the registered owner of a parcel of land with a building situated at Barangay Guizo, Mandaue City, and covered by TCT No. 12892. He mortgaged his property to petitioner Banco de Oro Unibank, Inc. (BDO) to secure the loan of World's Arts & Crafts, Inc.[1]

On August 12, 1994, Bollozos sold the property to VTL Realty Corporation (VTL) and A Deed of Definite Sale with Assumption of Mortgage was executed between the parties. However, BDO refused to accept VTL's payment as it does not recognize VTL as the new owner of the property. For BDO, the loan obligation that Bollozos and/or World's Arts and Crafts, Inc. contracted should be settled prior to any change in the ownership of the mortgaged property. This led VTL to institute an action for specific performance with damages against BDO with the Regional Trial Court (RTC) of Cebu City. In the course of the proceedings, the obligation remained unpaid, prompting BDO to foreclose the real estate mortgage on March 29, 1995. A Certificate of Sale was issued to BDO as the lone bidder at

[1] *Rollo*, p. 11.

the auction sale. Upon the expiration of the redemption period with no redemption being made, BDO consolidated ownership over the property.[2]

On January 6, 1997, the RTC rendered a Decision[3] directing BDO to furnish VTL with Bollozos and/or World's Arts and Crafts Inc.'s new Statement of Account based on the Statement of Account dated August 12, 1994, plus the corresponding interests and penalty charges that have accrued thereafter. By the same token, VTL was directed to assume and pay Bollozos' obligation to BDO upon receipt of such Statement of Account.[4] VTL appealed the RTC judgment to the Court of Appeals (CA), which affirmed the same in a Decision[5] dated May 26, 2004. Thereafter, an Entry of Judgment[6] was issued.

Separate motions for execution were filed by BDO and VTL. During the hearing set on March 28, 2007, BDO submitted a Statement of Account[7] showing that the total obligation of Victor Bollozos and/or World's Arts & Crafts, Inc. amounted to ₱41,769,596.94 as of March 16, 2007.

VTL filed a Motion to Order Defendant to Correct Statement of Account,[8] praying that BDO be ordered to compute interests and penalties due only up to April 28, 1995, which is the date of registration of the Certificate of Sale. This is based allegedly on *Development Bank of the Philippines vs. Zaragoza (DBP vs. Zaragoza)*.

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[2] *Id*. at 11-12.

[3] Penned by Judge Jose P. Soberano, Jr.; *Id*. at 56-74.

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

[5] Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Pampio A. Abarintos and Ramon M. Bato, Jr., concurring; *id.* at 76-82.

[6] *Id*. at 136.

[7] *Id*. at 83.

[8] *Id*. at 151-153.

Ruling of the RTC

Through its Order[9] dated June 19, 2007, the RTC granted VTL's motion based on its interpretation of *DBP vs. Zaragoza*.[10] Consequently, it ruled in its Order[11] dated January 25, 2008 that the amount to be paid by VTL is ₱6,631,840.95 corresponding to the principal, interests, and penalty charges as of April 28, 1995.

However, upon BDO's motion for reconsideration, the RTC reversed its previous stance and issued an Order[12] dated March 14, 2008. BDO was then directed to show how it computed the amount reflected in its Statement of Account, to which BDO complied with. In an Order[13] dated January 8, 2009, the RTC resolved that BDO's computation was in accordance with its Decision dated January 6, 1997 and thus, decreed:

> Accordingly, the amount payable by [VTL] to [BDO] as of March 16, 2007 is [₱]41,769,596.94.
>
> SO ORDERED.[14]

VTL filed a motion for reconsideration, which the RTC denied in its Order[15] dated June 3, 2009. Consequently, VTL lodged a petition for *certiorari* with the CA.

Ruling of the CA

On May 31, 2010, the CA promulgated its Decision,[16] reversing the RTC Order. The *fallo* of the Decision reads:

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

[10] 174 Phil. 153 (1978).

[11] Issued by then Presiding Judge Gabriel T. Ingles (now Executive Justice of the Court of Appeals); *id*. at 87-88.

[12] *Id*. at 89-97.

[13] *Id*. at 98-105.

[14] *Id*. at 105.

[15] *Id*. at 106.

[16] Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Socorro B. Inting and Eduardo B. Peralta, Jr.; *id*. at 45-53.

WHEREFORE, on the view above taken, judgment is hereby rendered **GRANTING** the petition. The assailed Order dated January 8, 2009, rendered by the Regional Trial Court, Branch 58, Cebu City in Civil Case No. CEB-16554 and its subsequent Order dated June 3, 2009, are hereby **SET ASIDE**. The Order dated January 25, 2008 is hereby **REINSTATED**.

SO ORDERED.[17]

Per the CA's construal of *DBP vs. Zaragoza*, the counting of interest must stop once the foreclosure proceedings have been completed by the execution, acknowledgment, and recording of the Certificate of Sale in favor of the purchaser.[18] The CA also affirmed VTL's reliance on *PNB vs. CA*,[19] which according to it reiterated the pronouncement in *DBP vs. Zaragoza*.

The CA concluded that the reckoning of the applicable interests and penalty charges should be computed only up to April 28, 1995, or the date of registration of the Certificate of Sale.[20] Following this manner of computation, VTL was being made liable to pay only ₱6,631,840.95 *versus* BDO's calculation of ₱41,769,596.94 as of March 16, 2007.

The CA denied BDO's motion for reconsideration, through its Resolution[21] dated August 18, 2010.

BDO argues that the CA violated the principle of immutability of judgments when it rendered the assailed Decision despite the finality of its Decision dated May 26, 2004.[22]

Hence, BDO's present recourse to the Court.

Ruling of the Court

The petition is meritorious.

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[17] *Id*. at 53.

[18] *Id*. at 52.

[19] 224 Phil. 499 (1985).

[20] *Rollo*, p. 52.

[21] *Id*. at 54-55.

[22] *Id*. at 19.

The CA, in ruling in favor of VTL, surmised that *DBP vs. Zaragoza* finds application in the present case "as it settles the question of whether interest may be properly charged to the mortgagor after the completion of the foreclosure sale."[23] However, this synthesis is misplaced.

In *DBP vs. Zaragoza*, the real estate mortgage executed by the Zaragozas was extrajudicially foreclosed by DBP. Four years later, the property was sold in a public auction but resulted to a deficiency. When DBP sued for the balance with interests, the Zaragozas argued that *from the date of the foreclosure to the sale of the foreclosed property*, the mortgagor is no longer liable for the interest on the loan.[24] Finding that the delay in the sale was of the Zaragozas' own doing, the Court adjudged them liable for interests. Also, the Court held that prior to the sale, the foreclosure proceedings cannot be considered as complete, thus, the mortgagor's interest in the mortgaged property subsists and he is liable for interest thereon. Quoted below is the Court's elucidation on the matter, which VTL cited:

> x x x it must be noted that a foreclosure of mortgage means the termination of all rights of the mortgagor in the property covered by the mortgage. It denotes the procedure adopted by the mortgagee to terminate the rights of the mortgagor on the property and includes the sale itself. In judicial foreclosures, the "foreclosure" is not complete until the Sheriff's Certificate is executed, acknowledged and recorded. In the absence of a Certificate of Sale, no title passes by the foreclosure proceedings to the vendee. It is only when the foreclosure proceedings are completed and the mortgaged property sold to the purchaser that all interests of the mortgagor are cut off from the property. This principle is applicable to extrajudicial foreclosures. Consequently, in the case at bar, prior to the completion of the foreclosure, the mortgagor is, therefore, liable for the interest on the mortgage.[25]

A closer look at *DBP vs. Zaragoza* reveals the issue is whether a mortgagor is liable for interests *from the date of*

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[23] *Id.* at 51.

[24] *Supra* note 19, at 505.

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

the foreclosure to the date of sale of the property. This is so because it took a period of four years for the Zaragozas' property to be sold in auction from the time it was extrajudicially foreclosed. This is *inapropos* to the instant case, where VTL seeks to recover a property that BDO already owns.

In *PNB vs. CA*,[26] the issue pertains to the *redemption price* which the mortgagor should pay to redeem the foreclosed property. PNB contended that the redemptioner should be made to pay the interests and charges specified in the mortgage, on top of the purchase price, computed from the time of the auction sale up to the date the mortgaged property is redeemed. Citing *DBP v. Zaragoza*, the Court held that after the auction sale, the *redemptioner mortgagor* is no longer bound to pay the interest agreed upon in the contract of mortgage, consistent with the rules provided under Act No. 3135, as amended, which was then the governing law for extrajudicial foreclosure of all real estate mortgages and which provides for the computation of redemption price. Thus:

> Since the applicable law is Act 3135, the provisions of Section 30, Rule 39, Rules of Court shall be determinative of the sole issue presented in this case. Section 6 of Act 3135, as amended by Act 4018, provides:
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> x x x x x x x x x
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> Sec. 6. — In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is old, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provision of this Act.

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[26] *Supra* note 19, at 503.

Section hundred sixty-four to four hundred sixty-six inclusive, of the Code of Civil Procedure, became Sections 29, 30, and 34 of Rule 39 of our Rules of Court. The same sections were reiterated in the Revised Rules of Court in July 1964 (Co vs. PNB, *supra*).

Pursuant to Section 30 of Rule 39, the redemptioner, who is the private respondent herein, "may redeem the property from the purchaser at any time within twelve (12) months after the sale, on paying the purchaser the amount of his purchase, with one per centum per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid therein after purchase and interest on such last named amount at the same interest rate; ..."

x x x x x x x x x

This would rightfully be so because, as stated in the case of *DBP vs. Zaragosa, supra*, when the foreclosure proceedings are completed and the mortgaged property is sold to the purchaser then all interest of the mortgagor are cut off from the property. Prior to the completion of the foreclosure, the mortgagor is liable for the interests on the mortgage. However, after the foreclosure proceedings and the execution of the corresponding certificate of sale of the property sold at public auction in favor of the successful bidder, the redemptioner mortgagor would be bound to pay only for the amount of the purchase price with interests thereon at the rate of one per centum per month in addition up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after the purchase and interest on such last named amount at the same rate.[27] (Emphasis ours)

In the present case, there is no redemption price to speak of, since no right of redemption was exercised. As the RTC found, VTL neither made a tender of payment nor did it deposit any amount, if only to stop the running of interest and imposition of penalty charges.[28] VTL also did not make an effort pending the redemption period to redeem the property from BDO, who

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[27] *Id.* at 504-505.

[28] *Rollo*, p. 101.

became the absolute owner thereof. What VTL undoubtedly wants is to purchase the property from BDO, not to redeem it, since the period for redemption has already lapsed. Clearly, *PNB vs. CA*, like *DBP vs. Zaragoza*, is inapplicable to VTL's situation.

Apart from the foregoing, it must be recalled that VTL did not appeal from the CA Decision dated May 26, 2004, which affirmed the RTC's disposition that the amount to be paid by VTL shall be based on the Statement of Account dated August 12, 1994, plus the corresponding interests and penalty charges *that have accrued thereafter*. The CA further explained therein that VTL has no right over the mortgaged property since it did not settle the obligation it assumed, *viz*:

> x x x it is imperative that tender of payment must be made in order to stop the running of interest and imposition of penalty charges. It is not enough that they merely allege that they are interested but it is important that payment should be made. The only way that the mortgage could be released is by settling all the outstanding balance of Mr. Bollozos in order for the property to be free from all encumbrances.
>
> x x x x x x x x x
>
> It is preposterous for [VTL] to assume that they have a right over the property by virtue of their execution of the deed of sale with Mr. Bollozos. Upon expiration of the redemption period on April 28, 1996, the subject property now forms part of the Bank's foreclosed assets. Had [VTL] immediately settled the outstanding amount due in behalf of Mr. Bollozos, and not question the stipulations, terms and conditions embodied in the real estate mortgage agreement between Mr. Bollozos and Banco de Oro, this case would not have reached the courts and the property would have been immediately transferred in [VTL's] name.[29]

Curiously, the CA did not stand by its above-quoted final and executory decision, the incidents of which may no longer be questioned. "It is axiomatic that final and executory judgments

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

can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land."[30] "The noble purpose is to write finis to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations."[31]

WHEREFORE, the petition is **GRANTED**. The Court of Appeals' Decision dated May 31, 2010 and the Resolution dated August 18, 2010 in CA-G.R. SP. No. 04309 are hereby **REVERSED** and **SET ASIDE**. The Orders dated January 8, 2009 and June 3, 2009 of the Regional Trial Court, Branch 58, Cebu City in Civil Case No. CEB-16554 are hereby **REINSTATED**.

SO ORDERED.

Carpio,[*] *Acting C.J. (Chairperson)*, *Peralta, Perlas-Bernabe*, and *Caguioa, JJ.*, concur.

FIRST DIVISION

[G.R. No. 194765. April 23, 2018]

MARSMAN & COMPANY, INC., *petitioner, vs.* **RODIL C. STA. RITA,** *respondent.*

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[30] *City Government of Makati v. Odeña*, 716 Phil. 284, 311 (2013).

[31] *One Shipping Corp. and/or One Shipping Kabushiki Kaisha/Japan v. Penafiel*, 751 Phil. 204, 211 (2015).

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

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; POST EMPLOYMENT; TERMINATION OF EMPLOYMENT BY EMPLOYER; BEFORE A CASE FOR ILLEGAL DISMISSAL CAN PROSPER, AN EMPLOYER-EMPLOYEE RELATIONSHIP MUST FIRST BE ESTABLISHED; NOT PRESENT IN CASE AT BAR.—** Settled is the tenet that allegations in the complaint must be duly proven by competent evidence and the burden of proof is on the party making the allegation. In an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee was for a valid cause. However, before a case for illegal dismissal can prosper, an employer-employee relationship must first be established. In this instance, it was incumbent upon Sta. Rita as the complainant to prove the employer-employee relationship by substantial evidence. Unfortunately, Sta. Rita failed to discharge the burden to prove his allegations.

2. **ID.; ID.; ID.; THE MANAGEMENT PREROGATIVE TO TRANSFER OR TO ABSORB EMPLOYEES IS SUSTAINED IN CASE AT BAR.—** The spin-off and the attendant transfer of employees are legitimate business interests of Marsman. The transfer of employees through the Memorandum of Agreement was proper and did not violate any existing law or jurisprudence. Jurisprudence has long recognized what are termed as "management prerogatives." In *SCA Hygiene Products Corporation Employees Association-FFW v. SCA Hygiene Products Corporation*, we held that: The hiring, firing, transfer, demotion, and promotion of employees have been traditionally identified as a management prerogative subject to limitations found in the law, a collective bargaining agreement, or in general principles of fair play and justice. x x x *Tinio v. Court of Appeals* also acknowledged management's prerogative to transfer its employees within the same business establishment, x x x Analogously, the Court has upheld the transfer/absorption of employees from one company to another, as successor employer, as long as the transferor was not in bad faith and the employees absorbed by a successor-employer enjoy the continuity of their employment status and their rights and privileges with their former employer. x x x A labor contract merely creates an action *in personam* and does not create any real right which should be respected by third parties. This

conclusion draws its force from the right of an employer to select his/her employees and equally, the right of the employee to refuse or voluntarily terminate his/her employment with his/her new employer by resigning or retiring. That CPDSI took Sta. Rita into its employ and assigned him to one of its clients signified the former's acquiescence to the transfer.

3. **MERCANTILE LAW; CORPORATION CODE; PIERCING THE VEIL OF CORPORATE FICTION; THE EXISTENCE OF INTERLOCKING DIRECTORS, CORPORATE OFFICERS AND SHAREHOLDERS WITHOUT MORE, IS NOT ENOUGH JUSTIFICATION TO PIERCE THE VEIL OF CORPORATE FICTION IN THE ABSENCE OF FRAUD OR OTHER PUBLIC POLICY CONSIDERATIONS; CASE AT BAR.—** It is a fundamental principle of law that a corporation has a personality that is separate and distinct from that composing it as well as from that of any other legal entity to which it may be related. Other than Sta. Rita's bare allegation that Michael Leo T. Luna was Marsman's and CPDSI's Vice-President and General Manager, Sta. Rita failed to support his claim that both companies were managed and operated by the same persons, or that Marsman still had complete control over CPDSI's operations. Moreover, the existence of interlocking directors, corporate officers and shareholders without more, is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations. Verily, the doctrine of piercing the corporate veil also finds no application in this case because bad faith cannot be imputed to Marsman.

4. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST TO DETERMINE THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP; NOT SATISFIED IN CASE AT BAR.—** Sta. Rita also failed to satisfy the four-fold test which determines the existence of an employer-employee relationship. The elements of the four-fold test are: 1) the selection and engagement of the employees; 2) the payment of wages; 3) the power of dismissal; and 4) the power to control the employee's conduct. There is no hard and fast rule designed to establish the aforesaid elements. Any competent and relevant evidence to prove the relationship may be admitted. Identification cards, cash vouchers, social security registration, appointment letters or employment contracts, payrolls, organization charts, and

personnel lists, serve as evidence of employee status. x x x [S]ta. Rita failed to prove that Marsman had the power of control over his employment at the time of his dismissal. The power of an employer to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship. Control in such relationships addresses the details of day to day work like assigning the particular task that has to be done, monitoring the way tasks are done and their results, and determining the time during which the employee must report for work or accomplish his/her assigned task.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo for petitioner.
Arthur P. Rivera for respondent.

D E C I S I O N

LEONARDO-DE CASTRO,[*] *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by Marsman & Company, Inc. (Marsman), now Metro Alliance Holdings & Equities Corporation, seeking the annulment and reversal of the Decision[1] dated June 25, 2010 and the Resolution[2] dated December 9, 2010 of the Court of Appeals in CA-G.R. SP No. 106516. The appellate court's issuances reversed the Decision[3] dated July 31, 2008 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 30-01-00362-00 (NLRC CA No. 032892-02)

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

[1] *Rollo*, pp. 29-49; penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Josefina Guevara-Salonga and Franchito N. Diamante, concurring.

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

[3] CA *rollo*, pp. 96-103; penned by Presiding Commissioner Gerardo C. Nograles with Commissioners Perlita B. Velasco and Romeo L. Go, concurring.

dismissing respondent Rodil C. Sta. Rita's (Sta. Rita's) complaint and the Resolution[4] denying his motion for reconsideration. The Court of Appeals instead found Marsman guilty of illegal dismissal and ordered the company to pay for backwages, separation pay, moral damages, exemplary damages and attorney's fees.

Marsman, a domestic corporation, was formerly engaged in the business of distribution and sale of pharmaceutical and consumer products for different manufacturers within the country.[5] Marsman purchased Metro Drug Distribution, Inc. (Metro Drug), now Consumer Products Distribution Services, Inc. (CPDSI), which later became its business successor-in-interest. The business transition from Marsman to CPDSI generated confusion as to the actual employer of Sta. Rita at the time of his dismissal.

Marsman temporarily hired Sta. Rita on November 16, 1993 as a warehouse helper with a contract that was set to expire on April 16, 1994, and paid him a monthly wage of ₱2,577.00. After the contract expired, Marsman rehired Sta. Rita as a warehouseman and placed him on probationary status on April 18, 1994 with a monthly salary of ₱3,166.00.[6] Marsman then confirmed Sta. Rita's status as a regular employee on September 18, 1994 and adjusted his monthly wage to ₱3,796.00. Later, Sta. Rita joined Marsman Employees Union (MEU), the recognized sole and exclusive bargaining representative of Marsman's employees.[7]

Marsman administered Sta. Rita's warehouse assignments. Initially, Marsman assigned Sta. Rita to work in its GMA warehouse. Marsman then transferred Sta. Rita to Warehouses C and E of Kraft General Foods, Inc. on September 5, 1995.

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[4] *Id*. at 114-115.

[5] *Rollo*, p. 5.

[6] CA *rollo*, pp. 15-16.

[7] Records, p. 2.

Thereafter, Marsman reassigned Sta. Rita to Marsman Consumer Product Division Warehouse D in ACSIE, Parañaque.[8]

Sometime in July 1995, Marsman purchased Metro Drug, a company that was also engaged in the distribution and sale of pharmaceutical and consumer products, from Metro Pacific, Inc. The similarity in Marsman's and Metro Drug's business led to the integration of their employees which was formalized in a Memorandum of Agreement,[9] dated June 1996, which provides:

MARSMAN & COMPANY, INC.
City of Makati

MEMORANDUM OF AGREEMENT

MARSMAN AND CO., INC. hereinafter referred to as the MANAGEMENT, represented by MR. JOVEN D. REYES, Group President and Chief Executive Officer and the MARSMAN EMPLOYEES UNION-PSMM/DFA as the Union, represented hereinafter by MR. BONIFACIO M. PANALIGAN, PSMM President,

WITNESSETH, THAT:

WHEREAS, Marsman Employees Union-PSMM/DFA is the recognized sole and exclusive bargaining representative of Marsman & Co., Inc. regular employees in the rank and file and non-managerial category except those excluded in Article I, Section 2 of their existing CBA signed last June 1995;

WHEREAS, Marsman & Co. Inc. bought Metro Drug Distribution, Inc. from Metro Pacific Inc. last July, 1995;

WHEREAS, the Management of Marsman & Co., Inc. decided to limit Marsman & Co. Inc.'s, functions to those of a holding company and run Metro Drug Distribution, Inc. as the main operating company;

WHEREAS, in view of this, Management decided to integrate the employees of Marsman & Co. Inc. and Metro Drug Distribution, Inc. effective July 1, 1996 under the Metro Drug legal entity;

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[8] *Rollo*, p. 6.

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

THEREFORE, Management and Marsman Employees Union-PSMM/DFA agree:

1. That, the Union acknowledges Management's decision to transfer all employees of Marsman, including members of MEU-PSMM/DFA, to Metro Drug Distribution, Inc.

2. That, the Management recognizes the Marsman Employees Union-PSMM/DFA as the exclusive bargaining representative of all the rank and file employees transferred from Marsman & Co. Inc. to Metro Drug Distribution, Inc. and the other employees who may join the Union later.

3. That, the name of Marsman Employees Union-PSMM/DFA is retained.

4. That, the tenure or service years of all employees transferred shall be recognized and carried over and will be included in the computation/consideration of their retirement and other benefits.

5. That, the provisions of the existing Collective Bargaining Agreement signed last June 1995 and the Memorandum of Agreement signed also last June 1995 will be respected, honored and continue to be implemented until expiry or until superseded as per item 8 below.

6. That, there will be no diminution of present salaries and benefits being enjoyed even after the transfer.

7. That, upon transfer of MCI employees to Metro Drug Distribution, Inc. all employees covered by the CBA or otherwise shall enjoy the same terms and conditions of employment prior to transfer and shall continue to enjoy the same including company practice until a new CBA is concluded.

8. That, all of the above rights and obligations of the parties pertaining to the recognition of the union as exclusive bargaining representative, the effectivity, coverage and validity of the CBA and all other issues relative to the representation of the former Marsman employees are subject to and be superseded by the result of a Certification Election between Marsman Employees Union-PSMM/DFA and Metro Drug Corp. Employees Association-FFW in 1996 or at a date to be agreed upon by MEU and MDCEA as coordinated by the DOLE, and by any agreement that may be entered into by management and the winner in said certification election.

9. That, upon transfer, the Management agrees to address all pending/unresolved grievances and issues lodged by Marsman Employees Union-PSMM/DFA.

10. That, also upon transfer, the Management agrees to continue negotiation of Truckers and Forwarders issue as stipulated in the MOA signed last June, 1995.

11. That, Management and Union may continue to negotiate/ discuss other concerns/issues with regard to the transfer and integration.

IN WITNESS WHEREOF, the parties have caused this document to be executed by their authorized representatives this _____day of June, 1996 at Makati City. [Emphases supplied.]

MARSMAN & COMPANY, INC.
(signed)
JOVEN D. REYES
President & Chief Exec. Officer

MARSMAN EMPLOYEES UNION-PSSM/DFA
(signed)
BONIFACIO M. PANALIGAN
President

Witnessed by:

(signed)
LUISITO N. REYES
Vice-President
Finance & Administration

(signed)
JOSE MILO M. GILLESANIA
1st Vice-President
MEU-PSMM/DFA

Attested by:
(signed)
ABNER M. PADILLA
Conciliator-Mediator
NCMB, DOLE

Concomitant to the integration of employees is the transfer of all office, sales and warehouse personnel of Marsman to Metro Drug and the latter's assumption of obligation with regard to the affected employees' labor contracts and Collective Bargaining Agreement. The integration and transfer of employees

ensued out of the transitions of Marsman and CPDSI into, respectively, a holding company and an operating company. Thereafter, on November 7, 1997, Metro Drug amended its Articles of Incorporation by changing its name to "Consumer Products Distribution Services, Inc." (CPDSI) which was approved by the Securities and Exchange Commission.[10]

In the meantime, on an unspecified date, CPDSI contracted its logistic services to EAC Distributors (EAC). CPDSI and EAC agreed that CPDSI would provide warehousemen to EAC's tobacco business which operated in EAC-Libis Warehouse. A letter issued by Marsman confirmed Sta. Rita's appointment as one of the warehousemen for EAC-Libis Warehouse, effective October 13, 1997, which also stated that the assignment was a "transfer that is part of our cross-training program."[11]

Parenthetically, EAC's use of the EAC-Libis Warehouse was dependent upon the lease contract between EAC and Valiant Distribution (Valiant), owner of the EAC-Libis Warehouse. Hence, EAC's operations were affected when Valiant decided to terminate their contract of lease on January 31, 2000. In response to the cessation of the contract of lease, EAC transferred their stocks into their own warehouse and decided to operate the business by themselves, thereby ending their logistic service agreement with CPDSI.[12]

This sequence of events left CPDSI with no other option but to terminate the employment of those assigned to EAC-Libis Warehouse, including Sta. Rita. A letter[13] dated January 14, 2000, issued by Michael Leo T. Luna, CPDSI's Vice-President and General Manager, notified Sta. Rita that his services would be terminated on February 28, 2000 due to redundancy. CPDSI rationalised that they could no longer accommodate Sta. Rita to another work or position. CPDSI however guaranteed

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[10] *Id*. at 54.

[11] CA *rollo*, p. 20.

[12] *Rollo*, p. 57.

[13] *Id*. at 58.

Sta. Rita's separation pay and other employment benefits. The letter is reproduced in full as follows:

a MARSMAN company
CONSUMER PRODUCTS DISTRIBUTION SERVICES, INC.
January 14, 2000

MR. RODIL STA. RITA
Warehouse Supervisor
EAC Libis Operation
Libis, Quezon City

Dear Rodil,

As we have earlier informed you, EAC Distributors, Inc. has advised us that their Lessor, Valiant Distribution has terminated their lease contract effective January 31, 2000.

Accordingly, we were informed by EAC Distributors, Inc., that they will no longer need our services effective on the same date. As a result thereof, your position as warehouseman will become redundant thereafter.

We have exerted efforts to find other work for you to do or other positions where you could be accommodated. Unfortunately, our efforts proved futile.

In view thereof, we regret to inform you that your services will be terminated effective upon the close of business hours on the 28th of February, 2000.

You will be paid separation pay and other employment benefits in accordance with the company policies and the law, the details of which shall be discussed with you by your immediate superior.

In order to cushion the impact of your separation from the service and to give you ample time to look for other employment elsewhere, you need not report for work from the 18th of January up the end of February, 2000, although you will remain in the payroll of the company and will be paid the salary corresponding to this period.

We thank you for your contribution to this organization and we wish you well in your future endeavors.

Sincerely,

(signed)
MICHAEL LEO T. LUNA
Vice President & General Manager[14]

CPDSI thereafter reported the matter of redundancy to the Department of Labor and Employment in a letter[15] dated January 17, 2000, conveying therein Sta. Rita's impending termination. The letter stated:

The Regional Director
Department of Labor & Employment
National Capital Region
Palacio Del Gobernador
Intramuros, Manila

Dear Sir:

In compliance with the provisions of Article 283 of the Labor Code, as amended, Consumer Products Distribution Services, Inc. (CPDSI) "Company" hereby gives notice that our company is implementing a comprehensive streamlining program affecting levels of employment with the objective of further reducing operating expenses and to cope with the current economic difficulties. The employment of the employees occupying such positions and whose names are enumerated in the attachment list of (Annex "A") will be terminated.

In accordance with law, the above enumerated employees will be paid their separation pay in due course. Individual notices of the termination of employment of said employees have already been served upon them.

Very truly yours,

CONSUMER PRODUCTS DISTRIBUTION SERVICES, INC.

BY:
(signed)
MICHAEL LEO T. LUNA
Vice President and General Manager

x x x x x x x x x

[14] *Id.*

[15] Records, pp. 67-69.

LIST OF TERMINATED WORKERS

Names of Workers Terminated x x x	Occupation/Skills	Salary
RION L. V. RUZGAL	x x x WHSE SUPERVISOR	₱16,000.00
GLENN V. VISTO	x x x WHSE SUPERVISOR	₱15,600.00
CONRADO C. TIUSINGCO, JR.	x x x SR. WHSEMAN	₱7,200.00[16]
LOLITA D. JAMERO	x x x WHSE SUPERVISOR	₱14,500.00
ARTURO G. CASTRO, JR.	x x x WHSEMAN	₱7,616.00
RODIL C. STA. RITA	x x x WHSEMAN	₱7,746.00
EMILIO MADRIAGA	x x x WHSEMAN	₱7,616.00

Aggrieved, Sta. Rita filed a complaint in the NLRC, National Capital Region-Quezon City against Marsman on January 25, 2000 for illegal dismissal with damages in the form of moral, exemplary, and actual damages and attorney's fees. Sta. Rita alleged that his dismissal was without just or authorized cause and without compliance with procedural due process. His affidavit-complaint reads:

RODIL C. STA RITA, of legal age, single, Filipino citizen, with residence and postal address at 1128 R. Papa Street, Bo. Obrero, Tondo, Manila being under oath hereby deposes and says:

1. He was employed with Marsman on November 16, 1993, with offices and address at Manalac Avenue, Taguig, Metro Manila, as warehouseman with a basic salary ₱3,790.00 more (*sic*);

2. As a regular employee, his salary was increased by ₱1,600.00 in 1995; in 1996 was increased by ₱1,300.00; in 1997 was increased by ₱1,050.00, making a total of ₱7,740.00 up to his separation from employment on January 18, 2000 x x x;

3. He cannot fathom to know why he was terminated from employment, save the better (*sic*) of Mr. Michael Leo T. Luna, Vice President and General Manager of Marsman Company (Consumer Products Distribution Services, Inc.) on January 14, 2000;

4. His termination from employment is in diametric opposition to Art VI. Sec. 3(d) of the CBA and to Art. 282 of the Labor

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[16] *Id.*

> Code, as amended, i.e., he was no[t] given the 30-day period prior to his termination, making his dismissal as illegal per se;
>
> 5. In the absence of any derogatory record of Mr. Rodil Sta. Rita for six (6) years, he is entitled to moral and exemplary damages, in addition to back wages and separation pay, short of reinstatement and without loss of seniority rights.[17]

Marsman filed a Motion to Dismiss[18] on March 16, 2000 on the premise that the Labor Arbiter had no jurisdiction over the complaint for illegal dismissal because Marsman is not Sta. Rita's employer. Marsman averred that the Memorandum of Agreement effectively transferred Sta. Rita's employment from Marsman and Company, Inc. to CPDSI. Said transfer was further verified by Sta. Rita's: 1) continued work in CPDSI's premises; 2) adherence to CPDSI's rules and regulations; and 3) receipt of salaries from CPDSI. Moreover, Marsman asserted that CPDSI terminated Sta. Rita.

Labor Arbiter Gaudencio P. Demaisip, Jr. (Demaisip) rendered his Decision[19] on April 10, 2002 finding Marsman guilty of illegal dismissal, thus:

> This Office finds in favor of the complainant.
>
> Article 167 of the Labor Code defines employer, to wit:
>
> "Employer means any person, natural or juridical, employing the services of the employee."
>
> Likewise, Article 212 of the Labor Code defines employer in this wise:
>
> "Employer includes any person acting in the interest of an employer directly or indirectly."
>
> Consumer did not perform any act, thru its responsible officer, to show that it had employed the complainant. Nevertheless, Marsman

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[17] *Id*. at 3.

[18] *Id*. at 14-19.

[19] Records, pp. 113-119.

acted in the interest of Consumer because "sometime in 1996, for purposes of efficiency and economy Marsman integrated its distribution business with the business operations of Consumer Products Distribution Services, Inc. xxx" and "in line with the integration of the distribution businesses of Marsman and CPDSI, the employment of all Marsman office, sales, and warehouse personnel was transferred to CPDSI. x x x"

Thusly, Marsman qualifies as the employer of the complainant under the aforequoted provisions of the Labor Code.

The MOA was concluded between Marsman and Co. Inc. and Marsman Employees Union-PSMM/DFA. A perusal of its contents show that matters, concerning terms and conditions of employment, were contracted and concluded.

On the contrary, the MOA is a piece of evidence that Marsman is the employer of complainant because it is solely the employer who can negotiate and conclude the terms and conditions of employment of the workers.

Ironically, the MOA does not establish the contention that Consumer is the employer of the complainant.

Rule XVI of Department Order No. 9, Series of 1997, which took effect on June 21, 1997, requires among others, the ratification by the majority of all workers in the Collective Bargaining Unit of the Agreement. The non-compliance of the requirement, under said Department Order, renders the MOA ineffective.

Further, it may be concluded that the Consumer is an agent of respondent Marsman, because the former does "[t]he employment of all Marsman office sales, and warehouse personnel x x x."

Nevertheless, the employer of the complainant is Marsman and Company, Inc.

In illegal dismissal, the burden, to establish the just cause of termination, rest on the employer. The records of this case [are] devoid of the existence of such cause. Indeed, the respondent Marsman and Company, Inc. failed to show the cause of complainant's dismissal, warranting the twin remedies of reinstatement and backwages. However, insofar as reinstatement is concerned, this remedy appears to be impractical because, as gleaned from the position paper of [Sta. Rita], there is uncertainty in the availability of assignment for the

complainant. Instead, the payment of separation pay equivalent to one half month for every year or a fraction of at least six (6) months be considered as one year, would be equitable.

The rest of the claims are dismissed for lack of merit.

WHEREFORE, premises considered, the complainant is herein declared to have been illegally dismissed. Marsman and Company, Inc. is directed to pay the complainant backwages and separation pay on the total amount of ₱152,757.55.[20]

Marsman appealed the foregoing Decision arguing that the Labor Arbiter had no jurisdiction over the complaint because an employer-employee relationship did not exist between the party-litigants at the time of Sta. Rita's termination. Furthermore, Marsman stated that the ratification requirement under Rule XVI of Department Order No. 9, Series of 1997[21] applied only to Collective Bargaining Agreements, and the Memorandum of Agreement was certainly not a replacement for the Collective Bargaining Agreement which Marsman and MEU entered into in the immediately succeeding year prior to the ratification of the Memorandum of Agreement. Marsman also maintained that it had a personality that was separate and distinct from CPDSI thus it may not be made liable to answer for acts or liabilities

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[20] *Id.* at 117-119.

[21] RULE XVI

REGISTRATION OF COLLECTIVE BARGAINING AGREEMENTS

Section 1. Registration of collective bargaining agreement. - The parties to a collective bargaining agreement shall submit to the appropriate Regional Office two (2) duly signed copies thereof within thirty (30) calendar days from execution. Such copies of the agreement shall be accompanied with verified proof of posting in two conspicuous places in the work place and of ratification by the majority of all the workers in the bargaining unit.

Such proof shall consist of copies of the following documents certified under oath by the union secretary and attested to by the union president

(a) Statement that the collective bargaining agreement was posted in at least two conspicuous places in the establishment at least five (5) days before its ratification; and

(b) Statement that the collective bargaining agreement was ratified by the majority of the employees in the bargaining unit.

of CPDSI and vice-versa. Finally, Marsman claimed that Sta. Rita was validly declared redundant when CPDSI's logistics agreement with EAC was not renewed.[22]

Sta. Rita filed his own appeal, contesting the failure of the Labor Arbiter to award him moral and exemplary damages, and attorney's fees.

The NLRC in its Decision dated July 31, 2008, reversed Labor Arbiter Demaisip's Decision and found that there was no employer-employee relationship between Marsman and Sta. Rita. The NLRC held:

> Applying the four-fold test in determining the existence of employer-employee relationship fails to convince Us that complainant is respondent Marsman's employee.
>
> On selection and engagement, by complainant's transfer to CPDSI, he had become the employee of CPDSI. It should be emphasized that respondent Marsman and CPDSI are corporate entities which are separate and distinct from one another.
>
> On payment of wages, it was CPDSI which paid complainant's salaries and benefits. Complainant never claimed that it was still respondent Marsman which paid his salaries.
>
> On the power of dismissal, after EAC's lease contract expired deciding to transfer its stock to its own warehouse and handle its warehousing operations, complainant was left without any work. CPDSI decided to terminate his services by issuing him a termination notice on January 14, 2000.
>
> On the employer's power to control the employee with respect to the means and methods by which his work is to be accomplished, complainant was under the control and supervision of CPDSI concomitant to the logistic services which respondent Marsman had integrated to that of CPDSI. CPDSI saw to it that its obligation to provide logistic services to its client EAC is carried out with complainant working as warehouseman in the warehouse rented by EAC. The power of control is the most decisive factor in determining the existence of an employer-employee relationship. x x x.

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[22] Records, p. 149.

Having determined that employer-employee relationship does not exist between complainant and respondent Marsman, complainant has no cause of action for illegal dismissal against the latter. There is no necessity to resolve the [other] issues.

WHEREFORE, premises considered, the Decision of the Labor Arbiter is VACATED and SET ASIDE. A NEW decision is entered dismissing the complaint for lack of employer-employee relationship.[23]

In a Resolution dated November 11, 2008, the NLRC denied Sta. Rita's motion for reconsideration because his motion "raised no new matters of substance which would warrant reconsideration of the Decision of [the] Commission."[24]

Sta. Rita filed before the Court of Appeals a Petition for *Certiorari*[25] imputing grave abuse of discretion on the part of the NLRC for 1) finding a lack of employer-employee relationship between the party-litigants; and 2) not awarding backwages, separation pay, damages and attorney's fees.

The Court of Appeals promulgated its Decision on June 25, 2010, reversing the NLRC Decision. The Court of Appeals held that Marsman was Sta. Rita's employer because Sta. Rita was allegedly not part of the integration of employees between Marsman and CPDSI. The Court gave credence to Sta. Rita's contention that he purposely refused to sign the Memorandum of Agreement because such indicated his willingness to be transferred to CPDSI. In addition, the appellate court considered Sta. Rita's assignment to the EAC-Libis Warehouse as part of Marsman's cross-training program, concluding that only Sta. Rita's work assignment was transferred and not his employment.

The appellate court also found no merit in the NLRC's contention that CPDSI paid Sta. Rita's salaries and that it exercised control over the means and methods by which Sta. Rita performed his tasks. On the contrary, the Court of Appeals

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[23] CA *rollo*, pp. 102-103.

[24] *Id.* at 114.

[25] *Id.* at 6-14.

observed that Sta. Rita filed his applications for leave of absence with Marsman. Finally, the Court of Appeals adjudged that CPDSI, on the assumption that it had the authority to dismiss Sta. Rita, did not comply with the requirements for the valid implementation of the redundancy program.

The dispositive portion of the Court of Appeals Decision reads:

> ***WHEREFORE***, the instant petition for *certiorari* is ***GRANTED***. The assailed Decision and Resolution of the public respondent National Labor Relations Commission are ***ANNULLED*** and ***SET ASIDE***. Judgment is rendered declaring petitioner Rodil C. [Sta. Rita's] dismissal from work as illegal and accordingly, private respondent Marsman and Company, Inc. is ordered to pay said [respondent] the following:
>
> 1. backwages computed from 18 January 2000 up to the finality of this Decision;
> 2. separation pay in lieu of reinstatement computed at the rate of one (1) month pay for every year of service from 16 November 1993 up to the finality of this Decision;
> 3. the amount of ₱15,000.00 as moral damages;
> 4. the amount of ₱15,000.00 as exemplary damages; and
> 5. the amount equivalent to 10% of his total monetary award, as and for attorney's fees.
>
> Let this case be REMANDED to the Labor Arbiter for the purpose of computing, with reasonable dispatch, petitioner's monetary awards as above discussed.[26]

Hence, Marsman lodged the petition before us raising the lone issue:

> WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DECIDING A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH THE LAW, APPLICABLE DECISIONS OF THIS HONORABLE COURT AND EVIDENCE ON RECORD WHEN IT ANNULLED AND SET ASIDE THE NLRC'S

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[26] *Rollo*, pp. 48-49.

DECISION AND RESOLUTION EFFECTIVELY RULING THAT [STA. RITA] WAS ILLEGALLY DISMISSED FROM SERVICE WHEN THE LATTER COULD NOT HAVE BEEN DISMISSED AT ALL ON ACCOUNT OF THE ABSENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN SAID [STA. RITA] AND THE COMPANY[27]

Simply stated, the issue to be resolved is whether or not an employer-employee relationship existed between Marsman and Sta. Rita at the time of Sta. Rita's dismissal.

This petition is impressed with merit.

The issue of whether or not an employer-employee relationship exists in a given case is essentially a question of fact. As a rule, this Court is not a trier of facts and this applies with greater force in labor cases.[28] This petition however falls under the exception because of variance in the factual findings of the Labor Arbiter, the NLRC and the Court of Appeals. Indeed, on occasion, the Court is constrained to wade into factual matters when there is insufficient or insubstantial evidence on record to support those factual findings; or when too much is concluded, inferred or deduced from the bare or incomplete facts appearing on record.[29] The Court in the case of *South Cotabato Communications Corporation v. Sto. Tomas*[30] held that:

The findings of fact should, however, be supported by substantial evidence from which the said tribunals can make their own independent evaluation of the facts. In labor cases, as in other administrative and quasi-judicial proceedings, the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. Although no particular form of evidence is required to

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[27] *Id.* at 11.

[28] *South East International Rattan, Inc. v. Coming*, 729 Phil. 298, 305 (2014).

[29] *Aliviado v. Procter and Gamble Phils., Inc.*, 628 Phil. 469, 480-481 (2010).

[30] G.R. No. 217575, June 15, 2016, 793 SCRA 668, 679.

prove the existence of an employer-employee relationship, and any competent and relevant evidence to prove the relationship may be admitted, a finding that the relationship exists must nonetheless rest on substantial evidence. (Citations omitted)

Settled is the tenet that allegations in the complaint must be duly proven by competent evidence and the burden of proof is on the party making the allegation.[31] In an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee was for a valid cause. However, before a case for illegal dismissal can prosper, an employer-employee relationship must first be established.[32] In this instance, it was incumbent upon Sta. Rita as the complainant to prove the employer-employee relationship by substantial evidence. Unfortunately, Sta. Rita failed to discharge the burden to prove his allegations.

To reiterate the facts, undisputed and relevant to the disposition of this case, Marsman hired Sta. Rita as a warehouseman when it was still engaged in the business of distribution and sale of pharmaceutical and consumer products. Marsman paid Sta. Rita's wages and controlled his warehouse assignments, acts which can only be attributed to a *bona fide* employer. Marsman thereafter purchased Metro Drug, now CPDSI, which at that time, was engaged in a similar business. Marsman then entered into a Memorandum of Agreement with MEU, its bargaining representative, integrating its employees with CPDSI and transferring its employees, their respective employment contracts and the attendant employment obligation to CPDSI. The planned integration was then carried out sometime in 1996, as admitted by Sta. Rita in his pleading.[33]

It is imperative to point out that the integration and transfer was a necessary consequence of the business transition or

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[31] *Sarona v. National Labor Relations Commission*, 679 Phil. 394, 408 (2012).

[32] *Reyes v. Glaucoma Research Foundation, Inc.*, 760 Phil. 779, 789 (2015).

[33] *Rollo*, p. 40.

corporate reorganization that Marsman and CPDSI had undertaken, which had the characteristics of a corporate spin-off. To recall, a proviso in the Memorandum of Agreement limited Marsman's function into that of a holding company and transformed CPDSI as its main operating company. In business parlance, a corporate spin-off occurs when a department, division or portions of the corporate business enterprise is sold-off or assigned to a new corporation that will arise by the process which may constitute it into a subsidiary of the original corporation.[34]

The spin-off and the attendant transfer of employees are legitimate business interests of Marsman. The transfer of employees through the Memorandum of Agreement was proper and did not violate any existing law or jurisprudence.

Jurisprudence has long recognized what are termed as "management prerogatives." In *SCA Hygiene Products Corporation Employees Association-FFW v. SCA Hygiene Products Corporation*,[35] we held that:

> The hiring, firing, transfer, demotion, and promotion of employees have been traditionally identified as a management prerogative subject to limitations found in the law, a collective bargaining agreement, or in general principles of fair play and justice. This is a function associated with the employer's inherent right to control and manage effectively its enterprise. Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied. x x x.

Tinio v. Court of Appeals[36] also acknowledged management's prerogative to transfer its employees within the same business establishment, to wit:

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[34] Villanueva, *Philippine Corporate Law* (2010), p. 705.

[35] 641 Phil. 534, 542 (2010).

[36] 551 Phil. 972, 981-982 (2007).

This Court has consistently recognized and upheld the prerogative of management to transfer an employee from one office to another within the business establishment, provided there is no demotion in rank or a diminution of salary, benefits and other privileges. As a rule, the Court will not interfere with an employer's prerogative to regulate all aspects of employment which include among others, work assignment, working methods and place and manner of work. Labor laws discourage interference with an employer's judgment in the conduct of his business.

x x x x x x x x x

But, like other rights, there are limits thereto. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which the right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. The employer must be able to show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges, and other benefits. x x x. (Citations omitted.)

Analogously, the Court has upheld the transfer/absorption of employees from one company to another, as successor employer, as long as the transferor was not in bad faith[37] and the employees absorbed by a successor-employer enjoy the continuity of their employment status and their rights and privileges with their former employer.[38]

Sta. Rita's contention that the absence of his signature on the Memorandum of Agreement meant that his employment remained with Marsman is merely an allegation that is neither proof nor evidence. It cannot prevail over Marsman's evident intention to transfer its employees.

To assert that Marsman remained as Sta. Rita's employer even after the corporate spin-off disregards the separate

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[37] See for example *Filipinas Port Services, Inc. Damasticor v. National Labor Relations Commission*, 257 Phil. 1059 (1989).

[38] See for example *International Container Terminal Services, Inc. v. National Labor Relations Commission*, 326 Phil. 134 (1996).

personality of Marsman and CPDSI. It is a fundamental principle of law that a corporation has a personality that is separate and distinct from that composing it as well as from that of any other legal entity to which it may be related.[39] Other than Sta. Rita's bare allegation that Michael Leo T. Luna was Marsman's and CPDSI's Vice-President and General Manager, Sta. Rita failed to support his claim that both companies were managed and operated by the same persons, or that Marsman still had complete control over CPDSI's operations. Moreover, the existence of interlocking directors, corporate officers and shareholders without more, is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations.[40]

Verily, the doctrine of piercing the corporate veil also finds no application in this case because bad faith cannot be imputed to Marsman.[41] On the contrary, the Memorandum of Agreement guaranteed the tenure of the employees, the honoring of the Collective Bargaining Agreement signed in June 1995, the preservation of salaries and benefits, and the enjoyment of the same terms and conditions of employment by the affected employees.

Sta. Rita also failed to satisfy the four-fold test which determines the existence of an employer-employee relationship. The elements of the four-fold test are: 1) the selection and engagement of the employees; 2) the payment of wages; 3) the power of dismissal; and 4) the power to control the employee's conduct.[42] There is no hard and fast rule designed to establish the aforesaid elements. Any competent and relevant evidence to prove the relationship may be admitted. Identification cards,

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[39] *"G" Holdings, Inc. v. National Mines and Allied Workers Union Local 103 (NAMAWU)*, 619 Phil. 69, 109 (2009).

[40] *Zaragoza v. Tan*, G.R. No. 225544, December 4, 2017.

[41] See *San Miguel Corp. Employees Union-PTGWO v. Confesor*, 330 Phil. 628, 648 (1996).

[42] *Bazar v. Ruizol*, G.R. No. 198782, October 19, 2016.

cash vouchers, social security registration, appointment letters or employment contracts, payrolls, organization charts, and personnel lists, serve as evidence of employee status.[43]

The Memorandum of Agreement effectively transferred Marsman's employees to CPDSI. However, there was nothing in the agreement to negate CPDSI's power to select its employees and to decide when to engage them. This is in line with Article 1700 of the Civil Code which provides that:

> Art. 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.

A labor contract merely creates an action *in personam* and does not create any real right which should be respected by third parties.[44] This conclusion draws its force from the right of an employer to select his/her employees and equally, the right of the employee to refuse or voluntarily terminate his/her employment with his/her new employer by resigning or retiring. That CPDSI took Sta. Rita into its employ and assigned him to one of its clients signified the former's acquiescence to the transfer.

Marsman's letter[45] to Sta. Rita dated September 29, 1997 neither assumed nor disturbed CPDSI's power of selection. The letter reads:

MARSMAN & COMPANY, INC.

TO: MR. RODIL STA. RITA

RE: TRANSFER OF ASSIGNMENT

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[43] *Meteoro v. Creative Creatures, Inc*., 610 Phil. 150, 161 (2009).

[44] *Bank of the Philippine Islands v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank*, 642 Phil. 47, 93 (2010), citing *Sundowner Development Corporation v. Hon. Drilon*, 259 Phil. 481, 485 (1989).

[45] CA *rollo*, p. 20.

This is to confirm in writing your appointment as warehouseman for EAC-Libis Warehouse and Mercury Drug effective 13 October 1997. This transfer is part of our cross-training program.

Prior to the effectivity of your appointment, you may be instructed to proceed to EAC-Libis Warehouse for work familiarization and other operational matters related to the job.

You will directly report to Mr. Eusebio Paisaje, warehouse supervisor.

Good luck.
(signed)
Irene C. Nagrampa

cc: EDB/QRI
LRP/Noynoy Paisaje
HRG-201 file
file

It would be amiss to read this letter independent of the Memorandum of Agreement because the Memorandum of Agreement clearly reflected Marsman's intention to transfer all employees to CPDSI. When read in isolation, the use of "cross-training program" may be subject to a different interpretation but reading it together with the MOA indicates that the "cross- training program" was in relation to the transition phase that Marsman and CPDSI were then undergoing. It is clear under the terms of the Memorandum of Agreement that Marsman may continue to negotiate and address issues with the Union even after the signing and execution of said agreement in the course of fully implementing the transfer to, and the integration of operations with, CPDSI.

To prove the element on the payment of wages, Sta. Rita submitted forms for leave application, with either Marsman's logo or CPDSI's logo. Significantly, the earlier leave forms bore Marsman's logo but the latest leave application of Sta. Rita already had CPDSI's logo. In any event, the forms for leave application did not sufficiently establish that Marsman paid Sta. Rita's wages. Sta. Rita could have presented pay slips, salary vouchers, payrolls, certificates of withholding tax

on compensation income or testimonies of his witnesses.[46] The submission of his Social Security System (SSS) identification card (ID) only proved his membership in the social insurance program. Sta. Rita should have instead presented his SSS records which could have reflected his contributions, and the name and address of his employer.[47] Thus, Sta. Rita fell short in his claim that Marsman still had him in its payroll at the time of his dismissal.

As to the power of dismissal, the letter dated January 14, 2000 clearly indicated that CPDSI, and not Marsman, terminated Sta. Rita's services by reason of redundancy.

Finally, Sta. Rita failed to prove that Marsman had the power of control over his employment at the time of his dismissal. The power of an employer to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship.[48] Control in such relationships addresses the details of day to day work like assigning the particular task that has to be done, monitoring the way tasks are done and their results, and determining the time during which the employee must report for work or accomplish his/her assigned task.[49] The Court likewise takes notice of the company IDs attached in Sta. Rita's pleading. The "old" ID bore Marsman's logo while the "new" ID carried Metro Drug's logo. The Court has held that in a business establishment, an identification card is usually provided not only as a security measure but mainly to identify the holder thereof as a *bona fide* employee of the firm that issues it.[50] Thus the "new" ID confirmed that Sta. Rita was an employee of Metro Drug, which, to reiterate, later changed its name to CPDSI.

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[46] *Lopez v. Bodega City*, 558 Phil. 666, 675 (2007).

[47] *Tenazas v. R. Villegas Taxi Transport*, 731 Phil. 217, 230 (2014).

[48] *Legend Hotel (Manila) v. Realuyo*, 691 Phil. 226, 236 (2012).

[49] *Tesoro v. Metro Manila Retreaders, Inc. (BANDAG)*, 729 Phil. 177, 194 (2014).

[50] *Domasig v. National Labor Relations Commission*, 330 Phil. 518, 524 (1996).

Having established that an employer-employee relationship did not exist between Marsman and Sta. Rita at the time of his dismissal, Sta. Rita's original complaint must be dismissed for want of jurisdiction on the part of the Labor Arbiter to take cognizance of the case. For this reason, there is no need for the Court to pass upon the other issues raised.

WHEREFORE, premises considered, the petition is **GRANTED**. The Court of Appeals' assailed Decision dated June 25, 2010 and Resolution dated December 9, 2010 in CA-G.R. SP No. 106516 are, accordingly, **REVERSED** and **SET ASIDE**. The NLRC Decision dated July 31, 2008 in NLRC NCR Case No. 30-01-00362-00 (NLRC CA No. 032892-02) is **REINSTATED**.

SO ORDERED.

Del Castillo, Jardeleza, and *Tijam, JJ.*, concur.

Sereno, C.J., on leave.

SECOND DIVISION

[G.R. No. 195320. April 23, 2018]

BUREAU OF INTERNAL REVENUE, represented by the COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **HON. ERNESTO D. ACOSTA, *et al.* OF THE SPECIAL FIRST DIVISION OF THE COURT OF TAX APPEALS and CHEVRON PHILIPPINES, INC. (formerly Caltex Philippines, Inc.),** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN AN APPEAL IS AVAILABLE, *CERTIORARI* WILL NOT PROSPER ESPECIALLY IF THE APPEAL WAS LOST BECAUSE OF ONE'S OWN NEGLIGENCE OR ERROR OF CHOICE OF REMEDY, EVEN IF THE GROUND IS GRAVE ABUSE OF DISCRETION; CASE AT BAR.—** Time and again, this Court emphasized that the special civil action for *certiorari* is a limited form of review and a remedy of last recourse. Section 1, Rule 65 of the Rules of Court provides that the special civil action of *certiorari* may only be invoked when there is no appeal, nor any plain, speedy and adequate remedy in the course of law. A writ of *certiorari* is not a substitute for a lost appeal. When an appeal is available, *certiorari* will not prosper especially if the appeal was lost because of one's own negligence or error in the choice of remedy, even if the ground is grave abuse of discretion. Under the Rules of Court, the remedy against a final judgment or order is an appeal. In *Pahila-Garrido v. Tortogo, et al.*, the Court has held that a final judgment disposes of the subject matter in its entirety or terminates a particular proceeding or action. A final judgment or order leaves nothing more to be done except to enforce by execution what the court has determined. x x x Clearly, the CTA-Special First Division disposed of the case in its entirety and no other issues were left to further rule upon. Therefore, the appropriate remedy to challenge the Resolution dated December 3, 2010 is an ordinary appeal, not a petition for *certiorari*. BIR had every opportunity to elevate the matter to the CTA *En Banc* but chose not to avail itself of this remedy. Even on this ground alone, the Court may already dismiss the present petition.

2. **ID.; ID.; ID.; A PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT COVERS ERRORS OF JURISDICTION OR GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION; NOT ESTABLISHED IN CASE AT BAR.—** A petition for *certiorari* under Rule 65 of the Rules of Court covers errors of jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction. Errors of jurisdiction refer to acts done by the court without or in excess of its

jurisdiction, and which error is correctible only by the extraordinary writ of *certiorari*. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. The petitioner, or the BIR in this case, bears the burden to prove not merely reversible error, but grave abuse of discretion on the part of the public respondent, absent which in the exercise of judicial power a petition for *certiorari* cannot prosper. In this case, the BIR was unable to show that the resolutions of the CTA-Special First Division were patent and gross to warrant striking them down through a petition for *certiorari*. No argument was advanced to establish that the CTA-Special First Division exercised its judgment capriciously, whimsically, arbitrarily, or despotically by reason of passion and hostility.

3. TAXATION; COURT OF TAX APPEALS (REPUBLIC ACT NO. 1125, THE LAW CREATING THE COURT OF TAX APPEALS [CTA]); REPUBLIC ACT NO. 9282 (THE LAW EXPANDING THE JURISDICTION OF THE CTA, AND OTHER MATTERS); A DECISION RENDERED BY A DIVISION OF THE CTA IS APPEALABLE TO THE CTA *EN BANC*.— For cases before the CTA, a decision rendered by a division of the CTA is appealable to the CTA *En Banc* as provided by Section 18 of R.A. No. 1125, as amended by R.A. No. 9282. x x x Section 2 of Rule 4 of the Revised Rules of the CTA also states that the CTA *En Banc* has exclusive appellate jurisdiction relative to the review of the court divisions' decisions or resolutions on motion for reconsideration or new trial, in cases arising from administrative agencies such as the BIR.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Platon Martinez Flores San Pedro & Leaño for private respondent.

D E C I S I O N

REYES, JR., *J.*:

Before this Court is a Petition for *Certiorari*[1] under Rule 65 of the Rules of Court assailing the Resolutions dated September 24, 2010[2] and December 3, 2010[3] promulgated by the Court of Tax Appeals-Special First Division (CTA-Special First Division), which considered the motion for reconsideration filed by the Bureau of Internal Revenue (BIR) as a mere scrap of paper and deemed the CTA-Special First Division's Decision[4] dated July 12, 2010 as final and executory.

The Antecedent Facts

On October 7, 2004, Chevron Philippines, Inc. (Chevron) filed an administrative claim for refund or credit with the BIR under Claim No. 2004-XP-11/03. The claim in the aggregate amount of ₱131,175,480.18 represented alleged overpayment of excise taxes on imported finished unleaded premium gasoline and diesel fuel withdrawn from its refinery in San Pascual, Batangas for the month of November 2003.[5]

The BIR, however, did not act on Chevron's claim. Thus, on the basis of Section 7 of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282,[6] Chevron elevated the case to the

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[1] *Rollo*, pp. 2-47.

[2] Penned by Presiding Justice Ernesto D. Acosta, with Associate Justices Lovell R. Bautista and Caesar A. Casanova, concurring; *id*. at 102-104.

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

[4] *Id*. at 115-127.

[5] *Id*. at 28.

[6] Section 7 A(2) of R.A. No. 9282

Jurisdiction. - The CTA shall exercise exclusive appellate jurisdiction to review by appeal: x x x Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by

CTA-Special First Division on October 28, 2005 *via* a petition for review.[7]

On July 12, 2010, the CTA-Special First Division rendered its Decision[8] partly granting the petition. The dispositive portion of the decision reads:

WHEREFORE, the Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED to refund to petitioner the reduced amount of ONE HUNDRED EIGHT MILLION FIVE HUNDRED EIGHTY-FIVE THOUSAND ONE HUNDRED) SIXTY-TWO PESOS and 95/100 (₱108,585,162.95).

SO ORDERED.[9]

The BIR moved for the reconsideration of this Decision on August 3, 2010.[10]

On August 17, 2010, Chevron filed its Comment/Opposition[11] to the Motion for Reconsideration. Chevron asserted that the BIR's motion for reconsideration was a *pro forma* motion because the BIR failed to set the motion for hearing pursuant to Sections 3 and 6 of Rule 15 of the Revised Rules of the CTA.[12] Chevron further maintained that non-compliance with the notice of hearing requirement was a fatal defect that rendered its motion a mere scrap of paper. As such, it is not entitled to judicial cognizance and the filing of such defective motion did not toll the reglementary period to appeal.

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the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial.

[7] *Rollo*, p. 28.

[8] *Id*. at 27-40.

[9] *Id*. at 39.

[10] *Id*. at 6.

[11] *Id*. at 63-73.

[12] *Id*. at 63.

The CTA-Special First Division, in the assailed Resolution[13] dated September 24, 2010, agreed with Chevron and denied the BIR's motion for reconsideration:

WHEREFORE, in view of the foregoing, respondent's Motion for Reconsideration, filed on August 3, 2010, is considered a mere scrap of paper. Accordingly, the said Motion is *pro forma*. Thus, the same will not merit the attention of this Court and will not toll the running of the period to appeal.

SO ORDERED.[14]

Unperturbed, the BIR once again moved for a reconsideration of the resolution, which the CTA-Special First Division denied with finality in its Resolution[15] dated December 3, 2010, *viz.*:

WHEREFORE, the instant Motion for Reconsideration is denied for lack of merit. The failure of respondent to file a correct motion for reconsideration did not toll the running of the reglementary period to appeal under the rules. The Decision promulgated on June 12, 2010 is hereby declared final and executory.

SO ORDERED.[16]

On December 8, 2010, the BIR received its copy of the Resolution dated December 3, 2010. The CTA-Special First Division, after having confirmed that the BIR did not elevate the issue before the CTA *En Banc* within the 15-day reglementary period to appeal, issued an Entry of Judgment.[17] On January 10, 2011, the BIR received a copy of the Entry of Judgment,[18] the pertinent portion of which reads:

This is to certify that on July 12, 2010, a decision rendered in this case was filed in this Office, the dispositive part of which reads as follows:

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[13] *Id*. at 41-47.

[14] *Id*. at 103.

[15] *Id*. at 105.

[16] *Id*. at 47.

[17] *Id*. at 109.

[18] *Id*. at 7.

> **WHEREFORE**, the Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED to refund to petitioner the reduced amount of ONE HUNDRED EIGHT MILLION FIVE HUNDRED EIGHTY-FIVE THOUSAND ONE HUNDRED SIXTY-TWO PESOS and 95/100 (₱108,585,162.95).
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> **SO ORDERED.**

And that the same has, on December 23, 2010, become final and executory and is hereby recorded in the Book of Entries of Judgment, x x x.[19]

On January 11, 2011, Chevron moved for the issuance of a Writ of Execution[20] of the CTA-Special First Division's Decision dated July 12, 2010.

In response, the BIR filed a Motion to Lift Entry of Judgment before the CTA-Special First Division on the ground that it intended to exhaust the remedy of filing a Petition for *Certiorari* before the Supreme Court under Rule 65 of the Revised Rules of Court.[21]

Hence, this petition for *certiorari*[22] filed by the BIR on February 7, 2011. The BIR alleged that the CTA-Special First Division committed grave abuse of discretion in rendering its Resolutions dated September 24, 2010[23] and December 3, 2010.[24] It argues that the CTA-Special First Division in accordance with jurisprudence should disregard technicalities and allowed the motion despite the lack of notice of hearing in order to resolve the case meritoriously.[25]

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[19] *Id*. at 109.

[20] *Id*. at 110-112.

[21] *Id*. at 138.

[22] *Id*. at 2-19.

[23] *Id*. at 102-104.

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

[25] *Id*. at 10.

Issues

Thus, the instant petition calls this Court to resolve two (2) issues:

1. Whether a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court is available as a remedy to the BIR; and
2. Whether the CTA-Special First Division gravely abused its discretion in declaring the motion for reconsideration filed by the BIR on October 14, 2010 to be a *pro forma* motion, and in rendering the Decision promulgated on July 12, 2010 final and executory.[26]

Ruling of the Court

The petition is dismissed.

Time and again, this Court emphasized that the special civil action for *certiorari* is a limited form of review and a remedy of last recourse.[27] Section 1, Rule 65 of the Rules of Court provides that the special civil action of *certiorari* may only be invoked when there is no appeal, nor any plain, speedy and adequate remedy in the course of law.

A writ of *certiorari* is not a substitute for a lost appeal.[28] When an appeal is available, *certiorari* will not prosper especially if the appeal was lost because of one's own negligence or error in the choice of remedy, even if the ground is grave abuse of discretion.[29]

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[26] *Id*. at 8.

[27] *Gabutan v. Nacalaban*, G.R. Nos. 185857-58, June 29, 2016, 795 SCRA 115, 130.

[28] *Cua, Jr., et al. v. Tan, et al.*, 622 Phil. 661, 711-712 (2009).

[29] *Chingkoe, et al. v. Republic of the Philippines*, 715 Phil. 651, 659 (2013), citing *Hicoblino M. Catly (deceased) v. Navarro, et al.*, 634 Phil. 273 (2010); *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC, et al.*, 716 Phil. 500, 513 (2013).

Under the Rules of Court, the remedy against a final judgment or order is an appeal. In *Pahila-Garrido v. Tortogo, et al.*,[30] the Court has held that a final judgment disposes of the subject matter in its entirety or terminates a particular proceeding or action. A final judgment or order leaves nothing more to be done except to enforce by execution what the court has determined.[31]

For cases before the CTA, a decision rendered by a division of the CTA is appealable to the CTA *En Banc* as provided by Section 18 of R.A. No. 1125, as amended by R.A. No. 9282. It reads as follows:

SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* - No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *En Banc*.

Section 2 of Rule 4 of the Revised Rules of the CTA also states that the CTA *En Banc* has exclusive appellate jurisdiction relative to the review of the court divisions' decisions or resolutions on motion for reconsideration or new trial, in cases arising from administrative agencies such as the BIR.

SEC. 2. *Cases within the jurisdiction of the Court En Banc.* — The Court *En Banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, x x x.

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[30] 671 Phil. 320 (2011).

[31] *Id.* at 334.

It must be stressed that the Resolution dated December 3, 2010 of the CTA-Special First Division which declared its Decision dated July 12, 2010 final and executory is a final judgment. It disposed of the case on the merits.

The main issue resolved by the CTA-Special First Division in the Decision dated July 12, 2010 was Chevron's entitlement to refund or credit because of its overpayment of excise taxes on imported finished unleaded premium gasoline and diesel fuel. In its decision, the CTA-Special First Division found sufficient basis for Chevron's claim and partially granted the petition. The BIR was ordered to refund One Hundred Eight Million Five Hundred Eighty-Five Thousand One Hundred Sixty-Two and Ninety-Five Centavos (₱108,585,162.95), representing the excess excise tax paid for November 2003.

After the BIR's Motion for Reconsideration on the Decision dated July 12, 2010 was denied in the Resolution dated September 24, 2010 of the CTA-Special First Division, the BIR again filed a motion for the reconsideration of this resolution. Significantly, in its Resolution dated December 3, 2010, the CTA-Special First Division ruled on the merits of the motion and denied the BIR's argument as to the liberal application of the rules.

Clearly, the CTA-Special First Division disposed of the case in its entirety and no other issues were left to further rule upon. Therefore, the appropriate remedy to challenge the Resolution dated December 3, 2010 is an ordinary appeal, not a petition for *certiorari*.

BIR had every opportunity to elevate the matter to the CTA *En Banc* but chose not to avail itself of this remedy. Even on this ground alone, the Court may already dismiss the present petition.

Anent the second issue, the Court finds that the CTA-Special First Division did not gravely abuse its discretion.

A petition for *certiorari* under Rule 65 of the Rules of Court covers errors of jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction. Errors of jurisdiction refer to acts done by the court without or in excess of its

jurisdiction, and which error is correctible only by the extraordinary writ of *certiorari*.[32] The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[33] The petitioner, or the BIR in this case, bears the burden to prove not merely reversible error, but grave abuse of discretion on the part of the public respondent,[34] absent which in the exercise of judicial power a petition for *certiorari* cannot prosper.

In this case, the BIR was unable to show that the resolutions of the CTA-Special First Division were patent and gross to warrant striking them down through a petition for *certiorari*. No argument was advanced to establish that the CTA-Special First Division exercised its judgment capriciously, whimsically, arbitrarily, or despotically by reason of passion and hostility.

It is not disputed that the BIR's Motion for Reconsideration dated August 3, 2010 failed to comply with the provisions provided for by the Revised Rules of the CTA. Specifically, the motion filed by the BIR did not include a notice for hearing and necessarily, the BIR likewise failed to set the motion for hearing. In denying the motion, the CTA-Special First Division cited Sections 3[35] and 6[36] of the Revised Rules of

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[32] *San Fernando Rural Bank Inc. v. Pampanga Omnibus Development Corp.*, 549 Phil. 349, 374 (2007).

[33] *Unilever Philippines, Inc. v. Tan*, 725 Phil. 486, 493-494 (2014).

[34] *Tan v. Sps. Antazo*, 659 Phil. 400, 404 (2011).

[35] **SEC. 3.** *Hearing of the Motion.* — The motion for reconsideration or new trial, as well as the opposition thereto, shall embody all supporting arguments and the movant shall set the same for hearing on the next available motion day. Upon the expiration of the period set forth in the next preceding section, without any opposition having been filed by the other party, the motion for reconsideration or new trial shall be considered submitted for resolution, unless the Court deems it necessary to hear the parties on oral argument, in which the case the Court shall issue the proper order.

[36] **SEC. 6.** *Contents of motion for reconsideration or new trial and notice.* — The motion shall be in writing stating its grounds, a written notice of

the CTA[37] as its basis. It is clear therefore that the CTA-Special First Division simply applied the applicable rules which the BIR concededly failed to observe. Accordingly, CTA-Special First Division's dismissal of the motion for reconsideration was discretion duly exercised, not misused or abused.

On the basis of the foregoing, the Court finds no grave abuse of discretion on the part of the CTA-Special First Division in issuing the assailed resolutions. Neither can the BIR, having chosen not to avail itself of the remedy of appeal, now substitute *certiorari* for an appeal as both remedies are mutually exclusive, and not alternative or successive.[38]

WHEREFORE, premises considered, the petition for *certiorari* is hereby **DISMISSED.** The Resolutions dated September 24, 2010 and December 3, 2010 of the Court of Tax Appeals-Special First Division in CTA Case No. 7358 are **AFFIRMED *in toto.***

SO ORDERED.

Carpio,[*] *Acting C. J. (Chairperson)*, *Peralta, Perlas-Bernabe*, and *Caguioa, JJ.*, concur.

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which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in subparagraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by counter-affidavits. A motion for the cause mentioned in subparagraph (b) of the preceding section shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration or new trial that does not comply with the foregoing provisions shall be deemed pro forma, which shall not toll the reglementary period for appeal.

[37] A.M. No. 05-11-07-CTA.

[38] *Rigor v. Tenth Division of the CA*, 526 Phil. 852, 857-858 (2006).

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

THIRD DIVISION

[G.R. No. 206529. April 23, 2018]

RENANTE B. REMOTICADO, *petitioner, vs.* **TYPICAL CONSTRUCTION TRADING CORP. and ROMMEL M. ALIGNAY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; UNDER RULE 45 OF THE 1997 RULES OF CIVIL PROCEDURE, ONLY QUESTIONS OF LAW MAY BE RAISED ON A PETITION FOR REVIEW ON *CERTIORARI*; EXCEPTIONS.— Under Rule 45 of the 1997 Rules of Civil Procedure, only questions of law may be raised in a petition for review on certiorari. The rule, however, admits of exceptions. In *Pascual v. Burgos*: x x x Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. These exceptions similarly apply in petitions for review filed before this court involving civil, labor, tax, or criminal cases.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; POST EMPLOYMENT; TERMINATION OF EMPLOYMENT BY THE EMPLOYER; THE COMPLAINING EMPLOYEE

IN AN ILLEGAL TERMINATION CASE MUST FIRST ESTABLISH BY SUBSTANTIAL EVIDENCE THE FACT OF TERMINATION BY THE EMPLOYER BECAUSE THERE CAN BE NO ILLEGAL TERMINATION WHEN THERE IS NO TERMINATION; CASE AT BAR.— It is true that in illegal termination cases, the burden is upon the employer to prove that termination of employment was for a just cause. Logic dictates, however, that the complaining employee must first establish by substantial evidence the fact of termination by the employer. If there is no proof of termination by the employer, there is no point in even considering the cause for it. There can be no illegal termination when there was no termination: x x x Petitioner here insists on his version of events, that is, that on December 23, 2010, he was told to stop reporting for work on account of his supposed indebtedness at the canteen. This bare insistence, however, is all that petitioner has. He failed to present convincing evidence. Even his basic narrative is bereft of supporting details that could be taken as badges of veracity. As the Court of Appeals underscored, "[P]etitioner only made a general statement that he was illegally dismissed . . . He did not state how he was terminated [or] mentioned who prevented him from reporting for work."

3. ID.; ID.; ID.; ID.; WAIVERS AND QUITCLAIMS; JURISPRUDENCE FROWNS UPON WAIVERS AND QUITCLAIMS FORCED UPON EMPLOYEES, HOWEVER, WAIVERS AND QUITCLAIMS ARE NOT INVALID IN THEMSELVES; REQUISITES OF A VALID QUITCLAIM.— Jurisprudence frowns upon waivers and quitclaims forced upon employees. Waivers and quitclaims are, however, not invalid in themselves. When shown to be freely executed, they validly discharge an employer from liability to an employee. "[A] legitimate waiver representing a voluntary settlement of a laborer's claims should be respected by the courts as the law between the parties." In *Goodrich Manufacturing Corporation v. Ativo*: x x x In certain cases, however, the Court has given effect to quitclaims executed by employees if the employer is able to prove the following requisites, to wit: (1) the employee executes a deed of quitclaim voluntarily; (2) there is no fraud or deceit on the part of any of the parties; (3) the consideration of the quitclaim is credible and reasonable; and (4) the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.

APPEARANCES OF COUNSEL

Federation Of Free Workers for petitioner.
Espinosa Aldea-Espinoa & Associates Law Offices for respondents.

D E C I S I O N

LEONEN, *J.*:

There can be no case for illegal termination of employment when there was no termination by the employer. While, in illegal termination cases, the burden is upon the employer to show just cause for termination of employment, such a burden arises only if the complaining employee has shown, by substantial evidence, the fact of termination by the employer.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed November 29, 2012 Decision[2] and March 26, 2013 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 124993 be reversed and set aside.

The assailed Court of Appeals November 29, 2012 Decision found no grave abuse of discretion on the part of National Labor Relations Commission in rendering its January 11, 2012 Decision,[4] which affirmed Labor Arbiter Renell Joseph R. Dela

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[1] *Rollo*, pp. 13-36.

[2] *Id*. at 214-226. The Decision was penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Amelita G. Tolentino and Danton Q. Bueser of the Fourth Division, Court of Appeals, Manila.

[3] *Id*. at 241-242. The Resolution was penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Amelita G. Tolentino and Danton Q. Bueser of the Fourth Division, Court of Appeals, Manila.

[4] *Id*. at 62-69. The Decision, docketed as NLRC LAC No. 11-003025-11 (NLRC RAB-IV-03-00317-11-L), was penned by Commissioner Napoleon M. Menese and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora of the Second Division, National Labor Relations Commission, Quezon City.

Cruz's (Labor Arbiter Dela Cruz) October 11, 2011 Decision.[5] Labor Arbiter Dela Cruz's Decision dismissed petitioner Renante B. Remoticado's (Remoticado) Complaint for illegal dismissal after a finding that he voluntarily resigned. The assailed Court of Appeals March 26, 2013 Resolution denied his Motion for Reconsideration.

Remoticado's services were engaged by Typical Construction Trading Corporation (Typical Construction) as a helper/laborer in its construction projects, the most recent being identified as the Jedic Project at First Industrial Park in Batangas.[6]

In separate sworn statements, Pedro Nielo (Nielo), Typical Construction's Field Human Resources Officer, and two (2) of Remoticado's co-workers, Salmero Pedros and Jovito Credo,[7] recalled that on December 6, 2010, Remoticado was absent without an official leave. He remained absent until December 20, 2010 when, upon showing up, he informed Nielo that he was resigning. Prodded by Nielo for his reason, Remoticado noted that they were "personal reasons considering that he got sick."[8] Nielo advised Remoticado to return the following day as he still had to report Remoticado's resignation to Typical Construction's main office, and as his final pay had yet to be computed.[9]

Remoticado returned the following day and was handed ₱5,082.53 as his final pay. He protested, saying that he was entitled to "separation pay computed at two (2) months for his services for two (2) years."[10] In response, Nielo explained that Remoticado could not be entitled to separation pay considering that he voluntarily resigned. Nielo added that if Remoticado

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[5] *Id*. at 72-80.

[6] *Id.* at 65.

[7] *Id*. at 66 and 76-77.

[8] *Id*. at 65.

[9] *Id*.

[10] *Id.*

was not satisfied with ₱5,082.53, he was free to continue working for Typical Construction. However, Remoticado was resolute and proceeded to sign and affix his thumb marks on a *Kasulatan ng Pagbawi ng Karapatan at Kawalan ng Paghahabol*, a waiver and quitclaim.[11]

On January 10, 2011,[12] Remoticado filed a Complaint for illegal dismissal against Typical Construction and its owner and operator, Rommel M. Alignay (Alignay).[13] He claimed that on December 23, 2010, he was told to stop reporting for work due to a "debt at the canteen"[14] and thereafter was prevented from entering Typical Construction's premises.[15]

In a Decision[16] dated October 11, 2011, Labor Arbiter Dela Cruz dismissed Remoticado's Complaint for lack of merit. He explained that Remoticado's employment could not have been illegally terminated as he voluntarily resigned.[17]

In its January 11, 2012 Decision,[18] the National Labor Relations Commission denied Remoticado's appeal.

In its assailed November 29, 2012 Decision,[19] the Court of Appeals found no grave abuse of discretion on the part of the National Labor Relations Commission. In its assailed March 26, 2013 Resolution,[20] the Court of Appeals denied Remoticado's Motion for Reconsideration.

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

[12] *Id*. at 76.

[13] *Id*. at 15.

[14] *Id*. at 73.

[15] *Id*. at 215.

[16] *Id*. at 72-80.

[17] *Id*. at 79.

[18] *Id*. at 62-69.

[19] *Id*. at 214-226.

[20] *Id*. at 241-242.

Undeterred by the consistent rulings of the Court of Appeals, the National Labor Relations Commission, and Labor Arbiter Dela Cruz, Remoticado filed the present Petition.[21]

For resolution is the issue of whether petitioner Renante B. Remoticado voluntarily resigned or his employment was illegally terminated in the manner, on the date, and for the reason he averred in his complaint.

The Petition lacks merit.

I

Determining which between two (2) alternative versions of events actually transpired and ascertaining the specifics of how, when, and why one of them occurred involve factual issues resting on the evidence presented by the parties.

It is basic that factual issues are improper in Rule 45 petitions. Under Rule 45 of the 1997 Rules of Civil Procedure,[22] only questions of law may be raised in a petition for review on certiorari. The rule, however, admits of exceptions. In *Pascual v. Burgos*:[23]

> The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt" when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.

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[21] *Id.* at 13-36.

[22] RULES OF COURT, Rule 45, Sec. 1 provides:

> Section 1. *Filing of petition with Supreme Court*. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

[23] *Pascual v. Burgos*, G.R. No. 171722, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/171722.pdf> [Per *J.* Leonen, Second Division].

However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

These exceptions similarly apply in petitions for review filed before this court involving civil, labor, tax, or criminal cases.[24] (Citations omitted)

No exception avails in this case.

Quite glaring is the sheer consistency of the factual findings of the Court of Appeals, the National Labor Relations Commission, and Labor Arbiter Dela Cruz.

Not only are these findings uniform, but they are also sustained by evidence. The Court of Appeals correctly ruled that there is no showing of grave abuse of discretion on the part of the National Labor Relations Commission.

II

It is petitioner's claim that the Court of Appeals, the National Labor Relations Commission, and Labor Arbiter Dela Cruz are all in error for failing to see that Typical Construction failed

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

to discharge its supposed burden of proving the validity of his dismissal. He asserts that such failure leaves no other conclusion than that his employment was illegally terminated.[25]

It is petitioner who is in error.

It is true that in illegal termination cases, the burden is upon the employer to prove that termination of employment was for a just cause. Logic dictates, however, that the complaining employee must first establish by substantial evidence the fact of termination by the employer.[26] If there is no proof of termination by the employer, there is no point in even considering the cause for it. There can be no illegal termination when there was no termination:

> Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. If there is no dismissal, then there can be no question as to the legality or illegality thereof.[27]

Petitioner here insists on his version of events, that is, that on December 23, 2010, he was told to stop reporting for work on account of his supposed indebtedness at the canteen. This bare insistence, however, is all that petitioner has. He failed to present convincing evidence. Even his basic narrative is bereft of supporting details that could be taken as badges of veracity. As the Court of Appeals underscored, "[P]etitioner only made a general statement that he was illegally dismissed . . . He did not state how he was terminated [or] mentioned who prevented him from reporting for work."[28]

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[25] *Rollo*, pp. 22-28.

[26] *Doctor v. NII Enterprises*, G.R. No. 194001, November 22, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/november2017/194001.pdf> 9 [Per *J.* Leonardo-De Castro, First Division] citing *MZR Industries v. Colambot*, 716 Phil. 617, 624 (2013).

[27] *Id*.

[28] *Rollo*, p. 223.

III

In contrast with petitioner's bare allegation are undisputed facts and pieces of evidence adduced by respondents, which cast serious doubt on the veracity of petitioner's recollection of events.

It is not disputed that the establishment identified as Bax Canteen, to which petitioner owed ₱2,115.00, is not owned by, or otherwise connected with any of the respondents, or with any of Typical Construction's owners, directors, or officers. There was also no showing that any of the two (2) respondents, or anyone connected with Typical Construction, was prejudiced or even just inconvenienced by petitioner's indebtedness. It appears that Bax Canteen was merely in the proximity of the site of Typical Construction's Jedic Project. Petitioner failed to show why Typical Construction would go out of its way to concern itself with the affairs of another company. What stands, therefore, is the sheer improbability that Typical Construction would take petitioner's indebtedness as an infraction, let alone as a ground for terminating his employment.[29]

The waiver and quitclaim bearing petitioner's signature and thumbmarks was dated December 21, 2010,[30] predating petitioner's alleged illegal termination by two (2) days. If indeed petitioner was told to stop reporting for work on December 23, 2010, it does not make sense for Typical Construction to have petitioner execute a waiver and quitclaim two (2) full days ahead of the termination of his employment. It would have been a ludicrous move for an employer that is purportedly out to outwit someone into unemployment.

The waiver and quitclaim could very well have been antedated. But it is not for this Court to sustain a mere conjecture. It was for petitioner to allege and prove any possibility of antedating. He did not do so. In any case, even if this Court were to indulge a speculation, there does not appear to be any cogent reason

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

[30] *Id*. at 66.

for antedating. To the contrary, antedating the waiver and quitclaim was an unnecessary complication considering that any simulation of resignation would have already been served by petitioner's mere affixing of his signature. Antedating would just have been an inexplicably asinine move on the part of respondents.

What is most crucial is that petitioner has never disavowed the waiver and quitclaim.[31] It does not appear also that petitioner has accounted for why this document exists, such as by alleging that he was coerced into executing it.

Jurisprudence frowns upon waivers and quitclaims forced upon employees. Waivers and quitclaims are, however, not invalid in themselves. When shown to be freely executed, they validly discharge an employer from liability to an employee. "[A] legitimate waiver representing a voluntary settlement of a laborer's claims should be respected by the courts as the law between the parties."[32] In *Goodrich Manufacturing Corporation v. Ativo*:[33]

> It is true that the law looks with disfavor on quitclaims and releases by employees who have been inveigled or pressured into signing them by unscrupulous employers seeking to evade their legal responsibilities and frustrate just claims of employees. In certain cases, however, the Court has given effect to quitclaims executed by employees if the employer is able to prove the following requisites, to wit: (1) the employee executes a deed of quitclaim voluntarily; (2) there is no fraud or deceit on the part of any of the parties; (3) the consideration of the quitclaim is credible and reasonable; and (4) the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.

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[31] *Id*. at 221.

[32] *Talam v. National Labor Relations Commission*, 631 Phil. 405, 423 (2010) [Per *J*. Brion, Second Division], citing *Veloso and Liguaton v. DOLE, et al.*, 277 Phil. 230 (1992) (Per *J*. Cruz, First Division].

[33] 625 Phil. 102 (2010) [Per *J*. Villarama, Jr., First Division].

Our pronouncement in *Periquet v. National Labor Relations Commission* on this matter cannot be more explicit:

> Not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking.[34] (Citations omitted)

Petitioner's barren tale of his employer's order for him to stop reporting for work is hardly the requisite "clear proof that the waiver was wangled from an unsuspecting or gullible person."[35] Indeed, courts and tribunals should not be so gullible as to lend validity to every waiver and quitclaim confronting them. However, neither should they be so foolhardy as to believe a complaining employee's narrative at the mere sight or mention of a waiver or quitclaim.

IV

Petitioner here would have this Court rule in his favor when he does absolutely nothing more than entreat the doctrine on an employer's burden to prove just cases for terminating employment. It is as though this invocation was a magic spell that would win the day for him regardless of whether or not he is able to discharge his primordial burden of proving the occurrence of termination. This Court cannot fall for this. The task of adjudication demands more than convenient conclusions obtained through handy invocations. Rather, it requires a meticulous appraisal of evidence and legal bases.

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

[35] *Rollo*, pp. 222-223.

Petitioner is utterly wanting, both in evidence and legal bases. This Court cannot be so witless as to rule in his favor. With an utter dearth of proof in petitioner's favor, the consistent findings of the Court of Appeals, the National Labor Relations Commission, and the Labor Arbiter must be sustained.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The assailed November 29, 2012 Decision and March 26, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 124993 are **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 208091. April 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENITO MOLEJON,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE ENTITLED TO GREAT WEIGHT AND RESPECT.— The factual findings of the trial court, especially when affirmed by the CA, are entitled to great weight and respect. The trial court, as the original trier of the facts, was in the best position to keenly observe the witnesses rendering their respective versions of the events that made up the occurrences constituting the ingredients of the offense charged. After a careful review of the evidence and testimony proffered by the prosecution, the Court opines that the trial

court and the CA were not mistaken in their assessment of the testimonies of AAA and BBB. The accused-appellant failed to show that both tribunals overlooked a material fact that otherwise would change the outcome of the case or misunderstood a circumstance of consequence in their evaluation of the credibility of the witnesses. Thus, this Court will not disturb the RTC's findings of fact as affirmed by the CA, but must fully accept the same.

2. CRIMINAL LAW; REVISED PENAL CODE; RAPE; DEFIES CONSTRAINTS OF TIME AND SPACE; PRESENCE OF OTHER OCCUPANTS IN THE SAME HOUSE WHERE THE ACCUSED AND THE VICTIM LIVED DOES NOT NECESSARILY RESTRAIN THE ACCUSED FROM COMMITTING THE CRIME OF RAPE.— We give short shrift to accused-appellant's contention that he could not have sexually abused AAA and BBB since they lived in a cramped house with several occupants. Suffice it to say that lust is no respecter of time or place, and rape defies constraints of time and space. In *People v. Nuyok*, We ruled that the presence of other occupants in the same house where the accused and the victim lived does not necessarily restrain the accused from committing the crime of rape.

3. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; DENIAL, IF UNSUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, IS A SELF-SERVING ASERTION THAT DESERVES NO WEIGHT IN LAW; ALIBI IS A WEAK DEFENSE THAT CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE ACCUSED; CASE AT BAR.— Then, too, accused-appellant's defenses, consisting of mere denial and alibi, fail to persuade Us. Denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law, as in this case. Likewise, alibi is one of the weakest defenses not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check or rebut. Here, accused-appellant's alibi cannot prevail over the positive identification of his own step-daughters who had no improper motive to testify falsely.

4. CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE UNDER PARAGRAPH 1, ARTICLE 266-A;

***RECLUSION PERPETUA*, WITHOUT ELIGIBILITY FOR PAROLE IS THE PROPER PENALTY WHEN CIRCUMSTANCES ARE PRESENT WARRANTING THE IMPOSITION OF DEATH PENALTY BUT CANNOT BE IMPOSED BECAUSE OF R.A. NO. 9346 PROHIBITING THE IMPOSITION OF DEATH PENALTY.—** [T]he CA Decision is modified as to the penalty imposed. x x x The crime of qualified rape under paragraph 1, Article 266-A of the RPC, is penalized under Article 266-B(1), which provides that the death penalty shall be imposed if the victim is under 18 years of age and the offender, among others, is the step-parent. Applying R.A. No. 9346, the CA correctly imposed the penalty of *reclusion perpetua*, and specified that it is without eligibility for parole. When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. No. 9346, the qualification "*without eligibility for parole*" shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

5. CIVIL LAW; DAMAGES; IN CASES OF QUALIFIED RAPE WHERE THE IMPOSABLE PENALTY IS DEATH BUT THE SAME IS REDUCED TO *RECLUSION PERPETUA* BECAUSE OF R.A. NO. 9346, CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES SHALL BE IN THE AMOUNT OF ₱100,000 EACH.— [T]he damages awarded by the RTC, as affirmed by the CA, should be modified in view of *People v. Jugueta* where it was held that in cases of qualified rape where the imposable penalty is death but the same is reduced to *reclusion perpetua* because of R.A. No. 9346, the amounts of civil indemnity, moral damages and exemplary damages shall be in the amount of ₱100,000 each.

6. CRIMINAL LAW; REPUBLIC ACT NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT OF 1992); ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 IN RELATION TO SECTION 5 (B), ARTICLE III; PROPER NOMENCLATURE OF THE OFFENSE WHEN THE VICTIM IS UNDER 12 YEARS OF AGE AT THE TIME THE OFFENSE WAS COMMITTED; CASE AT BAR.— As We have held in *People v. Caoili*: Based on xxx Section 5(b)

of R.A. No. 7610, however, the offense designated as Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of R.A. No. 7610 should be used when the victim is under 12 years of age at the time the offense was committed. This finds support in the first *proviso* in Section 5(b) of R.A. No. 7610 which requires that "*when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be*." x x x [T]he accused-appellant in Crim. Case Nos. 4156-798, 4157-799 and 4158-800, should be convicted of acts of lasciviousness under Article 336 of the RPC in relation to Section 5(b), Article III of R.A. No. 7610. This is so because the victim BBB was under 12 years old at the time of the commission of the offense.

7. ID.; ID.; LASCIVIOUS CONDUCT UNDER SECTION 5 (B); DESIGNATION OF THE OFFENSE WHEN THE VICTIM IS AGED 12 YEARS OR OVER BUT UNDER 18, OR IS 18 OR OLDER BUT IS UNABLE TO FULLY TAKE CARE OF HERSELF/HIMSELF FROM ABUSE, NEGLECT, CRUELTY, EXPLOITATION OR DISCRIMINATION BECAUSE OF A PHYSICAL OR MENTAL DISABILITY OR CONDITION.— Conversely, when the victim, at the time the offense was committed is aged twelve (12) years or over but under eighteen (18), or is eighteen (18) or older but unable to fully take care of herself/himself or protect himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the nomenclature of the offense should be Lascivious Conduct under Section 5(b) of R.A. No. 7610, since the law no longer refers to Article 336 of the RPC, and the perpetrator is prosecuted solely under R.A. No. 7610. x x x With respect, however, to Crim. Case Nos. 4159-801, 4160-802, 4161-803, 4162-804, 4163-805, 4164-806, 4165-807, and 4166-808, the proper nomenclature of the offense should be lascivious conduct under Section 5(b), Article III of R.A. No. 7610, for the reason that the victim AAA was already 12 years of age when the offense was committed.

8. ID.; ID.; ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 IN RELATION TO SECTION 5 (B), ARTICLE III; ELEMENTS.— Jurisprudentially, before an accused can be

held criminally liable for lascivious conduct under Section 5(b) of R.A. No. 7610, the requisites of the crime of acts of lasciviousness as penalized under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5(b) of R.A. No. 7610. On the one hand, conviction under Article 336 of the RPC requires that the prosecution establish the following elements: (a) the offender commits any act of lasciviousness or lewdness upon another person of either sex; and (b) the act of lasciviousness or lewdness is committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under 12 years of age. On the other hand, sexual abuse under Section 5(b), Article III of R.A. No. 7610 has three elements: (1) the accused commits an act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child is below 18 years old.

9. ID.; ID.; LASCIVIOUS CONDUCT UNDER SECTION 5 (B); ELEMENTS.— As mentioned earlier, the elements of sexual abuse under Section 5(b), Article III of Republic Act No. 7610 are as follows: (1) the accused commit the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to sexual abuse; and (3) the child, whether male or female, is below 18 years of age.

10. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; WHAT CONTROLS IS NOT THE TITLE OF THE INFORMATION OR THE DESIGNATION OF THE OFFENSE, BUT THE ACTUAL FACTS RECITED IN THE INFORMATION CONSTITUTING THE CRIME CHARGED; CASE AT BAR.— We stress that although there was no mention of Sec. 5(b), Article III of R.A. No. 7610 in the information, this omission is not fatal so as to violate his right to be informed of the nature and cause of accusation against him. Indeed, what controls is not the title of the information or the designation of the offense, but the actual facts recited in the information constituting the crime charged. In *Olivarez v. CA*, this Court found the information sufficient to convict the accused of sexual abuse despite the absence of the specific sections of R.A. No. 7610 alleged to have been violated by the

accused. x x x Here, the facts stated in the Information against the accused-appellant correctly made out a charge for violation of Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610, with respect to BBB, and Lascivious Conduct under Section 5(b) of R.A. No. 7610, with respect to AAA. As discussed earlier, the records show that accused-appellant, who exercised moral ascendancy over his minor step-daughters who were then under 11 and 12 years of age, repeatedly coerced and forced them to engage in lascivious conduct which is within the purview of sexual abuse contemplated in Section 5(b). Thus, even if the trial and appellate courts followed the improper designation of the offense, accused-appellant could be convicted of the offense on the basis of the facts recited in the information and duly proven during trial.

11. CRIMINAL LAW; REPUBLIC ACT NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT OF 1992); ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 IN RELATION TO SECTION 5 (B), ARTICLE III; PENALTY IN CASE AT BAR.— Here, since the crime was committed by the stepfather of the offended parties, the alternative circumstance of relationship should be appreciated. In crimes against chastity, such as acts of lasciviousness, relationship is always aggravating. With the presence of this aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period, *i.e., sixteen (16) years, five (5) months and ten (10) days to seventeen (17) years and four (4) months*, without eligibility of parole. This is in consonance with Section 31(c) of R.A. No. 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is, *inter alia*, the stepparent of the victim. Accordingly, the prison term meted to accused-appellant shall be 17 years and 4 months as maximum. On the other hand, the minimum term shall be taken from the penalty next lower to *reclusion temporal* medium, that is *reclusion temporal* minimum, which ranges from 12 years and 1 day to 14 years and 8 months.

12. ID.; ID.; LASCIVIOUS CONDUCT UNDER SECTION 5 (B); PENALTY IN CASE AT BAR.— Considering that AAA was over 12 but under 18 years of age at the time of the commission of the lascivious act, the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*, based on Section

5 (b) Of RA 7610. Corollarily, the alternative circumstance of relationship should be appreciated since the crime was committed by the step-father of the offended party. With the presence of this aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period, *i.e.,* reclusion perpetua, without eligibility of parole. This is in consonance with Section 31(c) of R.A. No. 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is, *inter alia*, the stepparent of the victim.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J.*:

Challenged in this appeal[1] is the Decision[2] dated April 24, 2013 of the Court of Appeals (CA) in CA-G.R. CR. HC No. 00919-MIN, which affirmed with modification the Joint Decision[3] dated August 5, 2010 of the Regional Trial Court (RTC), Branch 1 of Isabela, Basilan, convicting accused-appellant Benito Molejon of five counts of Qualified Rape under Art. 266-A of the Revised Penal Code (RPC), as amended by Republic Act No. 8353 (R.A.) No. 8353,[4] in Criminal Case Nos. 3895-604, 3896-605, 3897-606, 3901-608, 3902-609; and 11 counts of acts of lasciviousness under Art. 336 of the RPC, in Criminal Case Nos. 4156-798, 4157-799, 4158-800, 4159-801, 4160-802, 4161-803, 4162-804, 4163-805, 4164-806, 4165-807, and 4166-808.

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[1] *Rollo*, pp. 19-21; CA *Rollo*, pp. 204-206.

[2] Penned by Associate Justice Edgardo A. Camello, with the concurrence of Associate Justices Jhosep Y. Lopez and Henri Jean Paul B. Inting; *Rollo*, pp. 185-200.

[3] Penned by Judge Leo Jay T. Prinicipe; CA *Rollo*, pp. 135-156.

[4] The Anti-Rape Law of 1997.

The antecedent facts are as follows:

Accused-appellant Benito Molejon was charged in five separate informations, with five counts of rape; three of which was committed against his own 13-year old stepdaughter AAA[5] and, two against his 11-year old stepdaughter BBB. Except for the dates of the commission of the crime and the age of the victims, the first information[6] set forth allegations similar to the other four informations, *viz*:

> That in or about the 1st week of January, 2003, and within the jurisdiction of this Honorable Court, viz., at DDD, Isabela City, Zamboanga Peninsula, Philippines, the above[-] named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously succeeded in having carnal knowledge of said AAA, against her will.
>
> That the commission of the crime of rape was attended by the following aggravating/qualifying circumstances, to wit:
>
> 1. That the victim was only thirteen (13) years old during the commission of said crime;
>
> 2. That the offender is the step-father of the offended party; and
>
> 3. That there was force, threat and intimidation.
>
> Contrary to law.[7]

Accused-appellant was likewise charged in 11 separate informations with the crime of acts of lasciviousness under Art. 335 of the RPC, eight of which were committed against AAA and three against BBB. Except for the dates of the commission

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[5] Consistent with the ruling of this Court in *People v. Cabalquinto*, the real name and identity of the rape victims, as well as the members of her immediate family, are not disclosed. The rape victims shall herein be referred to as AAA and BBB, respectively. Their personal circumstances as well as other information tending to establish their identity, and that of their immediate family or household members, are not disclosed in this decision.

[6] Criminal Cases No. 3895-604; as mentioned in the RTC's Decision, CA *Rollo*, pp. 135-156.

[7] Records (RTC 3896-605), pp. 1-2.

of the crime and the ages of the victims, the first information[8] set forth allegations similar to the other ten informations, *viz*:

> That on or about the 28th day of June, 2003, and within the jurisdiction of this Honorable Court, viz., at DDD, Isabela City, Zamboanga Peninsula, Philippines, the above[-]named accused, actuated by lust, did then and there willfully, unlawfully and feloniously, commit an act of lasciviousness on the undersigned complainant, who was only 11 years old, by then and there touching and fingering her vagina, against her will and by means of force.
>
> Contrary to law.[9]

During his arraignment, accused-appellant pleaded not guilty to all the charges against him. Thereafter, the charges were consolidated and jointly heard. The prosecution presented five witnesses, namely: Complainants AAA; BBB; the victims' mother CCC; Dr. Nilo R. Barandino; and PO2 Jane Jacinto Martin.

AAA, who was born on July 9, 1989,[10] averred that on different occasions, *i.e.*, from July and August 2001, to September-December 2001, and January-November 2002, up to January 2003, she was either raped or sexually abused and molested by her own step-father. She testified that on separate dates, the accused-appellant would kiss her lips and neck, while caressing her breasts and fingering her vagina repeatedly. She recalled the time when accused-appellant suddenly entered her room and once inside, he kissed her lips, licked her vagina, mounted her, inserted his penis into her vagina and made a push-and-pull movement, causing her to cry in pain. These beastly acts would be committed several times, until January 2003.[11]

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[8] Criminal Cases Nos. 4156-798; *Id.*

[9] Records (RTC 4156-798), p. 1.

[10] Records (RTC 3896-605), p. 114.

[11] *Rollo*, pp. 5-6.

For her part, BBB, who was born on February 5, 1992,[12] gave an identical testimony of her step-father's licentious acts, which she experienced from October 2002 to May 2003, up to June 22, 2003 and June 28, 2003. She narrated that accused-appellant would insert his finger in her vagina, remove her panties and eventually thrust his penis. She even felt that accused-appellant excreted a sticky substance while his penis was inside her vagina.[13]

AAA and BBB both testified that accused-appellant threatened to kill them, including their mother and siblings, if they ever divulge to anyone their awful experience.[14]

The siblings' appalling ordeal would finally come to an end in the afternoon of June 28, 2003, when their mother CCC, witnessed accused-appellant standing behind BBB, with his left hand inserted inside BBB's shorts. Angered, CCC kicked and punched accused-appellant. Thereafter, AAA and BBB started crying. They revealed to CCC every act that accused- appellant committed against them.[15]

The rape incident and sexual abuse were subsequently reported to the police, resulting to the accused-appellant's arrest.

On June 29, 2003, CCC brought AAA and BBB to the Provincial General Hospital, where they were attended to by Dr. Barandino. According to the doctor, the healed lacerations on the victims' hymens was consistent with AAA's and BBB's testimonies that they were raped by the accused-appellant long before the date of their medical examinations.[16]

For his part, the accused-appellant denied the charges. He claimed that no rape was committed because the victims never

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[12] Records (RTC 3896-605), p. 113.

[13] *Rollo*, p. 6.

[14] *Id*.

[15] *Id*. at 8.

[16] *Id*.

testified that he uttered threatening words, or that he was armed with a weapon when the crimes were committed. Accused-appellant likewise questioned the credibility of the AAA's and BBB's testimonies. He argued that it is contrary to human experience for AAA to continue acting normally despite having been sexually abused. As to BBB, accused-appellant maintained that he could not have raped her since the room where the incident happened was then occupied by her sister and her mother.[17]

On August 5, 2010, the RTC rendered its Decision,[18] convicting the accused-appellant of five counts of Qualified

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[17] CA *rollo*, pp. 126-132.

[18] WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Cases Nos. 3895-604, 3896-605, 3897-606, 3901-608, and 3902-609, the accused Benito Molejon is found "GUILTY" beyond reasonable doubt of QUALIFIED RAPE as charged under Art. 266-A as amended by RA No. 8353 and is accordingly sentenced to:

a) Suffer the penalty of *Reclusion Perpetua* in each of the five (5) counts of qualified rape or in Criminal Cases Nos. 3895-604, 3896-605, 3897-606, 3901-608, and 3902-609;

b) Indemnity the victim AAA the sum of ₱50,000.00 as moral damages and ₱20,000.00 as exemplary damages for each count of qualified rape committed against her or in Criminal Cases No. 3895-604, 3896-605, and 3897-606;

c) Indemnify the victim BBB the sum of ₱50,000.00 as moral damages and ₱20,000.00 as exemplary damages for each count of qualified rape committed against her or in Criminal Cases No. 3901-608, and 3902-609;

2. In Criminal Cases Nos. 4156-798, 4157-799, 4158-800, 4159-801, 4160-802, 4161-803, 4162- 804, 4163-805, 4164-806, 4165-807, and 4166-808, the accused Benito Molejon is found "GUILTY" beyond reasonable doubt of Acts of Lasciviousness as charged under Art. 336 of the Revised Penal Code and is accordingly sentenced to:

a) Suffer the penalty of from 6 months of *arresto mayor* as minimum and 6 years of *prision correccional* as maximum in each of the eleven (11) counts of acts of lasciviousness; or in Criminal Cases Nos. 4156-798, 4157-799, 4158-800, 4159-801, 4160-802, 4161- 803, 4162-804, 4163-805, 4164-806, 4165-807, and 4166-808;

b) Indemnify AAA the sum of ₱20,000.00 as moral damages and ₱20,000.00 as exemplary damages for each count of lascivious acts committed

Rape under Art. 266-A of the RPC, as amended by R.A. No. 8353; and 11 counts of acts of lasciviousness under Art. 336 of the RPC.

On appeal, the CA rendered its April 24, 2013 Decision,[19] affirming with modification the RTC's Decision, only insofar as the award of damages is concerned.

On June 6, 2013, accused-appellant appealed the CA's Decision before this Court.

In his appeal, aside from invoking the defense of denial and alibi, accused-appellant insists that the testimonies of AAA and BBB failed to establish that he committed rape and acts of lasciviousness against them. He claims that since neither of

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against her or in Criminal Cases No. 4159-801, 4160-802, 4161-803, 4162-804, 4163-805, 4164-806, 4165-807, and 4166-808;

c) Indemnify the victim BBB the sum of ₱20,000.00 as moral damages and ₱20,000.00 as exemplary damages for each count of lascivious acts committed against her or in Criminal Cases No. 4156-798, 4157-799, and 4158-800.

SO ORDERED. *Id.* at 33-54.

[19] FOR THE REASONS STATED, the Judgment appealed from is AFFIRMED in so far as it held appellant guilty beyond reasonable doubt of five (5) counts of QUALIFIED RAPE, and eleven (11) counts for acts of lasciviousness subject, however, to the following MODIFICATIONS, namely:

(1) The accused is sentenced in each count of qualified rape, to suffer the penalty of *reclusion perpetua* in lieu of death, without eligibility of parole;

(2) He shall pay the victims, the sums of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages, for each and every count of qualified rape;

(3) The accused is sentenced in each count of acts of lasciviousness to suffer the penalty of imprisonment from 6 months of *arresto mayor* as minimum and 6 years of *prision correccional* as maximum;

(4) He shall pay the victims the amount of ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages and ₱2,000.00 as exemplary damages, for each and every count of acts of lasciviousness.

Costs against appellant.

SO ORDERED. *Rollo*, pp. 3-18.

the victims saw what he supposedly inserted in their genitalia and since they only narrated that the insertion caused them pain, the prosecution failed to prove his guilt beyond reasonable doubt. In short, accused-appellant challenges the credibility of AAA and BBB, including that of their testimonies.

The OSG, on the other hand, maintains that the prosecution proved all the elements of the crime of rape and acts of lasciviousness beyond reasonable doubt, on the basis of the victims' positive and candid narration of what transpired during the harrowing incidents.

The appeal is bereft of merit.

The factual findings of the trial court, especially when affirmed by the CA, are entitled to great weight and respect. The trial court, as the original trier of the facts, was in the best position to keenly observe the witnesses rendering their respective versions of the events that made up the occurrences constituting the ingredients of the offense charged.[20]

After a careful review of the evidence and testimony proffered by the prosecution, the Court opines that the trial court and the CA were not mistaken in their assessment of the testimonies of AAA and BBB. The accused-appellant failed to show that both tribunals overlooked a material fact that otherwise would change the outcome of the case or misunderstood a circumstance of consequence in their evaluation of the credibility of the witnesses.[21] Thus, this Court will not disturb the RTC's findings of fact as affirmed by the CA, but must fully accept the same.

Contrary to the accused-appellant's claim, the alleged inconsistencies are understandable considering that AAA and BBB were only minors at the time they testified before the trial court. We held in *People v. Lagbo*,[22] that:

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[20] See *People v. Deligero*, 709 Phil. 783, 797 (2013).

[21] *People v. Vidaña*, 720 Phil. 531, 538 (2013).

[22] G.R. No. 207535, February 10, 2016.

x x x Courts expect minor inconsistencies when a child-victim narrates the details of a harrowing experience like rape. Such inconsistencies on minor details are in fact badges of truth, candidness and the fact that the witness is unrehearsed. These discrepancies as to minor matters, irrelevant to the elements of the crime, cannot, thus, be considered a ground for acquittal. x x x (Citations omitted)[23]

As correctly observed by the trial court:

The testimony of AAA and BBB are consistent on material points. Slightly conflicting statements will not undermine the witness's credibility or the veracity of their testimony. They in fact tend to buttress rather than impair their credibility as they erase any suspicion of rehearsed testimony. The defense was not able to elicit significant contradictions in the testimonies of the child victims to render them as purely imagined motivated only by their desire to get even with the accused. The claim of the accused that AAA and BBB never disrespected him as they even kiss his hand and call him *tito* is not indication enough [sic] that he never committed the acts imputed on him and even when taken together with the testimony of his brother that there appeared to be no ill feelings pervading in the family.

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Carnal knowledge had also been proven. The respective testimonies of AAA and BBB vividly describe their harrowing experience in the hands of the accused. It bears emphasis that the accused resorted to force, threat and intimidation to consummate his lust. The Supreme Court has consistently held that rape is committed when intimidation is used on the victim, which includes moral intimidation or coercion. The accused also committed acts of lasciviousness using intimidation on AAA and BBB. The essence of acts of lasciviousness is lewd design, that is, deriving vicarious pleasure from acts performed on the person of the victim. The acts complained of have been sufficiently proved by the testimonies of the complainants.[24]

The CA echoed this assertion, when it pointed out that:

The testimonies of AAA and BBB were direct, candid, and replete with details of the acts of rape and lasciviousness. They were consistent and straightforward in their answers during the direct and cross

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[23] *Id*.

[24] CA *Rollo*, pp. 149-152.

examination. They did not waiver in their personal accounts of how the accused kissed them, mashed their breasts and later 'fingering' their genitalia, and in other instances inserted his penis into their vaginas to consummate his lustful designs. The presence of their mother in the house during the incident did not discourage the appellant from committing beastly acts on AAA and BBB. While neither AAA nor BBB really put up a struggle more palpable than merely trying to resist, it should be noted nonetheless that appellant was unmistakably threatening to kill them and all their loved ones. Moreover, the fact that AAA and BBB had been living with appellant who is their stepfather who had considerable moral ascendancy over them sufficiently explains why they did not offer a more physical resistance.

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It would be foolish fallacy to say that the victims' mere failure to shout or physically express their tenacious resistance were equivalent to voluntary submission to the lecherous conduct of the offender. It was certainly enough that they had repeatedly tried, though unsuccessfully, to resist his advances and pleaded him to stop.[25]

We give short shrift to accused-appellant's contention that he could not have sexually abused AAA and BBB since they lived in a cramped house with several occupants. Suffice it to say that lust is no respecter of time or place, and rape defies constraints of time and space.[26] In *People v. Nuyok*,[27] We ruled that the presence of other occupants in the same house where the accused and the victim lived does not necessarily restrain the accused from committing the crime of rape. Thus:

The presence of others as occupants in the same house where the accused and AAA lived did not necessarily deter him from committing the rapes. The crowded situation in any small house would sometimes be held to minimize the opportunity for committing rape, but it has been shown repeatedly by experience that many instances of rape were committed not in seclusion but in very public circumstances. Cramped spaces of habitation have not halted the criminal from

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[25] *Rollo*, pp. 193-194.

[26] *People v. Pareja*, 724 Phil. 759, 777 (2014).

[27] 759 Phil. 437 (2015).

imposing himself on the weaker victim, for privacy is not a hallmark of the crime of rape. x x x[28]

Then, too, accused-appellant's defenses, consisting of mere denial and alibi, fail to persuade Us.

Denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law,[29] as in this case. Likewise, alibi is one of the weakest defenses not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check or rebut.[30] Here, accused-appellant's alibi cannot prevail over the positive identification of his own step-daughters who had no improper motive to testify falsely.

However, the CA Decision is modified as to the penalty imposed and the damages awarded in Criminal Case Nos. 3895-604, 3896-605, 3897-606, 3901-608, and 3902-609. For qualified rape by sexual intercourse, accused-appellant is sentenced to suffer the penalty of five counts of *reclusion perpetua* without eligibility for parole,[31] and is ordered to pay AAA the amounts of ₱100,000 as civil indemnity, ₱100,000 as moral damages and ₱100,000 as exemplary damages for each count, in line with current jurisprudence.[32]

The crime of qualified rape under paragraph 1, Article 266-A of the RPC, is penalized under Article 266-B(1), which provides that the death penalty shall be imposed if the victim is under 18 years of age and the offender, among others, is the step-parent. Applying R.A. No. 9346,[33] the CA correctly imposed

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[28] *Id*. at 454.

[29] *People v. Vitero*, 708 Phil. 49, 63 (2013).

[30] *Id*.

[31] Pursuant to Article 266-B of the RPC, as amended by R.A. No. 8353, in relation to Section 3 of R.A. No. 9346.

[32] *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331.

[33] *An Act Prohibiting the Imposition of Death Penalty in the Philippines*.

the penalty of *reclusion perpetua*, and specified that it is without eligibility for parole. When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. No. 9346, the qualification "*without eligibility for parole*" shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.[34]

Meanwhile, the damages awarded by the RTC, as affirmed by the CA, should be modified in view of *People v. Jugueta*[35] where it was held that in cases of qualified rape where the imposable penalty is death but the same is reduced to *reclusion perpetua* because of R.A. No. 9346, the amounts of civil indemnity, moral damages and exemplary damages shall be in the amount of ₱100,000 each.[36]

As regards the 11 counts of acts of lasciviousness under Art. 336 of the RPC, in Criminal Case Nos. 4156-798, 4157-799, 4158-800, 4159-801, 4160-802, 4161-803, 4162-804, 4163-805, 4164-806, 4165-807, and 4166- 808, the CA Decision is likewise modified as to the nomenclature of the offense, the penalty imposed and the damages awarded.

As We have held in *People v. Caoili*:[37]

> Based on the language of Section 5(b) of R.A. No. 7610, however, the offense designated as Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of R.A. No. 7610 should be used when the victim is under 12 years of age at the time the offense was committed. This finds support in the first *proviso* in Section 5(b) of R.A. No. 7610 which requires that "*when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as*

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[34] A.M. No. 15-08-02-SC entitled *Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties*.

[35] *People v. Jugueta*, *supra*.

[36] *People v. Galagati*, G.R. No. 207231, June 29, 2016.

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

amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be." x x x

Conversely, when the victim, at the time the offense was committed is aged twelve (12) years or over but under eighteen (18), or is eighteen (18) or older but unable to fully take care of herself/himself or protect himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the nomenclature of the offense should be Lascivious Conduct under Section 5(b) of R.A. No. 7610, since the law no longer refers to Article 336 of the RPC, and the perpetrator is prosecuted solely under R.A. No. 7610.

x x x x x x x x x

2. If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610." Pursuant to the second *proviso* in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period.

3. If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "Lascivious Conduct under Section 5(b) of R.A. No. 7610," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.[38]

Taking cue from the aforequoted statement, the accused-appellant in Crim. Case Nos. 4156-798, 4157-799 and 4158-800, should be convicted of acts of lasciviousness under Article 336 of the RPC in relation to Section 5(b), Article III of R.A. No. 7610.[39] This is so because the victim BBB was under 12 years old at the time of the commission of the offense.

With respect, however, to Crim. Case Nos. 4159-801, 4160-802, 4161-803, 4162-804, 4163-805, 4164-806, 4165-807, and

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[38] *Id*.

[39] *Special Protection of Children Against Abuse, Exploitation and Discrimination Act of 1992*.

4166-808, the proper nomenclature of the offense should be lascivious conduct under Section 5(b), Article III of R.A. No. 7610, for the reason that the victim AAA was already 12 years of age when the offense was committed.

Elements of the crime of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b)

Jurisprudentially, before an accused can be held criminally liable for lascivious conduct under Section 5(b) of R.A. No. 7610, the requisites of the crime of acts of lasciviousness as penalized under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5(b) of R.A. No. 7610.[40]

On the one hand, conviction under Article 336 of the RPC requires that the prosecution establish the following elements: (a) the offender commits any act of lasciviousness or lewdness upon another person of either sex; and (b) the act of lasciviousness or lewdness is committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under 12 years of age.[41]

On the other hand, sexual abuse under Section 5(b), Article III of R.A. No. 7610 has three elements: (1) the accused commits an act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child is below 18 years old.[42]

First, it has been established that accused-appellant committed lewd designs with his step-daughter. The records show that

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[40] *People v. Ladra*, G.R. No. 221443, July 17, 2017.

[41] *Cruz v. People*, 745 Phil. 54, 73-74 (2014).

[42] *People v. Fragante*, 657 Phil. 577, 596 (2011).

accused-appellant on different occasions, fingered, fondled and inserted his finger into BBB's vagina. These acts undoubtedly constitute lascivious conduct under Section 2(h) of the Implementing Rules and Regulations (IRR) of R.A. No. 7610, to wit:

> (h) "*Lascivious conduct*" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or public area of a person.

Second, accused-appellant, as a step-father having moral ascendancy over his step-daughter, coerced BBB to engage in lascivious conduct, which is within the purview of sexual abuse. In *Quimvel v. People*,[43] We held:

> As regards the second additional element, it is settled that **the child is deemed subjected to other sexual abuse when the child engages in lascivious conduct under the coercion or influence of any adult. Intimidation need not necessarily be irresistible.** It is **sufficient** that **some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party**. The law does not require physical violence on the person of the victim; moral coercion or ascendancy is sufficient.
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> The petitioner's proposition-that there is not even an iota of proof of force or intimidation as AAA was asleep when the offense was committed and, hence, he cannot be prosecuted under RA 7610-is bereft of merit. **When the victim of the crime is a child under twelve (12) years old, mere moral ascendancy will suffice.** (Emphasis ours and citations omitted.)[44]

Third, BBB, who was then 11 years old, was clearly below 18 years old at the time of the commission of the offense, based on her testimony which was corroborated by her Birth Certificate

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

[44] *Id*.

presented during the trial. Section 3(a), Article I of R.A. No. 7610 provides:

> Section 3. Definition of Terms.—
> (a) "*Children*" refers [to] persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition;

Elements of the crime of Lascivious Conduct under Section 5(b) of R.A. No. 7610

As mentioned earlier, the elements of sexual abuse under Section 5(b), Article III of Republic Act No. 7610 are as follows: (1) the accused commit the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to sexual abuse; and (3) the child, whether male or female, is below 18 years of age.

First, based on the records, accused-appellant repeatedly committed the following acts against AAA: kissing her neck and lips; inserting his finger into her vagina; and licking and sucking her breasts. These acts clearly falls within the scope of lascivious conduct under Section 2(h) of the IRR of R.A. No. 7610.[45]

Second, the accused-appellant, having moral ascendancy over his step-daughter, forced AAA to engage in lascivious conduct, which is within the contemplation of sexual abuse. Indeed, intimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or

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[45] (h) "Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or public area of a person.

subdues the free exercise of the will of the offended party. Moral coercion or ascendancy is, thus, sufficient.[46]

Third, AAA testified that she was over 12 and below 18 years old at the time of the commission of the offense. This was corroborated by her Birth Certificate presented during trial.

We stress that although there was no mention of Sec. 5(b), Article III of R.A. No. 7610 in the information, this omission is not fatal so as to violate his right to be informed of the nature and cause of accusation against him. Indeed, what controls is not the title of the information or the designation of the offense, but the actual facts recited in the information constituting the crime charged.[47] In *Olivarez v. CA*,[48] this Court found the information sufficient to convict the accused of sexual abuse despite the absence of the specific sections of R.A. No. 7610 alleged to have been violated by the accused. Thus:

> The information merely states that petitioner was being charged for the crime of 'violation of R.A. 7610' without citing the specific sections alleged to have been violated by petitioner. Nonetheless, we do not find this omission sufficient to invalidate the information. The character of the crime is not determined by the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, they may be conclusions of law, but by the recital of the ultimate facts and circumstances in the complaint or information. The sufficiency of an information is not negated by an incomplete or defective designation of the crime in the caption or other parts of the information but by the narration of facts and circumstances which adequately depicts a crime and sufficiently apprise the accused of the nature and cause of the accusation against him.
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> True, the information herein may not refer to specific section/s of R.A. 7610 alleged to have been violated by the petitioner, but it is all to evident that the body of the information contains an averment of the acts alleged to have been performed by petitioner which unmistakably refers to acts punishable under Section 5 of R.A. 7610.

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

[47] *People v. Ursua*, G.R. No. 218575, October 4, 2017.

[48] 503 Phil. 421 (2005).

As to which section of R.A. 7610 is being violated by petitioner is inconsequential. What is determinative of the offense is the recital of the ultimate facts and circumstances in the complaint or information.[49] (Citations omitted.)

Here, the facts stated in the Information against the accused-appellant correctly made out a charge for violation of Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610, with respect to BBB, and Lascivious Conduct under Section 5(b) of R.A. No. 7610, with respect to AAA. As discussed earlier, the records show that accused-appellant, who exercised moral ascendancy over his minor step-daughters who were then under 11 and 12 years of age, repeatedly coerced and forced them to engage in lascivious conduct which is within the purview of sexual abuse contemplated in Section 5(b). Thus, even if the trial and appellate courts followed the improper designation of the offense, accused-appellant could be convicted of the offense on the basis of the facts recited in the information and duly proven during trial.[50]

Penalty of the crime of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b)

Section 5(b) of R.A. No. 7610[51] provides that the penalty for lascivious conduct, when the victim is under 12 years of age, shall be *reclusion temporal* in its medium period, which

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[49] *Id.* at 439.

[50] *Malto v. People*, 560 Phil. 119, 136 (2007).

[51] Article III, Section 5(b) of RA 7610 reads: (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be; Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x

ranges from 14 years, 8 months and 1 day to 17 years and 4 months.[52]

Meanwhile, Section 1 of Act No. 4103,[53] otherwise known as the Indeterminate Sentence Law (ISL), provides that if the offense is ostensibly punished under a special law, the minimum and maximum prison term of the indeterminate sentence shall not be beyond what the special law prescribed.[54] But as We have clarified in *People v. Simon*,[55] the situation is different where although the offense is defined in a special law, the penalty therefor is taken from the technical nomenclature in the RPC. Under such circumstance, the legal effects under the system of penalties native to the Code would also necessarily apply to the special law.

Here, since the crime was committed by the stepfather of the offended parties, the alternative circumstance of relationship should be appreciated.[56] In crimes against chastity, such as acts

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[52] *See* table in Art. 76 of the Revised Penal Code.

[53] An Act To Provide For An Indeterminate Sentence And Parole For All Persons Convicted Of Certain Crimes By The Courts Of The Philippine Islands; To Create A Board Of Indeterminate Sentence And To Provide Funds Therefor; And For Other Purposes.

[54] Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and **if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same**. (Emphasis ours)

[55] 304 Phil. 725 (1994).

[56] Article 15 of the RPC: Art. 15. *Their concept.* - Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication and the degree of instruction and education of the offender. The alternative

of lasciviousness, relationship is always aggravating.[57] With the presence of this aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period, *i.e., sixteen (16) years, five (5) months and ten (10) days to seventeen (17) years and four (4) months*,[58] without eligibility of parole.[59] This is in consonance with Section 31(c)[60] of R.A. No. 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is, *inter alia*, the stepparent of the victim.

Accordingly, the prison term meted to accused-appellant shall be 17 years and 4 months as maximum. On the other hand, the minimum term shall be taken from the penalty next lower to *reclusion temporal* medium, that is *reclusion temporal* minimum, which ranges from 12 years and 1 day to 14 years and 8 months.

In keeping with jurisprudence,[61] accused-appellant is liable to pay the victims ₱15,000 as fine pursuant to Section 31(f)[62] of R.A. No. 7610, as well as to pay AAA and BBB the amounts of ₱20,000 as civil indemnity, ₱15,000 as moral damages, and ₱15,000 as exemplary damages.

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circumstance of relationship shall be taken into consideration when the offended party in the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees of the offender.

[57] *People v. Montinola*, 567 Phil. 387 (2008).

[58] *People v. Gaduyon*, 720 Phil. 750 (2013).

[59] *People v. Bacus*, 767 Phil. 824 (2015).

[60] (c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked.

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

[62] (f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

Penalty of the crime of Lascivious Conduct under Section 5(b) of R.A. No. 7610

Considering that AAA was over 12 but under 18 years of age at the time of the commission of the lascivious act, the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*, based on Section 5 (b) of RA 7610.[63]

Corrolarily, the alternative circumstance of relationship should be appreciated since the crime was committed by the step-father of the offended party.[64] With the presence of this aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period, *i.e., reclusion perpetua*, without eligibility of parole.[65] This is in consonance with Section 31(c)[66] of R.A. No. 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is, *inter alia*, the stepparent of the victim.

Likewise, Section 31(f)[67] of R.A. No. 7610 imposes a fine upon the perpetrator, which jurisprudence pegs in the amount of ₱15,000.[68] In light of recent jurisprudence, when the circumstances surrounding the crime call for the imposition of

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[63] *People v. Ladra*, G.R. No. 221443, July 17, 2017.

[64] See *People v. Montinola*, *supra*.

[65] *People v. Caoili*, *supra* note 37.

[66] Article XII, Section 31. Common Penal Provisions. - x x x (c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked. x x x

[67] (f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

[68] *People v. Bacus*, *supra*.

reclusion perpetua, the victim is entitled to civil indemnity, moral damages and exemplary damages each in the amount of ₱75,000, regardless of the number of qualifying aggravating circumstances present.[69]

Further, the amount of damages awarded for each and every count of qualified rape; acts of lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610; and lascivious conduct under Sec. 5(b) of R.A. No. 7610, should earn interest at the rate of 6% *per annum* from the finality of this judgment until said amounts are fully paid.[70]

WHEREFORE, premises considered, the April 24, 2013 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00919-MIN is **AFFIRMED with MODIFICATION**. Accused-appellant Benito Molejon is hereby found **GUILTY** beyond reasonable doubt of the following:

(1) Five counts of qualified rape in Criminal Case Nos. 3895-604, 3896-605, 3897-606, 3901-608, and 3902-609. He is sentenced to suffer the penalty of *reclusion perpetua*, in each count, without eligibility for parole. For each and every count of the crime of qualified rape, he is ordered to pay private offended parties ₱100,000 as civil indemnity; ₱100,000 as moral damages; and ₱100,000 as exemplary damages; and

(2) Three counts of acts of lasciviousness under Article 336 of the RPC in relation to Section 5(b), Article III, of R.A. No. 7610, in Criminal Case Nos. 4156-798, 4157-799, and 4158-800. He is sentenced to suffer the indeterminate imprisonment of 12 years and 1 day of *reclusion temporal* minimum, as minimum to 17 years and 4 months of *reclusion temporal* medium, as maximum. For each and every count of acts of lasciviousness under Article 336 of the RPC in relation to Section 5(b), Article III, of R.A. No. 7610, he is ordered to pay the

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[69] *People v. Jugueta*, *supra* note 32.

[70] *People v. Suedad*, G.R. No. 211026, June 8, 2016.

victim BBB ₱15,000 as fine, as well as ₱20,000 as civil indemnity; and moral damages and exemplary damages each in the amount of ₱15,000.

(3) Eight counts of Lascivious Conduct under Section 5(b), Article III, of R.A. No. 7610 in Criminal Case Nos. 4159-801, 4160-802, 4161-803, 4162-804, 4163-805, 4164-806, 4165-807, and 4166-808. He is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility of parole, and to pay a fine of ₱15,000. He is further ordered to pay the victim, AAA, civil indemnity, moral damages and exemplary damages each in the amount of ₱75,000.

All monetary awards for damages shall earn an interest rate of 6% *per annum* to be computed from the finality of the judgment until fully paid.

SO ORDERED.

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

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

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

[**] Designated as additional Member per Raffle dated April 23, 2018.

FIRST DIVISION

[G.R. No. 208284. April 23, 2018]

THE IGLESIA DE JESUCRISTO JERUSALEM NUEVA OF MANILA, PHILIPPINES, INC., represented by its President, FRANCISCO GALVEZ, *petitioner, vs.* **LOIDA DELA CRUZ using the name CHURCH OF JESUS CHRIST, "NEW JERUSALEM" and all persons claiming rights under her,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; REQUIREMENTS.— A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) the defendant's initial possession of the property was lawful, either by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon the plaintiff's notice to the defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession and deprived the plaintiff of the enjoyment of the property; and (4) the plaintiff instituted the complaint for ejectment within one (1) year from the last demand to vacate the property.

2. ID.; ID.; ID.; WHERE THE ISSUE OF OWNERSHIP IS INSEPARABLY LINKED TO THAT OF POSSESSION IN AN EJECTMENT CASE, ADJUDICATION OF THE OWNERSHIP ISSUE IS NOT FINAL AND BINDING, BUT ONLY FOR THE PURPOSE OF RESOLVING THE ISSUE OF POSSESSION.— "When the defendant raises the defense of ownership in [her] pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession." In other words, "[w]here the parties to an ejectment case raise the issue of ownership, the courts may pass upon that issue to determine who between the parties has the better right to possess the property. However, where the issue of ownership is inseparably linked to that of possession,

adjudication of the ownership issue is not final and binding, but only for the purpose of resolving the issue of possession." x x x "Indeed, a title issued under the Torrens system is entitled to all the attributes of property ownership, which necessarily includes possession." Nevertheless, "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." x x x In *Corpuz v. Spouses Agustin*, this Court recognized that even as the registered owner generally has the right of possession as an attribute of ownership, nevertheless the dismissal of the complaint for unlawful detainer is justified where proof of preponderant evidence of material possession of the disputed premises has not been convincingly adduced.

APPEARANCES OF COUNSEL

Tan & Associates Law Offices for petitioner.
Regina L. Jose for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] are the January 22, 2013 Decision[2] of the Court of Appeals (CA) and its July 17, 2013 Resolution[3] in CA-G.R. SP No. 118132, both of which affirmed the January 19, 2011 Decision[4] of the Regional Trial Court (RTC) of Malabon City, Branch 74 in Appealed Case No. A9-001-MN. The RTC Decision upheld the November

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[1] *Rollo*, pp. 10-37.

[2] *Id*. at 41-52; penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla.

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

[4] CA *rollo*, pp. 35A-42; penned by Judge Celso R.L. Magsino, Jr.

7, 2008 Decision[5] of the Metropolitan Trial Court (MeTC) of Malabon City, Branch 56, in Civil Case No. JL00-891.

Factual Antecedents

Petitioner's version

On March 26, 2007, the Iglesia De Jesucristo Jerusalem Nueva of Manila, Philippines, Inc. (petitioner), represented by Francisco Galvez (Galvez), filed before the MeTC of Malabon City a Complaint[6] for unlawful detainer with damages (Complaint) against respondent Loida Dela Cruz (Dela Cruz), using the name CHURCH OF JESUS CHRIST, "NEW JERUSALEM" and all persons claiming rights under her (collectively, respondents). Docketed as Civil Case No. JL00-891, said Complaint contained the following allegations:

1. [Petitioner] is a [r]eligious [c]orporation x x x with office address at #29 Interior Leono St., Tanong, Malabon City represented by its president, [Galvez]. x x x

2. [Dela Cruz] is of legal age, Filipino[,] with office address at #27 Leono St., Tanong, Malabon City. x x x

3. [Petitioner] is the owner of certain parcels of land consisting of an area of TWO HUNDRED FOUR (204) SQUARE METERS and SEVENTY[-]ONE (71) SQUARE METERS [both] covered by Original Certificate of Title [(OCT)] No. 35266 and [the corresponding] Tax Declaration [(TD)] [No.] 06223 [(subject lot)]. x x x

4. [Galvez], x x x is the nephew of Rosendo Gatchalian (Rosendo), the founder and the leader of [petitioner] way back [in] 1940 who organized the said religious corporation and built a chapel within the [subject lot];

5. Since 1940, Miguela Gatchalian [Miguela], the late mother of [Galvez] and her family used to occupy [and] possess and [likewise] built a house of their own in the concept of an owner [with] uninterrupted, peaceful[,] and physical possession [on a] certain portion of the [subject lot] as they were relatives and [long-time] member[s]

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[5] *Id.* at 43-48; penned by Judge Edison F. Quintin.

[6] Records (Volume I), pp. 1-6.

of [petitioner] and were allowed by the founder [Rosendo] to occupy the same;

6. During the lifetime of x x x [Rosendo], the chapel [inside the subject lot] was used exclusively by the members of [petitioner] for worship x x x every Sunday;

7. [Dela Cruz] used to be a member of the [petitioner] x x x. However, when [Rosendo] died, x x x the members [became] disorganized x x x. Since then, members who x x x come and visit the chapel were allowed to enter the chapel and conduct their meetings and worship therein;

8. Surprisingly[,] sometime [in] 1998, without the knowledge and consent of all [the] members and officers of [petitioner], [Dela Cruz] x x x formed, organized[,] and created the name of CHURCH OF JESUS CHRIST, "NEW JERUSALEM";

9. The organization formed by [Dela Cruz] was used by her as an instrument in claiming that she is the representative of the said religious organization and had the right over the [subject lot]. x x x

10. The occupation and possession of [Dela Cruz] over the [subject lot] of [petitioner] was merely tolerated because they were former members of [petitioner] x x x

11. On 12 February 2007, a demand was sent to [respondents] to vacate and surrender the peaceful possession of the chapel and to stop using the [subject lot] of [petitioner] but the [respondents] failed and refused x x x to vacate the same x x x. The demand letter was personally served[,] but [Dela Cruz] refused to sign [the same]. x x x;

x x x x x x x x x

13. [Thus, petitioner] was constrained to institute the instant suit

x x x x x x x x x[7]

In the Position Paper it filed with the MeTC,[8] petitioner referred to its pieces of evidence, *viz*. Secretary's Certificate dated March 27, 2007 signed by Lourdes Co (Co) and Atty. Gerardo Cruz, OCT No. (8257) M-35266, TD No. 06223,

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[7] *Id.* at 1-4.

[8] Records (Volume II), pp. 94-116.

Decision in Appealed Case No. 1064-MN dated January 17, 2000 issued by RTC-Branch 169, demand letter dated February 12, 2007 and the corresponding affidavit of Co, its Securities and Exchange Commission (SEC) Certificate of Incorporation dated August 4, 1999 with Articles of Incorporation (AOI), Order in Civil Case No. 1853-98 issued by the MeTC-Branch 55, and Temporary Receipt issued by the MeTC-Branch 55 in Civil Case No. 1853-98.

Respondents' version

In her Answer,[9] Dela Cruz countered with the following averments:

1. x x x She is an Officer of Obispo Representante at Pastor General ng Iglesia ni Jesu Kristo "Bagong Jerusalem" Inc.[10] [Her] authority to represent said religious organization before [the MeTC] is embodied in a board resolution and outlined in the Secretary's Certificate hereto attached x x x;

2. On April 25, 2007[,] [she,] through a member of their church[,] received a copy of the Complaint and the Summons from [the MeTC] directing [her] to file her Answer x x x;

3. [She] denies the allegation in paragraph 1 of the Complaint for lack of knowledge to form a reasonable belief as to the truth thereof. As per inquiry on-line with the [SEC,] no such corporation or entity exist[s] as [such]. x x x

4. Paragraph 2 of the Complaint is likewise denied by [her] insofar as the allegation that No. 27 Leono St. x x x is being used by her as her office. In truth[,] the said place is the site of the church of Obispo Representante at Pastor General ng Iglesia ni Jesu Kristo '"Bagong Jerusalem" Inc.;

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[9] Records (Volume I), pp. 16-21.

[10] Also referred to as Obispo Representante at Pastor General ng Iglesia ni Jesu Cristo "Bagong Jerusalem" Inc., Obispo Representante at Pastor General ng Iglesia ni JesuCristo "Bagong Jerusalem" Inc. and as Obispo Representante at Pastor General ng Iglesia ni Jesu-Kristo "Bagong Jerusalem" Inc. in some parts of the records.

5. [She] denies the allegation in paragraph 3 of the [C]omplaint for being false and misleading. [Galvez deviously acquired] a new [title] by declaring the previous one as struck by flood x x x. [OCT] No. 8257 (owner's copy) was never lost [as such and] is still in [the] possession of the Obispo Representante at Pastor General ng Iglesia ni Jesu Kristo "Bagong Jerusalem" Inc. x x x;

6. x x x [T]he TDs of the [subject lot] x x x already bore the name of ["]New Jerusalem, New Church of Jesus Christ" as owner thereof, x x x;

7. In [TD] No. B-001-04457[,] [Galvez] declared the improvement (house) in his name x x x. However, the same document on the dorsal portion [thereof showed that the] improvement was described as situated "x x x on the land of New Jerusalem, New Church of Jesus Christ". x x x;

8. [She claims that in] 1914, the [c]hurch was founded [and had] its principal office at 797 Dagupan Ext., Solis, Tondo, Manila. The bishop then was Rev. Ildefonso Agulo. The church was known then, as it was now, as the following:

"Church of Jesus Christ New Jerusalem" (English)

"Iglesia ni Jesu-Kristo Bagong Jerusalem" (Tagalog)

"Iglesia De Jesucristo Jerusalem Nueva" (Spanish)

These three (3) nomenclatures were registered at the Department of Instruction, National Library, Manila[,] Philippines.

It can be gleaned from the [OCT] No. 8257 x x x that the owner-organization was incorporated x x x only after September 3, 1955 when it was registered as a corporation sole before the [SEC]. In [its AOI] it was mentioned that Felicisima Pineda (Pineda) is the Bishop Representative and General Pastor of the church known to the public as[:]

"Church of Jesus Christ New Jerusalem" (English)

"Iglesia ni Jesu-Kristo Bagong Jerusalem" (Tagalog)

"Iglesia De Jesucristo Jerusalem Nueva" (Spanish)

... And that it desires to become [a] corporation sole under the name and style: Obispo Representante at Pastor General ng Iglesia ni Jesu Kristo "Bagong Jerusalem" Inc.

Further, it was also stated that said entity shall administer and manage the temporalities of the estates and properties of the church, ["]Church of Jesus Christ New Jerusalem", "Iglesia ni Jesu-Kristo Bagong Jerusalem", "Iglesia De Jesucristo Jerusalem Nueva" within the territorial jurisdiction of the Philippines. x x x;

This is the reason why the TDs mentioned earlier x x x [bore] the name of Pineda as Administrator of the subject property;

9. Paragraph 5 of the Complaint is likewise denied. The church, in Tanong[,] Malabon was named "Templo Angeles" after one of the bishops[,] Rev. Pedro Angeles[,] who died x x x on March 30, 1930. [Miguela] built a shanty upon tolerance by [Pineda] upon the prodding of one of its member[s,] Feliza Bravo;

10. [Galvez] or any of his relative[s] was not and never became a member of the church. x x x;

11. That [Dela Cruz] remain[ed] an active member of the Obispo Representante at Pastor General ng Iglesia ni Jesu Kristo "Bagong Jerusalem" Inc.

12. [She] denies the allegations in paragraph 9 of the Complaint insofar as she allegedly formed the organization as an instrument to claim the [subject lot]. However, she admits filing an ejectment case and the consequent dismissal thereof on appeal. The reason for the dismissal being that [said] ejectment case has become "moot and academic" by [therein defendants', including Galvez's, act of] voluntarily vacating the [subject lot]. Said act of [Galvez] is an indication that he does not have any right over the [subject lot]. In fact[,] during the proceedings before the Lupon Tagapamayapa[,] [Galvez] offered to leave the [subject lot] provided [that] he would be paid a reasonable sum for the house built thereon. x x x

13. Paragraph 10 is likewise denied because respondents have in fact the right over the [subject lot] being the ADMINISTRATOR thereof;

14. x x x There was [neither a] demand that came to her attention [nor] was there an occasion that she refuse[d] to sign [the same]. x x x This is fatal to the cause of [petitioner or Galvez] and warrants the outright dismissal of the [C]omplaint;

15. [Galvez] x x x was using the church premises to gain profit by offering for lease the portion occupied by his house to other persons.

[Dela Cruz] with the consent of the church filed a complaint on February 20, 2007 before the Office of the Mayor [of] Malabon City. x x x This is the very reason why [Galvez] filed this case to harass and intimidate [her] and the church she represents;

16. Prior to the filing of [said] ejectment case [by respondents] against [Galvez,] the latter has been offering for lease the said portion of the [subject lot] and collecting rent [thereon] without the consent of [respondents]. After the decision [in the said ejectment] case on appeal[,] [Galvez] again surreptitiously entered the premises of the [subject lot] and offered the same for lease anew. x x x[11]

Respondent Dela Cruz thus prayed that the Complaint be dismissed; that the petitioner's claims for damages and attorney's fees be denied and that judgment be rendered ordering petitioner, represented by Galvez, to vacate the premises and to remove the structures that petitioner thereon erected, and that petitioner be also directed to pay her (respondent Dela Cruz) attorney's fees, monthly rent with legal interest from the time of occupation up to the present, plus exemplary damages.

In the Position Paper that she filed with the MeTC,[12] respondent referred to her pieces of evidence, *viz.*: Secretary's Certificate dated April 30, 2007 signed by Josie Sengco and notarized by Atty. Mamaril, a copy of OCT No. 8257,[13] TD No. 16094, TD No. B-001-04457, a copy of SEC Certificate of Registration dated September 3, 1955 with AOI, Minutes of Lupon Proceedings dated June 4, 1998, Complaint filed on February 20, 2007 with the Office of the Malabon City Mayor, and Certification from the then *Punong Barangay* dated February 2, 1999. What is more, Dela Cruz therein emphasized that the reconstituted title granted to Galvez was irregular and invalid because the alleged corporation represented by Galvez was not

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[11] Records (Volume I), pp. 16-19.

[12] *Id*. at 112-117.

[13] The attached photocopy of OCT No. 8257 is in the name of "Iglesia De Jesucristo Jerusalem Nueva of Manila, Philippines, Inc."; *id*. at 118-119.

yet existing when the reconstituted title was issued; and that Galvez moreover did not have any authority to institute the instant proceedings in behalf of the existing corporation, the Obispo Representante at Pastor General ng Iglesia ni JesuKristo "Bagong Jerusalem" Inc.

Ruling of the Metropolitan Trial Court

In its Decision dated November 7, 2008,[14] the MeTC dismissed petitioner's Complaint for lack of evidence.[15] The MeTC held that petitioner had failed to establish by preponderant evidence that it had a better right of possession over the disputed property arising from its claim of ownership.

The MeTC found that petitioner was organized as a religious corporation only on June 15, 1999, and was registered only on August 4, 1999, per its SEC Certificate of Incorporation; that petitioner did not own any real property per the List of Properties that it submitted to the SEC; that petitioner, which was organized only in 1990, made the claim that it lost the owner's copy of OCT No. 8257, which explains why it prayed for the issuance of a new owner's copy; that TD No. B-001-06214 covering the disputed property as shown in OCT No. 8257 in the name of New Jerusalem, New Church of Jesus Christ c/o Pineda of No. 171 Solis St., Tondo, Manila was cancelled by way of correction of name by TD No. B-001-06223 in the name of petitioner, with Galvez as administrator; that Galvez's house was indicated as an improvement in said TD No. B-001-06214; and that TD No. B-001-04457 beginning the year 1994 in Galvez's name indicated that his house is on the property of New Jerusalem, New Church of Jesus Christ with OCT No. 8257. The MeTC also found that TD No. B-001-06223 in the name of petitioner and Galvez as administrator which referred to the disputed property as covered by said OCT No. (8257) M-35266 is a corrected one, as regards the owner's name; and that said TD No. B-001-06223 cancelled TD No. B-001-06214

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[14] CA *rollo*, pp. 43-48.

[15] *Id.* at 48.

in the name of New Jerusalem, New Church of Jesus Christ c/o Pineda.

Upon the other hand, the MeTC found that Dela Cruz had successfully proven that she was the authorized representative of the Obispo Representante at Pastor General ng Iglesia ni Jesu Kristo "Bagong Jerusalem" Inc.; and that this corporation sole is the owner of the disputed property as shown by OCT No. (8257) M-35266 and TD No. B-001-06214 in the name of New Jerusalem, New Church of Jesus Christ beginning the year 1993.

The MeTC stressed that Obispo Representante at Pastor General ng Iglesia ni Jesu Kristo "Bagong Jerusalem" Inc. was registered with the SEC as a corporation sole on September 3, 1955; that this denomination is also known as "Church of Jesus Christ, New Jerusalem." "Iglesia ni Jesu-Kristo, Bagong Jerusalem," and "Iglesia de Jesucristo, Jerusalem Nueva" per its AOI; that this denomination was established way back in 1914 under a succession of bishops until its incorporation as a corporation sole in 1955. The MeTC further found that the Obispo Representante at Pastor General ng Iglesia ni Jesu Kristo "Bagong Jerusalem" Inc. is in actual possession of the original owner's copy of OCT No. 8257 that was issued in 1940 when the religious denomination was not yet a corporation.

On November 26, 2008, petitioner filed its Notice of Appeal to the RTC,[16] which was given due course by the MeTC on November 28, 2008.[17]

Ruling of the Regional Trial Court

On January 19, 2011, the RTC rendered its Decision[18] upholding the MeTC Decision.[19] The RTC held that the disputed

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[16] Records (Volume I), pp. 172-173.

[17] *Id*. at 180.

[18] CA *rollo*, pp. 35A-42.

[19] *Id*. at 42.

property which is covered by OCT No. (8257) M-35266 is registered in the name of "The Iglesia De Jesucristo Jerusalem Nueva of Manila, Philippines, Inc."; and that the only issue to be resolved is who as between the parties is authorized to represent the registered owner of the disputed property.

The RTC pointed out that although petitioner claimed that the religious corporation it represented was organized in 1940, the same was allegedly registered only in 1999, as compared to the earlier registration in 1955 of the religious corporation represented by Dela Cruz, and which entity has the words "Bagong Jerusalem" in its name, besides bearing the translated names "New Jerusalem" in English and "Jerusalem Nueva" in Spanish.

The RTC noted that the disputed property was declared in TD No. 06214 dated January 23, 1967 under the name of "New Jerusalem, New [Christ] of Jesus Christ" with Pineda as administrator, and that Galvez's house was declared therein only as part of the improvements; that Galvez's house was shown in TD No. B-001-6214 dated October 29, 1993 and in TD No. B-001-6214 dated January 11, 2007, as situated on the land of New Jerusalem, New Church of Jesus Christ; and that it was only on January 30, 2007 that the disputed property was declared in the name of "The Iglesia De Jesucristo Jerusalem Nueva of Manila, Philippines, Inc." under TD No. B-001-06223 with Galvez as administrator; however, this contained a notation at the back page stating that it was a **correction** of the owner's name.

Based on the foregoing findings, the RTC concluded that "The Iglesia De Jesucristo Jerusalem Nueva of Manila, Philippines, Inc." appearing as registered owner of the disputed property, and that respondent, with the registered name of Bagong Jerusalem, also known as New Jerusalem in its English translation, are one and the same, and that Dela Cruz was properly authorized to represent the same as evidenced by a Secretary's Certificate; that respondent's pieces of evidence are more preponderant as these are consistent hence, more credible. It further ruled that petitioner's alleged possession of the original

owner's duplicate of OCT No. (8257) M-35266 was to no avail, because it has been adequately explained that petitioner merely filed a petition for the issuance of the duplicate owner's copy alleging loss of the original title, but it utterly failed to establish its legal right over the disputed property.

Petitioner thereafter filed a Petition for Review with the CA.[20]

Ruling of the Court of Appeals

In its Decision[21] dated January 22, 2013, the CA denied the Petition for Review, *viz.*:

> WHEREFORE, the petition is DENIED. The Decision dated January 19, 2011 of the Regional Trial Court, Branch 74, Malabon City, which affirmed the Decision dated November 7, 2008 of the Metropolitan Trial Court of Malabon City, Branch 56 is AFFIRMED.
>
> SO ORDERED.[22]

The CA rejected petitioner's claim that it was the true owner of the disputed property, based on OCT No. (8257) M-35266 and TD No. 06223. It found no merit in petitioner's contention that he had a better right than respondent over the disputed property, upon the ground that the latter had allegedly failed to present the originals of the documents attached to the Answer and merely submitted unreadable photocopies thereof. The CA pointed out that while Dela Cruz failed to present the duplicate original copy of the title which was allegedly still in the possession of the Obispo Representante at Pastor General ng Iglesia ni JesuKristo "Bagong Jerusalem" Inc., the fact nonetheless remained that the title in petitioner's possession was issued only after a petition for the issuance of a new owner's duplicate copy was granted by Branch 170 of the RTC in LRC Case No. 958-MN.

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[20] *Id.* at 150.

[21] *Rollo*, pp. 41-52.

[22] *Id.* at 51.

The CA likewise upheld the RTC's finding that the disputed property is clearly registered in the name of "The Iglesia de Jesucristo, Jerusalem Nueva of Manila, Philippines" in 1940; that the only issue to be resolved in the case was who as between Galvez and Dela Cruz was authorized to represent the registered owner of the disputed property; that notwithstanding Dela Cruz's failure to produce the original copy of the subject title, the MeTC's finding, *i.e*. that "The Iglesia de Jesucristo, Jerusalem Nueva of Manila, Philippines" appearing as the registered owner of the disputed property and "Bagong Jerusalem", which is the registered name of the religious corporation of Dela Cruz that is also known as "New Jerusalem" in its English translation, are one and the same organization, was properly based on the totality of evidence presented by the parties, taking into consideration such facts as admissibility, credibility and plausibility, *vis-a-vis* the respective legal theories of the contending parties; that petitioner's failure to explain why the religious denomination was registered with the SEC only in 1999, even though it alleged in its Complaint that it was organized way back in 1940, as compared to the registration in 1955 of the Obispo Representante at Pastor General ng Iglesia ni JesuKristo "Bagong Jerusalem" Inc. with Rev. Pineda as Bishop Representative and General Pastor, can only mean that petitioner's evidence lacked credence; and that in fine, Dela Cruz's pieces of evidence were more consistent, more credible, and more trustworthy as compared to the pieces of evidence adduced by petitioner, which were remarkable for their lack of consistency, as well as their utter unreliability.

The CA also highlighted the fact that, notwithstanding petitioner's claim of a better right over the disputed property, Galvez and the latter's sub-lessees had, in fact, vacated the same.

Petitioner moved for reconsideration[23] of the CA's Decision, but this was denied by the CA in its Resolution of July 17, 2013.[24]

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[23] CA *rollo*, pp. 201-210.

[24] *Rollo*, pp. 53-54.

Issues

Before this Court, petitioner instituted the present Petition[25] where it raised the following issues:

> [WHETHER] THE [CA] SERIOUSLY ERRED IN DISMISSING THE APPEAL DESPITE (1) CLEAR AND CONVINCING EVIDENCE OF THE PETITIONER [; AND] (2) FAILURE OF THE RESPONDENT TO PRESENT EVIDENCE ON THEIR CLAIM THAT PETITIONER AND RESPONDENT RELIGIOUS CORPORATION IS ONE [AND] THE SAME ORGANIZATION [.]
>
> [WHETHER] THE [CA] SERIOUSLY ERRED IN DISMISSING THE APPEAL CONTRARY TO THE WELL[-]SETTLED RULE THAT A VALIDLY ISSUED TORRENS CERTIFICATE OF TITLE CANNOT BE THE SUBJECT OF COLLATERAL ATTACK[.]
>
> [WHETHER] THE [CA] SERIOUSLY ERRED IN ITS CONCLUSION THAT [GALVEZ] (REPRESENTATIVE OF THE PETITIONER) [VOLUNTARILY] VACATED THE [SUBJECT LOT] WHEN RESPONDENT FILED AN EJECTMENT [CASE] X X X[26]

Petitioner's Arguments

In its Petition,[27] Reply,[28] and Memorandum,[29] petitioner argues that it is the true, absolute, and registered owner of the disputed property which is covered by OCT No. (8257) M-35266 and TD No. 06223; that its President, Galvez, is in possession of the owner's duplicate copy of OCT (8257) M-35266; that being the registered owner of the disputed property, it has the right to possess, enjoy, dispose of the same, and to initiate the appropriate action to recover the same under Article 428 of the Civil Code, as in the instant case; that it filed the action for unlawful detainer against respondents in accordance with Sections 1 and 3 of Rule 70 of the Rules of Court; that

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[25] *Id*. at 10-37.

[26] *Id*. at 17.

[27] *Id*. at 10-37.

[28] *Id*. at 133-148.

[29] *Id*. at 158-184.

respondents' right to the possession of the disputed property, was through mere tolerance, and expired upon receipt of its demand for them to vacate the same through a letter dated February 12, 2007; that the date of unlawful deprivation is to be counted from the date of the demand to vacate; that respondents' continued possession of the disputed property has become unlawful, warranting their ejectment therefrom; that Dela Cruz's failure to present the original duplicate copy of the title which she alleged to be in respondents' possession, negated such claim; that Dela Cruz's allegation that petitioner is the same as Obispo Representante at Pastor General ng Iglesia ni JesuKristo "Bagong Jerusalem" Inc. is false, because the latter's SEC Certificate of Incorporation clearly showed that it was another entity; that it could not comprehend why the RTC mentioned that the originals of the SEC Certificate of Incorporation and AOI of Obispo Representante at Pastor General ng Iglesia ni JesuKristo "Bagong Jerusalem" Inc. as well as the original copy of the title in respondents' possession were presented before the MeTC, although these were not in fact presented before the court; and that despite respondents' failure to present the original documents to prove that the Church of Jesus Christ and the Iglesia ni JesuKristo "Bagong Jerusalem" Inc. were one and the same organization, the MeTC, RTC, and CA all still erroneously found that they are one and the same organization.

Petitioner further contends that respondents can be prosecuted for perjury for falsely claiming that the ejectment case was dismissed because Galvez in point of fact voluntarily vacated the disputed property; that Dela Cruz even paid attorney's fees to Galvez pursuant to said judgment; that while it may be true that some of the defendants in the ejectment case vacated the disputed property, Galvez did not vacate the disputed property, and in fact still resides there, hence, the CA's finding that Galvez vacated the disputed property is contrary to the evidence; that petitioner even filed a motion for execution with respect to the award of costs of suit in the amount of ₱10,000.00 and Dela Cruz even paid that award, as evidenced by a temporary receipt; and that what was merely stated in the MeTC Decision in the

ejectment case was that the demand letter by registered mail to Galvez was returned to sender "with the notation that the addressee had moved already."

Petitioner moreover insists that as the instant case is only for unlawful detainer, it follows that the only issue to be resolved pertains to who has a better right to the possession of the disputed property, independent of any claim of ownership or possession de jure; that in view of the existence of the validly issued title in its name, there is no need to determine the issue of ownership at all; that it is settled that a person who has a Torrens Title over the property is entitled to the possession thereof; that it had complied with all the requirements for the institution of an unlawful detainer case under Section 1, Rule 70 of the Rules of Civil Procedure; that the date of the filing of the Complaint on March 28, 2007 is within one year from the date of the final demand letter dated February 12, 2007; that respondents obstinately refused to surrender the possession of the disputed property, despite its demand; that Galvez was in peaceful possession of the disputed property until Dela Cruz filed the ejectment case, hence he was prompted to "fix" the documentation in 1999; and that he (Galvez) is now 94 years old, and has been residing at the disputed property since birth, hence its late registration should not be adjudged against him (Galvez).

Petitioner likewise argues that Dela Cruz's defense, which was upheld by the CA, that the petitioner and the Obispo Representante at Pastor General ng Iglesia ni JesuKristo "Bagong Jerusalem" Inc. are one and the same organization, is a collateral attack upon the title validly issued to it, which is proscribed by Section 48 of Presidential Decree No. 1529; that respondents did not resort to any legal action to annul or cancel the title issued to it; and that it was error for the CA to conclude that respondents' claim of ownership is better than petitioner's title.

Petitioner thus prays that the CA Decision and Resolution be set aside, and that judgment be rendered ordering Dela Cruz and all persons claiming rights under her to vacate the subject property; to pay petitioner monthly rent of ₱20,000.00 or

reasonable compensation therefor as well as ₱50,000.00 in exemplary damages; ₱50,000.00 in attorney's fees plus ₱3,000.00 per hearing; and to pay the costs of suit.

Respondents' Arguments

In her Comment[30] and Memorandum,[31] Dela Cruz counters that the records before the MeTC clearly showed that the original AOI was presented and marked; that if she and her co-respondents indeed failed to present the original AOI of the religious corporation that they belonged to, then petitioner should have made a comment thereon or requested for the correction of the Preliminary Conference Order to reflect such facts; and, that both the MeTC and the RTC made the finding that Dela Cruz presented the original document.

More than these, Dela Cruz argues that petitioner's title was obtained only because Dela Cruz filed an action or motion for the issuance of a reconstituted copy allegedly because the original title had been lost although it was not in fact lost; and that above all, the MeTC itself adverted to petitioner's declaration before the SEC that it does not in fact own any real property, whether land or building.

Our Ruling

This Court finds no merit in the present Petition.

We start off with the basic postulate that the present case was a complaint for unlawful detainer and damages by petitioner against respondents. The requirements for such an ejectment suit are fundamental, thus:

x x x Section 1, Rule 70 of the 1997 Rules of Civil Procedure, as amended x x x states:

> **SECTION 1.** *Who may institute proceedings, and when.* — Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force,

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[30] *Id.* at 120-126.

[31] *Id.* at 201-205.

> intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.
>
> x x x x x x x x x

A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) the defendant's initial possession of the property was lawful, either by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon the plaintiff's notice to the defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession and deprived the plaintiff of the enjoyment of the property; and (4) the plaintiff instituted the complaint for ejectment within one (1) year from the last demand to vacate the property.[32]

In this case, the MeTC, the RTC, and the CA ruled for respondents, by uniformly holding that Dela Cruz was able to show by convincing evidence that she is the duly authorized representative of the registered owner of the disputed property. Quoting the RTC, the CA agreed that it is beyond doubt or dispute that the disputed property is registered in the name of "The Iglesia de Jesucristo, Jerusalem Nueva of Manila, Philippines, Inc." and that the sole issue for resolution in the case is which party was authorized to represent the registered owner of the disputed property, *viz.*:

> Indeed, the totality of evidence presented by the parties tilts in favor of [Dela Cruz]. We quote with approval the [RTC's] ratiocinations x x x:

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[32] *Diaz v. Punzalan*, G.R. No. 203075, March 16, 2016, 787 SCRA 531, 535-536.

x x x x x x x x x

There is no question that the subject [lot] is registered in the name of 'Iglesia de Jesucristo, Jerusalem Nueva of Manila, Philippines', (['] Nueva de Manila' for brevity) in 1940, [Galvez] argued that he is the president of 'Nueva de Manila' hence, authorized to represent the same; likewise, [Dela Cruz] as an officer of Church of Jesus Christ, 'New Jerusalem' ('New Jerusalem' for brevity) claims the same representation as 'Nueva de Manila' and 'New Jerusalem' are one and the same entity.

The only issue to be resolved is who as between [Galvez] and [Dela Cruz] is authorized to represent the registered owner of the subject property. x x x

The Court notes that as stated in [Galvez's] [C]omplaint (par. 4) his religious organization, 'Nueva [de] Manila', of which he represents was organized way back in 1940; but why is it that [Galvez] registered it only in 1999? On the other hand[,] 'Bagong Jerusalem' which also bears the name of 'New Jerusalem' in its English [t]ranslation and 'Jerusalem Nueva' in its Spanish translation was registered in 1955 as a corporation sole with Rev. Pineda as the Bishop Representative and General Pastor of the church and not [Rosendo], the founder as [Galvez] claimed x x x. [Galvez] failed to explain this glaring inconsistency, which render[ed] his evidence not worthy of credence.

x x x x x x x x x

x x x [T]he Court finds that 'Nueva de Manila' appearing as the registered owner of the subject property and 'Bagong Jerusalem', the registered name of the religious organization of [Dela Cruz] which is also known, as 'New Jerusalem' in its English translation are one and the same organization; and [Dela Cruz], as evidenced by a Secretary's Certificate x x x was authorized to represent [the same]. The [pieces of] evidence of [Dela Cruz,] are found to be more preponderant, the same being consistent and more credible and therefore, more plausible than that of [Galvez's pieces of] evidence which are inconsistent, doubtful[,] and implausible.[33]

[33] *Rollo*, pp. 49-51.

It is beyond cavil that the disputed property is registered in the name of "The Iglesia de Jesucristo, Jerusalem Nueva of Manila, Philippines, Inc." as stated in both the reconstituted title[34] attached to the Complaint submitted by petitioner, as represented by Galvez, as well as in the copy of the original title[35] thereof attached to the Position Paper filed by Dela Cruz, which as claimed by the latter is in the possession of Obispo Representante at Pastor General ng Iglesia ni JesuKristo "Bagong Jerusalem" Inc. We note that this name is actually the name of petitioner verbatim. Moreover, it is indicated in the dorsal portion of the reconstituted title that Galvez had been authorized to prosecute the action to reconstitute the title, to wit:

Entry No. 77467/OCT (8257)35266-AFFIDAVIT OF LOSS-Executed by [Galvez] in his capacity as the president of the Iglesia De Jesucristo, Jerusalem Nueva of Manila, Philippines, Inc., that the Certificate of Owners [D]uplicate of Title No. 8257 had been lost, misplaced, struck by flood unknown to him.
Date of Instrument: 06-08-06
Date of Inscription: 06-09-06

(SGD) JOSEPHINE H. PONCIANO
Actg. Reg. of Deeds

Entry No. 79998-99/T-No. (8257)M-35266: COURT ORDER ISSUANCE OF NEW OWNERS CERT. OF TITLE:
ISSUING AUTHORITY: Branch 170/City of Malabon SPECIAL PROCEEDINGS: LRC CASE NO. 958-MN
Date of Instrument: Sept. 30, [2]006
Date of Inscription: Oct. 20, 2006 at 10:45 a.m.
This Cert. of Title is issued in lieu of the lost/destroyed first copy of the same previously declared null and void.

[Illegible Signature]
JOSEPHINE H. PONCIANO
Actg. Reg. of Deeds[36]

[34] OCT No. (8257) M-33266 per Records (Volume I), p. 8 (Annex "B" of petitioner's Complaint).

[35] The attached photocopy of OCT No. 8257 is in the name of "Iglesia De Jesucristo Jerusalem Nueva of Manila, Philippines, Inc."; *id*. at 118-119.

[36] Dorsal portion of OCT No. (8257) M-35266 per *id*. at 8 (Annex "B" of petitioner's Complaint).

Stock must be taken, too, of Dela Cruz's insistence that Galvez succeeded in obtaining a new title to the disputed property based on the latter's untruthful claim that the original thereof was destroyed by a flood, (even though the said original title, OCT No. 8257, was never in fact lost) and was still in the possession of Obispo Representante at Pastor General ng Iglesia ni JesuKristo "Bagong Jerusalem" Inc. Hence, the issuance of the reconstituted title was irregular and improper because the alleged corporation which owned the disputed property was not yet in existence when the alleged original title was issued.

"When the defendant raises the defense of ownership in [her] pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession."[37] In other words, "[w]here the parties to an ejectment case raise the issue of ownership, the courts may pass upon that issue to determine who between the parties has the better right to possess the property. However, where the issue of ownership is inseparably linked to that of possession, adjudication of the ownership issue is not final and binding, but only for the purpose of resolving the issue of possession."[38]

We need not repeatedly belabor the issue in an ejectment case:

> x x x The principal issue must be possession *de facto*, or actual possession, and ownership is merely ancillary to such issue. The summary character of the proceedings is designed to quicken the determination of possession *de facto* in the interest of preserving the peace of the community, but the summary proceedings may not be proper to resolve ownership of the property. Consequently, any issue on ownership arising in forcible entry or unlawful detainer is resolved only provisionally for the purpose of determining the principal issue of possession. x x x[39]

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[37] Section 16, Rule 70 of the Rules of Court.

[38] *Corpuz v. Spouses Agustin*, 679 Phil. 352, 360 (2012).

[39] *Penta Pacific Realty Corporation v. Ley Construction and Development Corporation*, 747 Phil. 672, 686 (2014).

"Indeed, a title issued under the Torrens system is entitled to all the attributes of property ownership, which necessarily includes possession."[40] Nevertheless, "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."[41]

Quite independently of the foregoing, what further strengthens herein respondents' posture was petitioner's utter failure to adduce proof that he merely tolerated respondents' possession of the disputed property. In *Corpuz v. Spouses Agustin*,[42] this Court recognized that even as the registered owner generally has the right of possession as an attribute of ownership, nevertheless the dismissal of the complaint for unlawful detainer is justified where proof of preponderant evidence of material possession of the disputed premises has not been convincingly adduced —

> x x x Petitioner is correct that as a Torrens title holder over the subject properties, he is the rightful owner and is entitled to possession thereof. However, the lower courts and the appellate court consistently found that possession of the disputed properties by respondents was in the nature of ownership, and not by mere tolerance of the elder Corpuz. In fact, they have been in continuous, open and notorious possession of the property for more than 30 years up to this day.
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> x x x x x x x x x
>
> The pronouncement in *Co v. Militar* was later reiterated in *Spouses Pascual v. Spouses Coronel* and in S*pouses Barias v. Heirs of Bartolome Boneo, et al*., wherein we consistently held the age-old rule 'that the person who has a Torrens Title over a land is entitled to possession thereof.'
>
> However, we cannot lose sight of the fact that the present petitioner has instituted an unlawful detainer case against respondents. It is an established fact that for more than three decades, the latter have been

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[40] *Corpuz v. Spouses Agustin*, *supra* note 38 at 361.

[41] *Dr. Carbonilla v. Abiera*, 639 Phil. 473, 481 (2010).

[42] *Supra* note 38.

in continuous possession of the subject property, which, as such, is in the concept of ownership and not by mere tolerance of petitioner's father. Under these circumstances, petitioner cannot simply oust respondents from possession through the summary procedure of an ejectment proceeding.[43]

In the case at bench, petitioner miserably failed to substantiate its claim that it merely tolerated respondents' possession of the disputed property. Indeed, "[w]ith the averment here that the respondent[s'] possession was by mere tolerance of the petitioner, the acts of tolerance **must be proved**, for bare allegation of tolerance did not suffice. At least, the petitioner should show the overt acts indicative of [its] or [its] predecessor's tolerance x x x But [it] did not adduce such evidence,"[44] as in this case. It is thus quite evident from the allegations and evidence presented by petitioner that its claim that it merely tolerated respondents' entry into and possession of the disputed property, is baseless and unsubstantiated. Furthermore, while possession is a question of fact which is generally not allowed to be raised in a Rule 45 petition, the MeTC, RTC, and CA made no finding in respect to the question of tolerance as discussed above.

WHEREFORE, the instant Petition for Review is **DENIED** for lack of merit.

Without costs.

SO ORDERED.

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

Sereno, C.J., on leave.

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[43] *Id*. at 361-363.

[44] *Quijano v. Amante*, 745 Phil. 40, 52 (2014).

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

FIRST DIVISION

[G.R. No. 212866. April 23, 2018]

SPOUSES FREDESWINDA DRILON YBIOSA and ALFREDO YBIOSA, *petitioners, vs.* **INOCENCIO DRILON,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 9700 OR THE CARPER LAW (COMPREHENSIVE AGRARIAN REFORM PROGRAM EXTENSION WITH REFORMS); IT IS THE DEPARTMENT OF AGRARIAN REFORM SECRETARY, NOT THE REGIONAL TRIAL COURT, WHO HAS JURISDICTION OVER THE CANCELLATION OF CLOA (CERTIFICATE OF LAND OWNERSHIP AWARD) AND CERTIFICATE OF TITLE; CASE AT BAR.— The subject property was originally an unregistered land, meaning it is public land owned by the State. It is presumed to belong to the State, and not privately owned by Gabriel. Thus, any sale made by Gabriel covering the subject property - whether to petitioners or respondent - is considered null and void unless the contrary is proved, on the principle that one cannot sell or dispose what he does not own. This is underscored by the fact that petitioners were able to obtain a CLOA over the subject property - and, later on, an original certificate of title in their favor. For the above reasons, the RTC had no jurisdiction over Civil Case No. 11985, as it primarily seeks to cancel the CLOA and certificate of title issued to petitioners. x x x Thus, it is the DAR Secretary who had jurisdiction over the instant case for cancellation of petitioners' CLOA and certificate of title; respondent should have filed his case against petitioners before the said office, and not the RTC. To this day, this very same procedure is applicable, pursuant to the more recent 2009 DARAB Rules of Procedure; Section 9 of Republic Act No. 9700, or the CARPER Law; and DAR Administrative Order No. 3, series of 2009. Thus, by law and administrative regulation, the RTC had no jurisdiction over respondent's cause of action. With the above disquisition, the proceedings in the RTC and the dispositions therein are rendered

null and void. The CA's pronouncements are likewise set aside and annulled for being patently erroneous. Having said that it is only the DAR that can cancel the CLOA and title of petitioners, it should not have proceeded to rule on the question of ownership - for the simple reason that all proceedings before the RTC, including the trial and reception of evidence, are deemed null and void; there is no evidence upon which to base its judgment. Such issue should be threshed out in the appropriate venue and proceedings.

APPEARANCES OF COUNSEL

Diocos & Associates Law Office for petitioners.
Rodel P. Ramayla for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the August 23, 2012 Decision[2] and May 14, 2014 Resolution[3] of the Court of Appeals (CA) partially granting the respondent's appeal in CA-G.R. CV No. 01729 and denying herein petitioners' Motion for Reconsideration.[4]

Factual Antecedents

As found by the CA, the facts of the case are as follows:

In his complaint[5] for 'Annulment of Deed of Absolute Sale, Original Certificate of Title and Damages' filed on 11 July 1997, plaintiff

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[1] *Rollo*, pp. 3-16.

[2] *Id*. at 18-40; penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Pampio A. Abarintos and Melchor Q.C. Sadang.

[3] *Id*. at 46-48; penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Ramon Paul L. Hernando and Marilyn B. Lagura-Yap.

[4] *Id*. at 41-45.

[5] *Id*. at 111-117; docketed as Civil Case No. 11985.

Inocencio[6] alleged that he is the owner of the subject property after he purchased the same from the late Gabriel Drilon as evidenced by the receipts. He further alleged that defendant Eustaquia Eumague Drilon connived with co-defendants, Spouses Fredeswinda Drilon Ybiosa and Alfredo Ybiosa,[7] in effecting a deed of sale in favor of the said spouses where the signature of the late Gabriel Drilon was written by another person. He added that the late Gabriel Drilon could not have signed the said Deed in 1992 as he was already old and sickly as shown by the fact that when he signed another document denominated as Affidavit of Consent on 03 January 1992, his signature thereon showed signs of difficulty. This difficulty is shown further on the other documents which Gabriel Drilon executed later, such as an Affidavit dated 04 August 1982, Notice of Appeal dated 22 September 1988, and Answer with Counterclaim, Etc. dated 31 July 1991, among others.

Plaintiff Inocencio prayed that the deed of sale be annulled, that the Original Certificate of Title No. 7266, Certificate of Land Ownership Award No. 00113116 covering the subject lot issued by the Register of Deeds for Negros Oriental on 30 June 1995, be canceled as this was issued on the strength of the questioned deed of sale.

That he exerted earnest efforts to settle amicably since they all belong to the same family but defendants refused to appear for conciliation and continued to be adamant about it. After failing to bring the defendants to the negotiation table, he sought the intervention of the Lupong Pambarangay but still failed. Hence, the issuance of a Certification to file action issued by the Barangay Captain of Barangay Ajong, Sibulan.

Plaintiff Inocencio averred that he suffered sleepless nights an[d] serious anxieties due to the unjustified refusal of defendant Eustaquia to execute the deed of conveyance in her favor, thus award of ₱200,000.00, as and for moral damages is proper. Moreover, to teach defendants a lesson and to deter them and others from doing similar acts in the future, they should be condemned to pay exemplary damages in the amount of ₱50,000.00. Finally, as he was compelled to litigate, defendants should, likewise, pay him attorney's fees of ₱15,000.00 plus cost of litigation in the amount of ₱10,000.00.

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[6] Herein respondent, Inocencio Drilon.

[7] Herein petitioners.

In their Answer,[8] defendants Eustaquia and Spouses Fredeswinda and Alfredo Ybiosa (hereafter defendant-[s]pouses) denied the material allegations in the complaint, maintaining that the questioned Deed of Absolute Sale executed in favor of defendant-spouses was executed freely and voluntarily by the late Gabriel Drilon and defendant Eustaquia; and that plaintiff Inocencio has long known about this sale and did not contest the same. That it is not true that plaintiff Inocencio purchased the subject property, in fact, this allegation of payment is a mere afterthought, made only after the death of Gabriel Drilon.

For their defense, defendants insisted that plaintiff Inocencio has no cause of action against them and that the instant action has long been barred by prescription and laches; and that the trial court acquired no jurisdiction over the subject matter of the case.

By way of counterclaim, defendants alleged that as a result of plaintiff Inocencio's filing of this baseless suit, they suffered sleepless nights, wounded feelings and anxieties, thus, justifying the award of moral damages in the amount of ₱60,000.00. They further ask payment of the following sums: ₱5,000.00, as and for actual damages, and ₱10,000.00 and ₱15,000.00, as and for attorney's fees and litigation expenses, respectively.

Trial proceeded in due time, with the presentation by the parties of their evidence, both testimonial and documentary.[9]

Ruling of the Regional Trial Court

On August 29, 2006, the Dumaguete City Regional Trial Court (RTC), Branch 40 issued its Decision[10] in Civil Case No. 11985, which contains the following pronouncement:

The plaintiff prays for the annulment of Original Certificate of Title No. 7266 alleging that Lot No[.] 3667 covered by the title is not an agricultural land but a residential lot thereby beyond the coverage of the Comprehensive Agrarian Reform.

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[8] *Rollo*, pp. 118-121.

[9] *Rollo*, pp. 19-20.

[10] *Id*. at 132-137; penned by Presiding Judge Gerardo A. Paguio, Jr.

Indeed, Original Certificate of Title was issued pursuant to Certificate of Land Ownership Award No. 00113116 of the Department of Agrarian Reform.

Under this circumstance, this court does not have jurisdiction to annul a Certificate of Land Ownership Award. The Department of Agrarian Reform Adjudication Board (DARAB) has jurisdiction over those involving the correction, partition, cancellation, secondary and subsequent issuances of Certificates of Land Ownership Awards (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority (Section 1, Rule II of the DARAB New Rules of Procedure; CENTENO V. CENTENO, G.R. No. 140825, October 13, 2000.)

The second issue involves the genuineness of the signature of Gabriel Drilon on Exhibit "I" which is the Deed of Absolute Sale of Lot 3667 in favor of Fredeswinda Ybiosa. This document is assailed because the signature and residence certificate of Gabriel Drilon was [sic] falsified.

On the signature, Adelia Cruz Demetillo, Senior Document Examiner of the National Bureau of Investigation, categorically testified that the signature of Gabriel Drilon on Exhibit "I" was not written by the same person identified in earlier documents showing the signature of Gabriel Drilon.

x x x x x x x x x

An examination of Exhibit "I" will bear out this fact. Likewise, when Exhibit "I" is compared to Exhibit "7" (the original of Exhibit "I"), there is a marked difference in the manner the signatures of Gabriel Drilon were made. While the signature on Exhibit "7" appears to be squiggly, the signature on Exhibit "I" is firm. Yet, these documents are identical in all other respects. The signature of Eustaquia Eumague and the witnesses are likewise identical in both documents.

The conclusion of the National Bureau of Investigation and an examination of both documents lend to the conclusion that there are badges of fraud on Exhibit "I" and "7" sufficient to warrant the nullification of these document [sic].

Finally, the plaintiff prays that a new Original certificate of Title over Lot 3667 be issued him. As proof that he bought the property and has a superior right to the same, he offered in evidence three receipts (Exhibits "D" to "F") purporting to be receipts issued by

Gabriel Drilon having received installment payments for the sale of Lot No. 3667. While issued during the period from 1990 to 1991, it would seem that the paper is one of more recent vintage and appear to be recently issued than that of the Deed of Absolute Sale (Exhibit "I"). Moreover, these receipts appear to have been executed near and or about the same time to each other.

However, the more important fact is that only Gabriel Drilon signed these receipts.

The evidence on record, however shows that Lot 3667 is a conjugal property of Gabriel Drilon and Eustaquia Eumague, which they bought from Maximiana Alviola in July 1980. In fact Eustaquia Eumague have [sic] been paying taxes on the property registered in their names. In this instance, since the property was acquired during the coverture of Gabriel Drilon and Eustaquia Eumague, then it forms part of the conjugal partnership of gains.

x x x x x x x x x

Granting that there was a sale of Lot 3667 to the plaintiff, there is a marked absence of consent on the part of Eustaquia Eumague Drilon, Gabriel Drilon's wife. Consequently, the disposition is void but the transaction shall be construed as a continuing offer and may be perfected upon acceptance by the other spouse.

Thus, the plaintiff cannot claim a better right over the property as against Gabriel Drilon's widow. Having no better right, the plaintiff cannot claim any injury as to warrant an award of damages.

WHEREFORE, premises considered, judgment is rendered as follows:

1. The Deeds of Absolute Sale (Exhibits "I" and "7") are declared Void due to badges of fraud and defendant Fredeswinda Ybiosa is directed to hold Lot 3667 in trust for Eustaquia Eumague and the heirs of Gabriel Drilon;

2. The oral sale of Lot 3667 in favor of the plaintiff is declared Void as it is contrary to Article 124 of the Family Code;

3. The respective claims for damages, not having been adequately established are Dismissed.

SO ORDERED.[11]

[11] *Id.* at 134-136.

Ruling of the Court of Appeals

Both petitioners and the respondent interposed their respective appeals before the CA, docketed as CA-G.R. CV No. 01729.

On August 23, 2012, the CA issued the assailed Decision, decreeing as follows:

> WHEREFORE, the partial appeal is partially GRANTED, the Decision dated 29 August 2006, of the Regional Trial Court, 7th Judicial Region, Branch 40 of Dumaguete City, in Civil Case No. 11985 is hereby SET ASIDE and new one is rendered to read as follows, to wit:
>
> 1. The Deed of Absolute Sale dated 28 February 1992 (Exhibit[s] "I" and "7") executed in favor of Fredeswinda Drilon Ybiosa, married to Alfredo Ybiosa, is declared void.
>
> 2. The sale of Lot 3667 in favor of plaintiff-appellant Inocencio is declared valid and subsisting. He is, however, DIRECTED to pay the balance of ₱4,200,00, plus legal interest of six percent (6%) per *annum* to commence in 1991, within fifteen (15) days from receipt hereof.
>
> 3. The respective claims for damages, not having been adequately established are DISMISSED.
>
> SO ORDERED.[12]

The CA ruled that Gabriel Drilon's (Gabriel) signature in the deed of sale executed in petitioners' favor was a forgery, and that the sale by Gabriel in respondent's favor was duly proved. On a final note, the appellate court held that —

> It would be well to stress that it is only the Department of Agrarian Reform (DAR) that can cancel Original Certificate of Title No. 726. [sic] (CLOA No. 00113116). 'The cases involving the issuance, correction and cancellation of the CLOAs by the DAR in the administrative implementation of agrarian reform laws, rules and regulations to parties who are not agricultural tenants or lessees are within the jurisdiction of the DAR and not of the DARAB.'[13] (Citation omitted)

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

[13] *Id*. at 39.

Petitioners moved to reconsider, but in a May 14, 2014 Resolution, the CA held its ground. Hence, the present Petition.

Issues

Petitioners submit the following legal issues to be resolved:

1. WHETHER THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT THE COURT HAS NO JURISDICTION OVER THE CASE, AND THUS, ALL PROCEEDINGS THEREIN ARE NULL AND VOID.

2. WHETHER THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THE ACTION OF PLAINTIFF-APPELLANT (RESPONDENT) FOR ANNULMENT OF DEED OF SALE AS HAVING PRESCRIBED.

3. WHETHER x x x THE HONORABLE COURT OF APPEALS ERRED IN DECLARING THE DEED OF SALE DATED FEBRUARY 28, 1992 OF DEFENDANT-APPELLANT (PETITIONERS) AS VOID.

4. WHETHER x x x THE HONORABLE COURT OF APPEALS ERRED IN CONCLUDING THAT THERE IS [A] PERFECTED SALE BETWEEN GABRIEL DRILON AND INOCENCIO DRILON OVER A PORTION [OF] LOT 3667 BY REASON OF ORDINARY RECEIPTS.[14]

Petitioners' Arguments

In their Petition and Reply,[15] petitioners pray that this Court 1) set aside the assailed CA dispositions, 2) declare as valid the February 28, 1992 deed of sale in their favor, and 3) dismiss Civil Case No. 11985. They argue that Civil Case No. 11985 is an action for cancellation of CLOA No. 00113116, from which Original Certificate of Title No. 7266 was derived - in which case the Department of Agrarian Reform (DAR) - and not the RTC - has jurisdiction. They add that the RTC had no jurisdiction over the case for failure of respondent to allege the assessed value of the subject property in his complaint.

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[14] *Id*. at 7-8.

[15] *Id*. at 264-267.

Petitioners further argue that respondent's action has prescribed, and that there is actually no sale between respondent and Gabriel covering the subject property.

Finally, petitioners argue that contrary to the findings of the RTC and CA, the February 28, 1992 deed of sale in their favor has been proved to be valid and subsisting, and not mere forgery or fabrication.

Respondent's Arguments

Respondent, in his Comment,[16] submits that petitioners are adopting inconsistent positions; that the issue of prescription is being raised for the first time in these proceedings; that the CA did not err when it voided the February 28, 1992 deed of sale in petitioners' favor; and that he was able to competently prove the validity of the sale in his favor. Thus, he prays for the denial of the instant Petition.

Our Ruling

The Petition is granted.

The subject property was originally an unregistered land, meaning it is public land owned by the State. It is presumed to belong to the State, and not privately owned by Gabriel. Thus, any sale made by Gabriel covering the subject property - whether to petitioners or respondent - is considered null and void unless the contrary is proved, on the principle that one cannot sell or dispose what he does not own. This is underscored by the fact that petitioners were able to obtain a CLOA over the subject property - and, later on, an original certificate of title in their favor.

For the above reasons, the RTC had no jurisdiction over Civil Case No. 11985, as it primarily seeks to cancel the CLOA and certificate of title issued to petitioners. Under the 1994 DARAB Rules of Procedure, which were in force at the time,

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[16] *Id*. at 251-255; captioned as Compliance/Comments to the Petition.

RULE II - Jurisdiction Of The Adjudication Board

SECTION 1. Primary And Exclusive Original and Appellate Jurisdiction. The Board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657, Executive Order Nos. 228, 229, and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations. Specifically, such jurisdiction shall include but not be limited to cases involving the following:

x x x x x x x x x

f) Those involving the issuance, correction and cancellation of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;

x x x x x x x x x

g) Those cases previously falling under the original and exclusive jurisdiction of the defunct Court of Agrarian Relations under Section 12 of Presidential Decree No. 946, except sub-paragraph (q) thereof and Presidential Decree No. 815.

It is understood that the aforementioned cases, complaints or petitions were filed with the DARAB after August 29, 1987.

Matters involving strictly the administrative implementation of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988 and other agrarian laws as enunciated by pertinent rules shall be the exclusive prerogative of and cognizable by the Secretary of the DAR.

In *Heirs of Santiago Nisperos v. Nisperos-Ducusin,*[17] this Court held that —

The complaint should have been lodged with the Office of the DAR Secretary and not with the DARAB.

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[17] 715 Phil. 691, 700-703 (2013).

Section 1, Rule II of the 1994 DARAB Rules of Procedure, the rule in force at the time of the filing of the complaint by petitioners in 2001, provides:

> SECTION 1. Primary and Exclusive Original and Appellate Jurisdiction. The Board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657, Executive Order Nos. 228, 229 and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations. Specifically, such jurisdiction shall include but not be limited to cases involving the following:
>
> x x x x x x x x x
>
> f) Those involving the issuance, correction and cancellation of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;
>
> x x x x x x x x x

However, it is not enough that the controversy involves the cancellation of a CLOA registered with the Land Registration Authority for the DARAB to have jurisdiction. What is of primordial consideration is the existence of an agrarian dispute between the parties.

Section 3(d) of R.A. No. 6657 defines an agrarian dispute as 'any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of such tenurial arrangements' and includes 'any controversy relating to compensation of lands acquired under' this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee.'

Thus, in *Morta, Sr. v. Occidental*, this Court held that there must be a tenancy relationship between the parties for the DARAB to have jurisdiction over a case. It is essential to establish all of the following indispensable elements, to wit: (1) that the parties are the landowner and the tenant or agricultural lessee; (2) that the subject matter of the relationship is an agricultural land; (3) that there is consent between the parties to the relationship; (4) that the purpose of the relationship is to bring about agricultural production; (5) that there is personal cultivation on the part of the tenant or agricultural lessee; and (6) that the harvest is shared between the landowner and the tenant or agricultural lessee.

x x x x x x x x x

Considering that the allegations in the complaint negate the existence of an agrarian dispute among the parties, the DARAB is bereft of jurisdiction to take cognizance of the same as it is the DAR Secretary who has authority to resolve the dispute raised by petitioners. As held in *Heirs of Julian dela Cruz v. Heirs of Alberto Cruz*:

> The Court agrees with the petitioners' contention that, under Section 2(f), Rule II of the DARAB Rules of Procedure, the DARAB has jurisdiction over cases involving the issuance, correction and cancellation of CLOAs which were registered with the LRA. However, for the DARAB to have jurisdiction in such cases, they must relate to an agrarian dispute between landowner and tenants to whom CLOAs have been issued by the DAR Secretary. The cases involving the issuance, correction and cancellation of the CLOAs by the DAR in the administrative implementation of agrarian reform laws, rules and regulations to parties who are not agricultural tenants or lessees are within the jurisdiction of the DAR and not of the DARAB.

What the PARAD should have done is to refer the complaint to the proper office as mandated by Section 4 of DAR Administrative Order No. 6, Series of 2000:

> SEC. 4. Referral of Cases.- If a case covered by Section 2 herein is filed before the DARAB, the concerned DARAB official shall refer the case to the proper DAR office for appropriate action within five (5) days after said case is determined to be within the jurisdiction of the Secretary. x x x (Citations omitted)

Thus, it is the DAR Secretary who had jurisdiction over the instant case for cancellation of petitioners' CLOA and certificate

of title; respondent should have filed his case against petitioners before the said office, and not the RTC. To this day, this very same procedure is applicable, pursuant to the more recent 2009 DARAB Rules of Procedure; Section 9 of Republic Act No. 9700, or the CARPER Law;[18] and DAR Administrative Order No. 3, series of 2009.[19] Thus, by law and administrative regulation, the RTC had no jurisdiction over respondent's cause of action.

With the above disquisition, the proceedings in the RTC and the dispositions therein are rendered null and void. The CA's pronouncements are likewise set aside and annulled for being patently erroneous. Having said that it is only the DAR that can cancel the CLOA and title of petitioners, it should not have proceeded to rule on the question of ownership - for the simple reason that all proceedings before the RTC, including the trial and reception of evidence, are deemed null and void; there is no evidence upon which to base its judgment. Such issue should be threshed out in the appropriate venue and proceedings.

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[18] Which took effect on July 1, 2009. It provides, as follows:

Section 9. Section 24 of Republic Act No. 6657, as amended, is hereby further amended to read as follows:

"SEC. 24. Award to Beneficiaries. - x x x

"All cases involving the cancellation of registered emancipation patents, certificates of land ownership award, and other titles issued under any agrarian reform program are within the exclusive and original jurisdiction of the Secretary of the DAR."

[19] RULES AND PROCEDURES GOVERNING THE CANCELLATION OF REGISTERED CERTIFICATES OF LAND OWNERSHIP AWARDS (CLOAs), EMANCIPATION PATENTS (EPs), AND OTHER TITLES ISSUED UNDER ANY AGRARIAN REFORM PROGRAM

PREFATORY STATEMENT

x x x x x x x x x

Pursuant to Section 9, fourth paragraph of RA No. 9700, the cancellation of the registered EPs, CLOAs and other titles issued under any agrarian reform program are within the exclusive and original jurisdiction of the Secretary of DAR.

WHEREFORE, the Petition is **PARTIALLY GRANTED**. The assailed August 23, 2012 Decision and May 14, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 01729 are **ANNULLED** and **SET ASIDE**. Civil Case No. 11985 is ordered **DISMISSED FOR LACK OF JURISDICTION, AND ALL PROCEEDINGS TAKEN THEREIN ARE DECLARED NULL AND VOID AND OF NO EFFECT**.

SO ORDERED.

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

Sereno, C.J., on leave.

SECOND DIVISION

[G.R. No. 214803. April 23, 2018]

ALONA G. ROLDAN, *petitioner, vs.* **SPOUSES CLARENCE I. BARRIOS and ANNA LEE T. BARRIOS, ROMMEL MATORRES, and HON. JEMENA ABELLAR ARBIS, in her capacity as Presiding Judge, Branch 6, Regional Trial Court, Aklan,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULE ON HIERARCHY OF COURTS; A STRICT APPLICATION OF THE RULE OF HIERARCHY OF COURTS IS NOT NECESSARY WHEN THE CASES BROUGHT BEFORE THE APPELLATE

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

COURTS DO NOT INVOLVE FACTUAL BUT LEGAL QUESTIONS; CASE AT BAR.— Preliminarily, we need to point out that generally a direct recourse to this Court is highly improper, for it violates the established policy of strict observance of the judicial hierarchy of courts. Although this Court, the RTCs and the Court of Appeals have concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus* and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum. This Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution and immemorial tradition. However, the judicial hierarchy of courts is not an iron-clad rule. A strict application of the rule of hierarchy of courts is not necessary when the cases brought before the appellate courts do not involve factual but legal questions. Since petitioner raises a pure question of law pertaining to the court's jurisdiction on complaint for judicial foreclosure of sale, we would allow petitioner's direct resort to us.

2. ID.; BATAS PAMBANSA BLG. 129, AS AMENDED BY REPUBLIC ACT NO. 7691; JURISDICTION; TO DETERMINE WHETHER A COURT HAS JURISDICTION OVER THE SUBJECT MATTER OF A CASE, IT IS IMPORTANT TO DETERMINE THE NATURE OF THE CAUSE OF ACTION AND OF THE RELIEF SOUGHT; CASE AT BAR.— Jurisdiction over the subject matter is the power to hear and determine cases of the general class to which the proceedings in question belong. It is conferred by law and an objection based on this ground cannot be waived by the parties. To determine whether a court has jurisdiction over the subject matter of a case, it is important to determine the nature of the cause of action and of the relief sought. Batas Pambansa Blg. (*BP*) 129 as amended by Republic Act No. (*RA*) 7691 pertinently provides for the jurisdiction of the RTC and the first level courts x x x From the foregoing, the RTC exercises exclusive original jurisdiction in civil actions where the subject of the litigation is incapable of pecuniary estimation. It also has jurisdiction in civil cases involving title to, or possession of, real property or any interest in it where the assessed value of the property involved exceeds ₱20,000.00, and if it is below ₱20,000.00, it is the first level court which has jurisdiction.

An action "involving title to real property" means that the plaintiff's cause of action is based on a claim that he owns such property or that he has the legal right to have exclusive control, possession, enjoyment, or disposition of the same.

3. ID.; SPECIAL CIVIL ACTIONS; FORECLOSURE OF REAL ESTATE MORTGAGE; AS FORECLOSURE OF MORTGAGE IS A REAL ACTION, IT IS THE ASSESSED VALUE OF THE PROPERTY WHICH DETERMINES THE COURT'S JURISDICTION; EXPLAINED.— It is worthy to mention that the essence of a contract of mortgage indebtedness is that a property has been identified or set apart from the mass of the property of the debtor-mortgagor as security for the payment of money or the fulfillment of an obligation to answer the amount of indebtedness, in case of default in payment. Foreclosure is but a necessary consequence of non-payment of the mortgage indebtedness. In a real estate mortgage when the principal obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold with the view of applying the proceeds to the payment of the obligation. Therefore, the foreclosure suit is a real action so far as it is against property, and seeks the judicial recognition of a property debt, and an order for the sale of the res. As foreclosure of mortgage is a real action, it is the assessed value of the property which determines the court's jurisdiction. Considering that the assessed value of the mortgaged property is only ₱13,380.00, the RTC correctly found that the action falls within the jurisdiction of the first level court under Section 33(3) of BP 129 as amended.

APPEARANCES OF COUNSEL

Adolfo M. Iligan for petitioner.

Leonida & Ibardolaza Law and Notarial Office for respondent Rommel D. Matorres.

Florencio D. Gonzales for Sps. Clarence and Ana Lee Barrios.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for *certiorari* assailing the Order[1] dated July 22, 2014 issued by the Regional Trial Court (*RTC*), Branch 6, Kalibo, Aklan as well as the Order[2] dated August 18, 2014 denying reconsideration thereof.

The antecedent facts are as follows:

On February 3, 2014, petitioner Alona G. Roldan filed an action[3] for foreclosure of real estate mortgage against respondents spouses Clarence I. Barrios and Anna Lee T. Barrios and respondent Romel D. Matorres, docketed as Civil Case No. 9811. She alleged the following:

x x x x x x x x x

2. That on October 13, 2008, defendants borrowed from plaintiff the sum of Two Hundred Fifty Thousand Pesos (₱250,000.00), Philippine Currency, payable within the period of one (1) year from said date, with an interest thereon at the rate of 5% per month; and to secure the prompt and full payment of the principal and interest, defendants made and executed on October 13, 2008 a Deed of Real Estate Mortgage in favor of plaintiff upon a parcel of land and improvements thereon described as follows:

A parcel of land (Lot 5891-A-4) situated in Baybay, Makato, Aklan, containing an area of four hundred seventy-eight (478) square meters, more or less x x x declared in the name of Spouses Clarence Barrios and Anna Lee T. Barrios, assessed in the sum of ₱13,380.00, tax effectivity for the year 2008. Said land is covered by OCT No. P-5561 pt.

x x x x x x x x x

3. That the condition of said mortgage, as stated therein, is such, that if within the period of one year from October 13, 2008, the

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[1] Per Presiding Judge Jemena Abellar Arbis; *rollo*, p. 37.

[2] *Id.* at 41.

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

defendants shall pay or cause to be paid to the plaintiff, her heirs and assigns, the said sum of ₱250,000.00 together with the agreed interest, then the said mortgage shall be discharged; otherwise, it shall remain in full force and effect, to be enforceable in the manner provided by law.

4. That the time for payment of said loan is overdue and defendants failed and refused to pay both the principal obligation and the interest due starting from February 2011 to the present notwithstanding repeated demands;

5. That there are no other persons having or claiming interest in the mortgaged property except Romel D. Matorres whom plaintiff recently discovered that the defendants mortgaged again to the said person the same property subject of this suit for One Hundred Fifty Thousand Pesos, (₱150,000.00) on June 11, 2012 x x x The said Romel D. Matorres is however a mortgagee in bad faith.

WHEREFORE, it is respectfully prayed that upon due notice and hearing, judgment be rendered ordering defendants SPS. CLARENCE I. BARRIOS and ANNA LEE T. BARRIOS:

1. To pay unto the court within the reglementary period of ninety days the sum of ₱250,000.00 together with the stipulated interest at five percent (5%) per month starting from February 2011 to the present, plus the additional sum of ₱25,000.00 the total amount due for attorney's fees; litigation expenses and costs; and that in default of such payment, the above-mentioned property be ordered sold to pay off the mortgage debt and its accumulated interest;

2. To teach the defendants a lesson for having mortgaged the property subject of this suit without plaintiffs consent or knowledge, the defendants be ordered to pay the plaintiff the sum of ₱50,000.00 as exemplary damages.

3. That plaintiff be granted such other relief in law and equity.[4]

Respondents spouses Barrios filed their Answer[5] with Special and Affirmative Defenses contending that the computation of

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[4] *Id.*

[5] *Id.* at 16-18.

their alleged loan obligation was not accurate; that they had filed with the RTC a petition for rehabilitation of a financially distressed individuals under Special Proceeding No. 9845, thus there is a need to suspend the foreclosure proceedings. On the other hand, respondent Matorres filed his Answer[6] with Special and Affirmative Defenses admitting that the subject land was mortgaged to him; that he had also filed a judicial foreclosure case against respondents spouses Barrios pending with the RTC of Kalibo Aklan, Branch 6, docketed as Civil Case No. 9642; that petitioner had no cause of action against him as they did not have any transaction with each other; and prayed for damages and attorney's fees, and cross-claim against respondent spouses for moral damages.

On July 22, 2014, the RTC issued the assailed Order as follows:

> Civil Cases Nos. 9642 and 9811 are complaints for Foreclosure of Real Estate Mortgage that involved the same property, Lot 5891-A-4, situated in Baybay, Makato, Aklan, owned by Spouses Clarence Barrios and Anna Lee Barrios.
>
> It appearing from the complaint that the assessed value of the property mortgaged is only ₱13,380.00 and the instant cases being a real action, the assessed value of the property determines the jurisdiction.
>
> The assessed value of the property involved being below ₱20,000.00, it is the first level court that has jurisdiction over the cases.
>
> Premises considered, for lack of jurisdiction, Civil Cases Nos. 9642 and 9811 are ordered DISMISSED without prejudice.
>
> SO ORDERED.[7]

Petitioner and respondent Matorres filed their respective motions for reconsideration.

In an Order dated August 18, 2014, the RTC denied petitioner's motion as follows:

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[6] *Id.* at 25-30.

[7] *Id.* at 37.

x x x x x x x x x

Petitioner in her Motion argued that foreclosure of real estate mortgage is an action incapable of pecuniary estimation and jurisdiction lies with the Regional Trial Court.

Petitioner's argument is devoid of merit.

A petition for foreclosure of real estate mortgage is a real action and the assessed value of the property determines jurisdiction while location of the property determines the venue.

Premises considered, the Motion for Reconsideration is DENIED for lack of merit.

SO ORDERED.[8]

Respondent Matorres' motion for reconsideration was also denied in an Order[9] dated September 1, 2014.

Petitioner filed the instant petition for *certiorari* alleging grave abuse of discretion committed by the RTC when it ordered the dismissal of her foreclosure case without prejudice and denying her motion for reconsideration. She argues that foreclosure of mortgage is an action incapable of pecuniary estimation which is within the exclusive jurisdiction of the RTC.

In his Comment, respondent Matorres joins the position and arguments of petitioner that the cause of action of the foreclosure cases is incapable of pecuniary estimation, hence, falling within the jurisdiction of the RTC.

Respondents spouses Barrios filed their Explanation and Comment alleging that petitioner violated the Tax Reform Act of 1997 for her failure to issue official receipts on the payments made by them; that she failed to show any proof of authority from the Bangko Sentral ng Pilipinas relative to her money-lending activities.

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[8] *Id.* at 41.

[9] *Id.* at 65.

The issue for resolution is whether the RTC committed grave abuse of discretion in dismissing the foreclosure cases filed with it on the ground of lack of jurisdiction.

Preliminarily, we need to point out that generally a direct recourse to this Court is highly improper, for it violates the established policy of strict observance of the judicial hierarchy of courts. Although this Court, the RTCs and the Court of Appeals have concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus* and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum. This Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution and immemorial tradition.[10] However, the judicial hierarchy of courts is not an iron-clad rule. A strict application of the rule of hierarchy of courts is not necessary when the cases brought before the appellate courts do not involve factual but legal questions.[11] Since petitioner raises a pure question of law pertaining to the court's jurisdiction on complaint for judicial foreclosure of sale, we would allow petitioner's direct resort to us.

The RTC dismissed the foreclosure cases finding that being a real action and the assessed value of the mortgaged property is only ₱13,380.00, it is the first level court which has jurisdiction over the case and not the RTC.

Jurisdiction over the subject matter is the power to hear and determine cases of the general class to which the proceedings in question belong. It is conferred by law and an objection based on this ground cannot be waived by the parties.[12] To determine

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[10] *Mangaliag v. Judge Catubig-Pastoral*, 510 Phil. 637, 645, citing *Ouano v. PGTT International Investment Corporation*, 433 Phil. 28, 34 (2002); *Vergara, Sr. v. Suelto*, 240 Phil. 719, 732 (1987).

[11] *SSgt Pacoy v. Hon. Cajigal*, 560 Phil. 599, 607 (2007); *Mangaliag v. Catubig-Pastoral*, 510 Phil. 637, 647 (2005).

[12] *Heirs of Valeriano Concha, Sr. v. Sps. Lumocso*, 564 Phil. 581, 592-593, citing *Republic v. Sangalang*, 243 Phil. 46, 50 (1988).

whether a court has jurisdiction over the subject matter of a case, it is important to determine the nature of the cause of action and of the relief sought.[13]

Batas Pambansa Blg. (*BP*) 129 as amended by Republic Act No. (*RA*) 7691 pertinently provides for the jurisdiction of the RTC and the first level courts as follows:

> Sec. 19. *Jurisdiction in civil cases*. — Regional Trial Courts shall exercise exclusive original jurisdiction:
>
> 1. In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;
>
> 2. In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000.00) or, for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts.

and

> Sec. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in civil cases*. — Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:
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> x x x x x x x x x
>
> 3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: Provided, That in cases of land not declared

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[13] *Id.*, citing *Philippine Association of Free Labor Unions, et al. v. Padilla, et al.*, 106 Phil. 591 (1959), citing *Perkins v. Roxas*, 72 Phil. 514 (1941).

> for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots.

From the foregoing, the RTC exercises exclusive original jurisdiction in civil actions where the subject of the litigation is incapable of pecuniary estimation. It also has jurisdiction in civil cases involving title to, or possession of, real property or any interest in it where the assessed value of the property involved exceeds ₱20,000.00, and if it is below ₱20,000.00, it is the first level court which has jurisdiction. An action "involving title to real property" means that the plaintiffs cause of action is based on a claim that he owns such property or that he has the legal right to have exclusive control, possession, enjoyment, or disposition of the same.[14]

The allegations and reliefs sought in petitioner's action for foreclosure of mortgage showed that the loan obtained by respondents spouses Barrios from petitioner fell due and they failed to pay such loan which was secured by a mortgage on the property of the respondents spouses; and prayed that in case of default of payment of such mortgage indebtedness to the court, the property be ordered sold to answer for the obligation under the mortgage contract and the accumulated interest. It is worthy to mention that the essence of a contract of mortgage indebtedness is that a property has been identified or set apart from the mass of the property of the debtor-mortgagor as security for the payment of money or the fulfillment of an obligation to answer the amount of indebtedness, in case of default in payment.[15] Foreclosure is but a necessary consequence of non-payment of the mortgage indebtedness.[16] In a real estate mortgage when the principal obligation is not paid when due, the mortgagee

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[14] *Heirs of Generoso Sebe, et al. v. Heirs of Veronica Sevilla, et al.*, 618 Phil. 395, 407 (2009).

[15] *Equitable PCI Bank, Inc. v. Fernandez, et al.,* 623 Phil. 343, 349 (2009), citing *China Banking Corporation v. Court of Appeals*, 333 Phil. 158 (1996).

[16] *Id.* at 349-350, citing *Producers Bank of the Philippines v. Court of Appeals*, 417 Phil. 646, 656 (2001).

has the right to foreclose the mortgage and to have the property seized and sold with the view of applying the proceeds to the payment of the obligation.[17] Therefore, the foreclosure suit is a real action so far as it is against property, and seeks the judicial recognition of a property debt, and an order for the sale of the res.[18]

As foreclosure of mortgage is a real action, it is the assessed value of the property which determines the court's jurisdiction. Considering that the assessed value of the mortgaged property is only ₱13,380.00, the RTC correctly found that the action falls within the jurisdiction of the first level court under Section 33(3) of BP 129 as amended.

Petitioner cites *Russell v. Vestil*[19] to show that action for foreclosure of mortgage is an action incapable of pecuniary estimation and, therefore, within the jurisdiction of the RTC. We are not persuaded. In the *Russell* case, we held:

In *Singsong vs. Isabela Sawmill*, we had the occasion to rule that:

[I]n determining whether an action is one the subject matter of which is not capable of pecuniary estimation, this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance (now Regional Trial Courts).

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[17] *Id.*, citing *Union Bank of the Philippines v. Court of Appeals*, 370 Phil. 837, 846-847 (1999).

[18] *Banco Español-Filipino v. Palanca*, 37 Phil. 921, 928-929 (1918).

[19] 364 Phil. 392 (1999).

Examples of actions incapable of pecuniary estimation are those for specific performance, support, or foreclosure of mortgage or annulment of judgment; also actions questioning the validity of a mortgage, annulling a deed of sale or conveyance and to recover the price paid and for rescission, which is a counterpart of specific performance.

While actions under Sec. 33(3) of B.P. 129 are also incapable of pecuniary estimation, the law specifically mandates that they are cognizable by the MTC, METC, or MCTC where the assessed value of the real property involved does exceed ₱20,000.00 in Metro Manila, or ₱50,000.00, if located elsewhere. If the value exceeds ₱20,000.00 or ₱50,000.00 as the case may be, it is the Regional Trial Courts which have jurisdiction under Sec. 19(2). However, the subject matter of the complaint in this case is annulment of a document denominated as "DECLARATION OF HEIRS AND DEED OF CONFIRMATION OF PREVIOUS ORAL PARTITION."[20]

Clearly, the last paragraph clarified that while civil actions which involve title to, or possession of, real property, or any interest therein, are also incapable of pecuniary estimation as it is not for recovery of money, the court's jurisdiction will be determined by the assessed value of the property involved.

WHEREFORE, the petition for *certiorari* is **DISMISSED** as we find no grave abuse of discretion committed by the Regional Trial Court, Branch 6, Kalibo, Aklan in dismissing the complaint for lack of jurisdiction.

SO ORDERED.

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

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[20] *Id.* at 400-401. (Citations omitted)

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

FIRST DIVISION

[G.R. No. 215387. April 23, 2018]

NORTHERN MINDANAO INDUSTRIAL PORT and SERVICES CORPORATION, *petitioner, vs.* **ILIGAN CEMENT CORPORATION,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; ESSENTIAL REQUISITES; CONSENT; ADVERTISEMENT TO POSSIBLE BIDDERS IS SIMPLY AN INVITATION TO MAKE PROPOSALS AND AN ADVERTISER IS NOT BOUND TO ACCEPT THE LOWEST BIDDER UNLESS THE CONTRARY APPEARS.—** The CA is correct in saying that an advertisement to possible bidders is simply an invitation to make proposals, and that an advertiser is not bound to accept the lowest bidder unless the contrary appears; respondent had the right to reject bids, and it cannot be compelled to accept a bidder's proposal, and execute a contract in its favor. Indeed, under Article 1326 of the Civil Code, "advertisements for bidders are simply invitations to make proposals, and the advertiser is not bound to accept the highest or lowest bidder, unless the contrary appears." "[A]s the discretion to accept or reject bids and award contracts is of such wide latitude, courts will not interfere, unless it is apparent that such discretion is exercised arbitrarily, or used as a shield to a fraudulent award. The exercise of that discretion is a policy decision that necessitates prior inquiry, investigation, comparison, evaluation, and deliberation."

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; FILING OF A COMPLAINT WHICH IS BASED ON FALSE ASSUMPTIONS AND NON-EXISTENT FACTS, TENDING TO DECEIVE AND MISLEAD THE COURT TO THE BELIEF THAT A PARTY HAS COMMITTED AN ABUSE OF RIGHT WHEN IN FACT THERE IS NONE IS CONTEMPTIBLE; CASE AT BAR.—** Finally, the insistence on Europort's ineligibility on account of its supposed non-participation in the bidding process, despite petitioner's knowledge and admission of the fact that Europort underwent a change of corporate name during the period material

to this case – which explains why the entity to which the cargo handling contract was awarded appears to be a total stranger to the bidding process, is a clear attempt to muddle the issues and confuse this Court in the vain hope of influencing its judgment – by stretching an irrelevant issue and capitalizing on a perceived technicality that has no material bearing whatsoever in the resolution of the case. Thus, far from having a cause of action upon which to base its claim for damages, petitioner's complaint is based on false assumptions and non-existent facts, tending to deceive and mislead this Court to the belief that respondent committed a so-called 'abuse of rights' against it, when in fact there is none. This is certainly contemptible, and petitioner is warned that any more attempt at stretching this case and manipulating the facts will be dealt with severely. It has wasted the Court's time enough. Its claim is illusory, to say the least; this has become evident not only from a reading of the allegations of the complaint and its annexes as well as the other pleadings, but also from the testimonial and documentary evidence presented by petitioner itself during trial.

APPEARANCES OF COUNSEL

Jose Mari D. Fabrigar for petitioner.
Yap & Tumulak Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] are the March 18, 2014 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 03789-MIN, which set aside the August 6, 2009 Order[3] of the Regional Trial Court of Iligan City, Branch

[1] *Rollo*, pp. 22-70.

[2] *Id*. at 71-78; penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Edgardo T. Lloren and Edward B. Contreras.

[3] *Id*. at 212-215; penned by Presiding Judge Albert B. Abragan.

3 (RTC) in Civil Case No. 7201, and the CA's October 17, 2014 Resolution[4] denying herein petitioner's motion for reconsideration.

Factual Antecedents

As narrated by the CA, the facts are as follows:

> x x x Iligan Cement Corporation (ICC) is a domestic corporation x x x engaged in the manufacturing and distribution of cement and other building materials.
>
> x x x Northern Mindanao Industrial & Port Services Corporation (NOMIPSCO) is likewise a domestic corporation x x x involved, among others, in the *arrastre* or stevedoring business.
>
> On 27 June 2007, ICC invited NOMIPSCO to a pre-bidding conference for a two-year cargo handling contract. Apart from NOMIPSCO, RC Barreto Enterprises, MN Seno Marketing, VIRLO Stevedoring and Oroport also joined the conference.
>
> In the course of the conference, ICC, through Nestor Camus (Camus), required the participants to submit their respective technical proposals and commercial bids on or before 5 July 2007. x x x
>
> NOMIPSCO thereafter submitted its proposal in which it offered the lowest bid of ₱1.788 per a [sic] 40 kilogram bag.
>
> ICC awarded the cargo handling contract to Europort Logistics and Equipment Incorporated (Europort).
>
> On 2 September 2008, NOMIPSCO filed a Complaint[5] for Damages and Attorney's fees against ICC [alleging] that, as *per* information from an ICC employee, its bid folder was marked as "no bid submitted'[;] that Camus, upon inquiry, revealed that, the bid award was based on x x x the recommendation of the end-user; and x x x a new company policy x x x to prioritize new contractors [which] were never made known to the bidders. x x x NOMIPSCO further claimed that ICC was guilty of bad faith when it still invited NOMIPSCO to join the pre-bidding conference despite prior knowledge of its status as an old contractor. NOMIPSCO, thus,

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[4] *Id.* at 79; penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo T. Lloren and Henri Jean Paul B. Inting.

[5] *Id.* at 96-107.

contended that the acts of ICC amounted to an abuse of its rights or authority, the same acts that led NOMIPSCO to suffer great losses and unearned income.

On 9 October 2008, ICC filed an Answer with Compulsory Counterclaims[6] wherein it x x x countered that NOMIPSCO had no cause of action since its complaint failed to state a cause of action. ICC stressed that 'for abuse of right to exist there must be: 1) an act which is legal; 2) but which is contrary to morals, good customs, public order, or public policy; and 3) it is done with intent to injure.' ICC argued that in the instant controversy the last two requisites were wanting. x x x

On 6 August 2009, the RTC rendered an Order denying ICC's affirmative and special defenses - complaint failed to state a cause of action and defective verification. The dispositive portion of the order reads –

> WHEREFORE, premises considered, the prayer for the dismissal of the complaint as it states no cause of action is denied for lack of merit.
>
> The acting clerk of Court is directed to set the case for pre-trial and referral of the case to the mediation center.
>
> SO ORDERED.

On 29 September 2009, [ICC] filed a Motion for Reconsideration.[7] In its Motion, [ICC] maintained that NOMIPSCO lacked a cause of action and that the Complaint 1) failed to state a cause of action; x x x

On 24 May 2010, the RTC issued an Order[8] denying [ICC's] Motion for Reconsideration, x x x[9]

Ruling of the Court of Appeals

Respondent ICC instituted an original Petition for *Certiorari*[10] before the CA, docketed as CA-G.R. SP No. 03789-MIN, arguing

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[6] *Id*. at 186-195.

[7] *Id*. at 216-220.

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

[9] *Id*. at 135.

[10] *Id*. at 224-252.

that the RTC committed grave abuse of discretion in not dismissing Civil Case No. 7201 for failure to state a cause of action and lack of cause of action.

On March 18, 2014, the CA rendered the assailed Decision, declaring as follows:

> The petition is meritorious.
>
> x x x x x x x x x
>
> Considering exclusively the allegations of the above Complaint, the Court finds that NOMIPSCO has no legal right to impute to ICC an abuse of its right or authority in the bidding selection or to impugn the validity of the cargo handling contract executed between the latter and Europort.
>
> In its Complaint, NOMIPSCO mainly anchored its right to institute this action on the fact that it won the bidding had it not for the alleged abuse of rights of ICC. However, as correctly argued by ICC, 'NOMIPSCO's right as a bidder is only to be considered in the evaluation of the entity to handle the stevedoring requirements' and that it has no right to dictate as to whom the award should be granted. It bears stressing that an advertisement to possible bidders is simply an invitation to make proposals, and that an advertiser is not bound to accept the [lowest] bidder unless the contrary appears. Moreover, ICC has the unprecedented right to reject bids and it cannot be compelled by a party who called the bids to accept its proposal and execute a contract in its favor. Considering that NOMIPSCO was not selected as the winner and that ICC cannot be legally obliged to accept its bid, the former therefore has no legal right against the latter. Considering that the existence of a legal right is wanting, it is thus ineluctable that the 2 September 2008 Complaint failed to state a cause of action.
>
> The above disquisitions render a discussion on the second issue of ICC unnecessary.
>
> All told, this Court finds grave abuse of discretion on the part of the RTC in denying the dismissal of NOMIPSCO's complaint. x x x
>
> WHEREFORE, the instant petition for *certiorari* is GRANTED.

Accordingly, the assailed Order dated 6 August 2009 of the Regional Trial Court, 12th Judicial Region, Branch 3, Iligan City, is hereby ordered SET ASIDE.

SO ORDERED.[11] (Citations omitted)

Petitioner sought to reconsider but to no avail. Hence, the present Petition.

Meanwhile, the proceedings continued on to trial. Petitioner's key witnesses testified in court.

Issues

In an April 18, 2016 Resolution,[12] this Court resolved to give due course to the Petition, which contains the following assignment of errors:

I. WHETHER X X X THE COURT OF APPEALS ERRED IN FINDING THAT RTC-03 COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT (RTC-03) DENIED THE MOTION TO DISMISS AND MOTION FOR RECONSIDERATION OF ICC, BOTH RAISING THE ISSUE THAT NOMIPSCO HAS NO CAUSE OF ACTION AGAINST ICC.

1.1. WHETHER X X X THE ISSUE RAISED BY ICC TO SUPPORT THE DISMISSAL OF THE COMPLAINT INVOLVES EVIDENTIARY ISSUE THAT SHOULD BE VENTILATED DURING THE TRIAL OF THE CASE.

1.2. WHETHER X X X ICC WAIVED THE ISSUE ON CAUSE OF ACTION WHEN IT PARTICIPATED IN THE TRIAL.

2. WHETHER X X X AN ISSUE NOT PRESENTED BEFORE RTC-03 (IN RESOLVING THE MOTION TO DISMISS AND MOTION FOR RECONSIDERATION) BE BROUGHT BEFORE, AND CONSIDERED BY, THE COURT OF APPEALS IN RESOLVING THE ISSUE OF GRAVE ABUSE OF DISCRETION.[13]

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[11] *Id*. at 74-78.

[12] *Id*. at 662-663.

[13] *Id*. at 40.

Petitioner's Arguments

In praying that the assailed CA dispositions be set aside and that Civil Case No. 7201 be instead reinstated, petitioner basically argues in its Petition and Reply[14] that while respondent had the right to accept or reject bids for its project, it exercised said right in bad faith to petitioner's prejudice, in that the bidding process was a mere ruse for respondent to secure petitioner's lowest bid in order to use it as basis or leverage for setting its contract price with Europort; respondent had no intention to award the contract to the bid participants, but to Europort, and the bidding process was intended merely to elicit the lowest bid which respondent would use to set its contract price with Europort.

Petitioner argues that respondent's bad faith can be seen from the fact that respondent made it appear that petitioner did not submit its bid, the folder in which the commercial and technical bids were kept was stamped with "No Bid Submitted" as to petitioner; that Europort, which eventually won the project, was not a participant in the bidding process; that respondent awarded the project on the basis of criteria, parameters, and policies that were not disclosed to petitioner prior to the bidding; and that Europort had no corporate and legal personality when it executed the cargo handling contract with respondent.

Petitioner further contends that under Article 19 of the Civil Code[15] which enunciates the principle of abuse of rights, when a right is exercised in a manner that disregards legal norms and standards, thus resulting in damage to another, a legal wrong is committed for which the guilty party may be held accountable; that respondent abused its rights and thus violated Article 19 and other laws; that petitioner thus has a cause of action against respondent; and that the issue of bad faith as a component of petitioner's cause of action requires proof and thus may only be resolved after trial on the merits.

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[14] *Id.* at 575-615.

[15] Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Respondent's Arguments

Respondent, on the other hand, counters in its Comment[16] that petitioner remains without cause of action, which makes its case dismissible; that petitioner's claim that respondent made it appear that the former did not submit a bid is pure hearsay and speculation as no documentary or testimonial evidence was attached to the complaint/pleadings, nor was any submitted in court, to prove this allegation; that for the same foregoing reasons, petitioner's claim that the bid was grounded on policies that were not disclosed to the bidders has no basis; that even if preference is given to new contractors as a matter of policy, this does not constitute an abuse of respondent's right since "preference" does not mean exclusion of other contractors; that petitioner's argument that Europort was not a corporate entity at the time and that respondent used the bidding for the sole purpose of obtaining the optimum contract price are unfounded and have no legal basis; that petitioner has no right to dictate who should be the winning bidder for respondent's cargo handling contract, since advertisements for bidders are simply invitations to make proposals, and an advertiser is not bound to accept the highest or lowest bidder unless the contrary appears; that there was thus no abuse of respondent's rights; and that respondent's participation in the trial does not result in waiver of its right to seek dismissal of the case on the basis of lack or absence of cause of action.

Our Ruling

The Court denies the Petition.

Petitioner's cause of action in Civil Case No. 7201 rests on the theory that respondent, in bad faith, used the bidding process for the cargo handling contract as a mere ruse to elicit the lowest bid which it would use to set its contract price with Europort; that respondent made it appear that petitioner did not submit a bid, when in fact it did; that respondent awarded the project on the basis of criteria, parameters, and policies that were not

[16] *Rollo*, pp. 515-552.

disclosed to petitioner prior to the bidding; and that respondent awarded the contract to Europort, which did not participate in the bidding and had no corporate and legal personality when it executed the cargo handling contract with respondent.

A review of the record and the evidence, however, reveals that petitioner's allegations do not reconcile with the facts and evidence on record; on the contrary, it appears that petitioner is twisting and inventing facts, circumstances, and documents that did not in fact take place nor exist.

Contrary to what petitioner would have this Court believe, it appears that there was a *bona fide* bidding process for respondent's designated cargo handling contract, and the project or contract was awarded to one of the participating bidders, which – for whatever reason – eventually changed its corporate name during the bidding process, prompting the execution of the awarded cargo handling contract under its new corporate name instead of the old one used during the submission of bids.

Thus, it appears that one of the five bidders that participated in the subject bidding, Oroport, was eventually chosen by respondent – although it did not necessarily submit the lowest bid. At or about the time that Oroport and respondent were consummating the cargo handling contract, Oroport changed its corporate name to Europort Logistics and Equipment Incorporated, or Europort. As a result, the cargo handling contract executed was between respondent and Europort, the new name of Oroport. This is not proscribed by law. The fact that the original bidder and winner was Oroport, and the resulting cargo handling contract was between respondent and Europort– Oroport's derivative – has no bearing; in legal contemplation, Oroport and Europort are one and the same.

x x x. The effect of the change of name was not a change of the corporate being, for, as well stated in *Philippine First Insurance Co., Inc. v. Hartigan*: 'The changing of the name of a corporation is no more the creation of a corporation than the changing of the name of a natural person is begetting of a natural person. The act, in both cases, would seem to be what the language which we use to designate it imports – a change of name, and not a change of being.'

x x x x x x x x x

> x x x. A change in the corporate name does not make a new corporation, whether effected by a special act or under a general law. It has no effect on the identity of the corporation, or on its property, rights, or liabilities. The corporation, upon the change in its name, is in no sense a new corporation, nor the successor of the original corporation. It is the same corporation with a different name, and its character is in no respect changed.[17]

As to the claim that respondent made it appear that petitioner did not submit a bid when in fact it did, the evidence and testimonies of the witnesses do not bear this out. Thus, while petitioner claims that its bid folder was marked as "no bid submitted," it did not attach a copy of said bid folder to its complaint below. Nor was the bid folder document introduced during trial. And an examination of the transcripts of the testimonies of its witnesses[18] equally fails to elicit even a faint shadow of truth to its claim of being deliberately excluded from the bidding process; indeed, the opposite is true: petitioner participated in the bidding process and its bid was considered, along with the others' bids.

On the claim that respondent awarded the project on the basis of criteria, parameters, and policies that were not disclosed to petitioner prior to the bidding, particularly that the award would be given to a new contractor and will be based on the recommendation of the end-user, the evidence does not bear this out. On the contrary, one of the witnesses, Alex Sagario, who worked for the end-user component of the contract as Pack House Manager of ICC, testified that there was no consultation prior to the award,[19] which thus belies petitioner's claim that undisclosed policies became the basis for the award.

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[17] *Zuellig Freight and Cargo Systems v. National Labor Relations Commission*, 714 Phil. 401, 411 (2013), citing *Philippine First Insurance Co., Inc. v. Hartigan*, 145 Phil. 310 (1970), *P.C. Javier & Sons, Inc. v. Court of Appeals*, 500 Phil. 419 (2005), and *Avon Dale Garments, Inc. v. National Labor Relations Commission*, 316 Phil. 898 (1995).

[18] *Rollo*, pp. 399-459, 460-511, 616-640.

[19] *Id.* at 629-632.

On the claim that it became the policy of respondent to award the contract to a new contractor, the Court finds nothing wrong with this. This is the prerogative of respondent, and petitioner had no right to interfere in the exercise thereof. The CA is correct in saying that an advertisement to possible bidders is simply an invitation to make proposals, and that an advertiser is not bound to accept the lowest bidder unless the contrary appears; respondent had the right to reject bids, and it cannot be compelled to accept a bidder's proposal and execute a contract in its favor. Indeed, under Article 1326 of the Civil Code, "advertisements for bidders are simply invitations to make proposals, and the advertiser is not bound to accept the highest or lowest bidder, unless the contrary appears." "[A]s the discretion to accept or reject bids and award contracts is of such wide latitude, courts will not interfere, unless it is apparent that such discretion is exercised arbitrarily, or used as a shield to a fraudulent award. The exercise of that discretion is a policy decision that necessitates prior inquiry, investigation, comparison, evaluation, and deliberation."[20]

Article 1326 of the Civil Code, which specifically tackles offer and acceptance of bids, provides that advertisements for bidders are simply invitations to make proposals, and that an advertiser is not bound to accept the highest bidder unless the contrary appears. In the present case, Section 4.3 of the ASBR explicitly states that APT reserves the right to reject any or all bids, including the highest bid. Undoubtedly, APT has a legal right to reject the offer of Dong-A Consortium, notwithstanding that it submitted the highest bid.

In *Leoquinco v. The Postal Savings Bank* and *C & C Commercial Corporation v. Menor*, we explained that this right to reject bids signifies that the participants of the bidding process cannot compel the party who called for bids to accept the bid or execute a deed of sale in the former's favor. x x x[21] (Citations omitted)

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[20] *National Power Corporation v. Pinatubo Commercial*, 630 Phil. 599, 608 (2010).

[21] *Privatization and Management Office v. Strategic Alliance Development Corporation*, 711 Phil. 209, 223 (2013).

Finally, the insistence on Europort's ineligibility on account of its supposed non-participation in the bidding process, despite petitioner's knowledge and admission of the fact that Europort underwent a change of corporate name during the period material to this case – which explains why the entity to which the cargo handling contract was awarded appears to be a total stranger to the bidding process, is a clear attempt to muddle the issues and confuse this Court in the vain hope of influencing its judgment – by stretching an irrelevant issue and capitalizing on a perceived technicality that has no material bearing whatsoever in the resolution of the case.

Thus, far from having a cause of action upon which to base its claim for damages, petitioner's complaint is based on false assumptions and non-existent facts, tending to deceive and mislead this Court to the belief that respondent committed a so-called 'abuse of rights' against it, when in fact there is none. This is certainly contemptible, and petitioner is warned that any more attempt at stretching this case and manipulating the facts will be dealt with severely. It has wasted the Court's time enough. Its claim is illusory, to say the least; this has become evident not only from a reading of the allegations of the complaint and its annexes as well as the other pleadings, but also from the testimonial and documentary evidence presented by petitioner itself during trial.

WHEREFORE, the Petition is **DENIED**. The March 18, 2014 Decision and October 17, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 03789-MIN are**AFFIRMED *in toto***.

SO ORDERED.

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

Sereno, C.J., on leave.

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

THIRD DIVISION

[G.R. No. 218703. April 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANTONIO LLAMERA *y* ATIENZA,** *defendant-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; GUIDING PRINCIPLES TO SUSTAIN THE VALIDITY OF AN OUT-OF-COURT IDENTIFICATION OF THE ACCUSED, ENUMERATED; APPLICATION IN CASE AT BAR.— In a long line of cases, the Court has laid down the two guiding principles in order to sustain the validity of an out-of-court identification: **first**, a series of photographs must be shown and not merely that of the suspect; and **second**, when a witness is shown a group of pictures, their arrangement and display should in no way suggest which one of the pictures pertains to the suspect. In addition, photographic identification should be free from any impermissible suggestions that would single out a person to the attention of the witness making the identification. Here, aside from the contention that the notations about the crimes committed by the persons in the photographs constituted impermissible suggestion, accused-appellant failed to aver much less prove any act on the police officers' part which indicated that he was singled out during the out-of-court identification. On the contrary, CCC testified that several photographs were shown to him and, among those, he readily recognized accused-appellant and his co-accused as the persons who robbed their house: x x x Further, a defective out-of-court identification may be cured by subsequent in-court identification. x x x Thus, accused-appellant's contention is insufficient to disturb the findings of both the RTC and the CA as regards the testimonies of private complainants who positively identified accused-appellant and his co-accused as the perpetrators of the crime. The identifications in this case were made by credible witnesses who clearly saw accused-appellant during the incident and whose stories were inherently believable and not contrived. It must also be stressed that AAA, with whom accused-appellant was alone for several minutes, positively identified the latter in court as her assailant.

2. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH RAPE; ELEMENTS; ESTABLISHED IN CASE AT BAR.— Finally, to be convicted of robbery with rape, the following elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape. In this case, the prosecution established that accused-appellant and his co-accused barged into the house of the victims armed with handguns. They demanded BBB to give them money and guns and when the latter refused, Edwin hit him in the head with a gun. Intent to gain, as an element of the crime of robbery, is an internal act; hence, presumed from the unlawful taking of things. Having established that the personal properties of the victims were unlawfully taken by the accused, intent to gain was sufficiently proven. Thus, the first three elements of the crime were clearly established. As regards the last element, accused-appellant did not even deny that he assaulted AAA.

3. ID.; ID.; ID.; THE CRIME OF ROBBERY WITH RAPE IS A SPECIAL COMPLEX CRIME; IMPOSABLE PENALTY.— The crime of robbery with rape is a special complex crime punishable under Article 294 of the Revised Penal Code as amended by R.A. No. 7659. Article 294 provides for the penalty of *reclusion perpetua* to death, when the robbery is accompanied by rape. x x x In view, however, of the passage of R.A. No. 9346, prohibiting the imposition of the death penalty, the trial court and the appellate court correctly imposed the penalty of *reclusion perpetua*, without eligibility for parole.

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 July 2014 Decision[1] of the Court of Appeals in CA-G.R. CR. H.C.-No. 04549 which affirmed with modification the 30 April 2010 Decision[2] of the Regional Trial Court, [redacted], Camarines Sur (*RTC*), in Criminal Case No. T-2176 finding Antonio Llamera y Atienza (*Llamera*) guilty of Robbery with Rape.[3]

THE FACTS

In an Information, dated 28 November 2000, accused-appellant and his co-accused Edwin Sical, Rodel Sical, Victorino Sical, and Alvin Adayo were charged with robbery with rape. The Information reads:

> That on or about 6:30 o'clock in the morning of March 28, 2000 at [XXX],[4] Camarines Sur and within the jurisdiction of the Honorable Court, the [abovenamed] accused, with intent to gain, while armed with an armalite rifle, a shot gun, a calibre .45 pistol and a calibre .38 pistol, after conspiring, confederating and mutually helping one another, through violence and intimidation of persons, did then and there, wilfully, unlawfully and feloniously enter the house of [BBB][5] and take, rob and carry away the following properties belonging to [BBB]:

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[1] *Rollo*, pp. 2-15; penned by Associate Justice Edwin D. Sorongon with Associate Justices Rosmari D. Carandang and Marlene Gonzales-Sison, concurring.

[2] CA *rollo*, pp. 25-44; penned by Presiding Judge Ma. Angela Acompanado Arroyo.

[3] Co-accused Edwin Sical, Rodel Sical, Victorino Sical and Alvin Adayo were found guilty of robbery but they no longer appealed the decision.

[4] The barangay and town where the crime was committed are blotted to protect the identity of the rape victim pursuant to Administrative Circular No. 83-2015 issued on 27 July 2015.

[5] The name of the private complainant is withheld to protect the identity of the rape victim who is a relative of the former.

a) Cash in the amount of Php 5,000.00;
b) Jewelry [valued] at Php 300,000.00;
c) A licensed shotgun brand Squib with serial no. 103980 valued at Php 21,000.00

Which properties have a total amount of Php 326,000.00

That in the course of robbery, the accused who are more than three armed malefactors thus, constituting a band (Cuadrilla) hit, harm and struck [BBB] with a gun on his head causing him to suffer physical injuries and that one of the accused with lewd and carnal design, touched the breast, stripped the pants and underwear of [AAA] and inserted his left hand into her private part (genital) thereby consummating rape, all to the damage and prejudice of the offended parties in such amount as maybe proven in court.

ACTS CONTRARY TO LAW.[6]

Upon arraignment, the accused pleaded not guilty to the charge.

Version of the Prosecution

On 28 March 2000, at around 6:30 A.M. in the morning, BBB and his nephew CCC were in their living room when suddenly, three (3) armed men, later identified as accused Edwin Sical (*Edwin*), Alvin Adayo (*Alvin*), and accused-appellant barged into the house. Edwin was armed with an armalite, Alvin with a .45 caliber gun, while accused-appellant was armed with a .38 caliber pistol. Edwin threatened BBB with his armalite.[7] Then, upon seeing AAA, BBB's niece, Edwin instructed her to go down the stairs and lie on the living room floor with her uncle.[8] Thereafter, Edwin ordered BBB to produce money and guns. When the latter refused, he was hit twice on the head with the armalite.[9] Edwin and Alvin then searched BBB's office and ransacked the rooms of the house where they found money, pieces of jewelry, and a shotgun. While the two accused were

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[6] CA *rollo*, pp. 26-27.

[7] TSN, 3 October 2002, pp. 8-10; Records, Vol. I, pp. 257-262.

[8] TSN, 14 January 2003, pp. 12-13; Records, Vol. I, p. 341.

[9] TSN, 3 October 2002, pp. 10-11; Records, Vol. I, pp. 262-263.

busy ransacking the house, AAA and CCC were able to run to the kitchen and found thereat, accused-appellant guarding DDD, BBB's wife, and the laborers of the family. Accused-appellant even made fun of EEE, one of BBB's workers. EEE, at gunpoint, was made to stand, sit, and lie down repeatedly. When accused-appellant got tired of mocking EEE, he struck his head with a gun.[10] Then, accused-appellant dragged AAA to the office of her uncle. Inside, he inserted his hands into her blouse and touched her breast. He tried to unbutton her pants and when he failed, he ordered AAA to unbutton her pants herself. Then, he inserted his left hand into AAA's pants and used his middle finger to penetrate AAA's vagina. Accused-appellant looked outside the door to check if somebody could see him and then he locked the door again. He told AAA to remove her pants and underwear, to sit on the table, and to spread her legs. Suddenly, Edwin knocked on the door. He was infuriated at accused-appellant when he discovered that AAA was inside the room with him. Edwin allowed AAA to leave the room and join the others in the kitchen.[11] The accused escaped using BBB's car. When the malefactors left the house, BBB was immediately taken to the hospital where he was treated for the injuries he sustained.[12]

Version of the Defense

Accused-appellant and his co-accused all raised the defense of denial and alibi. Edwin averred that on 28 March 2000, he was in a relative's house in Tiwi, Albay.[13]

Alvin claimed that he was attending to his store at Moriones, Ocampo, Camarines Sur. He came to know his co-accused only in August 2001 when he was arrested.[14]

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[10] TSN, 3 October 2002, pp. 10-12; Records, Vol. I, pp. 263-265.

[11] TSN, 3 March 2003, pp. 10-11; Records, Vol. II, pp. 397-401.

[12] TSN, 3 October 2002, p. 15; Records, Vol. I, pp. 265-267.

[13] TSN, 28 March 2006, p. 4; Records, Vol. III, pp. 1027-1028.

[14] TSN, 24 May 2007, pp. 3-4; Records, Vol. III, pp. 1107-1108.

On his part, accused-appellant maintained that on 28 March 2000, he was at Benitez Street, Cubao, Quezon City, working in a vulcanizing shop owned by his sister.[15]

The Regional Trial Court's Ruling

In its decision, the RTC found accused-appellant guilty of robbery with rape while his co-accused were convicted of robbery. It reasoned that the accused's denials were uncorroborated by any credible witness; whereas, the testimonies of the prosecution witnesses were clear, convincing, and corroborated each other on material points. The trial court, however, ruled that only accused-appellant could be held liable for robbery with rape because he alone perpetrated the crime of rape. It was also shown that Edwin prevented accused-appellant from further sexually molesting AAA. The *fallo* reads:

WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered:

In Crim. Case No. T-2176

1. Finding accused ANTONIO LLAMERA Guilty Beyond Reasonable Doubt of the felony of Robbery with Rape. The same having been committed by a band and there being no mitigating circumstance, he is hereby sentenced to suffer the penalty of Reclusion Perpetua without eligibility for parole.

2. Finding accused EDWIN SICAL, RODEL SICAL alias "Roman," VICTORINO SICAL alias "Manuel" and ALVIN ADAYO alias "Meno" guilty beyond reasonable doubt of Robbery penalized under paragraph 5, Article 294 in relation to Article 295 and 296 of the Revised Penal Code. There being no mitigating circumstance and with the aggravating circumstance of commission by a band, they are hereby sentenced to suffer the indeterminate penalty of 8 years of prision mayor in its minimum period as minimum to 9 years and 4 months of prision mayor in its medium period as maximum.

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[15] TSN, 13 May 2008, pp. 2-3; Records, Vol. III, pp. 1163-1164.

The said accused shall be credited in their service of their sentence with the full time during which they have undergone preventive imprisonment provided they agree voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, they shall be credited with only four-fifths thereof.

All the said accused are likewise sentenced to pay jointly and severally:

a. Actual damages in the amount of Php 326,000.00 and moral damages in the amount of Php 100,000.00 to the spouses BBB and DDD.

b. Civil indemnity in the amount of Php 50,000.00 to AAA.

In Crim. Case No. T-2779:

ACQUITTING accused EDWIN SICAL, RODEL SICAL, VICTORINO SICAL, ALVIN ADAYO and ANTONIO LLAMERA of the charge of Carnapping penalized under R.A. 6539 for want of all the elements constituting the said felony.

SO ORDERED.[16]

Aggrieved, accused-appellant appealed before the CA.

The Court of Appeals Ruling

In its decision, the CA affirmed the conviction of accused-appellant for robbery with rape but modified the award of damages. It rejected accused-appellant's claim that the police's act of showing his picture to the witnesses for identification was not free from impermissible suggestion. The appellate court opined that there was no evidence to prove that the police suggested or pointed to the witnesses a particular photograph from the set shown to them. It held that accused-appellant's identity was duly established because the witnesses, especially AAA, had the opportunity to be physically close to him. The CA disposed the case in this wise:

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[16] CA *rollo*, pp. 43-44.

WHEREFORE, the instant appeal is DENIED and the assailed Decision dated April 30, 2010 of the Regional Trial Court, [redacted] Camarines Sur in Criminal Case No. T-2176 is AFFIRMED with MODIFICATION on the award of damages to "AAA" in that accused-appellant Antonio Llamera y Atienza is ordered to likewise pay her moral damages in the amount of Php 50,000.00. Legal interest at the rate of six percent (6%) per annum is imposed on all the award for damages from the date of finality of this decision until full payment thereof.

SO ORDERED.[17]

Hence, this appeal.

ISSUE

WHETHER THE GUILT OF ACCUSED-APPELLANT HAS BEEN PROVEN BEYOND REASONABLE DOUBT

Accused-appellant asserts that the private complainants were shown photographs which contained the name and the crimes for which each person was arrested; that the identification was influenced by the notations found on the photographs; that the private complainants saw the accused for the first time during the robbery which lasted for only thirty minutes, thus, they had no ample time to remember the robbers' faces; and that as regards the rape, he merely inserted his hands into AAA's pants and not into her vagina.[18]

THE COURT'S RULING

To assail his conviction, accused-appellant harps on the alleged invalidity of the out-of-court identification made by the private complainants. In a long line of cases, the Court has laid down the two guiding principles in order to sustain the validity of an out-of-court identification: **first**, a series of photographs must be shown and not merely that of the suspect; and **second**, when a witness is shown a group of pictures, their arrangement and

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[17] *Rollo*, pp. 14-15.

[18] CA *rollo*, pp. 92-98.

display should in no way suggest which one of the pictures pertains to the suspect. In addition, photographic identification should be free from any impermissible suggestions that would single out a person to the attention of the witness making the identification.[19] Here, aside from the contention that the notations about the crimes committed by the persons in the photographs constituted impermissible suggestion, accused-appellant failed to aver much less prove any act on the police officers' part which indicated that he was singled out during the out-of-court identification. On the contrary, CCC testified that several photographs were shown to him and, among those, he readily recognized accused-appellant and his co-accused as the persons who robbed their house:

> [Prosecutor Habana]: Now what happened during said second investigation at the police station?
>
> [CCC]: They asked me questions and showed me pictures, Sir.
>
> Q: Now, how many pictures if you can recall were shown to you by the authorities?
> A: So many, sir.
>
> Q: Out of this so many pictures that the authorities shown to you were you able to identify some of them?
> A: Yes, Sir.
>
> Q: Who among those pictures did you recognize?
> A: Alvin Adayo, Edwin Sical, Antonio Llamera, sir.[20]

Further, a defective out-of-court identification may be cured by subsequent in-court identification. In *People v. Rivera*,[21] it was ruled that "even assuming arguendo that the out-of-court identification was defective, the defect was cured by the subsequent positive identification in court for the 'inadmissibility of a police lineup identification x x x should not necessarily foreclose the admissibility of an independent in-court

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[19] *People v. Rodrigo*, 586 Phil. 515, 531 (2008).

[20] TSN, 3 October 2002, pp. 16-18; Records, Vol. I, pp. 269-270.

[21] 458 Phil. 856, 877 (2003).

identification.'" In this case, CCC was unequivocal when he was asked during trial to identify their assailants, viz:

> [Prosecutor Habana]: Did you know who these three men who forcibly entered the residence of your uncle?
>
> [CCC]: I do not know them, Sir, but I can identify their faces.
>
> Q: Did you see the faces of these men [who] entered the house of your uncle?
> A: Yes, Sir.
>
> Q: If these three men are now inside the courtroom will you be able to point at them
> A: Yes, Sir. [CCC then pointed to the accused.][22]

Thus, accused-appellant's contention is insufficient to disturb the findings of both the RTC and the CA as regards the testimonies of private complainants who positively identified accused-appellant and his co-accused as the perpetrators of the crime. The identifications in this case were made by credible witnesses who clearly saw accused-appellant during the incident and whose stories were inherently believable and not contrived. It must also be stressed that AAA, with whom accused-appellant was alone for several minutes, positively identified the latter in court as her assailant.

Finally, to be convicted of robbery with rape, the following elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape.[23] In this case, the prosecution established that accused-appellant and his co-accused barged into the house of the victims armed with handguns. They demanded BBB to give them money and guns and when the latter refused, Edwin hit him in the head with a gun. Intent to gain, as an element of the crime of robbery, is an internal act; hence, presumed from the unlawful taking of things.[24] Having

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[22] TSN, 3 October 2002, p. 6; Records, Vol. I, p. 258.

[23] *People v. Evangelio*, 672 Phil. 229, 242 (2011).

[24] *Beltran, Jr. v. Court of Appeals*, 662 Phil. 296, 313-314 (2011).

established that the personal properties of the victims were unlawfully taken by the accused, intent to gain was sufficiently proven. Thus, the first three elements of the crime were clearly established.

As regards the last element, accused-appellant did not even deny that he assaulted AAA. He merely asserted that he just touched AAA's genitalia and did not insert his finger. Indeed, AAA testified as follows:

[Private Prosecutor Carandang]: After that what did accused Antonio Llamera do?

[AAA]: He poked a gun at me and then he inserted his hands into my left breast.

Q: After he was able to insert his hands into your shirt what happened next?
A: He was poking the gun at me, he inserted his hands into my pants, Sir.[25]

The foregoing statements, however, were clarified by the trial court which undoubtedly established that accused-appellant had assaulted AAA by inserting his finger into her genitalia.[26] Hence, accused-appellant's contention is nothing but a desperate attempt to deny that he sexually assaulted AAA during the robbery.

Award of damages

The crime of robbery with rape is a special complex crime punishable under Article 294 of the Revised Penal Code as amended by R.A. No. 7659. Article 294 provides for the penalty of *reclusion perpetua* to death, when the robbery is accompanied by rape. The provision reads as follows:

Art. 294. *Robbery with violence against or intimidation of persons; Penalties*. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

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[25] TSN, 3 March 2003, p. 13; Records, Vol. II, p. 398.

[26] TSN, 13 May 2003, pp. 3-7; Records, Vol. II, p. 477.

1. The penalty of *reclusion perpetua* to death when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson; x x x

In view, however, of the passage of R.A. No. 9346, prohibiting the imposition of the death penalty, the trial court and the appellate court correctly imposed the penalty of *reclusion perpetua*, without eligibility for parole.

The Court, however, deems it proper to modify the award of damages pursuant to the ruling in *People v. Jugueta*.[27] Accused-appellant is thus ordered to pay AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages.

WHEREFORE, the appeal is **DISMISSED**. The 17 July 2014 Decision of the Court of Appeals in CA-G.R. CR. HC-No. 04549 is **AFFIRMED** with **MODIFICATION**. Accused-appellant **Antonio Llamera y Atienza** is found **GUILTY** beyond reasonable doubt of **Robbery with Rape** and is hereby sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole. He is ordered to pay AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages.

SO ORDERED.

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

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[27] 783 Phil. 806, 850 (2016).

SECOND DIVISION

[G.R. No. 219953. April 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANGELITA REYES *y* GINOVE and JOSEPHINE SANTA MARIA *y* SANCHEZ,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); BUY-BUST OPERATIONS; BUY-BUST OPERATIONS ARE LEGALLY SANCTIONED PROCEDURES FOR APPREHENDING DRUG PEDDLERS AND DISTRIBUTORS WHICH REQUIRES NO PRIOR SURVEILLANCE.—** Buy-bust operations are legally sanctioned procedures for apprehending drug peddlers and distributors. These operations are often utilized by law enforcers for the purpose of trapping and capturing lawbreakers in the execution of their nefarious activities. There is no textbook method of conducting buy-bust operations. A prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment. Hence, the said buy-bust operation is a legitimate, valid entrapment operation.

2. **ID.; ID.; ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS.—** 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 accused."

3. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; THE PURPOSE OF THE CHAIN OF CUSTODY RULE IS TO ENSURE THAT THE SUBSTANCE BOUGHT DURING THE BUY-BUST OPERATION IS EXACTLY THE SAME**

SUBSTANCE OFFERED IN EVIDENCE BEFORE THE COURT.— 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."

4. ID.; ID.; ID.; ID.; THE RULE REQUIRES THAT THE APPREHENDING OFFICERS DO NOT SIMPLY MENTION A JUSTIFIABLE GROUND, BUT ALSO CLEARLY STATE THIS GROUND IN THEIR SWORN AFFIDAVIT, COUPLED WITH A STATEMENT ON THE STEPS THEY TOOK TO PRESERVE THE INTEGRITY OF THE SEIZED ITEM; NOT ESTABLISHED IN CASE AT BAR.— To ensure an unbroken chain of custody, Section 21 (1) of R.A. No. 9165 specifies: x x x Supplementing the above-quoted provision, Section 21 (a) of the IRR of R.A. No. 9165 x x x 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, x x x 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 to 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." 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. x x x Clearly, from the very findings of the CA, the requirements stated in Section 21 of R.A. 9165 have not been followed. There was no representative from the media and the National Prosecution Service present during the inventory and no justifiable ground was provided as to their absence. x x x The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item. A stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration. x x x Absent therefore any justifiable reason in this case for the non-compliance of Section 21 of R.A. No. 9165, the identity of the seized item has not been established beyond reasonable doubt. As such, this Court finds it apt to acquit the appellant.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is an appeal of the Court of Appeals' (*CA*) Decision[1] dated January 13, 2015 dismissing accused-appellants' appeal and affirming the Decision[2] dated June 24, 2011 of the Regional

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[1] Penned by Associate Justice Victoria Isabel A. Paredes with the concurrence of Associate Justices Magdangal M. De Leon and Jane Aurora C. Lantion; *rollo*, pp. 2-13.

[2] Penned by Presiding Judge Severino B. De Castro, Jr.; CA *rollo*, pp. 16-22.

Trial Court, Branch 82, Quezon City (*RTC*) in Criminal Case No. Q-06-143175 convicting accused-appellants of Violation of Section 5, Article II, Republic Act (*R.A.*) No. 9165.

The facts follow.

On September 22, 2006, around 4 o'clock in the afternoon, P/Insp. Alberto Gatus of the Galas Police Station – Anti-Illegal Drugs Unit received a report from a confidential informant about the activities of an alias "Babang" at No. 13 Manungal Street, Barangay Tatalon, Quezon City. On the following day, around 4:30 in the afternoon, the chief of police dispatched some policemen to confirm the veracity of the information, conduct a surveillance and a buy-bust operation. P/Insp. Gatus gave PO2 Talosig two (2) ₱100 bills, which he marked with his initials. When they arrived at the place, the confidential informant told PO2 Talosig that the person standing in front of the house is alias "Babang," later identified as appellant Angelita Reyes. The informant introduced PO2 Talosig to appellant Reyes as a buyer of shabu. When appellant Reyes asked him how much he will buy, he replied ₱200.00. Appellant Josephine Santa Maria, who was standing beside appellant Reyes, asked for money. When PO2 Talosig gave appellant Santa Maria the marked money, she told appellant Reyes, "*bigyan mo na.*" Appellant Reyes then got a plastic sachet containing a crystalline substance from her right pocket. PO2 Talosig removed his cap, the pre-arranged signal that the transaction was consummated, and PO1 Mirasol Lappay, SPO1 Mario Abong, PO2 Jonathan Caranza, Insp. Alberto Gatus and another policeman swooped in. PO1 Lappay asked appellant Santa Maria to empty her pockets and retrieved the marked money from the right pocket. PO1 Lappay then placed appellant Santa Maria under arrest, while PO2 Talosig arrested appellant Reyes, keeping the seized plastic sachet in his possession. Appellants were informed of their violation and their rights. Thereafter, appellants and the seized evidence were brought to the police station. At the police station, PO2 Talosig placed the seized evidence in another plastic sachet, sealed it and marked it "DT-AR-JS." An inventory of seized items and request for laboratory examination were prepared

by PO1 Erwin Bautista, while PO2 Talosig took the photo of appellants and the seized evidence. Thereafter, PO2 Talosig brought the request for laboratory examination and the seized plastic sachet of suspected shabu to the Quezon City Police District Crime Laboratory. He was furnished a copy of Chemistry Report No. D-381-2006.

Thus, an Information[3] was filed against the appellants for violation of Section 5, Article II of R.A. No. 9165 that reads as follows:

> That on or about the 23rd day of September 2006 in Quezon City, accused conspiring and confederating with and mutually helping each other without lawful authority did then and there wilfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, a dangerous drug, to wit:
>
> Zero point zero two (0.02) grams of Methylamphetamine Hydrochloride.
>
> CONTRARY TO LAW.

Appellants denied the allegations against them. According to appellant Reyes, on September 23, 2006, around 10 o'clock in the morning, she was sleeping with her husband and children in their house when someone knocked on their door. Her daughter woke her up and as she rose, three (3) men asked her if she knew a certain "Bugoy," to which query she replied in the negative. The men brought her out of the street, was made to board a jeep arid then brought to the Galas Police Station. At the police station, she was again asked whether she knew a certain Bugoy and she insisted that she did not know this certain Bugoy. Thus, she was detained. Meanwhile, on the same date, appellant Santa Maria claimed that she left her house to sell rugs when PO2 Talosig and two (2) other policemen accosted her and asked if she knew a person running by. She answered "no." After about five minutes, she was brought to a passenger jeep where PO1 Lappay and the driver were waiting. PO2 Talosig

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[3] CA *Rollo*, p. 10.

arrived with appellant Reyes. The policemen then asked her if she knew a certain Ray, and when she replied in the negative, they were brought to the police station.

The RTC found appellants guilty beyond reasonable doubt of the crime charged and sentenced them to the following:

> WHEREFORE, premises considered, judgment is hereby rendered finding accused ANGELITA REYES y GINOVE and JOSEPHINE SANTA MARIA y SANCHEZ guilty beyond reasonable doubt of violation of Section 5, Article II, of R.A. No. 9165, otherwise known as the Comprehensive Dangerous Act of 2002.
>
> Accordingly, they are hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to each pay a fine in the amount of Five Hundred Thousand (₱500,000.00) PESOS.
>
> The Branch Clerk of Court is hereby directed to transmit to the Philippine Drug Enforcement Agency the dangerous drug subject hereof for proper disposition and final disposal.
>
> SO ORDERED.[4]

The RTC ruled that appellants were validly arrested through a buy-bust operation and that appellants' denials are weak and unsubstantiated.

The CA affirmed the decision of the RTC *in toto*, thus:

> WHEREFORE, the appeal is DISMISSED. The Decision dated June 24, 2011, issued by the Regional Trial Court, Branch 82, Quezon City in Criminal Case No. Q-06-143175 is AFFIRMED.
>
> SO ORDERED.[5]

The CA ruled that the illegal sale of *shabu* has been established beyond reasonable doubt. 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 a frame-up. The CA also ruled that appellants'

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[4] *Id.* at 22.

[5] *Rollo*, p. 12.

arrest was valid and there was a necessity to conduct a buy-bust operation. Finally, it ruled that there is no broken chain of custody of the recovered dangerous drugs.

Hence, the present appeal. Pending appeal, appellant Reyes passed away, hence, her appeal was dispensed with by this Court in its Resolution[6] dated February 15, 2016.

The errors presented in the appeal are the following:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS FOR THE CRIME CHARGED WHEN THEIR GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE PROSECUTION EVIDENCE TO BE ADMISSIBLE DESPITE BEING THE RESULT OF AN INVALID WARRANTLESS SEARCH AND ARREST.

According to appellant Santa Maria, her guilt was not proven beyond reasonable doubt and that the trial court erred in finding the prosecution evidence to be admissible despite being the result of an invalid warrantless search and arrest.

There is merit in the appeal.

First of all, as to the argument of appellant Santa Maria that the arresting officers illegally arrested them because they did not have with them any warrant of arrest nor a search warrant considering that the police officers had enough time to secure such, the same does not deserve any merit. Buy-bust operations are legally sanctioned procedures for apprehending drug peddlers and distributors. These operations are often utilized by law

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[6] In a Resolution dated February 15, 2016, this Court dispensed the appeal of appellant Angelita Reyes, her liability having been extinguished by her death pursuant to Article 89 of the Revised Penal Code. The case therefore is considered CLOSED and TERMINATED as to appellant Reyes.

enforcers for the purpose of trapping and capturing lawbreakers in the execution of their nefarious activities.[7] There is no textbook method of conducting buy-bust operations. A prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment.[8] Hence, the said buy-bust operation is a legitimate, valid entrapment operation.

As to whether the prosecution was able to prove appellants' guilt beyond reasonable doubt, this Court finds that the prosecution failed to do so.

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.[9]
>
> 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."[10]

In illegal sale, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges.[11] In *People v. Gatlabayan*,[12] 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

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[7] *People v. Rebotazo*, 711 Phil. 150, 162 (2013).

[8] See *People v. Manlangits*, 654 Phil. 427, 437 (2011).

[9] *People v. Ismael y Radang*, G.R. No. 208093, February 20, 2017.

[10] *Id.*

[11] *Id.*

[12] 699 Phil. 240, 252 (2011).

and that which was exhibited must be the very same substance recovered from the suspect.[13] Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."[14]

To ensure an unbroken chain of custody, Section 21 (1) of R.A. No. 9165[15] 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, 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[.]

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[13] *People v. Mirondo*, 711 Phil. 345, 357 (2015).

[14] See *People v. Ismael y Radang*, G.R. No. 208093, February 20, 2017.

[15] Took effect on July 4, 2002.

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."[16] 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."[17] In addition, "[t]he requirement

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[16] Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

[17] *Id.*

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."[18]

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."[19] 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.
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> 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 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

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[18] *Id.*

[19] *Id.* at 349.

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.[20]

The foregoing legislative intent has been taken cognizance of in a number of cases. Just recently, We opined in *People v. Miranda*:[21]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640—provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds—will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not ipso facto render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses,

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[20] *Id.* at 349-350.

[21] G.R. No. 229671, January 31, 2018.

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.[22]

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 to 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."[23] 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.

The CA ruled that the chain of custody was aptly followed, thus:

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[22] 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.

[23] *People v. Sagana*, G.R. No. 208471, August 2, 2017.

In this case, the chain of custody was aptly described in the testimony of PO2 Talosig, in the joint affidavit he and PO1 Lappay executed on September 24, 2006, and the stipulations and admissions made by the prosecution and the defense during pre-trial. These pieces of evidence showed that the transaction in the buy-bust operation was completed, the seized evidence remained in the custody of PO2 Talosig, the poseur-buyer, who placed the evidence in another plastic sachet, sealed it and marked it as "DT-AR-JS" at the police station where appellants and the seized evidence were brought; that PO2 Talosig delivered the request for laboratory examination together with the seized evidence to the crime laboratory; that Forensic Chemist P/Insp. Ma. Shirlee M. Ballete conducted a qualitative examination on the specimen contained in a plastic sachet with marking "DT-AR-JS" and found the specimen positive for methylamphetamine hydrochloride; that the said forensic chemist reduced her findings in Chemistry Report No. D-381-2006, incidentally marking the plastic sachet itself as "D-381" to correspond to the number of the Chemistry Report. Though there were deviations in the making of the Inventory of Seized Items, in that it was **signed by Kagawad Balignasan only**, and the seized item was marked and inventoried, and with appellants, photographed, without the presence of counsel; nonetheless, the prosecution proved that the integrity and evidentiary value of the seized evidence, was duly accounted for and preserved. The fact that the process of marking, inventory and photographing was undertaken without the presence of counsel was explained by PO2 Talosig, i.e. because appellants had no counsel at that time.

Time and again, jurisprudence is consistent in stating that substantial compliance with the procedural aspect of the chain of custody rule does not necessarily render the seized drug item inadmissible. Although the police officers did not strictly comply with the requirements of Section 21, Article II of R.A. No. 9165, their noncompliance did not affect the evidentiary weight of the drug seized from appellant Reyes as the chain of custody of the evidence was shown to be unbroken under the circumstances of the case.[24]

Clearly, from the very findings of the CA, the requirements stated in Section 21 of R.A. 9165 have not been followed. There was no representative from the media and the National Prosecution Service present during the inventory and no

[24] *Rollo*, pp. 11-12. (Emphasis ours; citations omitted)

justifiable ground was provided as to their absence. It must be emphasized that the prosecution must be able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: (1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; (2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; (3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125[25] of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.

Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended.[26] It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the law.[27] Its failure to follow the mandated

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[25] **Article 125.** *Delay in the delivery of detained persons to the proper judicial authorities.* - The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent. In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel. (As amended by E.O. Nos. 59 and 272, Nov. 7, 1986 and July 25, 1987, respectively).

[26] See *People v. Macapundag*, *supra* note 22.

[27] See *People v. Miranda*, *supra* note 21; *People v. Paz, supra* note 22; *People v. Mamangon, supra* note 22; and *People v. Jugo, supra* note 22.

procedure must be adequately explained and must be proven as a fact in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item.[28] A stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.[29]

If doubt surfaces on the sufficiency of the evidence to convict, regardless that it does only at the stage of an appeal, our courts of justice should nonetheless rule in favor of the accused, lest it betray its duty to protect individual liberties within the bounds of law.[30]

Absent therefore any justifiable reason in this case for the non-compliance of Section 21 of R.A. No. 9165, the identity of the seized item has not been established beyond reasonable doubt. As such, this Court finds it apt to acquit the appellant.

WHEREFORE, premises considered, the Decision dated January 13, 2015 dismissing appellants' appeal and affirming the Decision dated June 24, 2011 of the Regional Trial Court, Branch 82, Quezon City in Criminal Case No. Q-06-143175 is **REVERSED AND SET ASIDE**. Appellant Josephine Santa Maria y Sanchez is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. She is **ORDERED IMMEDIATELY RELEASED** from detention, unless she is

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[28] *People v. Saragena*, G.R. No. 210677, August 23, 2017.

[29] See *People v. Abelarde*, G.R. No. 215713, January 22, 2018; *People v. Macud*, G.R. No. 219175, December 14, 2017; *People v. Arposeple*, G.R. No. 205787, November 22, 2017; *Aparente v. People*, G.R. No. 205695, September 27, 2017; *People v. Cabellon*, G.R. No. 207229, September 20, 2017; *People v. Saragena, supra* note 28; *People v. Saunar*, G.R. No. 207396, August 9, 2017; *People v. Sagana, supra* note 23; *People v. Segundo*, G.R. No. 205614, July 26, 2017; and *People v. Jaafar*, G.R. No. 219829, January 18, 2017.

[30] *People v. Miranda, supra* note 21.

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 Superintendent of the Correctional Institution for Women, for immediate implementation. Said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) working days from receipt of this Decision the action he/she has taken.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 222861. April 23, 2018]

PO2 JESSIE FLORES *y* DE LEON, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY; ELEMENTS; EXPLAINED.— Simple robbery is committed by means of violence against or intimidation of persons, but the extent of the violation or intimidation does not fall under paragraphs 1 to 4 of Article 294 of the RPC. For the successful prosecution of this offense, the following elements must be established: a) that there is personal property belonging to another; b) that there is unlawful taking of that property; c) that the taking is with intent to gain; and d) that there is violence against or intimidation of persons or force upon

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

things. In robbery, there must be an unlawful taking, which is defined as the taking of items without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things. As ruled in a plethora of cases, taking is considered complete from the moment the offender gains possession of the thing, even if he did not have the opportunity to dispose of the same. Intent to gain or *animus lucrandi*, on the other hand, is an internal act that is presumed from the unlawful taking of the personal property belonging to another.

2. REMEDIAL LAW; EVIDENCE; BEST EVIDENCE RULE; THE BEST EVIDENCE RULE APPLIES ONLY WHEN THE CONTENTS OF THE DOCUMENT IS THE SUBJECT OF INQUIRY; NOT APPLICABLE IN CASE AT BAR.— In *People v. Tandoy*, the Court held that the best evidence rule applies only when the contents of the document are the subject of inquiry. Where the issue is only as to whether or not such document was actually executed, or exists, or in the circumstances relevant to or surrounding its execution, the best evidence rule does not apply and testimonial evidence is admissible. In this case, the marked money was presented by the prosecution solely for the purpose of establishing its existence and not its contents. Therefore, other substitute evidence, like a xerox copy thereof, is admissible without the need of accounting for the original. In contrast with *People v. Dismuke*, where the accused was acquitted partly because of the dubious circumstances surrounding the marked money, the existence of the marked money in the case at bar was never questioned. It was not disputed that the four (4) pieces of ₱500 bills which were used as marked money, were produced and thereafter turned over to the police officer for dusting of fluorescent powder. The serial numbers of these marked money were duly recorded in the memorandum prepared by the PAOCTF in connection with the entrapment operation, and the same set of ₱500 bills bearing similar serial numbers was reflected in the request for laboratory examination after the conduct of the entrapment operation. More importantly, these four pieces of ₱500 bills were positively identified by the prosecution witnesses during the trial. As such, the absence of the original pieces of the marked money did not militate against the cause of the prosecution.

3. ID.; ID.; THERE IS NO RULE REQUIRING THAT THE POLICE OFFICERS MUST APPLY FLOURESCENT POWDER TO THE BUY-BUST MONEY TO PROVE THE COMMISSION OF THE OFFENSE.— The presence of ultraviolet fluorescent powder is not an indispensable evidence to prove that the appellant received the marked money. Moreover, there is no rule requiring that the police officers must apply fluorescent powder to the buy-bust money to prove the commission of the offense. In fact, the failure of the police operatives to use fluorescent powder on the boodle money is not an indication that the entrapment operation did not take place. Both the courts *a quo* did not even give much weight on the laboratory report. The CA instead stressed on the straightforward, candid and categorical testimony of France, corroborated by PO2 Ilao, as to how petitioner took the money of France in exchange for the latter's driver's license. The laboratory report is merely a corroborative evidence which is not material enough to alter the judgment either way.

4. ID.; ID.; CREDIBILITY OF WITNESSES; DISCREPANCY BETWEEN A SWORN STATEMENT AND TESTIMONY IN COURT WILL NOT INSTANTLY RESULT IN THE ACQUITTAL OF THE ACCUSED; CASE AT BAR.— The Court has held that discrepancies between a sworn statement and testimony in court will not instantly result in the acquittal of the accused. x x x Applying these principles to the present case, the Court finds that as between France's testimony given in open court and the affidavits executed before the PAOCTF, the former prevails because affidavits taken *ex-parte* are generally considered to be inferior to the testimony given in court. x x x As we have ruled in a multitude of cases, the trial court judge is in the best position to make this determination as the judge was the one who personally heard the witnesses of both parties, as well as observed their demeanor and the manner in which they testified during trial. Since there is no showing that the RTC overlooked or misinterpreted some material facts or that it gravely abused its discretion, We see no reason to disturb and interfere with its assessment of the facts and credibility of the witnesses.

5. ID.; CRIMINAL PROCEDURE; THE EXONERATION IN THE ADMINISTRATIVE CASE IS NOT A BAR TO A CRIMINAL PROSECUTION FOR THE SAME OR SIMILAR ACTS WHICH WERE THE SUBJECT OF THE ADMINISTRATIVE COMPLAINT OR *VICE VERSA*; CASE AT BAR.— It is hornbook doctrine in administrative law that administrative cases are independent from criminal actions for the same acts or omissions. Thus, an absolution from a criminal charge is not a bar to an administrative prosecution, or *vice versa*. Given the differences in the quantum of evidence required, the procedures actually observed, the sanctions imposed, as well as the objective of the two proceedings, the findings and conclusions in one should not necessarily be binding on the other. Hence, the exoneration in the administrative case is not a bar to a criminal prosecution for the same or similar acts which were the subject of the administrative complaint or *vice versa*. x x x In the case at bar, the administrative case for grave misconduct filed against petitioner and the present case for simple robbery are separate and distinct cases, and are independent from each other. The administrative and criminal proceedings may involve similar facts but each requires a different quantum of evidence. In addition, the administrative proceeding conducted was before the PNP-IAS and was summary in nature. In contrast, in the instant criminal case, the RTC conducted a full blown trial and the prosecution was required to proffer proof beyond reasonable doubt to secure petitioner's conviction. Furthermore, the proceedings included witnesses who were key figures in the events leading to petitioner's arrest. Witnesses of both parties were cross examined by their respective counsels creating a clearer picture of what transpired, which allowed the trial judge to have a better appreciation of the attendant facts and determination of whether the prosecution proved the crime charged beyond reasonable doubt. In fine, the Court is convinced from the evidence on record that the prosecution has overcome the constitutional presumption of innocence in favor of the petitioner with proof beyond reasonable doubt of his guilt. He must, therefore, suffer the penalty prescribed by law for abusing his power and blemishing the name of public service.

APPEARANCES OF COUNSEL

Palafox Patriarca Romero & Mendoza Law Firm for petitioner.

Office of the Solicitor General for respondent.

D E C I S I O N

GESMUNDO, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] dated August 13, 2015 and Resolution[2] dated February 3, 2016 of the Court of Appeals (*CA*) in CA-G.R. CR No. 36187. The CA affirmed with modification the May 28, 2013 Decision[3] of the Regional Trial Court, Quezon City, Branch 91 (*RTC*) finding PO2 Jessie Flores *y* De Leon (*petitioner*) guilty beyond reasonable doubt of Simple Robbery (extortion) as defined and penalized under Article 294 (5) of the Revised Penal Code (*RPC*).

The Antecedents

On June 29, 2000, petitioner was arrested via an entrapment operation conducted by the Presidential Anti-Organized Crime Task Force (*PAOCTF*) pursuant to a complaint lodged by private complainant Roderick France (*France*). The accusatory portion of the Information[4] dated July 3, 2000 reads:

That on or about the 29th day of June 2000 in Quezon City, Philippines, the above-named accused taking advantage of his official position as a member of the Traffic Enforcement Group, Central Police Traffic Enforcement Office, with intent to gain

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[1] *Rollo*, pp. 83-97; penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Danton Q. Bueser and Myra V. Garcia-Fernandez, concurring.

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

[3] *Id*. at 98-101; penned by Judge Lita S. Tolentino-Genilo.

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

and by means of intimidation, did then and there, willfully, unlawfully and feloniously rob Roderick S. France of ₱2,000.00 in cash in the following manner, to wit: on June 26, 2000, the driven taxi of Roderick S. France figured in a vehicular accident with a passenger jeepney and the said accused confiscated his Driver's License then issued a Traffic Violation Receipt indicating therein his alleged violations and demanded from him the amount of ₱2,000.00 as a condition for the return of his Driver's License thus creating fear in the mind of said Roderick S. France who was compelled to give to the said accused ₱2,000.00 in cash on June 29, 2000 to the damage and prejudice of the said offended party.

CONTRARY TO LAW.[5]

Petitioner posted a bail bond of ₱100,000.00 for his conditional release.

Upon arraignment, petitioner entered a plea of "not guilty".

The prosecution presented the following witnesses: France, PO2 Aaron Ilao (*PO2 Ilao*) and PO2 Richard Menor (*PO2 Menor*) of the PAOCTF. The defense, on the other hand, presented petitioner, Robert Pancipanci (*Pancipanci*) and photographer Toto Ronaldo (*Ronaldo*) as its witnesses.

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

xxx. The People's version of the facts are as follows:

On 26 June 2000, at around 6:00 o'clock in the evening, private complainant France figured in a vehicular collision with a passenger jeepney at the corner of E. Rodriguez and Aurora Blvd., Quezon City. Soon thereafter, a traffic enforcer arrived at the vicinity and prepared a sketch of the incident. Then, France and the jeepney driver proceeded to Station 10, Kamuning Police Station. At the station, appellant PO2 Flores investigated the incident. The jeepney driver was told to go home while France was asked to remain at the station. He was told to return to the station after two days and prepare the amount of ₱2,000.00 so he can get back his driver's license. Because France could not raise the said amount in two days, he was told by PO2 Flores to just return on the third day in

[5] *Id*. at 173.

the evening because he was on a night shift duty then. Subsequently, a Traffic Violation Receipt (*TVR*) No. 1022911 was issued and signed by PO2 Flores who told France that the same would serve as the latter's temporary driver's license. France became suspicious as he recalled that on a previous occasion when his driver's license was confiscated due to a traffic violation the same was claimed from the office of the Metro Manila Development Authority (*MMDA*) or City Hall and not from the officer who confiscated his license.

Sensing that something was not right, France went to the headquarters of the PAOCTF in Camp Crame to file a complaint against PO2 Flores. Meanwhile, France was asked to provide the amount of ₱2,000.00 which he heeded and four (4) 500-peso bills were dusted with ultraviolet fluorescent powder. Thereafter, France executed a *Sinumpaang Salaysay*.

Headed by PO2 Ilao, the PAOCTF team proceeded to Station 10, Kamuning Police Station together with France. When France entered the station, PO2 Flores asked him if he brought with him the money. After an hour, PO2 Flores called France to his table. He opened a drawer and told France to drop the money inside. PO2 Flores then counted the money inside the drawer using his left hand. As soon as France asked for his driver's license, the PAOCTF team suddenly materialized (sic) at the scene through PO2 Ilao's pre-arranged signal. They arrested PO2 Flores and confiscated the things inside his drawer including the marked money. The team subsequently proceeded to Camp Crame where PO2 Flores was turned over for ultraviolet examination. France was further asked to execute a "*Karagdagang Sinumpaang Salaysay*" regarding the incident. PO2 Menor also executed an affidavit in connection with the incident that lead to the arrest of Flores.

After the People rested its case, the trial court directed PO2 Flores to present his evidence. To exculpate himself from criminal liability, Flores interposed the defense of denial and "frame-up". He adduced his own testimony and the testimonies of Robert Pancipanci and photographer Toto Ronaldo which hewed to the following version of the facts:

On 26 June 2000, PO2 Flores received a report in his office that there was a vehicular collision in his area of assignment. Upon investigation, PO2 Flores determined that the accident was due

to France's fault. He confiscated the driver's license of France, issued a citation ticket and told France that he could claim his driver's license from the Quezon City Redemption Center upon payment of the amount of ₱2,000.00. On 29 June 2000, PO2 Flores had no idea why France returned to his office in the evening. Because he had to interview Robert Pancipance at that time, France was told to wait. France was, however, persistent in giving him the TVR with the enclosed money. On the third attempt, France convinced him to receive the TVR and money but PO2 Flores refused to receive them. While PO2 Flores was at the comfort room, France took the chance to place the money inside PO2 Flores' drawer. When PO2 Flores returned, the operatives from the PAOCTF arrested him and brought him to Camp Crame.[6]

The Ruling of the RTC

In its May 28, 2013 decision, the RTC found petitioner guilty of simple robbery (extortion). It ruled that the prosecution established all the elements of the crime beyond reasonable doubt. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, accused is found GUILTY beyond reasonable doubt of the crime of SIMPLE ROBBERY (Extortion) under Article 294(5) of the Revised Penal Code and is hereby sentenced to a penalty of Two (2) Years, Ten (10) Months and Twenty One (21) Days as minimum to Six (6) Years and One (1) Month and Eleven (11) days as maximum.
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> SO ORDERED.[7]

Petitioner filed a motion for reconsideration but it was denied in the RTC's Order[8] dated July 11, 2013.

Aggrieved, petitioner appealed before the CA.

In his Brief,[9] petitioner averred that the RTC incorrectly convicted him of simple robbery by giving weight on pieces

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[6] *Rollo*, pp. 84-87.

[7] *Id*. at 100-101.

[8] *Id*. at 102-105.

[9] *Id*. at 248-257.

of evidence in violation of the Best Evidence Rule. He argued that the prosecution's exhibits were mere photocopies and the original pieces of the marked money were never even presented. He also assailed the failure of the prosecution to present the forensic chemist who made the laboratory report which found traces of ultraviolet powder on his index finger. He further argued that the RTC disregarded the testimonies of the defense witnesses which clearly showed that he did not extort any money from France. Moreover, he reiterated that his exoneration from the administrative case arising from the same set of facts should have been sufficient basis for the dismissal of the criminal case.

The prosecution, thru the Office of the Solicitor General (*OSG*), argued that all the elements of the crime charged were adequately established. The OSG further asserted that the dismissal of the administrative case should not affect the criminal case since only a summary hearing was conducted for the former while a full blown trial was done for the latter. It added that the photocopies of the exhibits were sufficient and admissible since they were public records. It also said in its brief that the testimonies of the prosecution witnesses were enough to prove the elements of the crime and that the presentation of the original marked money was no longer necessary.[10]

The Ruling of the CA

In its decision, the CA denied the appeal. It held that the best evidence rule admits of some exemptions which were present in this case. It stated that the Complaint Sheet dated June 28, 2000 and *Karagdagang Sinumpaang Salaysay* executed by France were public records under the custody of a public officer, hence, the presentation of the photocopies as evidence, was deemed sufficient. It further held that the said documents were identified by the private complainant during trial and he attested to the veracity of the contents

[10] *Id.* at 275-290.

thereof. With regard to the photocopy of the TVR, the CA ruled that the same should be admitted since petitioner himself admitted in his direct testimony that he indeed issued it. As to the marked money, the CA held that the non-presentation of the original marked money did not create a hiatus in the evidence for the prosecution as the serial numbers were duly recorded in the memorandum prepared by the PAOCTF requesting the ultraviolet fluorescent powder dusting after the entrapment operation. The CA, however, modified the penalty after appreciating the aggravating circumstance of abuse of authority. The *fallo* of the decision reads:

> WHEREFORE, we DENY the appeal. The decision appealed from is AFFIRMED with MODIFICATION that PO2 Jessie Flores is sentenced to a penalty of Two (2) years, Four (4) months, and One (1) day as minimum to eight (8) years and One (1) day of *prision mayor* as maximum.
>
> IT IS SO ORDERED.[11]

Upon denial of his motion for reconsideration,[12] petitioner is now before the Court *via* a petition for review on *certiorari* raising the following-

ASSIGNMENT OF ERRORS

THE COURT OF APPEALS DECIDED IN A MANNER CONTRARY TO LAW AND JURISPRUDENCE WHEN IT ISSUED THE ASSAILED DECISION AND RESOLUTION, WHICH AFFIRMED THE RTC ORDERS, IN THAT:

A.

THE COURT OF APPEALS GRIEVOUSLY ERRED AND ABUSED ITS PREROGATIVES WHEN IT AFFIRMED THE PETITIONER'S CONVICTION, DESPITE THAT IT IS GLARING FROM THE EVIDENCE ON RECORD THAT THE RESPONDENT MISERABLY FAILED TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

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[11] *Id*. at 97.

[12] Resolution dated February 3, 2016; *rollo*, pp. 107-108.

B.

THE COURT OF APPEALS COMMITTED A PALPABLE MISTAKE WHEN IT UNCEREMONIOUSLY OVERLOOKED THAT UNDER THE PRINCIPLE OF CONCLUSIVENESS OF JUDGMENT, THE ISSUE ON THE ALLEGED TAKING OF THE PROPERTY SUBJECT OF THIS ACCUSATION CAN NO LONGER BE RE-LITIGATED IN THIS CRIMINAL ACTION.[13]

The Court's Ruling

The petition has no merit.

In petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised, not issues of fact. The factual findings of the RTC, especially when affirmed by the CA, are generally binding upon this Court. Though this rule admits of some exceptions,[14] the Court finds no compelling reason to disturb the factual findings of the lower court, as affirmed by the CA.

The prosecution sufficiently established all the elements of the crime charged.

Simple robbery is committed by means of violence against or intimidation of persons, but the extent of the violation or intimidation does not fall under paragraphs 1 to 4 of Article 294 of the RPC.[15] For the successful prosecution of this offense, the following elements must be established: a) that there is personal property belonging to another; b) that there is unlawful taking of that property; c) that the taking is with intent to gain; and d) that there is violence against or intimidation of persons or force upon things.[16]

In robbery, there must be an unlawful taking, which is defined as the taking of items without the consent of the

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[13] *Rollo*, pp. 25-26.

[14] *Pascual v. Burgos, et al.*, 776 Phil. 167, 182-183 (2016).

[15] *People v. Suela, et al.*, 424 Phil. 196, 232 (2002).

[16] *Sazon v. Sandiganbayan*, 598 Phil. 35, 45 (2009).

owner, or by means of violence against or intimidation of persons, or by using force upon things.[17] As ruled in a plethora of cases, taking is considered complete from the moment the offender gains possession of the thing, even if he did not have the opportunity to dispose of the same.[18] Intent to gain or *animus lucrandi*, on the other hand, is an internal act that is presumed from the unlawful taking of the personal property belonging to another.[19]

In the present case, there is no doubt that the prosecution successfully established all the elements of the crime charged. France, the private complainant categorically testified that petitioner demanded and eventually received from him the amount of Two Thousand Pesos (₱2,000.00) in exchange for the release of his driver's license. When the marked money was placed inside petitioner's drawer, who counted it afterwards, he was deemed to have taken possession of the money. This amount was unlawfully taken by petitioner from France with intent to gain and through intimidation. As aptly observed by the CA, petitioner was a police officer assigned as an investigator at the Traffic Sector of Kamuning Police Station whose main duties and responsibilities included conducting inquiries involving traffic law violations and making reports of his investigation. While petitioner had the authority to confiscate the driver's license of traffic violators, nowhere in the law is he authorized to keep an offender's license and receive any payment for its return.

The Court likewise agrees with the courts *a quo* that petitioner employed intimidation to obtain the amount of ₱2,000.00 from France as the act performed by the latter caused fear in the mind of the former and hindered the free exercise of his will. In the case of *People v. Alfeche, Jr.*,[20] the court held:

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[17] *Id*.

[18] *Id*. at 45-46.

[19] See *Matrido v. People of the Philippines*, 610 Phil. 203, 212 (2009).

[20] 286 Phil. 936 (1992).

But what is meant by the word intimidation? It is defined in Black's Law Dictionary as "unlawful coercion; extortion; duress; putting in fear". To take, or attempt to take, by intimidation means "willfully to take, or attempt to take, by putting in fear of bodily harm". As shown in United States vs. Osorio, **material violence is not indispensable for there to be intimidation, intense fear produced in the mind of the victim which restricts or hinders the exercise of the will is sufficient**. In an appropriate case, the offender may be liable for either (a) robbery under paragraph 5 of Article 294 of the Revised Penal Code if the subject matter is personal property and there is intent to gain or *animus furandi*, or (b) grave coercion under Article 286 of said Code if such intent does not exist.[21]

Here, petitioner confiscated the driver's license of France after figuring in a vehicular accident. He then issued a TVR but demanded from France the amount of ₱2,000.00 for the return of his driver's license. When France could not produce the said amount, petitioner informed him to return on the evening of June 29, 2000 as he was then on night shift duty. For France whose daily living depends on his earnings from driving a taxi, the thought of not having his driver's license back and the possibility that he might not be able to drive a taxi and earn a living for his family prompted him to give the amount demanded. Petitioner succeeded in forcing France to choose between parting with his money or have his driver's license confiscated or cancelled.

Non-presentation of the original pieces of the marked money is not fatal to the cause of the prosecution.

Petitioner contends that a mere photocopy of the alleged marked money is inadmissible for not conforming to the basic rules of admissibility. Hence, he must be acquitted for failure of the prosecution to present the original pieces of marked money which is the property subject of this criminal offense.

The Court disagrees.

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[21] *Id.* at 948-949.

In *People v. Tandoy*,[22] the Court held that the best evidence rule applies only when the contents of the document are the subject of inquiry. Where the issue is only as to whether or not such document was actually executed, or exists, or in the circumstances relevant to or surrounding its execution, the best evidence rule does not apply and testimonial evidence is admissible.[23]

In this case, the marked money was presented by the prosecution solely for the purpose of establishing its existence and not its contents. Therefore, other substitute evidence, like a xerox copy thereof, is admissible without the need of accounting for the original.[24] In contrast with *People v. Dismuke*,[25] where the accused was acquitted partly because of the dubious circumstances surrounding the marked money, the existence of the marked money in the case at bar was never questioned. It was not disputed that the four (4) pieces of ₱500 bills which were used as marked money, were produced and thereafter turned over to the police officer for dusting of fluorescent powder. The serial numbers of these marked money were duly recorded in the memorandum prepared by the PAOCTF in connection with the entrapment operation, and the same set of ₱500 bills bearing similar serial numbers was reflected in the request for laboratory examination after the conduct of the entrapment operation. More importantly, these four pieces of ₱500 bills were positively identified by the prosecution witnesses during the trial. As such, the absence of the original pieces of the marked money did not militate against the cause of the prosecution.

Presence of ultraviolet fluorescent powder is not an indispensible evidence to prove receipt of marked money

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[22] 270 Phil. 128 (1990).

[23] *Id.* at 133.

[24] *Id.*

[25] 304 Phil. 207 (1994).

Petitioner also assails the failure of the prosecution to produce the forensic chemist who actually conducted the testing for fluorescent powder. This contention, however, deserves scant consideration.

The presence of ultraviolet fluorescent powder is not an indispensable evidence to prove that the appellant received the marked money. Moreover, there is no rule requiring that the police officers must apply fluorescent powder to the buy-bust money to prove the commission of the offense. In fact, the failure of the police operatives to use fluorescent powder on the boodle money is not an indication that the entrapment operation did not take place.[26] Both the courts *a quo* did not even give much weight on the laboratory report. The CA instead stressed on the straightforward, candid and categorical testimony of France, corroborated by PO2 Ilao, as to how petitioner took the money of France in exchange for the latter's driver's license. The laboratory report is merely a corroborative evidence which is not material enough to alter the judgment either way.

Testimony in open court is given more weight than statements in affidavits

In his attempt to discredit France, petitioner pointed to the inconsistency of his statements between his *Karagdagang Sinumpaang Salaysay* and his testimony in open court, particularly on how the marked money found its way to his drawer.

The argument fails to convince.

The Court has held that discrepancies between a sworn statement and testimony in court will not instantly result in the acquittal of the accused.[27] In *Kummer v. People*,[28] the Court explained that:

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[26] *People v. Sy*, 608 Phil. 313, 329 (2009).

[27] *People v. Minangga, et al.*, 388 Phil. 353, 362 (2000).

[28] 717 Phil. 670 (2013).

It is oft repeated that affidavits are usually abbreviated and inaccurate. Oftentimes, an affidavit is incomplete, resulting in its seeming contradiction with the declarant's testimony in court. Generally, the affiant is asked standard questions, coupled with ready suggestions intended to elicit answers, that later turn out not to be wholly descriptive of the series of events as the affiant knows them. Worse, the process of affidavit-taking may sometimes amount to putting words into the affiant's mouth, thus allowing the whole statement to be taken out of context.[29]

Applying these principles to the present case, the Court finds that as between France's testimony given in open court and the affidavits executed before the PAOCTF, the former prevails because affidavits taken *ex-parte* are generally considered to be inferior to the testimony given in court.[30]

In appreciating the facts of the case, the RTC gave credence to the testimonies of the prosecution witnesses. It found the testimony France to be candid and straightforward, and his assertions categorical. As we have ruled in a multitude of cases, the trial court judge is in the best position to make this determination as the judge was the one who personally heard the witnesses of both parties, as well as observed their demeanor and the manner in which they testified during trial.[31] Since there is no showing that the RTC overlooked or misinterpreted some material facts or that it gravely abused its discretion, We see no reason to disturb and interfere with its assessment of the facts and credibility of the witnesses.[32]

Exoneration in an administrative case does not automatically cause the dismissal of the criminal case

Lastly, petitioner insists that his exoneration from the administrative case arising out of the same act is already sufficient basis for his acquittal in the present case based on the doctrine of conclusiveness of judgment.

[29] *Id.* at 679.

[30] *Id.*

[31] *People v. Bautista*, 665 Phil. 815, 826 (2011), citing *People v. Combate*, 653 Phil. 487 (2010).

[32] *Id.*

We disagree.

It is hornbook doctrine in administrative law that administrative cases are independent from criminal actions for the same acts or omissions. Thus, an absolution from a criminal charge is not a bar to an administrative prosecution, or *vice versa*.[33] Given the differences in the quantum of evidence required, the procedures actually observed, the sanctions imposed, as well as the objective of the two proceedings, the findings and conclusions in one should not necessarily be binding on the other.[34] Hence, the exoneration in the administrative case is not a bar to a criminal prosecution for the same or similar acts which were the subject of the administrative complaint or *vice versa*.[35]

The case of *Constantino vs. Sandiganbayan*,[36] which petitioner heavily relies on, finds no application in the case at bar. In *Constantino*, the Court dismissed the criminal action due to his exoneration in the administrative case because the same crucial evidence was presented and evaluated in both proceedings, and there was a categorical finding that the act from which the liability was based did not actually exist. It should also be noted that it was the Court who dismissed the administrative complaint against Constantino and Lindong, and reversed the ruling of the Office of the Ombudsman. Thus:

> It may be true that the basis of administrative liability differs from criminal liability as the purpose of administrative proceedings on the one hand is mainly to protect the public service, based on the time-honored principle that a public office is a public trust. On the other hand, the purpose of the criminal prosecution is the punishment of crime. However, the dismissal by the Court of the administrative case against Constantino based on the same subject matter and after examining the same crucial evidence operates to

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[33] *Paredes, et al. v. Court of Appeals, et al.*, 555 Phil. 538, 549 (2007).

[34] *Jaca v. People*, 702 Phil. 210, 250 (2013).

[35] *Id*.

[36] 559 Phil. 622 (2007).

dismiss the criminal case because of the precise finding that the act from which liability is anchored does not exist.[37]

In the case at bar, the administrative case for grave misconduct[38] filed against petitioner and the present case for simple robbery are separate and distinct cases, and are independent from each other. The administrative and criminal proceedings may involve similar facts but each requires a different quantum of evidence.[39] In addition, the administrative proceeding conducted was before the PNP-IAS and was summary in nature. In contrast, in the instant criminal case, the RTC conducted a full blown trial and the prosecution was required to proffer proof beyond reasonable doubt to secure petitioner's conviction. Furthermore, the proceedings included witnesses who were key figures in the events leading to petitioner's arrest. Witnesses of both parties were cross examined by their respective counsels creating a clearer picture of what transpired, which allowed the trial judge to have a better appreciation of the attendant facts and determination of whether the prosecution proved the crime charged beyond reasonable doubt.

In fine, the Court is convinced from the evidence on record that the prosecution has overcome the constitutional presumption of innocence in favor of the petitioner with proof beyond reasonable doubt of his guilt. He must, therefore, suffer the penalty prescribed by law for abusing his power and blemishing the name of public service.

WHEREFORE, the petition is **DENIED**. The August 13, 2015 Decision and February 3, 2016 Resolution of the Court of Appeals in CA-G.R. CR No. 36187 are **AFFIRMED**.

SO ORDERED.

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

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[37] *Id.* at 645.

[38] *Rollo*, pp. 169-170.

[39] *Paredes v. Court of Appeals, et al.*, 555 Phil. 538, 549 (2007).

SECOND DIVISION

[G.R. No. 223399. April 23, 2018]

FATIMA O. DE GUZMAN-FUERTE, married to MAURICE GEORGE FUERTE, *petitioner, vs.* **SPOUSES SILVINO S. ESTOMO and CONCEPCION C. ESTOMO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; JURISDICTION OVER THE SUBJECT MATTER OF A CASE IS CONFERRED BY LAW AND DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT; EXPLAINED.— At the outset, jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.

2. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER AND FORCIBLE ENTRY; IN SUMMARY EJECTMENT SUITS, THE ONLY ISSUE TO BE DETERMINED IS WHO AMONG THE CONTENDING PARTIES HAS BETTER POSSESSION OF THE CONTESTED PROPERTY.— In summary ejectment suits such as unlawful detainer and forcible entry, the only issue to be determined is who between the contending parties has better possession of the contested property. The Municipal Trial Courts, Municipal Trial Courts in Cities, and the Municipal Circuit Trial Courts exercise exclusive original jurisdiction over these cases and the proceedings are governed by the Rules on Summary Procedure.

3. ID.; ID.; ID.; UNLAWFUL DETAINER, DEFINED; REQUISITES FOR A VALID CAUSE OF ACTION OF UNLAWFUL DETAINER, EXPLAINED.— Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess. A complaint sufficiently alleges a cause of action for unlawful detainer if it states the following: a. Initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff; b. Eventually, such possession became illegal upon notice by the plaintiff to the defendant about the termination of the latter's right of possession; c. Thereafter, the defendant remained in possession of the property and deprived the plaintiff of its enjoyment; and d. Within one year from the making of the last demand to vacate the property on the defendant, the plaintiff instituted the complaint for ejectment. As the allegations in the complaint determine both the nature of the action and the jurisdiction of the court, the complaint must specifically allege the facts constituting unlawful detainer. In the absence of these factual allegations, an action for unlawful detainer is **not** the proper remedy and the municipal trial court does not have jurisdiction over the case. x x x A requisite for a valid cause of action of unlawful detainer is that the possession was originally lawful, but turned unlawful only upon the expiration of the right to possess. To show that the possession was initially lawful, the basis of such lawful possession must then be established. x x x Acts of tolerance must be proved showing the overt acts indicative of his or his predecessor's tolerance or permission for them to occupy the disputed property. There should be any supporting evidence on record that would show when the respondents entered the properties or who had granted them to enter the same and how the entry was effected. Without these allegations and evidence, the bare claim regarding "tolerance" cannot be upheld.

4. ID.; ID.; ID.; A JUDGMENT RENDERED IN A FORCIBLE ENTRY OR AN UNLAWFUL DETAINER CASE WILL NOT BAR AN ACTION BETWEEN THE SAME PARTIES RESPECTING TITLE OR OWNERSHIP BECAUSE

BETWEEN A CASE FOR FORCIBLE ENTRY OR UNLAWFUL DETAINER AND AN *ACCION REIVINDICATORIA*, THERE IS NO IDENTITY OF CAUSE OF ACTION; ELUCIDATED.— It is well to be reminded of the settled distinction between a summary action of ejectment and a plenary action for recovery of possession and/or ownership of the land. What really distinguishes an action for unlawful detainer from a possessory action (*accion publiciana*) and from a reivindicatory action (*accion reivindicatoria*) is that the first is limited to the question of *possession de facto*. Unlawful detainer suits (*accion interdictal*), together with forcible entry, are the two forms of ejectment suit that may be filed to recover possession of real property. Aside from the summary action of ejectment, *accion publiciana* or the plenary action to recover the right of possession and *accion reivindicatoria or the action to recover ownership which also includes recovery of possession*, make up the three kinds of actions to judicially recover possession. Unlawful detainer and forcible entry suits are designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings. These actions are intended to avoid disruption of public order by those who would take the law in their hands purportedly to enforce their claimed right of possession. A judgment rendered in a forcible entry case, or an unlawful detainer as in this case, will not bar an action between the same parties respecting title or ownership because between a case for forcible entry or unlawful detainer and an *accion reinvindicatoria, there is no identity of causes of action*. Such determination does not bind the title or affect the ownership of the land; neither is it conclusive of the facts therein found in a case between the same parties upon a different cause of action involving possession. In fact, Section 18, Rule 70 of the Rules of Court expressly provides that a "judgment rendered in an action for forcible entry or detainer shall be conclusive with respect to the possession only and shall in no wise bind the title or affect the ownership of the land." Since there is no identity of causes of action, there can be no multiplicity of suits.

APPEARANCES OF COUNSEL

Argue Law Firm for petitioner.
Sinforoso Ordiz, Jr. for respondents.

D E C I S I O N

PERALTA, *J.*:

For resolution of this Court is a petition for review on *certiorari* filed by herein petitioner Fatima O. De Guzman-Fuerte (*Fuerte*) assailing the Decision[1] dated October 6, 2015 and Resolution[2] dated February 16, 2016 of the Court of Appeals (*CA*) in CA-G.R. SP No. 138513 which reversed and set aside the Decision[3] of the Regional Trial Court (*RTC*) of Antipolo City, Branch 98, in SCA Case No. 12-1237.

The instant case stemmed from a Complaint[4] for unlawful detainer dated August 10, 2009 filed by Fuerte against respondents spouses Silvino S. Estomo (*Silvino*) and Concepcion C. Estomo (*Concepcion*) (*Spouses Estomo*). The subject property is situated at Block 3, Lot 2, Birmingham Homes, Dalig City 1, Antipolo City, covered by Transfer Certificate of Title (*TCT*) No. R-55253.

Fuerte alleged that Manuela Co (*Co*) executed a Deed of Real Estate Mortgage over the subject property in her favor. Upon Co's failure to pay the loan, Fuerte caused the foreclosure proceedings and eventually obtained ownership of the property. However, the writ of possession was returned unsatisfied since Co was no longer residing at the property and that the Spouses Estomo and their family occupied the same. It was only after

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[1] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Japar B. Dimaampao and Carmelita Salandanan Manahan, concurring; *rollo*, pp. 30-38.

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

[3] Penned by Judge Ma. Consejo Gengos-Ignalaga, *id.* at 118-122.

[4] *Rollo*, pp. 41-44.

the said return that Fuerte discovered and verified that the Spouses Estomo were in possession of the property. In a letter[5] dated December 1, 2008, she demanded them to vacate and surrender posession of the subject property and pay the corresponding compensation. The Spouses Estomo refused to heed to her demands.

In their Answer,[6] the Spouses Estomo denied that they illegally occupied the subject property. They also denied the existence of the December 1, 2008 letter. They averred that they acquired the property from the Homeowners Development Corporation on February 15, 1999 through a Contract to Sell, registered it under their names, covered by TCT No. 407613, and had been their family home since 2000. Sometime in 2006, Concepcion sought the services of Co, a real estate broker, to assist her in securing a loan. Co obtained the certificate of title to be shown to potential creditors, however, she never returned it. The TCT was cancelled by an alleged Absolute Sale of Real Property executed on June 22, 2006, when Silvino was out of the country as a seaman, and then TCT No. R-39632 was issued under Co's name. On July 13, 2006, Co mortgaged the subject property in the amount of ₱800,000.00. Consequently, the Spouses Estomo filed an annulment case against Co and Fuerte on January 30, 2007. When they were served with the writ of possession in favor of Fuerte, they filed a *terceria* with the sheriff, a motion to recall the writ of possession, and asked for the consolidation of the land registration case to the annulment case on August 5, 2008. In the Orders dated October 28, 2008 and October 30, 2008, the trial court quashed the writ and directed the consolidation of the cases.

The Spouses Estomo also prayed that the complaint be dismissed on the ground that the allegations are insufficient to establish a cause of action for unlawful detainer. By Fuerte's own allegation, the Spouses Estomo's entry to the property was unlawful from the beginning. The case cannot be considered

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[5] *Id.* at 50.

[6] *Id.* at 52-62.

as one for forcible entry since it was never alleged that their entry was by means of force, intimidation, threat, stealth or strategy. Lastly, prescription has already set, since Fuerte was aware that the spouses possessed the property when they filed the complaint for annulment of deed of absolute sale and real estate mortgage against Co and Fuerte on January 30, 2007.

In a Decision dated October 3, 2012, the Municipal Trial Court in Cities (*MTCC*) of Antipolo City, Branch 1 dismissed the complaint without prejudice finding that Fuerte failed to attach in the complaint a copy of the demand letter and establish that the same was duly received by the spouses, thus:

> WHEREFORE, premises considered, the complaint is ordered dismissed without prejudice.
>
> SO DECIDED.[7]

On appeal, the RTC reversed and set aside the decision of the MTCC. It held that Fuerte established the existence of the December 1, 2008 demand letter, which was sent through registered mail under Registry Receipt No. 5209 of the Antipolo City Post Office. The notice to vacate the subject property served through registered mail is a substantial compliance with the modes of service under Section 2,[8] Rule 70 of the Rules of Court. Suits for annulment of sale, cancellation of titles, reconveyance as well as criminal complaints for falsification do not operate to abate ejectment proceedings involving the same property. The dispositive portion reads:

> WHEREFORE, premises considered, the instant appeal is hereby ordered GRANTED.

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[7] *Id.* at 95.

[8] Section 2 - *Lessor to proceed against lessee only after demand —*

Unless otherwise stipulated, such action by the lessor shall be commenced only after demand to pay or comply with the conditions of the lease and to vacate is made upon the lessee, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no person be found thereon, and the lessees fails to comply therewith after fifteen (15) days in the case of land or five (5) days in the case of buildings.

Accordingly, the Decision dated October 3, 2012 rendered by the Municipal Trial Court in Cities, Branch 1, Antipolo City, is ordered REVERSED and SET ASIDE and a new one is entered ordering the [respondents] Spouses Silvino S. Estomo and Concepcion C. Estomo as follows:

1. To vacate and surrender the possession of the property situated at Block 3, Lot 2, Birmingham Homes, Dalig City 1, Antipolo City and covered by Transfer Certificate of Title No. R-55253 in favor of [petitioner];

2. To pay [petitioner] the amount of Five Thousand Pesos ([₱]5,000.00) representing the compensation for the use and occupation of the property computed from the time the complaint was filed on August 12, 2009 until the actual physical possession of the property has been delivered in favor of the [petitioner];

3. To pay the [petitioner] the amount of Ten Thousand Pesos ([₱]10,000.00) as and for attorney's fees;

SO ORDERED.[9]

Subsequently, the CA reversed and set aside the ruling of the RTC. It held that the complaint in ejectment cases should embody such statement of facts as to bring the party clearly within the class of cases for which Section 1,[10] Rule 70 of the Rules of Court provides a summary remedy, and must show enough on its face to give the court jurisdiction without resort

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[9] *Rollo,* p. 122.

[10] SECTION 1. *Who May Institute Proceedings, and When.* — Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

to parole evidence. The CA found that the complaint failed to describe that the possession by the Spouses Estomo was initially legal or tolerated and became illegal upon termination of lawful possession. The *fallo* of the decision reads:

> WHEREFORE, the instant Petition for Review is hereby GRANTED. The assailed October 1, 2014 Decision of the Antipolo City Regional Trial Court, Fourth Judicial Region, Branch 98 in SCA CASE No. 12-1237 is REVERSED and SET ASIDE. Resultantly, the Unlawful Detainer & Damages case filed by the herein [petitioner] against the herein [respondents] is DISMISSED.
>
> SO ORDERED.[11]

Upon denial of her Motion for Reconsideration, petitioner elevated the case before this Court raising the following issues:

1. The CA, in reversing and setting aside the RTC decision, decided a question of substance not in accord with law and with the applicable jurisprudence as instructively laid down by this Honorable Court when it ruled that the complaint filed by the petitioner does not constitute unlawful detainer and thereupon concluded that MTCC Antipolo where the case was filed had no jurisdiction to try it, being without legal and/or factual basis;
2. The CA, in ruling to dismiss the complaint filed by the petitioner with the MTCC Antipolo, defied Section 8, Rule 40 of the Rules of Court thereby it departed from the accepted and usual course of judicial proceeding as to call for an exercise of power of supervision of this Honorable Court.

The instant petition is devoid of merit.

At the outset, jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiffs cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the

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[11] *Rollo* p. 37.

plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[12]

Fuerte maintains that it is a hornbook rule that the purchaser of a real property from a vendor who no longer occupies the said property need not prove as an essential requisite how and the manner the present possessor came into occupation. As long as she fulfills the requisite of demand to vacate, she may bring an action for unlawful detainer against the Spouses Estomo who defied her demand.[13] She avers that prior to the expiration of the period she granted to the spouses to vacate the premises, their occupation of the subject property was only by mere tolerance. The same became illegal upon the expiration of the said period.

In summary ejectment suits such as unlawful detainer and forcible entry, the only issue to be determined is who between the contending parties has better possession of the contested property. The Municipal Trial Courts, Municipal Trial Courts in Cities, and the Municipal Circuit Trial Courts exercise exclusive original jurisdiction over these cases and the proceedings are governed by the Rules on Summary Procedure.[14]

Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess.[15]

A complaint sufficiently alleges a cause of action for unlawful detainer if it states the following:

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[12] *Padlan v. Dinglasan*, 707 Phil. 83, 91 (2013).

[13] *Rollo*, p. 22.

[14] *Spouses Norberte v. Spouses Mejia*, 755 Phil. 234, 240 (2015).

[15] *Canlas v. Tubil*, 616 Phil. 915, 924 (2009).

(a Initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff;

(b Eventually, such possession became illegal upon notice by the plaintiff to the defendant about the termination of the latter's right of possession;

(c Thereafter, the defendant remained in possession of the property and deprived the plaintiff of its enjoyment; and

(d Within one year from the making of the last demand to vacate the property on the defendant, the plaintiff instituted the complaint for ejectment.[16]

As the allegations in the complaint determine both the nature of the action and the jurisdiction of the court, the complaint must specifically allege the facts constituting unlawful detainer. In the absence of these factual allegations, an action for unlawful detainer is **not** the proper remedy and the municipal trial court does not have jurisdiction over the case.[17]

Here, the pertinent portion of the Complaint reads:

x x x x x x x x x

3. Plaintiff is the absolute and registered owner of that parcel of land with a house and structures thereon situated at Blk 3, Lot 2, Birmingham Homes, Dalig City 1, Antipolo City, being illegally occupied by the defendants, covered by Transfer Certificate of Title No. R-55253 of the Registry of Deeds for the City of Antipolo, a machine copy thereof is hereto attached as **Annex "A"** and made an integral part hereof.

4. Plaintiff came to know and discovered that defendants are illegally occupying and staying at [the] above subject premises without their (*sic*) permission, consent and approval when the writ of possession issued by the Regional Trial Court of Antipolo City, Branch 74, in LRC Case No. 07-3916, over the subject premises in favor of the plaintiff and directed to the mortgagor thereof, Manuela Co, was returned UNSATISFIED by Sheriff Rolando C. Leyva, on the ground that the said mortgagor is no longer residing thereat and the persons

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[16] *Macaslang v. Spouses Zamora*, 644 Phil. 337, 351 (2011).

[17] *Spouses Golez v. Heirs of Bertuldo*, 785 Phil. 801, 812 (2016).

occupying the subject property are the defendants and their family, a machine copy of the Parital (*sic*) Sheriff's Report, dated August 20, 2008, is hereto attached as **Annex "B"** and made an integral part hereof.

5. Hence, upon verification that indeed, the defendants are occupying and staying on the subject premises obviously WITHOUT their knowledge, consent, permission and approval and therefore, unlawful, plaintiff demanded that they vacate the subject premises and forthwith, to deliver the actual physical possession thereof to them but despite of the foregoing, the defendants unjustly and unlawfully failed and refused to comply thereto, resulting to the undue and irreparable damage and prejudice of the plaintiff.

6. In view thereof, plaintiff was constrained to refer the matter to her counsel who then made a FORMAL DEMAND by way of a demand letter upon the defendants to vacate the subject premises and forthwith, to surrender the possession thereof to the plaintiffs and to pay them the corresponding amount of monthly compensation of at least TEN THOUSAND PESOS ([₱]10,000.00), Philippine Currency, from the time of their illegal occupancy, or from August 20, 2008, until they shall have fully vacated the subject premises and the actual physical possession thereof shall have been completely delivered and turned to the plaintiff, a machine copy of the demand letter of plaintiff's counsel dated December 01, 2008, is hereto attached as **Annex "B"** (*sic*) and made an integral part hereof.

7. Notwithstanding the foregoing demands, defendants unjustly and unlawfully failed and refused to comply thereto and they continue to stubbornly, defiantly, unlawfully and unjustly refuse and fail to vacate the subject premises and to surrender and deliver the actual physical possession thereof to the plaintiff and to pay the just compensation for their undue and unlawful use and occupancy of the subject premises, thereby resulting to herein plaintiff's undue and irreparable damage and prejudice.

x x x x x x x x x[18]

A perusal of the Complaint shows that it contradicts the requirements for unlawful detainer. A requisite for a valid cause of action of unlawful detainer is that the possession was originally lawful, but turned unlawful only upon the expiration of the right to possess. To show that the possession was initially lawful,

[18] *Rollo,* pp. 41-43.

the basis of such lawful possession must then be established.[19] Paragraphs 2 and 3 make it clear that Spouses Estomo's occupancy was illegal and without Fuerte's consent. Likewise, the Complaint did not contain an allegation that Fuerte or her predecessor-in-interest tolerated the spouses' possession on account of an express or implied contract between them. Neither was there any averment which shows any overt act on Fuerte's part indicative of her permission to occupy the land.

Acts of tolerance must be proved showing the overt acts indicative of his or his predecessor's tolerance or permission for them to occupy the disputed property.[20] There should be any supporting evidence on record that would show when the respondents entered the properties or who had granted them to enter the same and how the entry was effected.[21] Without these allegations and evidence, the bare claim regarding "tolerance" cannot be upheld.[22]

Moreover, the December 1, 2008 demand letter supports the fact that she characterized the Spouses Estomo's possession of the subject property as unlawful from the start, to wit:

Dear Mr. & Mrs. Estomo:

We represent our client, **DR. FATIMA O. DE GUZMAN-FUERTE**, the absolute and registered owner in fee simple of the above premises you are **presently occupying without her consent, permission nor approval**.

Our client is presently the absolute registered owner in fee simple of the above premises you are presently occupying covered by Transfer Certificate of Title No. R-55253 of the Registry of Deeds for the City of Antipolo. Please note that a writ of possession is issued by the Regional Trial Court of Antipolo City, Branch 74, in LRC Case No. 07-3916, anent the said real property but which cannot be enforced

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[19] *Quijano v. Amante*, 745 Phil. 40, 52 (2014).

[20] *Id.*

[21] *Ocampo v. Heirs of Bernardino Dionisio*, 744 Phil. 716, 724 (2014).

[22] *Echanes v. Spouses Hailar*, G.R. No. 203880, August 10, 2016, 800 SCRA 93, 103.

as against you being third persons in the case, pursuant to the ruling laid down in *Philippine National Bank vs. Court of Appeals (G.R. No. 135219, January 17, 2002, 374 SCRA 22[,] 31-33*). In the said case, it is mandated that our client instead institute the appropriate ejectment suit or *accion reivindicatoria* for the purpose of obtaining possession over their said real property. **Nevertheless, since your occupancy of our client's property is without her consent, permission and approval, it is, therefore, unlawful.**

In view thereof, FORMAL DEMAND is made upon you to immediately vacate the premises you are presently unlawfully occupying and to peacefully surrender the same to our client and to pay our client the corresponding compensation for your use thereof in the amount of not less than TEN THOUSAND PESOS ([₱]10,000.00), Philippine Currency, within fifteen (15) days from your receipt hereof. Your failure to comply shall constrain us to institute the appropriate ejectment suit against you and claim from you such other damages and such relief as may be allowed and warranted by law.[23]

It is apparent from the letter that Fuerte demanded the spouses to immediately vacate the subject property, contrary to her allegation in the instant petition that she granted such period, during which she tolerated the spouses' possession. She failed to satisfy the requirement that her supposed act of tolerance was present right from the start of the possession by the Spouses Estomo. It is worth noting that the absence of the first requisite is significant in the light of the Spouses Estomo's claim that they have been occupying the property as owner thereof, and that they have filed an annulment of sale and real estate mortgage against Co and Fuerte even before the property was foreclosed.

From the foregoing, this Court finds that the complaint failed to state a cause of action for unlawful detainer. Since the complaint fell short of the jurisdictional facts to vest the court jurisdiction to effect the ejectment of respondent, the MTCC failed to acquire jurisdiction to take cognizance of Fuerte's complaint and the CA correctly dismissed the unlawful detainer case against the Spouses Estomo.

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[23] *Rollo*, p. 50. (Emphasis and underscoring supplied)

Fuerte asseverates that the pronouncement of the CA that the dismissal of the unlawful detainer case "is not a bar for the parties or even third persons to file an action for the determination of the issue of ownership" merely invites multiplicity of suits. Such dismissal defied Section 8,[24] Rule 40 of the Rules of Court. She alleged that the CA should have remanded the case to the RTC as the appellate court which has the original and exclusive jurisdiction over the nature and subject matter of the complaint to proceed with the case.

It is well to be reminded of the settled distinction between a summary action of ejectment and a plenary action for recovery of possession and/or ownership of the land. What really distinguishes an action for unlawful detainer from a possessory action (*accion publiciana*) and from a reivindicatory action (*accion reivindicatoria*) is that the first is limited to the question of *possession de facto*. Unlawful detainer suits (*accion interdictal*), together with forcible entry, are the two forms of ejectment suit that may be filed to recover possession of real property. Aside from the summary action of ejectment, *accion publiciana* or the plenary action to recover the right of possession and *accion reivindicatoria or the action to recover ownership which also includes recovery of possession*, make up the three kinds of actions to judicially recover possession.[25]

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[24] SECTION 8. *Appeal from Orders Dismissing Case Without Trial; Lack of Jurisdiction*. — If an appeal is taken from an order of the lower court dismissing the case without a trial on the merits, the Regional Trial Court may affirm or reverse it, as the case may be. In case of affirmance and the ground of dismissal is lack of jurisdiction over the subject matter, the Regional Trial Court, if it has jurisdiction thereover, shall try the case on the merits as if the case was originally filed with it. In case of reversal, the case shall be remanded for further proceedings.

If the case was tried on the merits by the lower court without jurisdiction over the subject matter, the Regional Trial Court on appeal shall not dismiss the case if it has original jurisdiction thereof, but shall decide the case in accordance with the preceding section, without prejudice to the admission of amended pleadings and additional evidence in the interest of justice.

[25] *Heirs of Casilang, Sr. v. Casilang-Dizon*, 704 Phil. 397, 410 (2013).

Unlawful detainer and forcible entry suits are designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings. These actions are intended to avoid disruption of public order by those who would take the law in their hands purportedly to enforce their claimed right of possession.[26]

A judgment rendered in a forcible entry case, or an unlawful detainer as in this case, will not bar an action between the same parties respecting title or ownership because between a case for forcible entry or unlawful detainer and an *accion reinvindicatoria, there is no identity of causes of action*. Such determination does not bind the title or affect the ownership of the land; neither is it conclusive of the facts therein found in a case between the same parties upon a different cause of action involving possession.[27] In fact, Section 18, Rule 70 of the Rules of Court expressly provides that a "judgment rendered in an action for forcible entry or detainer shall be conclusive with respect to the possession only and shall in no wise bind the title or affect the ownership of the land." Since there is no identity of causes of action, there can be no multiplicity of suits.

Furthermore, the Court expounded in *Serrano v. Spouses Gutierrez*[28] that the first paragraph of Section 8, Rule 40 contemplates an appeal from an order of dismissal issued without trial of the case on the merits, while the second paragraph deals with an appeal from an order of dismissal but the case was tried on the merits. Both paragraphs, however, involve the same ground for dismissal, *i.e.*, lack of jurisdiction. The above section ordains the RTC not to dismiss the cases appealed to it from the first level court which tried the same albeit without jurisdiction, but to decide the case on the merits.

In the case at bar, the RTC actually treated the case as an appeal, with the decision starting with, "This is an appeal from

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[26] *Barrientos v. Rapal*, 669 Phil. 438, 444, 447 (2011).

[27] *Spouses Ocampo v. Heirs of Dionisio*, 744 Phil. 716, 728 (2014).

[28] 537 Phil. 187, 197 (2006).

the Decision dated October 3, 2012 rendered by the Municipal Trial Court in Cities, Branch 1 Antipolo City" and then discussed the merits of the "appeal" in the unlawful detainer case. In the dispositive portion of said decision, the trial court reversed the MTCC's findings and conclusions. In a petition for review filed before it, the CA decided the case based on the judgment issued by the RTC in the exercise of its appellate jurisdiction.

It cannot be overemphasized that jurisdiction over the subject matter is conferred only by law and it is "not within the courts, let alone the parties, to themselves determine or conveniently set aside." Neither would the active participation of the parties nor *estoppel* operate to confer original and exclusive jurisdiction where the court or tribunal only wields appellate jurisdiction over the case.[29]

Without a doubt, the registered owner of real property is entitled to its possession. However, the registered owner cannot simply wrest possession thereof from whoever is in actual occupation of the property. To recover possession, he must resort to the proper remedy, and once he chooses what action to file, he is required to satisfy the conditions necessary for such action to prosper.[30] In this case, Fuerte chose the remedy of unlawful detainer to eject the Spouses Estomo, but, failed to sufficiently allege the facts which are necessary to vest jurisdiction to MTCC over an unlawful detainer case. In fine, the CA did not commit reversible error in dismissing Fuerte's complaint for unlawful detainer.

WHEREFORE, the instant petition filed by petitioner Fatima O. De Guzman-Fuerte assailing the Decision dated October 6, 2015 and Resolution dated February 16, 2016 of the Court of Appeals in CA-G.R. SP No. 138513 is hereby **DENIED**.

SO ORDERED.

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

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[29] *Maslag v. Monzon*, 711 Phil. 274, 285 (2013).

[30] *Suarez v. Sps. Emboy*, 729 Phil. 315, 329 (2014).

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

SECOND DIVISION

[G.R. No. 226590. April 23, 2018]

SHIRLEY T. LIM, MARY T. LIM-LEON and JIMMY T. LIM, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; FALSIFICATION OF PUBLIC DOCUMENTS; WHILE A BOARD RESOLUTION IS INDEED NOT A PUBLIC DOCUMENT WITHIN THE CONTEMPLATION OF THE RULES ON EVIDENCE, THE SECRETARY'S CERTIFICATE SQUARELY FALLS UNDER THIS CATEGORY, HENCE, THE CORRECT CHARGE OF FALSIFICATION OF PUBLIC DOCUMENT; CASE AT BAR.— While a board resolution is indeed not a public document within the contemplation of Section 19(b), Rule 132 of the Revised Rules on Evidence, the Secretary's Certificate dated February 29, 2000 squarely falls under this category. And, since the said Secretary's Certificate specifically contained not only the supposed resolution passed by Pentel's Board of Directors, but also the signatures of all the board members who approved such resolution, then it can be concluded that all of the petitioners participated in the execution of the falsified Secretary's Certificate. Verily, the petitioners were correctly charged and convicted with the falsification of a public document, punishable under Article 172(1) of the RPC: x x x To be clear, Quintin was indisputably dead by the time Board Resolution 2000-001 was passed with his participation on February 25, 2000. **For this reason, Pentel's Corporate Secretary, in conspiracy with the other petitioners, falsified a public document by certifying under oath that Quintin was present during this board meeting and making it appear that he signed the resolution contained in the Secretary's Certificate, when in truth and in fact, he could not, as he was already dead at the time of its execution.** This is the main act of falsification committed by the petitioners, especially Shirley, who was the Corporate

Secretary at that time. The fact that Quintin's signature appeared on the Secretary's Certificate corroborates this charge.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; THE ACCUSED IS ALLOWED TO MOVE FOR THE QUASHAL OF THE COMPLAINT OR INFORMATION ON THE GROUND THAT THE CRIMINAL ACTION OR LIABILITY IS EXTINGUISHED; THE ACCUSED MAY RAISE PRESCRIPTION OF THE CRIME AT ANY STAGE OF THE PROCEEDING.— Section 3(g), Rule 117 of the Rules of Criminal Procedure allows an accused to move for the quashal of the complaint or information on the ground that the criminal action or liability is extinguished. Generally, the accused should make the objection before entering his plea, otherwise, the accused is deemed to have waived this defense. However, Section 9, Rule 117 of the same Rules carves out an exception for grounds involving the extinguishment of the criminal action or liability, which includes the prescription of the crime. Even prior to the promulgation of the present Rules of Criminal Procedure, the Court in *People v. Castro* ruled that the accused may raise the prescription of the crime at any stage of the proceeding: x x x This doctrine was affirmed in the more recent case of *Syhunliong v. Rivera*, where the defense of prescription was raised only in the comment to the petition filed before the Court. Despite this belated objection, the Court upheld the right of the accused to invoke the prescription of the crime at any stage of the proceeding. Under these judicial pronouncements, the petitioners are not deemed to have waived this defense, even if they failed to move for the quashal of the information prior to their arraignment.

3. CRIMINAL LAW; REVISED PENAL CODE; FALSIFICATION OF PUBLIC DOCUMENTS; FALSIFICATION OF PUBLIC DOCUMENTS FALLS WITHIN THE PURVIEW OF A CORRECTIONAL PENALTY WHICH PRESCRIBES IN TEN (10) YEARS, THE PERIOD OF PRESCRIPTION COMMENCES ON THE DATE OF REGISTRATION OF THE FORGED OR FALSIFIED DOCUMENT; ESTABLISHED IN CASE AT BAR.— The petitioners were charged with the crime of falsification of a public document, punishable under Article 172 of the RPC. x x x Further, as this involves the crime of

falsification of a public document, the imposable penalty under the RPC is *prision correccional* in its medium and maximum periods and a fine of not more than ₱5,000.00. This falls within the purview of a correctional penalty, which prescribes in ten (10) years. Article 90 of the RPC provides that the period for the prescription of offenses commences from the day on which the crime is *discovered* by the offended party, the authorities, or their agents. **But if the offense is *falsification of a public document* punishable under Article 172 of the RPC, as in this case, the period for prescription commences on the date of registration of the forged or falsified document.** x x x **Since the registration of all the documentary requirements for transfer of title, including the falsified Secretary's Certificate dated February 29, 2000, was made on March 29, 2000, this is the proper reckoning point from which the prescription of the crime of falsification of a public document began to run** x x x It is well-settled that the filing of the complaint in the fiscal's office interrupts the prescriptive period. Unfortunately, the records of this case do not show the date when Lucy's Affidavit of Complaint was filed. This Court notes, however, that the Affidavit of Complaint was executed on September 21, 2010, or more than ten (10) years from the time that prescription commenced to run on March 29, 2000. Considering that Lucy's complaint could not have been filed earlier than its date of execution, **prescription already set in by March 29, 2010, or approximately five (5) months before the execution of the complaint on September 21, 2010**. As a result, by the time the criminal Information charging the petitioners with falsification of a public document was filed on May 15, 2012, their criminal liability was already extinguished.

APPEARANCES OF COUNSEL

Grapilon Chan & Pasana for petitioners.
Office of the Solicitor General for respondent.

D E C I S I O N

REYES, JR., *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated April 22, 2016 and Resolution[3] dated August 17, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 37336. The CA affirmed with modification the Decision[4] dated November 27, 2014 of the Regional Trial Court of Manila (RTC) in Criminal Case No. 14-305915, which in turn, affirmed the Decision[5] dated April 29, 2014 of the Metropolitan Trial Court of Manila (MeTC).

These decisions found petitioners Shirley T. Lim (Shirley), Mary T. Lim-Leon (Mary), and Jimmy T. Lim (Jimmy) (collectively referred to as the petitioners) guilty beyond reasonable doubt of the crime of falsification of a public document, punishable under Article 172, in relation to Article 171, of the Revised Penal Code (RPC).

Factual Antecedents

The petitioners are siblings, all of whom are officers of Pentel Merchandising Co., Inc. (Pentel). Their father, Quintin C. Lim (Quintin), established Pentel.[6] Quintin died on September 16, 1996.[7]

In an Affidavit of Complaint dated September 21, 2010, one of Pentel's stockholders, Lucy Lim (Lucy), alleged that the petitioners falsified the Secretary's Certificate dated February

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[1] *Rollo*, pp. 15-56.

[2] *Id.* at 288-300.

[3] *Id.* at 315-316.

[4] *Id.* at 212-217.

[5] *Id.* at 172-178.

[6] *Id.* at 77 and 108.

[7] *Id.* at 66.

29, 2000, which in turn contained Pentel Board Resolution 2000-001 dated February 25, 2000.[8] This Board Resolution authorized Jimmy to dispose the parcel of land covered by Transfer Certificate of Title (TCT) No. 129824 registered in Pentel's name, located in P. Samonte Street, Pasay City (subject property).[9] Through this Secretary's Certificate, Jimmy was able to enter into a Deed of Absolute Sale on March 21, 2000,[10] conveying the subject property to the Spouses Emerson and Doris Lee (Spouses Lee). According to Lucy, the Secretary's Certificate dated February 29, 2000 bearing Board Resolution 2000-001 was falsified, because it was made to appear that Quintin signed it, despite having already died on September 16, 1996 — or, more than three (3) years from the time of its execution.[11]

On May 15, 2012, the criminal Information dated August 31, 2011 was filed with the MeTC, charging the petitioners and the Spouses Lee with the crime of falsification of a public document.[12] The pertinent portions of the Information state:

> That sometime in March 2000, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, being then private individuals, did then and there willfully, unlawfully and feloniously forge and falsify, or cause to be forged and falsified a ***Secretary's Certificate and Board Resolution No. 2000-001*** dated February 25, 2000, purportedly executed by SHIRLEY LIM, MARY LIM LEON. JIMMY LIM, QUINTIN C. LIM and HENRY LIM, involving the disposal of a property measuring FIFTY[-]SIX SQUARE METERS and SEVENTY SQUARE DECIMETERS (56.70) located at P. Samonte Street, Pasay City, Metro Manila covered by (TCT) No. 129824, duly notarized by a Notary Public and therefore a public document, by feigning, imitating and counter-feiting (*sic*)

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[8] *Id*. at 318-319.

[9] *Id*. at 60.

[10] *Id*. at 169.

[11] *Id*. at 318.

[12] *Id*. at 58.

or causing to be feigned, imitated and counterfeited the signature of QUINTIN C. LIM, appearing on the lower middle portion of the said ***Secretary's Certificate and find Board Resolution No. 2000-001***, thereby making it appear as it did appear that the said QUINTIN C. LIM had participated and intervened in the preparation and signing of the said document, when in truth and in fact, as the herein accused well knew, such was not the case in that the said QUINTIN C. LIM did not sign the said document, much less did he authorize the accused, or anybody else to sign his name or affix his signature thereon because the said QUINTIN C. LIM had died on September 16, 1996; that once the said ***Secretary's Certificate and Board Resolution No. 2000-001*** has been forged and falsified in the manner above set forth, the said accused succeeded in transferring the said property to SPOUSES EMERSON and DORRIS LIM LEE by virtue of Transfer Certificate of Title No. 142595, to the damage and prejudice of LUCY LIM and/or public interests.

Contrary to law.[13]

During trial, the prosecution presented Lucy and another sibling of the petitioners, Charlie C. Lim (Charlie), to prove the charge against them.[14] The Records Officer of the Registry of Deeds of Pasay City also testified for the prosecution, stating that TCT No. 129824 was cancelled by virtue of: (a) the Secretary's Certificate dated February 29, 2000 showing Board Resolution 2000-001; and (b) the Deed of Absolute Sale between Pentel and the Spouses Lee. Pentel's title was cancelled on March 29, 2000, and in lieu thereof, TCT No. 142595 was issued in the name of the Spouses Lee.[15]

The petitioners and the Spouses Lee opted not to present any evidence, believing that the prosecution's case against them was weak.[16]

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[13] *Id*.

[14] *Id*. at 74-141.

[15] *Id*. at 143-148.

[16] *Id*. at 174.

Ruling of the MeTC

In its Decision[17] dated April 29, 2014, the MeTC convicted the petitioners but acquitted the Spouses Lee, as the prosecution failed to prove their participation in the falsification of the Secretary's Certificate dated February 29, 2000 and Board Resolution 2000-001.[18]

The dispositive portion of the MeTC's decision reads:

> WHEREFORE, premises considered, the court, finding the guilt of the accused SHIRLEY LIM, MARY LIM, and JIMMY LIM for the crime charged to have been proven beyond reasonable doubt, and there being neither mitigating nor aggravating circumstances to affect their penal liability, hereby imposes and sentences the accused SHIRLEY LIM, MARY LIM, and JIMMY LIM an indeterminate penalty of IMPRISONMENT from two (2) years and four (4) months of *prision correccional* as minimum to four (4) years, nine (9) months and eleven (11) days of *prision correccional* as maximum with all the accessory penalties of the law, and a fine of Php 3,000.00 and to pay the costs.
>
> With respect to the accused DORRIS LIM LEE and EMERSON LEE, the court, finding the guilt of the accused for the crime charged not having been proven beyond reasonable doubt, hereby ACQUITS the said accused DORRIS LIM LEE and EMERSON LEE.
>
> No pronouncement on the civil liability for failure of the prosecution to prove that the acts complained of, from which civil liability might arise, exist.
>
> SO ORDERED.[19]

On May 7, 2014, the petitioners filed a Notice of Appeal from the MeTC's Decision dated April 29, 2014.[20]

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[17] *Id*. at 172.

[18] *Id*. at 177.

[19] *Id*. at 178.

[20] *Id*. at 180-182.

Ruling of the RTC

In its Decision[21] dated November 27, 2014, the RTC denied the appeal and affirmed the assailed MeTC decision:

> WHEREFORE, the appeal is hereby DENIED and the Decision dated April 29, 2014 issued by the court *a quo* is AFFIRMED *in toto*.
>
> SO ORDERED.[22]

The petitioners, thus, filed their motion for reconsideration on January 5, 2015, and argued that the evidence of their guilt rests only on circumstantial evidence. According to the petitioners, there was no direct evidence that they falsified the signature of Quintin on Board Resolution 2000-001, which was embodied in the Secretary's Certificate dated February 29, 2000.[23] Both the private prosecutor and the Assistant City Prosecutor of Manila opposed the petitioners' motion.[24]

In an Order dated February 16, 2015, the RTC denied the petitioners' Motion for Reconsideration.[25] Aggrieved, the petitioners appealed to the CA *via* a petition for review under Rule 42 of the Rules of Court. They assailed the findings of the lower courts and denied that they are the material authors of Quintin's falsified signature. They also insisted that reasonable doubt exists as to their guilt because they do not stand to benefit from the falsified signature of their deceased father.[26]

Ruling of the CA

In a Resolution[27] dated March 26, 2015, the CA dismissed the appeal outright due to several formal defects in the petition.[28]

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[21] *Id*. at 213.

[22] *Id*. at 217.

[23] *Id*. at 219-225.

[24] *Id*. at 229-236.

[25] *Id*. at 238.

[26] *Id*. at 240-255.

[27] *Id*. at 258.

[28] *Id*.

On April 24, 2015, the petitioners moved for the reconsideration of this resolution and submitted their compliance in order to rectify the deficiencies in their petition.[29] The CA later on reconsidered the outright dismissal of the petition in its Resolution dated September 4, 2015, and required the People to comment.[30]

After the submission of the People's Comment,[31] the CA rendered its Decision[32] dated April 22, 2016 denying the appeal and modifying the penalty in accordance with the Indeterminate Sentence Law, *viz.*:

> WHEREFORE, we DENY the appeal. The decision appealed from is AFFIRMED with MODIFICATION that the petitioners Shirley Lim, Mary Lim and Jimmy Lim are sentenced to a penalty of two (2) years and four (4) months of *prision correccional* as minimum to four (4) years, nine (9) months and ten (10) days of *prision correccional* as maximum.
>
> IT IS SO ORDERED.[33]

The CA found that the petitioners clearly conspired with each other in making it appear that Quintin participated in Pentel's Board Meeting, as embodied in the Secretary's Certificate dated February 29, 2000 containing Board Resolution 2000-001. It further stated that the petitioners cannot feign ignorance of the death of Quintin, especially since he was their father.[34]

The petitioners' subsequent Motion for Reconsideration[35] was denied in the CA's Resolution[36] dated August 17, 2016.

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[29] *Id*. at 260-268.

[30] *Id*. at 271-272.

[31] *Id*. at 274-285.

[32] *Id*. at 288.

[33] *Id*. at 299-300.

[34] *Id.* at 293-298.

[35] *Id*. at 302-308.

[36] *Id*. at 315-316.

Not satisfied with the CA's affirmation of the MeTC and RTC's respective decisions, the petitioners filed the present Rule 45 petition before the Supreme Court, essentially submitting the same arguments already discussed before the lower courts.

In addition to their previous arguments, the petitioners raise for the first time the prescription of the offense, claiming that the crime should have been discovered at the latest on either: (a) March 21, 2000, the date of the Deed of Absolute Sale; or (b) March 29, 2000, the date TCT No. 142595 was issued in favor of the Spouses Lee.[37]

Ruling of the Court

The petition is partially meritorious.

The petitioners were correctly charged with the crime of falsification of a public document.

Preliminarily, the Court should address the argument of the petitioners regarding the supposedly erroneous charge of falsification of a public document against them. According to the petitioners, the evidence of the prosecution actually proved the falsification of Board Resolution 2000-001, a private document, instead of the Secretary's Certificate dated February 29, 2000. As the falsification of a private document requires proof of intention to cause damage, the petitioners argue that there is no evidence to establish this element. Furthermore, they point out that the prosecution failed to prove the existence of Board Resolution 2000-001 because they merely relied on the Secretary's Certificate in establishing its genuineness and due execution.[38]

Upon review of the Information, it is apparent that the subject matter of the falsification is the Secretary's Certificate dated February 29, 2000—a notarized document certifying that Pentel's Board of Directors passed Board Resolution 2000-001 in the

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[37] *Id*. at 46.

[38] *Id.* at 37-45.

meeting held on February 25, 2000. Specifically, the Information accused the petitioners of conspiring with one another in falsifying the Secretary's Certificate dated February 29, 2000 and Board Resolution 2000-001, because Quintin, one of Pentel's directors, already died on September 16, 1996—long before the documents were executed with his supposed approval. It was further alleged that the petitioners falsified these documents through the following aces: (a) counterfeiting the signature of Quintin; (b) causing it to appear that Quintin participated in the preparation of these documents; and (c) by making an untruthful statement in a narration of facts.[39]

Thus, the prosecution offered the Secretary's Certificate dated February 29, 2000 for two purposes: *first*, to prove its existence and the fact that the petitioners falsified this public document by making an untruthful statement in a narration of facts; and *second*, to prove the existence of Board Resolution 2000-001, and that the petitioners made it appear that Quintin participated in its preparation by forging his signature.

While a board resolution is indeed not a public document within the contemplation of Section 19(b), Rule 132 of the Revised Rules on Evidence, the Secretary's Certificate dated February 29, 2000 squarely falls under this category. And, since the said Secretary's Certificate specifically contained not only the supposed resolution passed by Pentel's Board of Directors, but also the signatures of all the board members who approved such resolution, then it can be concluded that all of the petitioners participated in the execution of the falsified Secretary's Certificate. Verily, the petitioners were correctly charged and convicted with the falsification of a public document, punishable under Article 172(1) of the RPC:

Art. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* — The penalty of *prision mayor* and a fine not to exceed ₱5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

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[39] *Id.* at 58.

x x x x x x x x x

4. Making untruthful statements in a narration of facts;

x x x x x x x x x

Art. 172. *Falsification by private individual and use of falsified documents*. — The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than ₱5,000 pesos shall be imposed upon:

1. **Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document;** x x x

x x x x x x x x x (Emphasis Ours)

To be clear, Quintin was indisputably dead by the time Board Resolution 2000-001 was passed with his participation on February 25, 2000. **For this reason, Pentel's Corporate Secretary, in conspiracy with the other petitioners, falsified a public document by certifying under oath that Quintin was present during this board meeting and making it appear that he signed the resolution contained in the Secretary's Certificate, when in truth and in fact, he could not, as he was already dead at the time of its execution.** This is the main act of falsification committed by the petitioners, especially Shirley, who was the Corporate Secretary at that time. The fact that Quintin's signature appeared on the Secretary's Certificate corroborates this charge.

The foregoing notwithstanding, it is more important to consider the allegation of the petitioners that the crime already prescribed.

The prescription of the offense may be raised even for the first time on appeal.

For the first time on appeal to the Court, the petitioners argue that despite the finding of their guilt, the crime with which they were charged already prescribed.[40]

[40] *Id*. at 48.

Section 3(g), Rule 117 of the Rules of Criminal Procedure allows an accused to move for the quashal of the complaint or information on the ground that the criminal action or liability is extinguished. Generally, the accused should make the objection before entering his plea,[41] otherwise, the accused is deemed to have waived this defense. However, Section 9, Rule 117 of the same Rules carves out an exception for grounds involving the extinguishment of the criminal action or liability, which includes the prescription of the crime.[42]

Even prior to the promulgation of the present Rules of Criminal Procedure, the Court in *People v. Castro*[43] ruled that the accused may raise the prescription of the crime at any stage of the proceeding:

> A case in point is *People v. Moran*, 44 Phil., 387. In that case, the accused was charged with a violation of the election law. He was found guilty and convicted and the judgment was affirmed, with slight modification, by the Supreme Court. Pending reconsideration of the decision, the accused moved to dismiss the case setting up the plea of prescription. After the Attorney General was given an opportunity to answer the motion, and the parties had submitted memoranda in support of their respective contentions, the court ruled that the crime had already prescribed holding that this defense can not (*sic*) de deemed waived even if the case had been decided by the lower court and was pending appeal in the Supreme Court. The philosophy behind this ruling was aptly stated as follows: "Although the general rule is that the defense of prescription is not available unless expressly set up in the lower court, as in that case it is presumed to have been waived and cannot be taken advantage of thereafter, yet this rule is not always of absolute application in criminal cases, such as that in which prescription of the crime is expressly provided by law, for the State not having then the right to prosecute, or continue prosecuting, nor to punish, or continue punishing, the offense, or to continue holding the defendant subject to its action through the imposition of the penalty, the court must so declare." And elaborating on this proposition, the Court went on to state as follows:

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[41] RULES OF COURT, Rule 117, Section 1.

[42] REVISED PENAL CODE, Article 89(5).

[43] 95 Phil. 462 (1954).

> As prescription of the crime is the loss by the State of the right to prosecute and punish the same, it is absolutely indisputable that from the moment the State has lost or waived such right, the defendant may, at any stage of the proceeding, demand and ask that the same be finally dismissed and he be acquitted from the complaint, and such petition is proper and effective even if the court taking cognizance of the case has already rendered judgment and said judgment is merely in suspense, pending the resolution of a motion for a reconsideration and new trial, and this is the more so since in such a case there is not yet any final and irrevocable judgment.

The ruling above adverted to squarely applies to the present case. Here, the rule provides that the plea of prescription should be set up before arraignment, or before the accused pleads to the charge, as otherwise the defense would be deemed waived; but, as was well said in the Moran case, this rule is not of absolute application, especially when it conflicts with a substantive provision of the law, such as that which refers to prescription of crimes. Since, under the Constitution, the Supreme Court has only the power to promulgate rules concerning pleadings, practice and procedure, and the admission to the practice of law, and cannot cover substantive rights (section 13, article VIII, of the Constitution), the rule we are considering cannot be interpreted or given such scope or extent that would come into conflict or defeat an express provision of our substantive law. One of such provisions is article 89 of the [RPC] which provides that the prescription of crime has the effect of totally extinguishing the criminal liability. And so we hold that the ruling laid down in the Moran case still holds good even if it were laid down before the adoption of the present Rules of Court.[44]

This doctrine was affirmed in the more recent case of *Syhunliong v. Rivera*,[45] where the defense of prescription was raised only in the comment to the petition filed before the Court. Despite this belated objection, the Court upheld the right of the accused to invoke the prescription of the crime at any stage of the proceeding.[46]

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[44] *Id.* at 464-466.

[45] 735 Phil. 349 (2014).

[46] See also *Recebido v. People*, 400 Phil. 752, 758-759 (2000).

Under these judicial pronouncements, the petitioners are not deemed to have waived this defense, even if they failed to move for the quashal of the information prior to their arraignment.

The crime of falsification of a public document charged against the petitioners already prescribed.

The petitioners were charged with the crime of falsification of a public document, punishable under Article 172 of the RPC. They were accused of making it appear that Quintin, who died on September 16, 1996, participated in a board meeting with Pentel's Board of Directors occurring three (3) years after his death, or on February 25, 2000. This was accomplished by falsifying the signature of Quintin on Board Resolution 2000-001. **The crime was fully consummated through the execution of the Secretary's Certificate dated February 29, 2000, which certified under oath that such meeting happened with the participation of Quintin, and that Board Resolution 2000-001 was passed with his approval.**[47] This Secretary's Certificate allowed Jimmy to dispose of the subject property on behalf of Pentel, which is quoted in full below:

I, SHIRLEY LIM, of legal age, Filipino and with business address at Taft Office Center Bldg., 1986 Taft Avenue, Pasay City, after having been duly sworn to in accordance with law depose and state:

1. That I am the Corporate Secretary of PENTEL MERCHANDISING CO., INC., a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with SEC Registration No. 54070 and with principal office at same as above;

2. **That at a special meeting of the Board of Directors of the corporation held on February 25, 2000 at its principal office, the following resolutions were unanimously approved by the directors present**, to wit:

RESOLUTION 2000-001

"**RESOLVED, that the corporation PENTEL MERCHANDISING CO., INC., by virtue of a special meeting**

[47] *Rollo*, p. 58.

held today (February 25, 2000) unanimously approved Resolution 2000-001, stating among others to wit:

1. **That, the corporation decided to dispose its real property (a residential townhouse) located at P. Samonte Street, Pasay City, under Transfer Certificate of Title No. - 129824, at the soonest possible time;**

2. **That, the corporation's Board of Directors hereby appointed and empowered MR. JIMMY LIM, the corporation's President to transact, sign, deal and accept payment for and on behalf of the corporation with regard to the aforementioned properties;**

3. **That, all transactions being done by said MR. JIMMY LIM, with regard to the disposal of the aforesaid properties will be honored by the corporation.**"

APPROVED AND SIGNED by the undersigned Members of the Board of Directors, this 25th day of February 2000 at the City of Pasay, Philippines

(Signature)		(Signature)
MARY LIM LEON		SHIRLEY LIM
(Signature)	**(Signature)**	(Signature)
JIMMY LIM	**QUINTIN C. LIM**	HENRY LIM

IN WITNESS WHEREOF, I hereby set my hand this 29th day of February 2000.

(Signature)
SHIRLEY LIM
Corporate Secretary[48]

(Emphasis Ours)

Since the above-quoted Secretary's Certificate dated February 29, 2000 was notarized, it is considered a public document pursuant to Section 19(b), Rule 132 of the Revised Rules on Evidence:

Sec. 19. *Classes of Documents*. — For the purpose of their presentation in evidence, documents are either public or private.

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[48] *Id*. at 60.

Public documents are:

x x x x x x x x x

(b) Documents acknowledged before a notary public except last wills and testaments; and

x x x x x x x x x

All other writings are private. (Emphasis Ours)

Further, as this involves the crime of falsification of a public document, the imposable penalty under the RPC is *prision correccional* in its medium and maximum periods and a fine of not more than ₱5,000.00.[49] This falls within the purview of a correctional penalty,[50] which prescribes in ten (10) years.[51]

Article 90 of the RPC provides that the period for the prescription of offenses commences from the day on which the crime is *discovered* by the offended party, the authorities, or their agents.[52] **But if the offense is *falsification of a public document* punishable under Article 172 of the RPC, as in this case, the period for prescription commences on the date of registration of the forged or falsified document.**[53]

As consistently applied in land registration proceedings, the act of registration serves as a constructive notice to the entire world, charging everyone with knowledge of the contents of the document. In *People v. Reyes*,[54] the Court justified the application of this rule in criminal cases as follows:

The rule is well-established that registration in a public registry is a notice to the whole world. **The record is constructive notice**

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[49] REVISED PENAL CODE, Article 172; See also *Republic Act No. 10951*. Section 26 in relation to REVISED PENAL CODE, Article 21.

[50] REVISED PENAL CODE, Article 25.

[51] *Id*. at Article 90.

[52] *Id*. at Article 91.

[53] *Cabral v. Hon. Puno, etc., et al.*, 162 Phil. 814, 820-821 (1976); *People v. Hon. Villalon*, 270 Phil. 637, 647 (1990).

[54] 256 Phil. 1015 (1989).

of its contents as well as all interests, legal and equitable, included therein. All persons are charged with knowledge of what it contains [Legarda and Prieto v. Saleeby, 31 Phil. 590 (1915); Garcia v. Court of Appeals, G.R. Nos. L-48971 and 49011, January 22, 1980, 95 SCRA 380; Hongkong and Shanghai Banking Corporation v. Pauli, et al., G.R. No. L-38303, May 30, 1988, 161 SCRA 634; See also Sec. 52, Pres. Decree No. 1529 (1978)].

x x x x x x x x x

The practical factor of securing for civil suits the best evidence that can be obtained is also a major consideration in criminal trials. However, the law on prescription of crimes rests on a more fundamental principle. Being more than a statute of repose, it is an act of grace whereby the state, after the lapse of a certain period of time, surrenders its sovereign power to prosecute the criminal act. While the law on prescription of civil suits is interposed by the legislature as an impartial arbiter between two contending parties, the law on prescription of crimes is an act of amnesty and liberality on the part of the state in favor of the offender [People v. Moran, supra, at p. 405]. Hence, in the interpretation of the law on prescription of crimes, that which is most favorable to the accused is to be adopted [People v. Moran, supra; People v. Parel, 44 Phil. 437 (1923); People v. Yu Hai, 99 Phil. 725 (1956)]. **The application of the rule on constructive notice in the construction of Art. 91 of the [RPC] would most certainly be favorable to the accused since the prescriptive period of the crime shall have to be reckoned with earlier, i.e., from the time the notarized deed of sale was recorded in the Registry of Deeds.**In the instant case, the notarized deed of sale was registered on May 26, 1961. The criminal informations for falsification of a public document having been filed only on October 18, 1984, or more than ten (10) years from May 26, 1961, the crime for which the accused was charged has prescribed. The [CA], therefore, committed no reversible error in affirming the trial court's order quashing the two informations on the ground of prescription.[55] (Emphasis Ours)

Significantly, Section 51 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, provides that the act of registration with the Register of Deeds is considered the **operative act** to convey or affect the land "insofar as third

[55] *Id*. at 1022.

persons are concerned." Thus, if the transaction is not registered with the Register of Deeds, only the parties are bound by the contract and innocent third persons are not affected. Section 52 of the same law further states:

> Sec. 52. *Constructive notice upon registration.* Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, **if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering**. (Emphasis Ours)

For voluntary transactions such as sale, registration is commenced upon the owner's presentation of the duplicate certificate to the Register of Deeds, together with the voluntary instrument.[56] The Register of Deeds then registers the instrument in the primary entry book, and makes a corresponding memorandum on the owner's duplicate and original certificate.[57] **If the property belongs to a corporation, such as the subject property, the voluntary instrument should be accompanied by a secretary's certificate showing the board of directors' resolution for the approval of the sale of the corporation's property.**[58]

It should be emphasized at this point that the corporation's real property may only be sold through the agents expressly authorized by the board of directors to act on behalf of the corporation. Since a corporation is a juridical entity, the physical act of executing the deed of sale may be done only through the corporation's officers or agents, duly authorized for this purpose by its board of directors.[59] This authority should be reduced in

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[56] *Presidential Decree No. 1529 (1978)*, Sections 53 and 57.

[57] *Autocorp Group and Autographics, Inc. v. Court of Appeals*, 481 Phil. 298, 310 (2004).

[58] See *Ampil v. Office of the Ombudsman, et al.*, 715 Phil. 733, 766 (2013), citing <http://nreaphilippines.com/question-on-philippine-real-estate/land-registration-procedure> visited last July 21, 2013. (Emphasis Ours)

[59] CORPORATION CODE, Section 23; See also *Swedish Match Phils., Inc. v. The Treasurer of the City of Manila*, 713 Phil. 240, 247 (2013).

writing as evidence that such authority exists, and more importantly, because this involves the creation or conveyance of real rights over immovable property.[60]

Thus, considering all these corporate requirements, the board resolution for the sale of the corporation's real property, must reflect two important items, *i.e.* (a) the board of directors' collective approval of the sale; and (b) the board of directors' grant of authority to a natural person, who would act as the corporation's agent for such sale.

The evidence of such board resolution to the public is the **secretary's certificate**. In this document, the corporate secretary certifies under oath, that on a particular date, the board of directors met and resolved to approve the sale of the corporation's real property, and to authorize a specific natural person to act on behalf of the corporation for this transaction.[61]

The secretary's certificate thus serves as the corporation's official document showing the corporate actions approved by its board of directors, as well as the extent and scope of authority necessarily conferred to its agents for the execution and implementation of such actions. *Vis-á-vis* natural persons, this secretary's certificate is equivalent to the special power of attorney (SPA) that an individual executes to designate an agent, who would act on their behalf for a particular transaction, such as a sale.

In the present case, the corporate action of Pentel's Board of Directors was the approval of the sale of its land, particularly described in the corresponding board resolution. For this sale, Pentel 's Board of Directors, including Quintin, designated Jimmy as Pentel's agent in all transactions involving the disposition and conveyance of the subject property. All this information was contained in Board Resolution 2000-001, signed by all the petitioners, which in turn was embodied in the notarized Secretary's Certificate dated February 29, 2000.[62] However,

[60] CIVIL CODE OF THE PHILIPPINES, Article 1874, cited in *Litonjua, Jr. v. Eternit Corporation*, 523 Phil. 588, 608-609 (2006).

[61] CIVIL CODE OF THE PHILIPPINES, Article 1358.

[62] *Rollo*, p. 60.

as earlier emphasized, Quintin could not have participated, much less approved Board Resolution 2000-001 during the board meeting on February 25, 2000, because he was already dead at that time. The petitioners, therefore, falsified a public document by untruthfully stating that Quintin was among the members of Pentel's Board of Directors that approved the sale of the subject property.

Pursuant to and by virtue of the authority stated in the falsified Secretary's Certificate, Jimmy subsequently entered into the Deed of Absolute Sale with the Spouses Lee on March 21, 2000.[63]

Thereafter, on March 29, 2000, the conveyance to the Spouses Lee was registered with the Register of Deeds of Pasay City, through the submission of the Secretary's Certificate dated February 29, 2000 and the Deed of Absolute Sale dated March 21, 2000. The annotation on Pentel's title (TCT No. 129824) reveals that the registration resulted in its cancellation and the issuance of a new one in favor of the Spouses Lee.[64] **This was further corroborated by the Records Officer from the Register of Deeds of Pasay City, who testified that Pentel's title was cancelled when the Secretary's Certificate dated February 29, 2000, alongside the Deed of Absolute Sale dated March 21, 2000, were presented for registration.**[65]

While the voluntary instrument in this case refers to the Deed of Absolute Sale executed between Pentel (as represented by Jimmy) and the Spouses Lee, the constructive notice rule nonetheless still covers the falsified Secretary's Certificate that was registered together with the voluntary instrument. The rule on constructive notice charges the entire world with knowledge of the document's **contents**, including "**all interests, legal and equitable, included therein**"[66] and of "**facts that the public record contains**."[67] These facts and contents necessarily include

[63] *Id*. at 169-170.

[64] *Id*. at 64.

[65] *Id*. at 174.

[66] *People v. Reyes*, *supra* note 54, at 1022-1023.

[67] *Id*.

the authority granted to Jimmy, especially since the real property subject of this case was registered in the name of Pentel, which, as a juridical entity, may act only through its Board of Directors or duly authorized officers or agents.

It should be further borne in mind that when the sale of a piece of land, or any interest therein, is made through an agent (such as Jimmy in this case), the grant of authority must be in writing, otherwise, the sale itself is void.[68] The grant of power to the agent must also be expressly stated in clear and unmistakable language;[69] otherwise, only acts of administration are deemed conferred.[70] As previously mentioned, a corporation grants authority to its representative through its board of directors, which issues a board resolution relative to the appointment of an agent. The corporate secretary then certifies this board resolution under oath, pursuant to Article 1358(1) of the Civil Code.

Accordingly, whether the party to the sale of a real property is a natural or a juridical person, as long as it is entered into by someone other than its registered owner, the written authority of the party's representative is an explicit requirement to the validity of the sale itself. While the Register of Deeds is not required to inquire into the intrinsic validity of the transaction and should, as a matter of course, record the instrument presented for registration, this ministerial duty is subject to the condition that *all* the requisites for registration are present.[71] In the absence

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[68] CIVIL CODE OF THE PHILIPPINES, Article 1874; See also CIVIL CODE OF THE PHILIPPINES, Article 1878(5) and (12).

[69] *Bautista-Spille v. NICORP Management and Dev't. Corp., et al.*, 771 Phil. 492, 501-502 (2015); *Spouses Alcantara, et al. v. Nido*, 632 Phil. 343, 352 (2010).

[70] *Bautista-Spille v. NICORP Management and Development Corporation, et al.*, *id*. at 502, citing *Veloso v. Court of Appeals*, 329 Phil. 398, 405 (1996); CIVIL CODE OF THE PHILIPPINES, Article 1877.

[71] *Presidential Decree No. 1529*, Section 10.

of a prescribed requirement, the Register of Deeds acts in excess of their authority should they proceed to register the instrument.[72]

Clearly, the registration of the falsified Secretary's Certificate dated February 29, 2000, which proves the authority granted in favor of Jimmy, is indispensable for the validity of the sale of Pentel's property and for this sale to take effect as against third persons. Without this document being presented for registration, the Register of Deeds of Pasay City cannot effectively transfer the title of Pentel to the Spouses Lee, absent any basis that the Deed of Absolute Sale dated March 21, 2000 was executed under the authority of Pentel's Board of Directors.[73]

Likewise, as one of the documents submitted to the Register of Deeds of Pasay City for registration, **the falsified Secretary's Certificate forms part of the public record**. As such, Lucy and all other third persons were charged with knowledge of- not only the sale or the conveyance of the subject property— but also of the fact that Jimmy acted on behalf of Pentel by virtue of the Secretary's Certificate dated February 29, 2000, which certified Board Resolution 2000-001. Charging Lucy with constructive knowledge of only the sale of Pentel's real property, without similarly putting her and the entire world on notice of the Secretary's Certificate dated February 29, 2000, disregards the relevant statutory provisions on the requirements for the sale of real property or the transfer of real rights.

As the Court held in *Cayton, et al. v. Zeonnix Trading Corp., et al.*,[74] the nature and scope of the constructive notice rule is as follows:

> When a conveyance has been properly recorded, such record is constructive notice of its **contents and all interests, legal and equitable, included therein**. Under the rule of notice, it is presumed that the purchaser has examined **every instrument of record** affecting

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[72] See *Ampil v. Ombudsman*, *supra* note 58.

[73] *Id*.

[74] 618 Phil. 136 (2009).

the title. Such presumption is irrefutable. **He is charged with notice of every fact shown by the record and is presumed to know every fact which an examination of the record would have disclosed.** This presumption may not be overcome by proof of innocence or good faith. Otherwise, the very purpose and object of the law requiring a record would be destroyed. Such presumption may not be defeated by proof of want of knowledge of what the record contains, any more than one may be permitted to show that he was ignorant of the provisions of the law. The rule that all persons must take notice of the facts that the public record contains is a rule of law. The rule must be absolute. Any variation would lead to endless confusion and useless litigation.[75] (Emphasis Ours)

As an essential part of the public record, and as an indispensable element to the sale of Pentel's subject property, the constructive notice rule may be appropriately applied to the falsified Secretary's Certificate dated February 29, 2000.

Squarely applicable to the present case is the Court's ruling in *People v. Hon. Villalon*,[76] in which the public document subject of the case was a notarized SPA authorizing the accused to mortgage a parcel of land for purposes of securing a bank loan. Both the mortgage contract and the SPA were registered with the Registry of Deeds. It was later on discovered that the SPA was falsified, which resulted in the filing of an information charging the accused with *estafa* through the falsification of a public document. The accused later on filed a motion to dismiss raising the issue of prescription of the crime. The Court applied the constructive notice rule, and clarified that the prescriptive period commenced to run "from the time the offended party had constructive notice of the alleged forgery after the document was **registered** with the Register of Deeds."[77]

Remarkably, while the transaction in *Villalon* referred only to the mortgage, the Court nonetheless considered the

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[75] *Id*. at 150.

[76] 270 Phil. 637 (1990); see also *People v. Sandiganbayan*, 286 Phil. 347 (1992).

[77] *People v. Villalon*, *id*. at 645-646.

accompanying registration of the falsified SPA as constructive notice of the crime. **In other words, the registration of the mortgage deed, together with the falsified SPA, commenced the running of the prescriptive period for the crime.**

Since the registration of all the documentary requirements for transfer of title, including the falsified Secretary's Certificate dated February 29, 2000, was made on March 29, 2000, this is the proper reckoning point from which the prescription of the crime of falsification of a public document began to run. From this date of registration, there was constructive notice of the falsification to the entire world, including the complainant Lucy. She and all other persons were charged with the knowledge of the falsified Secretary's Certificate dated February 29, 2000, beginning on March 29, 2000.

Having established that the prescriptive period started on March 29, 2000—not from Lucy's actual discovery of the transfer of title, it is now pertinent to discuss whether the prescriptive period has lapsed.

Article 91 of the RPC provides:

> Art. 91. *Computation of prescription of offenses.* — The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be **interrupted by the filing of the complaint or information**, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.
>
> The term of prescription shall not run when the offender is absent from the Philippine Archipelago. (Emphasis Ours)

It is well-settled that the filing of the complaint in the fiscal's office interrupts the prescriptive period.[78] Unfortunately, the records of this case do not show the date when Lucy's Affidavit of Complaint was filed. This Court notes, however, that the

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[78] *Francisco, et al. v. Court of Appeals, et al.*, 207 Phil. 471, 477 (1983); *People v. Bautista*, 550 Phil. 835, 839 (2007).

Affidavit of Complaint was executed on September 21, 2010, or more than ten (10) years from the time that prescription commenced to run on March 29, 2000. Considering that Lucy's complaint could not have been f iled earlier than its date of execution, **prescription already set in by March 29, 2010, or approximately five (5) months before the execution of the complaint on September 21, 2010**.

As a result, by the time the criminal Information charging the petitioners with falsification of a public document was filed on May 15, 2012, their criminal liability was already extinguished. On this ground alone, the case against the petitioners should have been dismissed. The State already lost its right to prosecute and punish the petitioners for the crime subject of Criminal Case No. 467715-CR then filed with the MeTC.

In light of the fact that the petitioners' criminal liability is extinguished, there is no reason to discuss the other arguments raised in the petition. The Court, nonetheless, emphasizes that the merits of the parties' arguments as to the petitioners' guilt were not simply brushed aside. The Court, however, is bound to observe the basic substantive law providing for the prescription of offenses.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated April 22, 2016 and Resolution dated August 17, 2016 of the Court of Appeals in CA-G.R. CR No. 37336 are hereby **REVERSED** and **SET ASIDE**, and Criminal Case No. 467715-CR against petitioners Shirley T. Lim, Mary T. Lim-Leon and Jimmy T. Lim is hereby ordered **DISMISSED**.

SO ORDERED.

Carpio,[*] *Acting C.J. (Chairperson), Peralta, Perlas-Bernabe*, and *Caguioa, JJ.*, concur.

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

SECOND DIVISION

[G.R. No. 226656. April 23, 2018]

ARNEL T. GERE, *petitioner, vs.* **ANGLO-EASTERN CREW MANAGEMENT PHILS., INC. and/or ANGLO-EASTERN CREW MANAGEMENT (ASIA), LTD.,** *respondents.*

[G.R. No. 226713. April 23, 2018]

ANGLO-EASTERN CREW MANAGEMENT PHILS., INC. and/or ANGLO-EASTERN CREW MANAGEMENT (ASIA), LTD., *petitioners, vs.* **ARNEL T. GERE,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; DISABILITY BENEFITS; PERMANENT TOTAL DISABILITY; GUIDELINES IN DETERMINING WHETHER THE DISABILITY IS DEEMED PERMANENT AND TOTAL; THE COMPANY-DESIGNATED PHYSICIAN MUST NOT ONLY ISSUE A FINAL MEDICAL ASSESSMENT OF THE SEAFARER'S MEDICAL CONDITION, BUT MUST ALSO GIVE HIS ASSESSMENT TO THE SEAFARER CONCERNED.— Initially, there was confusion as to the application of the 120-day period found in Article 192(c)(1) of the Labor Code *vis-a-vis* the application of the 240-day period found in Section 2, Rule X of the Amended Rules on Employees' Compensation Implementing Title II, Book IV of the Labor Code. x x x The Court, in recognizing these provisions, and for the final resolution of any confusion that may arise therefrom, formulated guidelines in the case of *Elburg Shipmanagement Phils., Inc. vs. Quiogue, Jr.*, as cited in the recent case of *Paulino M. Aldaba vs. Career Philippines Ship-Management, Inc. Columbia Ship Management Ltd., and/or Verlou Carmelino.* As it now stands, the rules to be followed are: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability

grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.* seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification. In following the foregoing guidelines, it must be emphasized that the company-designated physician must not only "issue" a final medical assessment of the seafarer's medical condition. He must also— and the Court cannot emphasize this enough— "give" his assessment to the seafarer concerned. That is to say that the seafarer must be fully and properly informed of his medical condition. The results of his/her medical examinations, the treatments extended to him/her, the diagnosis and prognosis, if needed, and, of course, his/her disability grading must be fully explained to him/her by no less than the company-designated physician. **In this regard, the company-designated physician is mandated to issue a medical certificate, which should be personally received by the seafarer, or, if not practicable, sent to him/her by any other means sanctioned by present rules.**

2. ID.; ID.; ID.; ID.; ID.; SHOULD THE SEAFARER'S PERSONAL PHYSICIAN DISAGREE WITH THE ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN IN RELATION TO THE INJURY OR ILLNESS SUFFERED DURING THE COURSE OF THE SEAFARER'S EMPLOYMENT, THEN THE MATTER SHALL BE REFERRED TO A NEUTRAL THIRD PARTY PHYSICIAN, WHO SHALL THEN ISSUE A FINAL AND BINDING ASSESSMENT; SUSTAINED.— [I]n the event that a seafarer suffers a worker-related/aggravated illness or an injury during the course of his/her employment, it is the company-designated physician's medical assessment that shall

> control the determination of the seafarer's disability grading. Should the seafarer's personal physician disagree, then the matter shall be referred to a neutral third party physician, who shall then issue a final and binding assessment. x x x In *Formerly INC Shipmanagement, Inc. vs. Rosales*, the Court further clarified this rule by categorically saying that the referral to a third doctor is **mandatory**, and should the seafarer fail to abide by this method, he/she would be in breach of the POEA-SEC, and the assessment of the company-designated physician shall be final and binding. x x x In this light, only when the seafarer is duly and properly informed of the medical assessment by the company-designated physician could he determine whether or not he/she agrees with the same; and if not, only then could he/she commence the process of consulting his personal physician. If conflicting assessments arise, only then is there a need to refer the matter to a neutral third party physician. Again, this process is mandatory. And, at the risk of sounding repetitive, it could only begin from the moment of proper notice to the seafarer of his medical assessment by the company-designated physician. *To require the seafarer to seek the decision of a neutral third party physician without primarily being informed of the assessment of the company-designated physician is a clear violation of the tenets of due process, and shall not be countenanced by the Court.*

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Valmores And Valmores Law Offices for Arnel T. Gere.

D E C I S I O N

REYES, JR., *J*.:

To require the seafarer to seek the decision of a neutral third-party physician without primarily being informed of the assessment of the company-designated physician is a clear violation of the tenets of due process, and shall not be countenanced by the Court.

The Case

Consolidated in this case are the Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court filed (1) by Arnel T. Gere (petitioner) against Anglo-Eastern Crew Management Phils., Inc. and Anglo-Eastern Crew Management (Asia), Ltd. (hereinafter collectively referred to as the "respondents") in G.R. No. 226656, and (2) by respondents against the petitioner in G.R. No. 226713.

The petitions challenge before the Court the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 142422, promulgated on April 21, 2016, which affirmed with modification the Decision[2] and Resolution[3] of the Panel of Voluntary Arbitrators in AC-971-RCMB-NCR-MVA-123-11-11-2014 dated May 29, 2015 and August 25, 2015, respectively. The latter decision and resolution granted total and permanent disability benefits in favor of the petitioner.

Likewise challenged is the subsequent Resolution of the CA[4] promulgated on August 26, 2016, which upheld the earlier CA decision.

The Antecedent Facts

The petitioner is a Filipino seafarer who signed a Contract of Employment[5] with respondent Anglo-Eastern Crew Management (Asia), Ltd., through its manning agent in the Philippines, respondent Anglo-Eastern Crew Management Phils., Inc. The petitioner was accepted as an able seaman aboard the

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[1] Penned by Associate Justice Jhosep Y. Lopez, and concurred in by Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba, *rollo* (G.R. No. 226656), pp. 352-373, *rollo* (G.R. No. 226713), pp. 11-32.

[2] *Rollo* (G.R. No. 226656), pp. 256-273, *rollo* (G.R. No. 226713), Vol. 1, pp. 453-470.

[3] *Rollo* (G.R. No. 226656), p. 275, *rollo* (G.R. No. 226713), Vol. 1, p. 532.

[4] *Rollo* (G.R. No. 226656), pp. 399-401, *rollo* (G.R. No. 226713), Vol. 1, pp. 34-36.

[5] *Rollo* (G.R. No. 226713), Vol. 1, p. 179.

vessel "MV JENNY N" for a duration of nine (9) months, receiving a basic monthly salary of US$582.00 on a 44-hour work week, with overtime pay of US$324.00 and vacation leave pay of US$213.00. Also included in the terms of the petitioner's employment is the Collective Bargaining Agreement (CBA)[6] between (1) the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP), of which the petitioner is a member, and (2) the respondents herein.[7]

On January 4, 2014, the petitioner suffered an accident while performing his duties on board the vessel. According to the findings of the CA the petitioner was placing a rat guard on the headline of the vessel when he accidentally stepped on a bulwark support causing him to lose his balance and to eventually land awkwardly and heavily on his right arm.[8] The petitioner was immediately referred to a medical facility in Trinidad and Tobago, where he was subjected to x-ray and the placement of a cast over the affected arm.[9]

Due to this, on January 10, 2014, the petitioner was repatriated to the Philippines for medical reasons. He was confined at the Marine Medical Services—the respondents' accredited medical services provider, consequently referred to Dr. Ferdinand R. Bernal, an orthopedic surgeon at the Cardinal Santos Medical Center, and underwent different medical examinations, which thereafter disclosed the impression: "Closed Complete Fracture, Right Radius, Undisplaced."[10]

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[6] Collective Bargaining Agreement (AMOSUP / ANGLO-EASTERN) Between Associated Marine Officers' and Seamen's Union of the Philippines and Anglo-Eastern Crew Management (SG) PTE. LTD. Represented by Anglo-Eastern Crew Management Philippines, Inc., *rollo* (G.R. No. 226713), Vol. 1. pp. 180-214.

[7] *Rollo* (G.R. No. 226713), Vol. I, p. 179.

[8] *Id*. at 13.

[9] *Id*.

[10] *Id*.

From that moment until August 27, 2014, the petitioner underwent different medical examinations, procedures, and treatments on the injured arm and, subsequently, on his hips.[11]

The point of divergence in the statement of facts between the parties arose from the issuance—or non-issuance—of the disability grading of the petitioner's injury.

According to the respondents, the company-designated physician issued on April 28, 2014 an interim disability grading of "Grade 10 - loss of grasping power"[12] and on August 12, 2014, a final disability grading of "Grade 10 — ankylosed wrist in normal position."[13] The respondents asserted in their petition that they informed the petitioner of these findings. They said:

> Several discussions were had with the Respondent (herein referred to as the petitioner) about his state of health. Petitioners (herein referred to as the respondents) informed the Respondent (petitioner) of the disability assessment of the company-designated doctors. The commensurate amount of disability benefits was accordingly offered to him, as shown in the exchange of communication between Pandiman Philippines, Inc., the Petitioners' (Respondents') Protection and Indemnity Correspondent, and Private Respondent's (Petitioner's) counsel, Atty. Romulo P. Valmores.[14]

In contrast, however, the petitioner remained firm in asserting that the respondents have not informed him of these medical assessments.[15] According to him, more than 240 days of treatment have already lapsed without the disability grading from the company-designated physician, and so, on September 11, 2014, he consulted his personal physician, Dr. Manuel Fidel M. Magtira (Dr. Magtira) of the Armed Forces of the Philippines Medical Center. Dr. Magtira later on opined that the petitioner suffers from "partial permanent disability with Grade 8 impediment

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

[12] *Id*. at 233.

[13] *Id*. at 409.

[14] *Rollo* (G.R. No. 226713), Vol. I, p. 48.

[15] *Rollo* (G.R. No. 226713), Vol. II, p. 844.

based on the POEA contract."[16] Dr. Magtira further concluded that the petitioner is "now permanently UNFIT in any capacity for further sea duties."[17]

On the basis of the foregoing, the petitioner asked the respondents to pay him disability benefits based on the CBA between AMOSUP and the respondents. The latter denied the claim.

Hence, on the strength of the provisions under the CBA,[18] the petitioner filed a Notice to Arbitrate before the Office of the Panel of Voluntary Arbitrators of the National Conciliation and Mediation Board (NCMB). After the failure of the parties to arrive at an amicable settlement, the panel rendered its Decision on May 29, 2015 in favor of the petitioner. The dispositive portion of the NCMB Decision reads:

WHEREFORE, ALL THE ABOVE CONSIDERED, a Decision is hereby promulgated directing the respondents, jointly and severally, to pay complainant the following amounts:

1.) US$95,949.00 as full disability benefits under the CBA;
2.) US$2,328.00 representing his illness allowance; and
3.) 10% of the total monetary award for attorney's fees.

All other claims are dismissed.

SO ORDERED.[19]

Aggrieved the respondents appealed the NCMB decision before the CA, which later on modified the same. The *fallo* of the appellate court's decision reads:

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[16] *Rollo* (G.R. No. 226656), p. 124.

[17] *Id*.

[18] Collective Bargaining Agreement (AMOSUP / ANGLO-EASTERN) Between Associated Marine Officers' and Seamen's Union of the Philippines and Anglo-Eastern Crew Management (SG) PTE. LTD. Represented by Anglo-Eastern Crew Management Philippines, Inc., Art. 13, *rollo* (G.R. No. 226713), Vol. I, p. 195.

[19] *Rollo* (G.R. No. 226713), Vol. I, pp. 466-467.

WHEREFORE, premises considered, the Petition is **PARTLY GRANTED**. The Decision dated 29 May 2014 and Resolution dated 25 August 2015 of the Panel of Voluntary Arbitrators in AC-971-RCMB-NCR-MVA-123-11-11-2014 are hereby **AFFIRMED** with **MODIFICATIONS**, such that:

1. The total and permanent disability benefit awarded in the amount of US$95,949.00 is hereby **REDUCED** to US$60,000.00 pursuant to the 2010 POEA-SEC; and

2. The award of sickness allowance in the amount of US$2,328.00 is hereby **DELETED** for lack of merit.

SO ORDERED.[20]

Both parties were unsatisfied with the appellate court's decision. Hence, the instant petitions.

The Issues

The petitioner anchors his plea of the partial reversion of the CA decision on the following ground:

WITHOUT A DEFINITE AND FINAL ASSESSMENT OF THE PETITIONER'S FITNESS TO WORK OR PERMANENT DISABILITY, THE LAW STEPS IN TO CONSIDER THE DISABILITY TO BE PERMANENT AND TOTAL WHICH ENTITLES HIM TO FULL DISABILITY BENEFITS UNDER THE CBA.[21]

On the other hand, the respondents put forth the following grounds:

I. THIS CLAIM SHOULD HAVE BEEN DISMISSED OUTRIGHT IN VIEW OF THE PRIVATE RESPONDENT'S BLATANT DISREGARD OF THE CONFLICT-RESOLUTION PROCEDURE ON REFERRAL TO A THIRD DOCTOR, AS EXPRESSLY MANDATED BY THE POEA-STANDARD EMPLOYMENT CONTRACT AND THE PARTIES' COLLECTIVE BARGAINING AGREEMENT.

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[20] *Id*. at 32.

[21] *Rollo* (G.R. No. 226656), p. 26.

II. THE DISABILITY ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIANS MUST BE ACCORDED AUTHORITATIVE VALUE, BEING BASED ON EXTENSIVE MEDICAL EXAMINATIONS, DIAGNOSIS, AND TREATMENT, AS OPPOSED TO THAT OF THE PRIVATE RESPONDENT'S PERSONAL DOCTOR.

III. CONTRARY TO THE RULING OF THE COURT OF APPEALS, THE PRESENT STATE OF LAW AND JURISPRUDENCE MANDATES THAT A SEAFARER'S DISABILITY ASSESSMENT BE BASED SOLELY ON THE DISABILITY GRADINGS UNDER THE POEA-STANDARD EMPLOYMENT CONTRACT, AS REAFFIRMED IN THE 6 APRIL 2016 CASE OF *SCANMAR MARITIME SERVICES, INC. V. CONAG*.

IV. IN ANY EVENT, PRIVATE RESPONDENT IS NOT ENTITLED TO TOTAL AND PERMANENT DISABILITY BENEFITS, AS THE DEGREE OF HIS DISABILITY WAS DETERMINED WITHIN THE 240-DAY PERIOD PROVIDED BY THE LABOR CODE.

V. PRIVATE RESPONDENT SHOULD NOT HAVE BEEN AWARDED ATTORNEY'S FEES CONSIDERING THAT PETITIONERS WERE NEVER IN BAD FAITH AND THERE IS NO EQUITABLE JUSTIFICATION THEREFOR.[22]

In essence, while there is no question that the petitioner did indeed suffer an injury during the course of his employment with the respondents, both parties now ask the Court whether or not such injury is compensable under Philippine law.

In particular, the parties herein seek the guidance of the Court to answer whether or not the company-designated physician was able to issue a final disability grading of the petitioner's injury within 240 days from the moment of his medical attention. If not, then, as the petitioner asserted, his injury would be considered final and permanent insofar as compensation is concerned; if so, then the disability grading issued by the company-designated physician would stand.

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[22] *Rollo* (G.R. No. 226713), Vol. I, pp. 49-50.

Moreover, the Court is called upon once again to determine whether or not the referral to a third doctor is mandatory in the event of disagreement between the company-designated physician and the seafarer's personal physician.

The Court's Ruling

The rise of the Filipino as the preferred seafarer worldwide place emphasis on the importance of their effort to uplift Philippine economy. As such, much importance is accorded to the safety and the well-being of the country's workers who unselfishly contribute their time and devotion to the country and their families. To this end, Philippine jurisprudence regarding the disability claims of Filipino seafarers has come a long way. The Court has evolved with the times, as it were, to answer and face the challenges that befall the Filipino worker.

Among the most controversial issues that concern seafarers are the so-called 120-day or 240-day rules for the determination of disability.

Initially, there was confusion as to the application of the 120-day period found in Article 192(c)(1) of the Labor Code *vis-a-vis* the application of the 240-day period found in Section 2, Rule X of the Amended Rules on Employees' Compensation Implementing Title II, Book IV of the Labor Code.

Article 192(c)(1) provides:

ART. 192. Permanent Total Disability.

x x x x x x 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 in the Rules; (Emphasis and underscoring supplied)

On the other hand, the implementing rules provide that:

Sec. 2. Period of entitlement. - (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days **except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from**

onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.[23] (Emphasis and underscoring supplied)

The Court, in recognizing these provisions, and for the final resolution of any confusion that may arise therefrom, formulated guidelines in the case of *Elburg Shipmanagement Phils., Inc. vs. Quiogue, Jr.*,[24] as cited in the recent case of *Paulino M. Aldaba vs. Career Philippines Ship-Management, Inc. Columbia Ship Management Ltd., and/or Verlou Carmelino.*[25] As it now stands, the rules to be followed are:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.* seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[26]

[23] Amended Rules on Employees' Compensation, Rule X, Sec. 2 (1995).

[24] 765 Phil. 341 (2015).

[25] G.R. No. 218242, June 21, 2017.

[26] *Supra* note 24, at 362-363.

In following the foregoing guidelines, it must be emphasized that the company-designated physician must not only "issue" a final medical assessment of the seafarer's medical condition. He must also—and the Court cannot emphasize this enough—"give" his assessment to the seafarer concerned. That is to say that the seafarer must be fully and properly informed of his medical condition. The results of his/her medical examinations, the treatments extended to him/her, the diagnosis and prognosis, if needed, and, of course, his/her disability grading must be fully explained to him/her by no less than the company-designated physician.

In this regard, the company-designated physician is mandated to issue a medical certificate, which should be personally received by the seafarer, or, if not practicable, sent to him/her by any other means sanctioned by present rules. For indeed, proper notice is one of the cornerstones of due process, and the seafarer must be accorded the same especially so in cases where his/her well-being is at stake.

A company-designated physician who fails to "give" an assessment as herein interpreted and defined fails to abide by due process, and consequently, fails to abide by the foregoing guidelines.

This elaboration acquires greater significance in light of Section 20(A)(3) of the Philippine Overseas Employment Administration-Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-board Ocean-going Ships (POEA Contract), which commences a process that the seafarer, the employers, and the latter's agents must abide by.

This section states that, in the event that a seafarer suffers a worker related/aggravated illness or an injury during the course of his/her employment, it is the company-designated physician's medical assessment that shall control the determination of the seafarer's disability grading. Should the seafarer's personal physician disagree, then the matter shall be referred to a neutral third party physician, who shall then issue a final and binding assessment. The provision reads:

Section 20 [B]. Compensation and Benefits for Injury or Illness

x x x x x x x x x

2. x x x x x x x x x

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

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of his 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. (Emphasis supplied)

In *Formerly INC Shipmanagement, Inc. vs. Rosales*,[27] the Court further clarified this rule by categorically saying that the referral to a third doctor is **mandatory**, and should the seafarer fail to abide by this method, he/she would be in breach of the POEA-SEC, and the assessment of the company-designated physician shall be final and binding. Thus, the Court said:

This referral to a third doctor has been held by this Court to be a **mandatory procedure** as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. In other words, **the company can insist on its disability rating**

[27] G.R. No. 195832, October 1, 2014, 737 SCRA 438.

even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties. We have followed this rule in a string of cases x x x.[28] (Emphasis supplied)

In this light, only when the seafarer is duly and properly informed of the medical assessment by the company-designated physician could he determine whether or not he/she agrees with the same; and if not, only then could he/she commence the process of consulting his personal physician. If conflicting assessments arise, only then is there a need to refer the matter to a neutral third party physician.

Again, this process is mandatory. And, at the risk of sounding repetitive, it could only begin from the moment of proper notice to the seafarer of his medical assessment by the company-designated physician. *To require the seafarer to seek the decision of a neutral third party physician without primarily being informed of the assessment of the company-designated physician is a clear violation of the tenets of due process, and shall not be countenanced by the Court.*

In the present case, the Court finds that the evidence presented by the respondents to prove to this Court that they have actually given the petitioner a copy of the medical assessment fail to convince. For a full discourse, the following are the documents alluded to by the respondents in their petition:

1. A letter dated April 28, 2014, issued by Dr. Bernal and addressed to Dr. Lim, the company-designated physician, indicating an interim disability grading of "Grade 10 — loss of grasping power."[29] The full contents of the letter reads:

"4/28/1
Dear Dr. Lim,

Re: Mr. Arnel Gere

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[28] *Id*. at 440.

[29] *Rollo* (G.R. No. 226713), Vol. I, pp. 232-233.

I will meet to see the patient at least every 2 weeks to monitor his condition.

He will be re-evaluated on May 16, 2014 for repeat x-ray of his forearm and I will re-assess patient.

Based on his present condition, patient's interim disability grading is Grade 10 — loss of grasping power.

Thank you.

(sgd)
Ferdinand R. Bernal, (sic)"[30] (Emphasis supplied)

2. A letter dated August 12, 2014, issued by Dr. Bernal and addressed to Dr. Lim, the company-designated physician, suggesting a final disability grading of "Grade 10—ankylosed wrist in normal position."[31] It reads:

"August 12, 2014

Dear Dr. Lim,

Re: Mr. Arnel T. Gere

If patient entitled (sic) to a disability, his suggested final disability grading remains Grade 10 - ankylosed wrist in normal position.

Thank you.

(sgd)
Ferdinand R. Bernal, MD"[32]

3. An e-mail addressed to Atty. Romulo Valmores (Atty. Valmores), the petitioner's counsel, confirming a telephone conversation wherein the respondents advised the former of the assessment of the company-designated physician.[33] It reads:

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[30] *Id*. at 233.

[31] *Id*. at 409.

[32] *Id*.

[33] *Id*. at 497.

"Dear Atty. Valmores,

Further to today's telecom between your goodself (sic) and the undersigned, we confirm our advice of Owner's approval to settle your client's claim at US$19,333.72 based on the assessment of the company designated physician.

In this regard, we would appreciate it if you could discuss the matter with Mr. Gere and inform us of your/your client's decision in order to progress the matter.

Thank you and we look forward to hearing from you.

Kindest regards

Delia V. Andrada
Joint Manager - Personal Injury Division"[34]

Two things must be said of these documents.

First, both interim and final disability ratings were, as correctly pointed out by the petitioner, mere suggested disability ratings. If anything, the import of these documents could only be regarded as an internal communication between the company-designated physician and his consulting physician regarding the treatment of herein petitioner. More so, none of the foregoing documents prove that the petitioner was properly informed of the assessment. Indeed, both the interim and final disability grading mentioned above were in fact written by the attending physician, Dr. Bernal, and addressed not to the petitioner but to the company-designated physician.

Second, the only instance when it could be shown that the petitioner was informed of his disability grading was through the communication between the respondents, as represented by Ms. Delia V. Andrada, joint manager of the Personal Injury Division, and the petitioner's counsel, Atty. Valmores.

However, all that this document showed was that the petitioner was informed of his disability grading only **after** he has initiated an action against the respondents before the Panel of Arbitrators.[35] In the Court's perusal of the evidence submitted by the

[34] *Id*.

[35] *See* Notice to Arbitrate dated September 12, 2014, *rollo* (G.R. No. 226713), Vol. I, p. 158.

respondents, it was only on September 17, 2014 that he was informed of the disability grading—five days after the filing of the Notice to Arbitrate-which, coincidentally, was already 250 days after his medical repatriation.

The effect of this failure by the respondents to furnish the petitioner a copy of his medical certificate militates gravely against the respondents' cause.

To begin with, without this proper notice, the 120-day and 240-day rule would have stepped in by operation of law. Insofar as the petitioner is concerned, there was no issuance of a final medical assessment regarding his disability. For all intents and purposes, *Elburg Shipmanagement Phils., Inc*. rules that the petitioner's disability has already become permanent and total.

This is in addition to the fact that the records do not contain any document, not even any argument, that offer any justification why the 120-day period should be extended to 240 days as required by *Elburg Shipmanagement Phils., Inc.* There simply was no explanation why the disability grading was not issued within the shorter time, and why it necessitated an extension to the longer period.

Secondly, without the proper notice, the petitioner was not given the opportunity to evaluate his medical assessment. Again, insofar as he was concerned, the disability grading of his personal physician was the only disability grading available to him prior to the filing of the case before the Panel of Arbitrators. In this instance, the mandatory referral to a neutral third doctor could not have been applicable. **Indeed, from the perspective of the petitioner, there was absolutely no assessment by the company-designated physician to contest. As such, there was no impetus to seek a neutral third doctor.**

That the respondents now harp on the conflict-resolution procedure is not only self-serving but is also a selfish invocation of a rule which the respondents so easily disregarded earlier on. And this, the Court could not accede to.

Moreover, considering that the respondents failed to inform the petitioner of the assessment of the company-designated physician, it would be the height of injustice if the Court were

to uphold the former's disability grading of the petitioner's injury. Such an action would firmly go against the guidelines that the Court has already set in *Elburg Shipmanagement Phils., Inc*.

Therefore, for the respondents' failure to inform the petitioner of his medical assessment within the prescribed period, the petitioner's disability grading is, by operation of law, total and permanent.

This thus brings the discourse of this case to the CBA between AMOSUP and the respondents. The provisions of the CBA are clear: (1) only when the disability grading is at 50% or more, or (2) only when the company-designated physician certifies that the seafarer is medically unfit to continue work—even if the disability grading is less than 50%—could the seafarer be entitled to total and permanent disability benefits in accordance with the medical unfitness clause. As Article 20.1.4 of the CBA provides:

20.1.4. Permanent Medical Unfitness

A seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall, for the purpose of this paragraph be regarded as permanently unfit for further sea service in any capacity and entitled to 100% compensation, as follows: US$151,470.00 for senior officers, US$121,176.00 for junior officers and US$90,882.00 for ratings (effective 2012); US$155,257.00 for senior officers, US$124,205.00 for junior officers and US$93,154.00 for ratings (effective 2013); and US$159,914.00 for senior officers, US$127,932.00 for junior officers, US$95,949.00 for ratings (effective 2014). Furthermore, any seafarer assessed at less than 50% disability under the contract but certified as permanently unfit for further sea service in any capacity by the company doctor, shall also be entitled to 100% compensation.[36]

In the present case, even the petitioner's personal physician assessed him only at Grade 8 disability grading. According to the schedule of disability allowances indicated in the POEA Contract, this impediment grade translates to only 33.59%,[37]

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[36] *Rollo* (G.R. No. 226713), Vol. I, p. 199.

[37] Philippine Overseas Employment Administration-Standard Terms and

which definitely falls short in the 50% requirement of Article 20.1.4 of the CBA. On the other hand, neither did the company-designated physician issue a certification that the petitioner was medically unfit to continue performing his seafaring duties. On these grounds, the medical unfitness clause of the CBA finds no application.

Nonetheless, the petitioner is not without any benefit to lean back on. The POEA contract provides that seafarers suffering from total and permanent disability are entitled to 120% of US$50,000.00, or a total of US$60,000.00. Indeed, the Court of Appeals is correct in applying the provisions of the POEA contract rather than the provisions of the CBA when it said:

> As correctly argued by Petitioners, the permanent medical unfitness clause under the parties' CBA awarding a total and permanent disability benefit of US$95,949.00 does not apply to private respondent because **neither the company doctor nor his own doctor assessed his disability at 50% or more**. Moreover, while the permanent medical unfitness clause provides that any seafarer assessed at less than 50% disability is entitled to full compensation, **the same clause mandates that the certification must be made by the company doctor which is not the situation in the present case**.[38] (Emphasis and underscoring supplied, citations omitted)

The Court finds that no further elucidation is necessary to this categorical ruling.

WHEREFORE, premises considered, the Decision and Resolution of the Court of Appeals, dated April 21, 2016 and August 26, 2016 respectively, in CA-G.R. SP No. 142422 are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Carpio, Acting C.J. (Chairperson), Peralta, Perlas-Bernabe, and *Caguioa, JJ.*, concur.

Conditions Governing the Overseas Employment of Filipino Seafarers On-board Ocean-going Ships, POEA Memorandum Circular No. 10, Series of 2010.

[38] *Rollo* (G.R. No. 226713), Vol. I, p. 30.

SECOND DIVISION

[G.R. No. 227982. April 23, 2018]

MARIO DIESTA BAJARO, *petitioner, vs.* **METRO STONERICH CORP., and/or IBRAHIM M. NUÑO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE JURISDICTION OF THE COURT IN A PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT IS LIMITED ONLY TO REVIEWING ERRORS OF LAW; EXCEPTION.— It is a well-settled rule that the jurisdiction of the Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited only to reviewing errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; POST EMPLOYMENT; KINDS OF EMPLOYMENT; ENUMERATED AND CONSTRUED.— Essentially, the Labor Code classifies four (4) kinds of employees, namely: (i) regular employees or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (ii) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the employees' engagement; (c) seasonal employees or those who perform services which are seasonal in nature, and whose employment lasts during the duration of the season; and (d) casual employees or those who are not regular, project, or seasonal employees. Jurisprudence has added a fifth kind—fixed-term employees or those hired only for a definite period of time. Focusing on the first two kinds of employment, Article 294 of the Labor Code distinguishes a regular from project-based employment x x x Parenthetically, in a project-based employment, the employee is assigned to a particular project

or phase, which begins and ends at a determined or determinable time. Consequently, the services of the project employee may be lawfully terminated upon the completion of such project or phase. For employment to be regarded as project-based, it is incumbent upon the employer to prove that (i) the employee was hired to carry out a specific project or undertaking; and (ii) the employee was notified of the duration and scope of the project. In order to safeguard the rights of workers against the arbitrary use of the word "project" as a means to prevent employees from attaining regular status, employers must prove that the duration and scope of the employment were specified at the time the employees were engaged, and prove the existence of the project.

3. ID.; ID.; ID.; ID.; PROJECT EMPLOYEES; PROJECTS, DEFINED; THE COURT ACKNOWLEDGED THE UNIQUE CHARACTERISTICS OF THE CONSTRUCTION INDUSTRY AND EMPHASIZED THAT THE LABORER'S PERFORMANCE OF WORK THAT IS NECESSARY AND VITAL TO THE EMPLOYER'S CONSTRUCTION BUSINESS, AND THE FORMER'S REPEATED REHIRING, DO NOT AUTOMATICALLY LEAD TO REGULARIZATION; CASE AT BAR.— Remarkably, in *Gadia, et al. v. Sykes Asia, Inc., et al.*, the Court explained that the "projects" wherein the project employee is hired may consist of "(i) a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (ii) a particular job or undertaking that is not within the regular business of the corporation." Accordingly, it is not uncommon for a construction firm to hire project employees to perform work necessary and vital for its business. Suffice it to say, in *William Uy Construction Corp. and/or Uy, et al. v. Trinidad*, the Court acknowledged the unique characteristic of the construction industry and emphasized that the laborer's performance of work that is necessary and vital to the employer's construction business, and the former's repeated rehiring, do not automatically lead to regularization, x x x Additionally, in *Malicdem, et al. v. Marulas Industrial Corporation, et al.*, the Court took judicial notice of the fact that in the construction industry, an employee's work depends on the availability of projects. The employee's tenure "is not

permanent but coterminous with the work to which he is assigned." Consequently, it would be extremely burdensome for the employer, who depends on the availability of projects, to carry the employee on a permanent status and pay him wages even if there are no projects for him to work on. An employer cannot be forced to maintain the employees in the payroll, even after the completion of the project. "To do so would make the employee a privileged retainer who collects payment from his employer for work not done. This is extremely unfair to the employers and amounts to labor coddling at the expense of management." Accordingly, it is all too apparent that the employee's length of service and repeated re-hiring constitute an unfair yardstick for determining regular employment in the construction industry. Thus, Bajaro's rendition of six years of service, and his repeated re-hiring are not badges of regularization. x x x In fine, *the Court affirms the right of an employer to hire project employees, for as long as the latter are sufficiently apprised of the nature and term of their employment*. Metro Stonerich was not remiss in informing Bajaro of his limited tenure as a project employee. Accordingly, being a project employee, Bajaro was validly terminated from employment due to the completion of the project in which he was engaged.

4. ID.; ID.; ID.; ID.; ID.; PROJECT EMPLOYEES ARE STILL ENTITLED TO CERTAIN BENEFITS UNDER THE LAW, SUCH AS: OVERTIME PAY DIFFERENTIALS, SERVICE INCENTIVE LEAVE (SIL) PAY, 13TH MONTH PAY AND ATTORNEY'S FEES FOR UNLAWFULLY WITHHELD WAGES; APPLICATION IN CASE AT BAR.— Although Bajaro was hired as a project employee, he is still entitled to certain benefits under the law. Particularly, Bajaro is bound to receive overtime pay differentials, SIL pay, and proportionate 13th month pay, with attorney's fees equivalent to 10% of the total monetary award. x x x Notably, Article 95 of the Labor Code states that "every employee who has rendered at least one year of service shall be entitled to a yearly SIL of five days with pay." Metro Stonerich failed to prove that it gave Bajaro his SIL pay. It must be noted that in claims for payment of salary differential, SIL, holiday pay and 13th month pay, the burden rests on the employer to prove payment. This standard follows the basic rule that in all illegal dismissal cases the burden

> rests on the defendant to prove payment rather than on the plaintiff to prove non-payment. This likewise stems from the fact that all pertinent personnel files, payrolls, records, remittances and other similar documents — which will show that the differentials, SIL and other claims of workers have been paid — are not in the possession of the worker but are in the custody and control of the employer. x x x In addition, Bajaro should be awarded attorney's fees equivalent to 10% of the total monetary award, as the instant case includes a claim for unlawfully withheld wages. Added to this, all amounts due shall earn a legal interest of six percent (6%) *per annum*.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Villanueva Caña and Associates Law Offices for respondents.

D E C I S I O N

REYES, JR., *J.*:

In view of the distinct nature of the construction industry, the Court recognizes the right of an employer to hire a construction worker for a specific project, provided that the latter is sufficiently apprised of the duration and scope of such undertaking. In this instance, the worker's tenure shall be coterminous with the project. Notably, the employee's performance of work that is necessary and desirable to the construction business, as well as his repeated rehiring, do not bestow upon him regular employment status.

This treats of the Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court seeking the reversal of the Decision[2] dated July 22, 2016, and Resolution[3] dated October

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[1] *Rollo*, pp. 11-25.

[2] Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Fernanda Lampas Peralta and Nina G. Antonio-Valenzuela, concurring; *id*. at 239-248.

[3] *Id*. at 271-272.

27, 2016, rendered by the Court of Appeals (CA) in CA-G.R. SP No. 143243. The CA affirmed the ruling of the National Labor Relations Commission (NLRC), Second Division, in NLRC LAC No. 07-001980-15(4) and NLRC NCR CN. 06-06903-14,[4] which dismissed the Complaint for illegal dismissal filed by petitioner Mario Diesta Bajaro (Bajaro) against respondent Metro Stonerich Corporation (Metro Stonerich) and/or Ibrahim M. Nuño (Nuño).

The Antecedents

Metro Stonerich is a domestic entity engaged in the construction business, owned and operated by Nuño.[5]

On June 4, 2008, Metro Stonerich hired Bajaro as a concrete pump operator, tasked with operating the pouring of freshly mixed concrete on the former's construction projects. Bajaro was called to work from 7:00 a.m. until 4:00 p.m., from Mondays to Saturdays.[6] He was assigned in various construction projects until May 10, 2014.[7] He received a daily wage of Php 500.00.[8]

Sometime in April 21, 2014, while Bajaro was working at the KCC Mall of Marbel in Koronadal City, South Cotabato, he noticed that one of the pipes was filled with concrete. He lifted the said pipe to empty and clean it. Upon lifting, he suddenly felt an excruciating pain on his thighs and since then, could no longer walk properly.[9] Due to his injury, he requested the Secretary and Manager of Metro Stonerich to take him to the hospital. However, he was ignored and instead, was told to go home and have himself treated.[10]

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[4] *Id*. at 179-187.

[5] *Id*. at 145.

[6] *Id*. at 46.

[7] *Id*. at 145.

[8] *Id*. at 43.

[9] *Id*. at 47.

[10] *Id*.

On April 23, 2014, Bajaro went to the office of Metro Stonerich to seek financial help, but Metro Stonerich refused to pay for his medical expenses.[11]

Bajaro went to the East Avenue Medical Center to have himself treated.[12] He fully recovered after two weeks. Consequently, on May 5, 2014, he was issued a Certificate that he was fit to return to work.[13]

Thus, on May 7, 2014, Bajaro arrived at his work place. However, he was informed to return to work the next day.[14]

Meanwhile, on May 8 and 9, 2014, Bajaro was informed that he should no longer report for work. Instead, he was offered money in lieu of his employment. He did not accept the money.[15]

This prompted Bajaro to file a complaint before the Labor Arbiter (LA) for illegal dismissal with monetary claims against Metro Stonerich.[16] In his position paper, Bajaro asserted that he was a regular employee of Metro Stonerich,[17] as he was continuously employed for six years and performed activities that were necessary and desirable to the latter's usual business. As a regular employee, he was entitled to security of tenure and could not be dismissed except for just or authorized cause.[18]

Additionally, Bajaro claimed that he was entitled to his monetary benefits consisting of overtime pay differential, as he was merely given Php 50.00 per hour of overtime pay. He also alleged that he was entitled to night shift differential, holiday pay, and proportionate 13th month pay.[19] Finally, Bajaro sought

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[11] *Id.*

[12] *Id*.

[13] *Id*. at 48.

[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*. at 49.

[18] *Id*. at 49.

[19] *Id*. at 52.

an award of moral damages, exemplary damages and attorney's fees.[20]

On the other hand, Metro Stonerich argued that Bajaro is not a regular employee, but a project employee. Bajaro was hired for five different construction projects, with each project lasting for a period of five months or 12 months. As proof that Bajaro was engaged on a per project basis, Metro Stonerich pointed out that it even submitted reports to the Department of Labor and Employment (DOLE) upon the completion of the projects Bajaro was engaged in.[21]

Furthermore, Metro Stonerich countered that contrary to Bajaro's claim that he was not given the monetary benefits due him, he was actually given overtime pay, service incentive leave (SIL) pay and 13th month pay as shown in its accounting ledgers.[22]

Ruling of the LA

On June 25, 2014, the LA rendered a Decision[23] dismissing Bajaro's complaint for illegal dismissal. The LA held that Bajaro was a project employee, as evidenced by the employment contracts he signed each time he was engaged by Metro Stonerich. Each contract clearly indicated the specific project, as well as the duration of his work. As a project employee, his employment was coterminous with each project.

As for Bajaro's money claims, the LA awarded a total overtime pay differential of Php 14,921.10, finding that Bajaro was entitled to an overtime pay differential of Php 28.10 per hour of overtime pay, multiplied by the 531 (overtime) hours. Also, the LA awarded Php 4,333.30 as proportionate 13th month pay for 2014, and Php 7,500.00, as SIL pay equivalent to 15 days. In addition, the LA awarded attorney's fees equivalent to 10% of the total

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[20] *Id*.

[21] *Id*. at 147.

[22] *Id*.

[23] *Id*. at 145-151.

monetary award, recognizing that Bajaro was forced to litigate to protect his rights.[24]

The LA denied Bajaro's other claims of holiday pay and rest pay premiums, due to the latter's failure to substantiate his claims. The LA also denied Bajaro's claims for moral and exemplary damages, finding that there was no illegal dismissal to speak of.[25]

The dispositive portion of the LA decision reads:

> WHEREFORE premises considered, judgment is hereby rendered DISMISSING the complaint for illegal dismissal. However, respondent Metro Stonerich Corporation/Ibrahim M. Nuño are directed to pay [Bajaro] the amount of Php 14,921.10 representing his underpaid overtime pay, Php 4,333.30 unpaid proportionate 13th month pay for 2014 and unpaid [SIL] pay in the amount of Php 7,500.00 plus ten percent by way of attorney's fees in the amount of Php 2,675.44 or a total of Php 29,429.84.
>
> Other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[26]

Aggrieved, Bajaro filed an appeal against the same LA decision.

Ruling of the NLRC

On July 30, 2015, the NLRC rendered a Resolution[27] dismissing Bajaro's appeal for lack of merit. Echoing the ruling of the LA, the NLRC found that Bajaro was a project employee since his employment contracts prove that at the time he was hired/rehired, the duration and scope of his engagement were already specified. The NLRC rejected Bajaro's claim that his continued and repeated rehiring made him a regular employee.

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[24] *Id*. at 151.

[25] *Id*. at 150-151.

[26] *Id*. at 151.

[27] *Id*. at 179-187.

The NLRC observed that based on the records presented by Metro Stonerich, it was clear that Bajaro was hired on different dates for various projects. The projects for which he was hired had gaps in between, and did not constitute a continuous employment. Thus, the NLRC concluded that Bajaro was validly dismissed due to the completion of the project in which he was hired. Furthermore, the NLRC affirmed the monetary awards granted by the LA.

The dispositive portion of the NLRC resolution reads:

> WHEREFORE, the appeal filed by [Bajaro] is DISMISSED.
>
> The [LA's] decision is AFFIRMED.
>
> SO ORDERED.[28]

Dissatisfied with the ruling, Bajaro filed with the CA a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court.

Ruling of the CA

On July 22, 2016, the CA rendered the assailed Decision[29] dismissing the Petition for *Certiorari*, on the ground that the NLRC did not commit any grave abuse of discretion to warrant the nullification of its decision. The CA agreed with the findings of the NLRC that Bajaro was a project employee. The CA opined that every time Bajaro was hired as a concrete pump operator on Metro Stonerich's projects, he was made to sign a *Kasunduan Para Sa Katungkulang Serbisyo (Pamproyekto)*. This indicated that Bajaro was adequately apprised of his employment status, and was sufficiently informed that his employment will last only until the completion of each construction project. Accordingly, the CA held that Bajaro was not illegally dismissed as his employment was terminated due to the completion of the project. The CA affirmed the benefits awarded by the LA and the NLRC.

The dispositive portion of the CA decision states:

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[28] *Id*. at 187.

[29] *Id*. at 239-248.

WHEREFORE, the instant Petition is DISMISSED and the assailed Resolutions dated July 30, 2015 and September 30, 2015 of the NLRC, Second Division, in NLRC LAC No. 07-001980-15(4) and NLRC NCR CN. 06-06903-14 are hereby AFFIRMED.

SO ORDERED.[30]

Undeterred, Bajaro filed the instant Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court.

Issues

The main issues raised for the Court's resolution are: (i) whether or not Bajaro was a regular employee of Metro Stonerich; and (ii) whether or not he was illegally dismissed by the latter company.

Ruling of the Court

The instant petition is bereft of merit.

It is a well-settled rule that the jurisdiction of the Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited only to reviewing errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts.[31] The Couti finds that none of the mentioned circumstances are present to warrant a review of the factual findings of the case. At any rate, the CA did not commit any reversible error that would warrant the exercise of the Court's appellate jurisdiction.

Bajaro is a Project Employee of Metro Stonerich

Essentially, the Labor Code classifies four (4) kinds of employees, namely: (i) regular employees or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (ii) project employees or those whose employment has been fixed

[30] *Id.* at 248.

[31] *Tenazas, et al. v. R. Villegas Taxi Transport, et al.*, 731 Phil. 217, 228 (2014), citing *"J" Marketing Corp. v. Taran*, 607 Phil. 414, 424-425 (2009).

for a specific project or undertaking, the completion or termination of which has been determined at the time of the employees' engagement; (iii) seasonal employees or those who perform services which are seasonal in nature, and whose employment lasts during the duration of the season; and (iv) casual employees or those who are not regular, project, or seasonal employees. Jurisprudence has added a fifth kind—fixed-term employees or those hired only for a definite period of time.[32]

Focusing on the first two kinds of employment, Article 294 of the Labor Code distinguishes a regular from project-based employment as follows:

> **Art. 294.** *Regular and casual employment*. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

Parenthetically, in a project-based employment, the employee is assigned to a particular project or phase, which begins and ends at a determined or determinable time. Consequently, the services of the project employee may be lawfully terminated upon the completion of such project or phase.[33] For employment to be regarded as project-based, it is incumbent upon the employer to prove that (i) the employee was hired to carry out a specific project or undertaking; and (ii) the employee was notified of the duration and scope of the project.[34] In order to safeguard

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[32] *GMA Network, Inc. v. Pabriga, et al.*, 722 Phil. 161, 170 (2013), citing *Brent School, Inc. v. Zamora*, 260 Phil. 747 (1990).

[33] *Dacles v. Millenium Erectors Corp., et al.*, 763 Phil. 550, 558 (2015), citing *Omni Hauling Services, Inc., et al. v. Bon, et al.*, 742 Phil. 335, 343-344 (2014).

[34] *Dacles v. Millenium Erectors Corporation*, *id*. at 557.

the rights of workers against the arbitrary use of the word "project" as a means to prevent employees from attaining regular status, employers must prove that the duration and scope of the employment were specified at the time the employees were engaged, and prove the existence of the project.[35]

In the case at bar, Bajaro was hired by Metro Stonerich as a concrete pump operator in five different construction projects, to wit: (i) SM Cubao Expansion and Renovation project located at Araneta Center, Cubao for five months, which began on June 3, 2008; (ii) Robinson's Place Ilocos Norte for five months, which commenced on January 24, 2009; (iii) Robinson's Tacloban, Marasbaras for five months, which started on December 14, 2010; (iv) KCC Mall Marbel Expansion, Koronadal City for 12 months, which commenced on October 24, 2011; and (v) KCC Mall Zamboanga Project, Zamboanga City for 12 months, which started on January 11, 2013.[36]

It is undisputed that Bajaro was adequately informed of his employment status (as a project employee) at the time of his engagement. This is clearly substantiated by his employment contracts (*Kasunduan Para sa Katungkulang Serbisyo (Pamproyekto)*, stating that: (i) he was hired as a project employee; and (ii) his employment was for the indicated starting dates therein, and will end on the completion of the project. The said contracts that he signed sufficiently apprised him that his security of tenure with Metro Stonerich would only last as long as the specific phase for which he was assigned. In fact, the target date of completion was even indicated in each individual contract clearly warning him of the period of his employment.

Furthermore, pursuant to Department Order No. 19, Series of 1993, or the "Guidelines Governing the Employment of Workers in the Construction Industry," Metro Stonerich duly submitted the required Establishment Employment Report on

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[35] *Id*. at 558.

[36] *Rollo*, p. 147.

April 23, 2014 to the DOLE for the reduction of its workforce. Bajaro was included among the 10 workers reported for termination as a consequence of the completion of the construction project effective May 23, 2014.[37] As aptly pointed out by the CA, the submission of the said Establishment Employment Report is a clear indication of project employment.

Verily, being a project employee, Metro Stonerich was justified in terminating Bajaro's employment upon the completion of the project for which the latter was hired.

Bajaro's Continuous Rehiring and His Performance of Work that was Necessary and Desirable to Metro Stonerich's Business Did Not Confer Upon Him Regular Employment Status

Remarkably, in *Gadia, et al. v. Sykes Asia, Inc., et al.*,[38] the Court explained that the "projects" wherein the project employee is hired may consist of "(i) a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (ii) a particular job or undertaking that is not within the regular business of the corporation."[39]

Accordingly, it is not uncommon for a construction firm to hire project employees to perform work necessary and vital for its business. Suffice it to say, in *William Uy Construction Corp. and/or Uy, et al. v. Trinidad*,[40] the Court acknowledged the unique characteristic of the construction industry and emphasized that the laborer's performance of work that is

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[37] *Id*. at 247.

[38] 752 Phil. 413 (2015).

[39] *Id*. at 421, citing *Omni Hauling Services, Inc., et al. v. Bon, et al.*, *supra* note 33, at 344.

[40] 629 Phil. 185 (2010).

necessary and vital to the employer's construction business, and the former's repeated rehiring, do not automatically lead to regularization,*viz.*:

Generally, length of service provides a fair yardstick for determining when an employee initially hired on a temporary basis becomes a permanent one, entitled to the security and benefits of regularization. But this standard will not be fair, if applied to the construction industry, simply because construction firms cannot guarantee work and funding for its payrolls beyond the life of each project. And getting projects is not a matter of course. Construction companies have no control over the decisions and resources of project proponents or owners. There is no construction company that does not wish it has such control but the reality, understood by construction workers, is that work depended on decisions and developments over which construction companies have no say.

For this reason, the Court held in *Caseres v. Universal Robina Sugar Milling Corporation* that **the repeated and successive rehiring of project employees do not qualify them as regular employees, as length of service is not the controlling determinant of the employment tenure of a project employee, but whether the employment has been fixed for a specific project or undertaking, its completion has been determined at the time of the engagement of the employee**.[41] (Citations omitted and emphasis and underscoring Ours)

Additionally, in *Malicdem, et al. v. Marulas Industrial Corporation, et al.*,[42] the Court took judicial notice of the fact that in the construction industry, an employee's work depends on the availability of projects. The employee's tenure "is not permanent but coterminous with the work to which he is assigned."[43] Consequently, it would be extremely burdensome for the employer, who depends on the availability of projects, to carry the employee on a permanent status and pay him wages even if there are no projects for him to work on. An employer cannot be forced to maintain the employees in the payroll, even

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[41] *Id*. at 190.

[42] 728 Phil. 264 (2014).

[43] *Id*. at 274.

after the completion of the project.[44] "To do so would make the employee a privileged retainer who collects payment from his employer for work not done. This is extremely unfair to the employers and amounts to labor coddling at the expense of management."[45]

Accordingly, it is all too apparent that the employee's length of service and repeated re-hiring constitute an unfair yardstick for determining regular employment in the construction industry. Thus, Bajaro's rendition of six years of service, and his repeated re-hiring are not badges of regularization.

Bajaro is Entitled to Overtime Pay Differentials, Proportionate 13th Month Pay, SIL Pay and Attorney's Fee

Although Bajaro was hired as a project employee, he is still entitled to certain benefits under the law. Particularly, Bajaro is bound to receive overtime pay differentials, SIL pay, and proportionate 13th month pay, with attorney's fees equivalent to 10% of the total monetary award.

Specifically, as for Bajaro's overtime pay, the records show that Bajaro rendered 531 hours of overtime work. Pursuant to Article 87 of the Labor Code, Bajaro is entitled to receive an additional compensation equivalent to 25% of his daily wage of Php 500.00 for every hour of overtime work he rendered. Unfortunately however, Bajaro merely received a meager overtime pay of Php 50.00. Thus, the Court agrees with the LA's conclusion that Bajaro is entitled to an overtime pay differential.[46]

Additionally, Metro Stonerich failed to prove that it paid Bajaro his SIL pay. Notably, Article 95 of the Labor Code states that "every employee who has rendered at least one year of

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[44] *Id*. at 275.

[45] *Id*.

[46] *Rollo*, p. 150.

service shall be entitled to a yearly SIL of five days with pay." Metro Stonerich failed to prove that it gave Bajaro his SIL pay.[47] It must be noted that in claims for payment of salary differential, SIL, holiday pay and 13th month pay, the burden rests on the employer to prove payment. This standard follows the basic rule that in all illegal dismissal cases the burden rests on the defendant to prove payment rather than on the plaintiff to prove non-payment. This likewise stems from the fact that all pertinent personnel files, payrolls, records, remittances and other similar documents — which will show that the differentials, SIL and other claims of workers have been paid — are not in the possession of the worker but are in the custody and control of the employer.[48]

Likewise, Bajaro is entitled to receive his proportionate 13th month pay corresponding to January 2014 to April 22, 2014.[49]

In addition, Bajaro should be awarded attorney's fees equivalent to 10% of the total monetary award, as the instant case includes a claim for unlawfully withheld wages.[50] Added to this, all amounts due shall earn a legal interest of six percent (6%) *per annum*.

On the other hand, Bajaro's claims for premium pay for holiday and rest day are denied for lack of factual basis, due to Bajaro's failure to specify the dates that he worked during special days, or rest days.[51] It bears stressing that premium pays for holidays and rest days, are not usually incurred in the normal course of business.[52] As such, the burden is shifted on the employee to

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[47] *Id*. at 150-151.

[48] *Loon, et al. v. Power Master, Inc., et al.*, 723 Phil. 515, 531-532 (2013).

[49] *Rollo*, p. 150.

[50] LABOR CODE OF THE PHILIPPINES, Article 111.

[51] *Rollo*, p. 150.

[52] *Loon, et al. v. Power Master, Inc., et al.*, *supra* note 48, at 532, citing *Lagatic v. NLRC*, 349 Phil. 172, 185-186 (1998).

prove that he actually rendered service on holidays and rest days.[53]

In fine, *the Court affirms the right of an employer to hire project employees, for as long as the latter are sufficiently apprised of the nature and term of their employment*. Metro Stonerich was not remiss in informing Bajaro of his limited tenure as a project employee. Accordingly, being a project employee, Bajaro was validly terminated from employment due to the completion of the project in which he was engaged.

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED for lack of merit**. Accordingly, the Decision dated July 22, 2016 of the Court of Appeals in CA-G.R. SP No. 143243 is **AFFIRMED with modification** in that all monetary awards shall earn legal interest of six percent (6%) *per annum* from the finality of this Decision until the full satisfaction of the obligation. The Labor Arbiter is ordered to prepare a comprehensive accounting of all monetary awards pursuant to this Court's ruling.

SO ORDERED.

Carpio,[*] *Acting C.J. (Chairperson), Bersamin*,[**] *Perlas-Bernabe*, and *Caguioa, JJ.*, concur.

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[53] *Loon, et al. v. Power Master, Inc., et al.*, *id*.

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

[**] Designated as additional Member per Raffle dated August 30, 2017.

SECOND DIVISION

[G.R. No. 228470. April 23, 2018]

LOADSTAR INTERNATIONAL SHIPPING, INC., *petitioner, vs.* **ERNESTO AWITEN YAMSON, substituted by his heirs GEORGIA M. YAMSON and their children, namely: JENNIE ANN MEDINA YAMSON, KIMBERLY SHEEN MEDINA YAMSON, JOSHUA MEDINA YAMSON and ANGEL LOUISE MEDINA YAMSON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW SHOULD BE RAISED IN A PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; EXCEPTIONS.— The first issue is factual and it is settled that factual issues are not proper subjects in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Only questions of law should be raised in petitions filed under this Rule. This principle, however, is subject to certain exceptions, to wit: (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. The crux of the instant petition revolves around the contrasting findings of the LA and the NLRC, on one hand, and the CA on the other with respect to the issue of whether or not respondent's

illnesses are work-related or work aggravated. Thus, this issue may be the subject of this Court's review.

2. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); TWO ELEMENTS WHICH MUST CONCUR IN ORDER FOR DISABILITY TO BE COMPENSABLE UNDER THE POEA-SEC, EXPLAINED; THE BURDEN IS PLACED UPON THE CLAIMANT TO PRESENT SUBSTANTIAL EVIDENCE THAT HIS WORK CONDITIONS CAUSED OR AT LEAST INCREASED THE RISK OF CONTRACTING THE DISEASE.— For disability to be compensable under the above 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. To be entitled to compensation and benefits under the governing POEA-SEC, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted. In other words, while the law recognizes that an illness may be disputably presumed to be work-related, prevailing jurisprudence requires that the seafarer or the claimant must still show a reasonable connection between the nature of work on board the vessel and the illness contracted or aggravated. Thus, the burden is placed upon the claimant to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease.

3. ID.; ID.; ID.; FAILURE OF THE SEAFARER TO COMPLY WITH THE MANDATORY REPORTING REQUIREMENTS AS PRESCRIBED BY THE COMPANY-DESIGNATED PHYSICIAN WOULD RESULT IN THE FORFEITURE OF THE RIGHT TO CLAIM, AMONG OTHERS, SICKNESS ALLOWANCE AND REIMBURSEMENT OF MEDICAL AND TRANSPORTATION EXPENSES INCURRED AS A RESULT OF THE SEAFARER'S CONTINUED TREATMENT; CASE AT BAR.— [W]hile it is true that labor contracts are impressed with public interest and the provisions

of the POEA-SEC must be construed logically and liberally in favor of Filipino seamen in the pursuit of their employment on board ocean-going vessels, still the rule is that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence. x x x Under Section 20 of the 2010 Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, failure of the seafarer to comply with the mandatory reporting requirements as prescribed by the company-designated physician would result in the forfeiture of the right to claim, among others, sickness allowance and reimbursement of medical and transportation expenses incurred as a result of the seafarer's continued treatment. x x x A perusal of the records at hand would, however, show that both parties failed to present substantial evidence to prove their respective allegations. Thus, in the absence of proof, the above claims of both parties are considered mere self-serving assertions which cannot be given credence. It has been ruled, time and again, that self-serving and unsubstantiated declarations are insufficient to establish a case before quasi-judicial bodies where the quantum of evidence required to establish a fact is substantial evidence. Since the parties failed to substantiate their allegations, the Court cannot, with sufficiency and finality, determine who between them is at fault for the discontinuance and non-completion of the post-employment medical examination of Ernesto. Thus, there is no basis to grant Ernesto's prayer for sickness allowance and reimbursement of medical and transportation expenses.

APPEARANCES OF COUNSEL

Dennis P. Ancheta for petitioner.
Lynnicel Lambino Tabanera for respondents.

D E C I S I O N

PERALTA, *J.*:

Assailed in the present petition for review on *certiorari* under Rule 45 of the Rules of Court are the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), promulgated on June 9, 2016 and December 1, 2016, respectively, in CA-G.R. SP Nos. 142663 and 142689. The assailed CA Decision reversed and set aside the June 25, 2015 Decision[3] and August 17, 2015 Resolution[4] of the National Labor Relations Commission (*NLRC*), in NLRC LAC No. 10-000876-14, which affirmed, with modification, the September 8, 2014 Decision[5] of the Labor Arbiter (*LA*) in NLRC Case No. NCR (M) 03-03096-14. The Decision of the LA dismissed herein respondent's complaint for recovery of total and permanent disability benefits, sickness allowance, medical and transportation reimbursements, moral and exemplary damages, and attorney's fees.

The factual and procedural antecedents are as follows:

Herein petitioner is a domestic corporation engaged in the shipping business. On May 7, 2012, petitioner employed the services of herein respondent Ernesto Yamson (*Ernesto*) as Third Mate aboard the vessel "M/V Foxhound" for a period of twelve (12) months, with a basic monthly salary of US$582.00, as evidenced by his Employment Contract.[6] On May 9, 2012 Ernesto

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[1] Penned by Associate Justice Manuel M. Barrios with Associate Justices Franchito N. Diamante and Maria Elisa Sempio Diy, concurring; Annex "C" to petition, *rollo*, pp. 79-92.

[2] Annex "D" to petition, *id.* at 93-95.

[3] Per NLRC opinion written by Commissioner Erlinda T. Agus, with the concurrence of Presiding Commissioner Gregorio O. Bilog III and Commissioner Alan A. Ventura; Annex "L" to Petition, *id.* at 284-311.

[4] Annex "N" to Petition, *id.* at 322-326.

[5] Penned by Labor Arbiter Fe S. Cellan, Annex "I" to Petition, *id.* at 217-230.

[6] *Rollo*, p. 136.

commenced his employment on board "M/V Foxhound". His contract was subsequently extended.

On November 15, 2013, the vessel anchored at Paia Inlet, Papua New Guinea and started to load logs. On November 19, 2013, Ernesto, while performing his regular tasks on an extremely hot day, felt dizzy. In the evening of the same day, Ernesto started to feel the left side of his body getting numb. Around 9 o'clock of the following morning, Ernesto already felt very weak while performing his duties. He requested that his blood pressure be checked and that his condition be reported to the ship captain. Thereafter, he was ordered to rest in his cabin. However, his condition deteriorated as he could no longer move the left side of his body in the evening of the same day. His predicament worsened when he suffered from LBM the next day forcing him to request that he be brought to the hospital. Ernesto was, thus, brought to the Pacific International Hospital in Papua New Guinea where he was confined and was diagnosed to have suffered from cerebrovascular disease: "left cerebellar infarct" and hypertension, Stage 2. The attending physician ordered him to cease from working for a period of two (2) weeks.[7] Subsequently, on December 1, 2013, Ernesto was repatriated to the Philippines. Upon arrival in Manila, he was immediately brought to the Philippine General Hospital where he underwent medical check-up. Finding that he was in a stable condition, the examining doctor sent him home as he was classified as an "out-patient." However, Ernesto continued to experience headache and numbness of the entire left side of his body even after arriving home. This prompted his wife to insist that he be admitted in a private hospital. Thus, on December 4, 2013, Ernesto was admitted at the Manila Doctor's Hospital where he underwent CT scans of the head and heart. In his letter addressed to petitioner, the company-designated physician reported that the result of the CT scan conducted on Ernesto showed, among others, that he has an "old infarct in the left superior aspect of the left cerebellum."[8] On December 13, 2013,

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[7] See Medical Certificate, *id.* at 137.

[8] *Rollo*, p. 115.

Ernesto was discharged from the hospital. Subsequently, he consulted another physician who diagnosed him to be suffering from Hypertensive Atherosclerotic Cardiovascular Disease and Cerebrovascular Disease and was advised to cease from working as a seaman due to his neurologic deficits.[9]

On the basis of the findings of his own doctor, Ernesto, on March 14, 2014, filed the above-mentioned complaint praying that he be awarded the following: US$60,000.00 as total and permanent disability benefits; sickness allowance equivalent to 120 days; medical and transportation expenses in the amount of ₱62,514.64; ₱100,000.00 as moral damages; ₱100,000.00 as exemplary damages; and, 10% of the total judgment award as attorney's fees.[10]

Thereafter, the parties filed their respective Position Papers[11] and Replies.[12]

On September 8, 2014, the LA rendered a Decision in petitioner's favor by dismissing the complaint for lack of merit.

Respondent appealed the Decision of the LA to the NLRC.

On June 25, 2015, the NLRC promulgated its Decision and disposed as follows:

> WHEREFORE, the instant appeal is PARTLY GRANTED. The assailed Decision dated September 8, 2014 is hereby AFFIRMED with MODIFICATION in that respondent Loadstar International Shipping Inc. is ordered to pay complainant the following:
>
> 1. Sickness allowance in the amount of US$2,328.00
>
> 2. Medical and transportation expenses in the amount of ₱31,738.18.
>
> All other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[13]

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[9] See Medical Certificate, *id.* at 142.

[10] See Complainant's Position Paper, Annex "F" to Petition, *id.* at 132.

[11] See Annexes "E" and "F", *id.* at 96-110 and 117-135.

[12] See Annexes "G" and "H", *id.* at 189-203 and 204-216.

[13] *Rollo*, p. 310.

Feeling aggrieved, both petitioner and Ernesto filed with the CA separate special civil actions for *certiorari* under Rule 65 of the Rules of Court questioning the above Decision of the NLRC.

On June 9, 2016, the CA rendered its assailed Decision with the following dispositive portion:

> **WHEREFORE**, premises considered, the petition of Loadstar International Shipping Inc. in CA-G.R. S.P. No. 142689 is **DENIED** for lack of merit. The petition of Yamson in CA-GR SP No. 142663 is **GRANTED**. The Decision dated 25 June 2015 and Resolution dated 17 August 2015 of the NLRC are **REVERSED** and **SET ASIDE**.
>
> We order Loadstar International Shipping Inc. to pay Ernesto Awiten Yamson total and permanent disability benefits in the amount of US$60,000.00 plus ten percent (10%) thereof as attorney's fees, in Philippine currency, at the prevailing rate of exchange at the time of payment.
>
> **SO ORDERED.**[14]

Petitioner filed a Motion for Reconsideration, but the CA denied it *via* its Resolution of December 1, 2016.

Hence, the present petition for review on *certiorari* based on the following grounds:

I

THE COURT OF APPEALS RESOLVED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORDANCE WITH LAW AND APPLICABLE DECISIONS OF THIS HONORABLE COURT IN GRANTING THE PETITION FOR CERTIORARI FILED BY RESPONDENT YAMSON AND IN THE PROCESS AWARDED US$60,000.00 REPRESENTING TOTAL AND PERMANENT DISABILITY BENEFITS CONSIDERING THAT:

A. YAMSON DID NOT SUFFER A ISCHEMIC NOR HEMORRHAGIC STROKE WHILE IN THE EMPLOY OF LOADSTAR INTERNATIONAL SHIPPING, INC.

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[14] *Id.* at 91. (Emphasis in the original)

THE WEAKNESS IN THE LEFT SIDE OF YAMSON'S BODY FOR WHICH HE WAS REPATRIATED WAS CAUSED BY ISCHEMIA OR REDUCED BLOOD FLOW TO THE BRAIN AND THIS ISCHEMIA WAS CAUSED BY HIS ATHEROMATOUS BASAL VESSEL DISEASE OR A NARROWING OF HIS ARTERIES.

THIS IS CONFIRMED BY THE CT SCANS CONDUCTED BOTH BY THE PACIFIC INTERNATIONAL HOSPITAL IN PORT MORESBY, PAPUA NEW GUINEA AND THE MANILA DOCTOR'S HOSPITAL IN MANILA.

B. THE HONORABLE COURT OF APPEALS ENGAGED IN SPECULATIONS WHEN IT RULED THAT "IT IS POSSIBLE THAT THE INFARCT WAS CAUSED BY THE CEREBRAL ACCIDENT ON NOVEMBER 13, 2013".

THE CT SCAN CLEARLY PROVED THAT THERE WAS NO CEREBRAL EVENT OR ACCIDENT ON THE SAID DATE.

THE USE OF THE PHRASE "IT IS POSSIBLE" IS A CLEAR INDICATION OF "SPECULATION".

C. THE QUESTION OF WHETHER YAMSON SUFFERED A STROKE OR NOT WHILE WORKING ON BOARD THE VESSEL OF PETITIONER, IS A QUESTION OF FACT WHICH IS NOT THE PROPER SUBJECT OF A PETITION FOR CERTIORARI BEFORE THE COURT OF APPEALS.

D. REALITIES ON BOARD M/V FOXHOUND MILITATES AGAINST THE HONORABLE COURT OF APPEALS' FINDINGS THAT THE NATURE OF YAMSON'S EMPLOYMENT AS A THIRD OFFICER HAS REGULARLY EXPOSED HIM TO STRESS, LACK OF SLEEP AND OTHER SIMILAR HAZARDS WHICH LED HIM TO HAVE A STROKE THAT THE CT SCAN SHOWED YAMSON DID NOT HAVE A SCHEMIC STROKE NOR HEMORRHAGIC STROKE ON NOVEMBER 13, 2013.

E. YAMSON COMMITTED FRAUDULENT MISREPRESENTATION ABOUT HIS PAST MEDICAL

CONDITION IN HIS PEME WHEN HE DID NOT DISCLOSE AND IN FACT CONCEALED FROM THE PETITIONER THAT HE HAD ALREADY INCURRED A CEREBRAL EVENT LONG BEFORE HIS PEME BEFORE BEING EMPLOYED BY LISI.

F. THE HONORABLE COURT OF APPEALS FAULTED DR. TEVES, THE COMPANY--DESIGNATED PHYSICIAN FOR HIS ALLEGED FAILURE TO MAKE A COMPLETE ASSESSMENT OF YAMSON'S HEALTH.

ON RECORD, IT WAS YAMSON WHO FAILED TO COMPLETE HIS POST MEDICAL EXAMINATION AFTER HIS REPATRIATION PURSUANT TO SEC. 20(A), No. 3 OF THE 2010 POEA STANDARD EMPLOYMENT CONTRACT. THIS IS MEDICAL ABANDONMENT.

THE COURT COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISREGARDED THE FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN WHO EXAMINED YAMSON FOR NINE (9) DAYS IN FAVOR OF THE MEDICAL OPINION OF THE PRIVATE PHYSICIAN OF YAMSON WHO EXAMINED HIM ONLY FOR ONE (1) DAY ON MARCH 8, 2014.

THE COURT OF APPEALS WRONGLY CONCLUDED THAT THE ASSESSMENT MADE BY YAMSON'S PHYSICIAN MATCHED THAT OF DR. KHINE OF PACIFIC INTERNATIONAL HOSPITAL.

THE FINDINGS OF THE PRIVATE PHYSICIAN WAS DISCARDED BY THE NLRC.

G. YAMSON COMMITTED A FATAL ERROR WHEN HE PREMATURELY FILED HIS COMPLAINT WITHOUT FIRST SEEKING THE OPINION OF A THIRD PARTY DOCTOR WHICH VIOLATED THE MANDATORY CONFLICT RESOLUTION PROVISION OF SECTION 20 (3) OF THE 2010 POEA-SEC.

II

THE COURT OF APPEALS RESOLVED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORDANCE WITH LAW

AND APPLICABLE DECISIONS OF THIS HONORABLE COURT IN DENYING THE PETITION FOR CERTIORARI FILED BY PETITIONER AND IN THE PROCESS ALSO AFFIRMED THE AWARD OF SICKNESS ALLOWANCE IN THE AMOUNT OF US$2,328.00 AND MEDICAL AND TRANSPORTATION EXPENSES IN THE AMOUNT OF ₱31,738.18 IN ADDITION TO THE US$60,000.00 TOTAL AND PERMANENT TOTAL DISABILITY BENEFITS CONSIDERING THAT:

A. YAMSON FAILED TO COMPLETE HIS POST MEDICAL EXAMINATION AFTER HIS REPATRIATION PURSUANT TO SEC. 20(A), No. 3 OF THE 2010 POEA STANDARD EMPLOYMENT CONTRACT.

B. PETITIONER LOADSTAR INTERNATIONAL SHIPPING CO., INC. CANNOT BE MADE LIABLE FOR REFUND OF RESPONDENT YAMSON'S MEDICAL EXPENSES BECAUSE THE EXPENSES DO NOT REFER TO COST OF MEDICINES PRESCRIBED BY THE COMPANY-DESIGNATED PHYSICIAN.[15]

On October, 30, 2017, Ernesto's counsel filed a "Manifestation of the Death of Respondent and Motion to Substitute the Deceased Respondent with his Surviving Spouse and Children."

In a Resolution[16] dated January 24, 2018, this Court noted the above Manifestation and granted the Motion to Substitute.

At the outset, it bears to point out that the merits of the present case should be resolved by taking into consideration the parties' contract as well as the prevailing law and rules at the time that Ernesto was employed. In this regard, it is settled that while the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-Standard Employment Contract (*POEA-SEC*) be integrated with every seafarer's contract.[17] In the instant case,

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[15] *Id.* at 31-34.

[16] *Id.* at 660-661.

[17] *C.F. Sharp Crew Management, Inc. v. Legal Heirs of the late Godofredo Repiso*, 780 Phil. 645, 665-666 (2016).

since petitioner's employment contract was executed on May 7, 2012, it is governed by the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships,[18] which was amended in 2010, pertinent portions of which read as follows:

SECTION 20. COMPENSATION AND BENEFITS

A. 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:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship;

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and

[18] See POEA Memorandum Circular No. 10, Series of 2010, dated October 26, 2010.

> accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.
>
> 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. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. 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.

On the basis of the above provisions, the Court will, thus, proceed to discuss the main substantive issues which relate to: (1) whether or not Ernesto's illnesses are work-related or work aggravated, and (2) whether or not he is entitled to disability compensation by reason of such illnesses.

The first issue is factual and it is settled that factual issues are not proper subjects in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Only questions of law should be raised in petitions filed under this Rule.[19] This principle, however, is subject to certain exceptions, to wit: (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

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[19] *Pascual v. Burgos, et al.*, 776 Phil. 167, 182 (2016).

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.[20] The crux of the instant petition revolves around the contrasting findings of the LA and the NLRC, on one hand, and the CA on the other with respect to the issue of whether or not respondent's illnesses are work-related or work aggravated. Thus, this issue may be the subject of this Court's review.

From the pieces of evidence and arguments presented by the parties, it appears that the opinion of Ernesto's physician, that his illnesses are work-related or work aggravated, is diametrically opposed to the evaluation made by the company doctor which found that Ernesto's illnesses are not work-related. The LA and the NLRC gave credence to the findings of the company-designated doctor, while the CA gave more weight to the findings of respondent's physician of choice.

In *Andrada v. Agemar Manning Agency, Inc., et al.*,[21] this Court held that:

> Jurisprudence is replete with pronouncements that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. It is his findings and evaluations which should form the basis of the seafarer's disability claim. His assessment, however, is not automatically final, binding or conclusive on the claimant, the labor tribunal or the courts, as its inherent merits would still have to be weighed and duly considered. The seafarer may dispute such assessment by seasonably exercising his prerogative to seek a second opinion and consult a doctor of his choice. In case of disagreement between the findings of the company-designated physician and the seafarer's doctor of choice, the employer

[20] *Id.* at 182-183.

[21] 698 Phil. 170 (2012).

and the seaman may agree jointly to refer the latter to a third doctor whose decision shall be final and binding on them.[22]

In the present case, there is no evidence to show that the parties jointly sought the opinion of a third physician in the determination and assessment of Ernesto's disability or the absence of it. Hence, the credibility of the findings of their respective doctors was properly evaluated by the labor tribunals (*LA and NLRC*) as well as the CA on the basis of their inherent merits.

After a review of the records at hand, the Court finds that there is no cogent reason to depart from the findings of the LA and the NLRC that Ernesto failed to establish that his subject illnesses were either work-related or work aggravated.

For disability to be compensable under the above 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.[23] To be entitled to compensation and benefits under the governing POEA-SEC, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.[24]

In other words, while the law recognizes that an illness may be disputably presumed to be work-related, prevailing jurisprudence requires that the seafarer or the claimant must still show a reasonable connection between the nature of work on board the vessel and the illness contracted or aggravated.[25] Thus, the burden is placed upon the claimant to present substantial

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[22] *Id.* at 182.

[23] *Doehle-Philman Manning Agency, Inc., et al. v. Haro*, 784 Phil. 840, 850 (2016); *Austria v. Crystal Shipping, Inc.*, 781 Phil. 674, 682 (2016).

[24] *Id.*

[25] *Nonay v. Bahia Shipping Services, Inc.*, 781 Phil. 197, 217 (2016).

evidence that his work conditions caused or at least increased the risk of contracting the disease.[26]

In this case, however, Ernesto was unable to present substantial evidence to show that his work conditions caused, or at the least increased the risk of contracting his illness. Neither was he able to prove that his illness was pre-existing and that it was aggravated by the nature of his employment.

Contrary to the ruling of the CA, there is no evidence to prove that the findings of Ernesto's private physician, Dr. Joel Carlos, were reached based on an extensive or comprehensive examination of Ernesto. In the Medical Certificate[27] he issued, Dr. Carlos diagnosed Ernesto as suffering from "cerebrovascular disease (*CVD*) and hypertensive atherosclerotic cardiovascular disease"; that he suffered from these illnesses "due to the nature of patient's work and the working conditions/environment on board vessel" and, by reason of which, "[p]atient is no longer advised to work especially as a seaman due to his ... neurologic deficits." However, aside from the above Medical Certificate, Ernesto failed to present competent evidence to prove that he was thoroughly examined by Dr. Carlos. No proof was shown that laboratory or diagnostic tests nor procedures were taken. In fact, Dr. Carlos did not specify the medications he prescribed and the type of medical management he made to treat Ernesto's condition. Dr. Carlos did not sufficiently justify his conclusions that Ernesto's illnesses started at work or are work-related and that, by reason of such illnesses, Ernesto was no longer fit to work. At most, the said Medical Certificate is a mere summary and generalization of Ernesto's medical history and condition based on a one-time consultation. Indeed, Dr. Carlos indicated therein that he examined Ernesto on March 8, 2014. However, a cursory reading of the said Medical Certificate shows that the same was issued on the same day. This only proves that Ernesto was under the care of Dr. Carlos for only one day, without any indication whether Ernesto consulted him previously.

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[26] *Id.* at 218.

[27] *Rollo*, p. 142.

While it is true that probability and not ultimate degree of certainty is the test of proof in compensation proceedings, it cannot be gainsaid, however, that award of compensation and disability benefits cannot rest on speculations, presumptions and conjectures.[28] In addition, the Court agrees with the finding of the NLRC that "[c]omplainant [Ernesto] failed to demonstrate that he was subjected to any unusual and extraordinary physical or mental strain or event that may have triggered his stroke."

Also, it may be true that there is nothing in Ernesto's Pre-Employment Medical Examination (*PEME*) which showed that he suffered from left cerebral infarct prior to his deployment. However, this Court has ruled that the PEME is not exploratory and does not allow the employer to discover any and all pre-existing medical conditions with which the seafarer is suffering and for which he may be presently taking medication.[29] The PEME is nothing more than a summary examination of the seafater's physiological condition; it merely determines whether one is "fit to work" at sea or "fit for sea service" and it does not state the real state of health of an applicant.[30] The "fit to work" declaration in the PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment.[31] In this regard, it is also true that the pre-existence of an illness does not irrevocably bar compensability because disability laws still grant the same provided the seafarer's working conditions bear causal connection with his illness.[32] These rules, however, cannot be asserted perfunctorily by the claimant as it is incumbent upon him to prove, by substantial evidence, as to how and why the nature of his work and working conditions contributed to and/or aggravated his illness.[33] However, as earlier

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[28] *Andrada v. Agemar Manning Agency, Inc., et al., supra note* 21, at 184.

[29] *Status Maritime Corporation, et al. v. Spouses Delalamon*, 740 Phil. 175, 194 (2014).

[30] *Id.*

[31] *Id.* at 194-195.

[32] *Id.* at 196.

[33] *Id.*

discussed, Ernesto failed to discharge this burden of proof. His claims are mere general statements presented as self-serving allegations which were not validated by any written document or any other evidence visibly demonstrating that the working conditions on board the vessel "M/V Foxhound" served to cause or worsen his illnesses.

Thus, on the basis of the foregoing discussions, the LA and the NLRC correctly ruled that Ernesto is not entitled to any disability compensation. The Court commiserates with Ernesto, but absent substantial evidence from which reasonable basis for the grant of benefits prayed for can be drawn, the Court is left with no choice but to deny his petition, lest an injustice be caused to his employer. Otherwise stated, while it is true that labor contracts are impressed with public interest and the provisions of the POEA-SEC must be construed logically and liberally in favor of Filipino seamen in the pursuit of their employment on board ocean-going vessels, still the rule is that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.[34]

However, the Court takes careful note of the fact that evidence on record would show that the evaluation made by the company-designated physician with respect to Ernesto's medical condition was not completed. In fact, in his December 9, 2013 letter addressed to petitioner, the Medical Director who was handling Ernesto's case did not make a report of the final assessment of his medical condition owing to the fact that they are still awaiting the results of the CT angiogram done on him, although the said Medical Director indicated that "initial reading of the angiogram shows a potential problem which needs more investigation."[35] Thus, as noted by the CA, "Dr. Teves failed to make a complete assessment of Yamson's health condition or disability or fitness to work."[36]

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[34] *Panganiban v. TARA Trading Shipmanagement, Inc., et al.*, 647 Phil. 675, 691 (2010).

[35] See *rollo*, p. 115.

[36] *Id.* at 89.

Under Section 20 of the 2010 Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, failure of the seafarer to comply with the mandatory reporting requirements as prescribed by the company-designated physician would result in the forfeiture of the right to claim, among others, sickness allowance and reimbursement of medical and transportation expenses incurred as a result of the seafarer's continued treatment. In this regard, petitioner contends that it was Ernesto's fault that he failed to complete his post-employment medical examination when, after being discharged from the hospital on December 13, 2013, he no longer reported to the company-designated doctor on the dates prescribed by the latter for his continued medical evaluation. On the other hand, Ernesto retorted by claiming that petitioner is actually at fault because it left him with no other choice but to consult a doctor of his own considering that upon his "return to Manila Doctor's [Hospital] for a follow-up check-up after he was discharged and was already treated as an out-patient, a nurse informed him and his wife that he was taken off his status as an out-patient and in fact his account with the hospital was already closed by the Petitioner."[37] A perusal of the records at hand would, however, show that both parties failed to present substantial evidence to prove their respective allegations. Thus, in the absence of proof, the above claims of both parties are considered mere self-serving assertions which cannot be given credence. It has been ruled, time and again, that self-serving and unsubstantiated declarations are insufficient to establish a case before quasi-judicial bodies where the quantum of evidence required to establish a fact is substantial evidence.[38] Since the parties failed to substantiate their allegations, the Court cannot, with sufficiency and finality, determine who between them is at fault for the discontinuance and non-completion of the post-employment medical examination of Ernesto. Thus, there is no basis to grant Ernesto's prayer for

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[37] See Comment to Petitioner's Petition for Review on *Certiorari*, *id.* at 609.

[38] *Interorient Maritime Enterprises, Inc. v. Creer III*, 743 Phil. 164, 184 (2014).

sickness allowance and reimbursement of medical and transportation expenses.

In any case, it is clear that Ernesto did not undergo any kind of treatment by the company doctor subsequent to being discharged from the hospital. Neither was there any definite declaration or assessment by the company doctor that respondent is already fit to go back to work following his hospital discharge. Nonetheless, it is undisputed that Ernesto was no longer able to return to work after his hospital discharge on December 13, 2013. In fact, Ernesto died on September 28, 2017, pending resolution of this petition, and the immediate cause of his death was "Brainstem Failure Secondary to Cerebrovascular Disease, Acute Infarction"[39] which, undeniably, was related to the illnesses subject of the instant case. If Ernesto were still alive, this Court would have ordered petitioner to continue, at its expense, Ernesto's medical treatment until the final evaluation or assessment could be made, with regard to his medical condition. Unfortunately, this can no longer be done. In a number of cases, this Court, has granted financial assistance to separated employees for humanitarian considerations, as a measure of social and compassionate justice and as an equitable concession.[40] Taking into consideration the factual circumstances obtaining in the present case, and the fact that Ernesto, in his own little way, has devoted his efforts to further petitioner's endeavors, the Court finds that Ernesto, who is now substituted by his heirs, is entitled to this kind of assistance in the amount of ₱75,000.00.

WHEREFORE, the instant petition is **GRANTED**. The Decision and Resolution of the Court of Appeals dated, June 9, 2016 and December 1, 2016, respectively, in CA-G.R. SP Nos. 142663 and 142689 are **REVERSED and SET ASIDE**. The Decision of the NLRC in NLRC LAC No. 10-000876-14

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[39] See Certificate of Death, *rollo*, p. 650.

[40] *Panganiban v. TARA Trading Shipmanagement, Inc., supra* note 34, at 686, 692; *Villaruel v. Yeo Han Guan*, 665 Phil. 212, 221 (2011); *Eastern Shipping Lines, Inc. v. Antonio*, 618 Phil. 601, 614-615 (2009).

(NLRC NCR-OFW-M 03-03096-14), promulgated on June 25, 2015, is **REINSTATED with MODIFICATION** to the effect that the grant of sickness allowance and medical and transportation expenses are **DELETED**. In lieu thereof, petitioner is **ORDERED to PAY** respondent's heirs the amount of ₱75,000.00 as financial assistance.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 230473. April 23, 2018]

SEACREST MARITIME MANAGEMENT, INC. and/or HERNING SHIPPING ASIA PTE. LTD., *petitioners, vs.* **ALMA Q. RODEROS, as widow and legal heir of FRANCISCO RODEROS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW ARE REVIEWABLE BY THE SUPREME COURT BECAUSE THE FACTUAL FINDINGS OF ADMINISTRATIVE OR QUASI-JUDICIAL BODIES ARE ACCORDED RESPECT; EXCEPTIONS; CASE AT BAR.— The general rule is that only questions of law are reviewable by the Court. This is because it is not a trier of facts; it is not duty-bound to analyze, review, and weigh the evidence all over

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

again in the absence of any showing of any arbitrariness, capriciousness, or palpable error. Thus, factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by the Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence. In labor cases, this doctrine applies with greater force as questions of fact presented therein are for the labor tribunals to resolve. The Court, however, permitted a relaxation of this rule whenever any of the following circumstances is present: (1) [W]hen the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Whether or not there is a causal relation between Roderos's illness and his work as a Chief Cook on board the vessel "MT ANNELISE THERESA" is essentially a factual issue that the Court would generally not disturb. Nonetheless, in light of the apparent conflict between the findings of facts of the NLRC and the CA, and on the strength of the relaxation of the rules quoted above, the Court can and will delve into the present controversy.

2. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DETERMINES WHETHER OR NOT A SEAFARER, WHO SUSTAINS AN INJURY OR CONTRACTS AN ILLNESS, SHOULD BE INDEMNIFIED BY THE EMPLOYER; TWO ELEMENTS TO ESTABLISH COMPENSABILITY.— In

Jebsens Maritime, Inc., Sea Chefs. Ltd. And Enrique M. Aboitiz vs. Florvin G. Rapiz, the Court reiterated its pronouncement that the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) is the law between the parties, and its provisions bind both of them. This contract is also what primarily determines whether or not a seafarer, who sustains an injury or contracts an illness, should be indemnified by the employer. Section 20(A) of the contract requires the concurrence of two elements: (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.; WORK-RELATED ILLNESSES; RULES DETERMINING WORK-RELATEDNESS OF AN ILLNESS.— Work-related illnesses, are determined by the following rules: First, there is work relation if the illness leads to disability or death as a result of an occupational disease listed under Section 32-A of the POEA-SEC with the conditions set therein satisfied; Second, 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. However, this presumption notwithstanding, the Court has held that the claimant-seafarer must still prove by substantial evidence that his/her 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 — but not direct causal relation — is required. It is thus this probability of connection, and not the ultimate degree of certainty, that is the test of proof of compensation proceedings.

4. ID.; ID.; COMPENSABILITY OF OCCUPATIONAL DISEASE AND THE RESULTING DISABILITY OR DEATH; CONDITIONS TO BE ESTABLISHED BY SUBSTANTIAL EVIDENCE; CASE AT BAR.— [F]or an occupational disease and the resulting disability or death to be compensable, all the following conditions, *as supported by substantial evidence*, must be established: 1. The seafarer's work must involve the risk described herein; 2. The disease was contracted as a result of the seafarer's exposure to the described risks; 3. The disease was contracted within a period of exposure

and under such other factors necessary to contract it; 4. There was no notorious negligence on the part of the seafarer. In this case, there is no dispute that Roderos's illness, Cancer of the Large Bowel (Colon), is not among the occupational diseases listed in the POEA-SEC. x x x This thus leads the discussion into the second rule in determining the work relation of the illness. Did the respondent establish by substantial evidence the reasonable causation, or aggravation, of the exigencies of Roderos's work aboard the vessel "MT ANNELISE THERESA" to his diagnosed illness? x x x The Court had devoted sufficient time in scouring the records of this case, and after a careful perusal of all documents submitted, the resolution of the foregoing issue could lead to no other conclusion than that the respondent has failed to support her claims. She presented no substantial evidence that could lead the Court to state that the exigencies of Roderos's work on board the "MT ANNELISE THERESA" caused, or at the very least, aggravated, his diagnosed illness.

5. ID.; ID.; ID.; IN CASE OF DISAGREEMENT BETWEEN THE FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN AND THE SEAFARER'S DOCTOR OF CHOICE, REFERRAL TO A THIRD DOCTOR IS MANDATORY; FAILURE TO ABIDE THEREBY IS A BREACH OF THE POEA-SEC AND HAS THE EFFECT OF CONSOLIDATING THE FINDING OF THE COMPANY-DESIGNATED PHYSICIAN AS FINAL AND BINDING; CASE AT BAR.— It is settled jurisprudence that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. While this is so, the same finding is not automatically final, binding or conclusive. In fact, should the seafarer disagree with the assessment by the company designated physician, the former may dispute the assessment by seasonably exercising his/her prerogative to seek a second opinion and consult a doctor of his/her choice. In case of disagreement between the findings of the company-designated physician and the seafarer's doctor of choice, the employer and the seafarer may agree jointly to refer the latter to a third doctor whose decision shall be final and binding on them. x x x In the case at hand, contrary to the mandatory proceedings identified by the Court, Roderos did not demand for his re-examination by

a third doctor, and instead opted to initiate the instant case. This, as the Court already ruled, is a fatal defect that militates against his claims. To reiterate, the referral to a third doctor is now a mandatory procedure, and that the failure to abide thereby is a breach of the POEA-SEC, and has the effect of consolidating the finding of the company-designated physician as final and binding.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Jabla Bagas Sampior and Libardo Law Offices for respondent.

D E C I S I O N

REYES, JR., *J.*:

Did the respondent establish by substantial evidence the reasonable causation, or aggravation, of the exigencies of his work aboard the vessel "MT ANNELISE THERESA" to his diagnosed illness? This is the nexus around which the following decision revolves.

The Case

Challenged before this Court *via* this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 135249, promulgated on July 18, 2016, which reversed and set aside the Decision[2] and Resolution[3] dated April 30, 2013 and February

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[1] Penned by Court of Appeals Associate Justice Francisco P. Acosta, and concurred in by Court of Appeals, now Supreme Court, Associate Justice Noel G. Tijam and Court of Appeals Associate Justice Eduardo B. Peralta, Jr.; *rollo*, pp. 13-25.

[2] Rendered by Presiding Commissioner Leonardo L. Leonida, with Commissioner Mercedes R. Posada-Lacap, concurring; *id*. at 396-401.

[3] Rendered by Presiding Commissioner Grace E. Maniquiz-Tan with Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Lacap, concurring; *id*. at 427-431.

28, 2014, respectively, of the National Labor Relations Commission (NLRC) in NLRC NCR CN. OFW(M)-01-01649-12. Likewise challenged is the subsequent Resolution[4] of the CA promulgated on March 8, 2017, which upheld the earlier Decision.

The Antecedent Facts

As borne by the records, the following are the undisputed facts:

The respondent is the widow of Francisco Roderos (Roderos), a Filipino seafarer, who signed a Contract of Employment[5] with petitioner Herning Shipping Asia Pte. Ltd., through its manning agent in the Philippines, Seacrest Maritime Management, Inc. He was accepted on board the vessel "MT ANNELISE THERESA" as a Chief Cook for six (6) months, with a 40-hour work week, and a basic monthly salary of US $648.00, in addition to overtime pay and annual leave with pay.[6]

Sometime in July 2011, during Roderos's engagement in the vessel, he experienced constipation and abdominal pains. The symptoms continued until September of the same year causing him to report the incident to the Master of the vessel. On September 4, 2011, while on the Port of Rostock in Germany, Roderos was brought to the Hamburg-Wilhelmsburg Hospital in Grob Sand where he was found to have blood in his stool, with swollen intestinal walls and swollen lower abdomen.[7] Few days thereafter, he was repatriated back to the Philippines.

Upon Roderos's arrival on September 8, 2011, he was admitted to St. Luke's Medical Center Hospital on September 29, 2011, where he was diagnosed with "Colon Adenocarcinoma" in a

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[4] Penned by Associate Justice Francisco P. Acosta with Associate Justice Noel G. Tijam (now a member of this Court) and Eduardo B. Peralta, Jr., concurring; *id*. at 27-28.

[5] *Id.* at 223.

[6] *Id*.

[7] *Id*. at 14.

stage four (4) level with "metastasis on the perocolinic lymph node." One (1) month after, on October 8, 2011, Roderos was discharged from the hospital, but underwent chemotherapy sessions under the care of the company designated physician, Dr. Natalio Alegre.

On October 22, 2011, Dr. Alegre issued a Progress Report,[8] where he indicated (1) the diagnosis and prognosis of Roderos's illness, (2) the risk factors for the development of the illness, (3) the cost of the chemotherapy, and (4) the survival rate of patients suffering from the same illness. Dr. Alegre likewise reported that Roderos's illness was "deemed not work related."[9] Specifically, the report stated:

> Mr. Francisco Roderos has been diagnosed with Cancer of the Large Bowel (Colon).
>
> x x x x x x x x x
>
> 2. The risk factors for the development of colon cancer are: a) age 50 years of (sic) older; b) family history of cancer of the colon; c) personal history of cancer of the colon, rectum, ovary, endometrium or breast; d) history of ulcerative colitis (ulcers in the lining of the large intestine) or Crohns disease; and e) hereditary conditions such as familial adenomatous polyposis and non-hereditary non-polyposis colon cancer (Lynch Syndrome).
>
> The Chromosome 5 with the gene APC is involved and transmitted 50% of the time to the offspring. p53 gene is mutated 70% and when the mutation is ineffective, cells with damaged DNA escape repair or destruction, allowing the damaged cell to perpetrate itself. Continued replication of the damaged DNA may lead to tumor development.
>
> Development of polyps of the colon commonly precedes the development of colon cancer.
>
> As the ailment is not listed in the POEA list of occupational diseases and they are not associated to trauma with genetic predisposition taken into consideration, **Colon Cancer is deemed not work related.**[10] (Emphasis supplied)

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[8] *Id*. at 181.

[9] *Id*.

[10] *Id*.

On the basis of the foregoing report, Roderos's chemotherapy treatments were discontinued.[11]

Thus, Roderos sought the assistance of the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP), of which he was a member, for the collection of disability benefits. Unfortunately, the parties did not reach any settlement. Hence, Roderos filed a complaint before the Labor Arbiter (LA) for disability benefits, illness allowance, attorney's fees, and medical expenses.

The Ruling of the Labor Arbiter

On June 27, 2012, the LA rendered a Decision against Roderos on the following grounds: (1) Stage 4 Colon Cancer is not among the occupational diseases listed in the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC)[12] and (2) the company-designated physician declared that the illness is not work-related. Thus, the dispositive portion of the Decision reads:

> WHEREFORE, premises considered, decision is hereby rendered ordering the dismissal of the instant case for lack of merit.
>
> SO ORDERED.[13]

The Ruling of the NLRC

Aggrieved, Roderos elevated the case to the NLRC. As fate would have it, Roderos died on August 6, 2012 while the case was still pending. As a result, herein respondent, Roderos's widow and legal heir, filed for a motion for substitution, which was granted by the NLRC.

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[11] *Id*. at 208-209.

[12] Philippine Overseas Employment Administration Amended Standards Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On Board Ocean-Going Ships, POEA Memorandum Circular No. 10, Series of 2010, October 26, 2010.

[13] *Id*. at 290.

On April 30, 2013, the NLRC rendered a Decision which affirmed the earlier LA decision. The *fallo* of the NLRC decision states:

> WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED** for lack of merit.
>
> SO ORDERED.[14]

The NLRC decision was followed by the Resolution dated February 28, 2014, which denied the motion for reconsideration filed by the respondent.[15]

The Ruling of the CA

The respondent, unperturbed by the twin decisions of the LA and the NLRC, filed before the CA a Petition for *Certiorari* under Rule 65 of the Rules of Court. On July 18, 2016, the appellate court rendered the assailed Decision, this time in favor of herein respondent.

According to the CA, Roderos's illness was work-related, or at the very least, work aggravated due to the dietary factors attendant to his work on board the vessel. The CA elucidated that, as a seafarer on board his vessel, Roderos's meals consisted of processed meats, high-fat and low-fiber food, including ham, hotdogs, sardines, tuna, bacon, and other canned goods.[16] The CA likewise gave emphasis on the "constant pressure and stress" and the physical strain that Roderos experienced at work. In addition, he was consistently exposed to the heat and fumes inside the kitchen as well as the varying temperatures of hot and cold in the vessel and differing time zones.[17]

Thus, the CA concluded that Roderos was entitled to full and permanent disability compensation under the DSA-CBA[18]

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[14] *Id*. at 401.

[15] *Id*. at 427-431.

[16] *Id*. at 88.

[17] *Id*. at 89.

[18] Collective Bargaining Agreement (Ratings) between Associated Marine

and POEA-SEC.[19] The dispositive portion of the CA decision states that:

> WHEREFORE, the Petition is GRANTED. The Decision dated April 30, 2013 and Resolution dated February 28, 2014 of the National Labor Relations (sic) are REVERSED and SET ASIDE. The private respondents, Seacrest Maritime Management, Inc. and Herning Shipping Asia Pte., Ltd., are hereby held jointly and severally liable to petitioner, ALMA Q. RODEROS, as widow and legal heir of FRANCISCO M. RODEROS, for the amounts of (a) US$60,000.00 as total and permanent disability allowance, and (b) US$6,000.00 as attorney's fees, at the prevailing rate of exchange at the time of payment. An interest of **six** percent (6%) *per annum* is likewise imposed upon the total monetary award reckoned from August 6, 2012, the date of death of Francisco Roderos, until full satisfaction thereof.
>
> SO ORDERED.[20] (Emphasis omitted)

Herein petitioners' motion for reconsideration was subsequently denied by the CA finding "no new matter of substance which would warrant the modification much less the reversal of the assailed Decision."[21]

Hence, this present petition.

The Issues

The petitioners seek the reversal of the assailed Decision and Resolution by the CA on the basis of the following grounds:

A.

THE HONORABLE COURT OF APPEALS COMMITTED A PATENT AND GRAVE ERROR WHEN IT RENDERED A DECISION THAT IS PLAINLY CONTRARY TO THE EVIDENCE ON RECORD. ITS CONCLUSION THAT SEAFARER RODEROS'S AILMENT IS WORK-RELATED IS NOT ONLY ABSOLUTELY

Officers' and Seamen's Union of the Philippines (AMOSUP-PTGWO-ITF) and Danish Shipowners' Association (DSA); *id*. at 225-241.

[19] *Id*. at 84.

[20] *Id*. at 24.

[21] *Id*. at 27.

BASELESS, THE SAME IS LIKEWISE NEGATED BY THE UNDISPUTED EVIDENCE ON RECORD CONFIRMING THAT THE ILLNESS IS, IN FACT, NOT WORK-RELATED. THUS, UNDER THE GOVERNING POEA CONTRACT, THE GRANT OF TOTAL AND PERMANENT DISABILITY BENEFITS WAS IN CLEAR DISREGARD OF THE EVIDENCE ON RECORD AND PLAIN ERROR OF LAW WHICH IS UNTENABLE.

B.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN CONVENIENTLY AWARDING ATTORNEY'S FEES DESPITE ABSENCE OF ANY FINDING OR DISCUSSION SHOWING BAD FAITH OR MALICE ON THE PART OF PETITIONERS.

C.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN GRANTING INTEREST OF 6% PER ANNUM COMPUTED FROM THE TIME OF DEATH. IT MUST BE EMPHASIZED THAT THERE IS NO DELAY IN PAYMENT OF A *VALID* CLAIM HERE. THE NON-PAYMENT OF RESPONDENT'S CLAIMS IS PREMISED ON LEGAL GROUNDS. THE ILLNESS IS NOT WORK-RELATED AND AS SUCH, IS NOT COMPENSABLE UNDER THE GOVERNING POEA CONTRACT.[22]

The Court's power of review is hereby being invoked to answer the following issues: (1) whether or not Roderos's illness was work-related, and consequently, whether or not he was entitled to disability and death benefits; and (2) whether or not the CA's imposition of attorney's fees and interest were proper in this case.

The Court's Ruling

After a careful perusal of the arguments presented and the evidence submitted, the Court finds that the petition is impressed with merit. Roderos's illness, Cancer of the Large Bowel (Colon), is not an occupational disease listed in Section 32 of the POEA-SEC, and the respondent failed to discharge the burden of

[22] *Id*. at 45-46.

providing substantial evidence of the causal connection between the work done by Roderos aboard the vessel and his diagnosed illness.

The general rule is that only questions of law are reviewable by the Court. This is because it is not a trier of facts;[23] it is not duty-bound to analyze, review, and weigh the evidence all over again in the absence of any showing of any arbitrariness, capriciousness, or palpable error.[24] Thus, factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by the Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[25] In labor cases, this doctrine applies with greater force as questions of fact presented therein are for the labor tribunals to resolve.[26]

The Court, however, permitted a relaxation of this rule whenever any of the following circumstances is present:

(1) [W]hen the findings are grounded entirely on speculations, surmises or conjectures;
(2) when the inference made is manifestly mistaken, absurd or impossible;
(3) when there is grave abuse of discretion;
(4) when the judgment is based on a misapprehension of facts;
(5) when the findings of fact are conflicting;
(6) when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
(7) when the findings are contrary to that of the trial court;

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[23] *Manotok Realty, Inc. v. CLT Realty Development Corp.*, 512 Phil. 679, 706 (2005), as cited in *Van Clifford Torres y Salera v. People of the Philippines*, G.R. No. 206627, January 18, 2017.

[24] *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1168 (1997); *Bautista v. Puyat*, 416 Phil. 305, 308 (2001), as cited in *Van Clifford Torres y Salera v. People of the Philippines*, G.R. No. 206627, January 18, 2017.

[25] *Lamberto M. De Leon v. Maunlad Trans, Inc., Seachest Associates, et al.*, G.R. No. 215293, February 8, 2017.

[26] *Id.*

(8) when the findings are conclusions without citation of specific evidence on which they are based;
(9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent;
(10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or
(11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[27]

Whether or not there is a causal relation between Roderos's illness and his work as a Chief Cook on board the vessel "MT ANNELISE THERESA" is essentially a factual issue that the Court would generally not disturb. Nonetheless, in light of the apparent conflict between the findings of facts of the NLRC and the CA, and on the strength of the relaxation of the rules quoted above, the Court can and will delve into the present controversy.

In *Jebsens Maritime, Inc, Sea Chefs. Ltd. And Enrique M. Aboitiz vs. Florvin G. Rapiz*,[28] the Court reiterated its pronouncement that the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) is the law between the parties, and its provisions bind both of them.[29] This contract is also what primarily determines whether or not a seafarer, who sustains an injury or contracts an illness, should be indemnified by the employer. Section 20(A) of the contract requires the concurrence of two elements: (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.[30]

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[27] *Id*.

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

[29] *Id*.

[30] See *Nonay v. Bahia Shipping Services, Inc.*, G.R. No. 206758, February 17, 2016, 784 SCRA 292, 312; *Austria v. Crystal Shipping, Inc.*, G.R. No. 206256, February 24, 2016, 785 SCRA 89, 98.

Work-related illnesses, are determined by the following rules:

First, there is work relation if the illness leads to disability or death as a result of an occupational disease listed under Section 32-A of the POEA- SEC with the conditions set therein satisfied;

Second, 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.[31] However, this presumption notwithstanding, the Court has held that the claimant-seafarer must still prove by substantial evidence that his/her work conditions caused or, at least, increased the risk of contracting the disease.[32] 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—but not direct causal relation—is required. It is thus this probability of connection, and not the ultimate degree of certainty, that is the test of proof of compensation proceedings.[33]

Thus, for an occupational disease and the resulting disability or death to be compensable, all the following conditions, *as supported by substantial evidence*, must be established:

1. The seafarer's work must involve the risk described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;
4. There was no notorious negligence on the part of the seafarer.[34]

[31] *Supra* note 12, Par. 4, Sec. 20(A).

[32] *Supra* note 25.

[33] *Id*.

[34] See *Balba v. Tiwala Human Resources, Inc.*, G.R. No. 184933, April 13, 2016, 789 SCRA 322, 331; *Austria v. Crystal Shipping, Inc.*, G.R. No. 206256, February 24, 2016, 785 SCRA 89, 98; *Leonis Navigation Co., Inc. v. Villamater*, 628 Phil. 81, 96 (2010).

In this case, there is no dispute that Roderos's illness, Cancer of the Large Bowel (Colon), is not among the occupational diseases listed in the POEA-SEC. In fact, the Court has already stated in *Leonis Navigation Co., Inc. vs. Villamater*[35] that "under Section 32-A of the POEA Standard Contract, **only two types of cancers are listed as occupational diseases** - (1) Cancer of the epithelial lining of the bladder (papilloma of the bladder); and (2) cancer, epithellematous or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil or paraffin, or compound products or residues of these substances."[36] Cancer of the Large Bowel (Colon) is, decidedly, not among them.

This thus leads the discussion into the second rule in determining the work relation of the illness. Did the respondent establish by substantial evidence the reasonable causation, or aggravation, of the exigencies of Roderos's work aboard the vessel "MT ANNELISE THERESA" to his diagnosed illness?

The Court's disquisition on the nature and causes of colon cancer, as elaborated in the case of *Leonis Navigation Co., Inc. vs. Villamater*,[37] is instructive. It said:

> Colon cancer, also known as colorectal cancer or large bowel cancer, includes cancerous growths in the colon, rectum and appendix.
>
> x x x x x x x x x
>
> Tumors of the colon and rectum are growths arising from the inner wall of the large intestine. Benign tumors of the large intestine are called polyps. Malignant tumors of the large intestine are called cancers. Benign polyps can be easily removed during colonoscopy and are not life-threatening. If benign polyps are not removed from the large intestine, they can become malignant (cancerous) over time. Most of the cancers of the large intestine are believed to have developed as polyps. Colorectal cancer can invade and damage adjacent tissues and organs. Cancer cells can also break away and spread to other

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[35] 628 Phil. 96 (2010).

[36] *Id*.

[37] *Id*. at 97.

parts of the body (such as liver and lung) where new tumors form. The spread of colon cancer to distant organs is called metastasis of the colon cancer. Once metastasis has occurred in colorectal cancer, a complete cure of the cancer is unlikely.

x x x x x x x x x

Factors that increase a person's risk of colorectal cancer include high fat intake, a family history of colorectal cancer and polyps, the presence of polyps in the large intestine, and chronic ulcerative colitis.

Diets high in fat are believed to predispose humans to colorectal cancer. In countries with high colorectal cancer rates, the fat intake by the population is much higher than in countries with low cancer rates. It is believed that the breakdown products of fat metabolism lead to the formation of cancer-causing chemicals (carcinogens). Diets high in vegetables and high-fiber foods may rid the bowel of these carcinogens and help reduce the risk of cancer.

A person's genetic background is an important factor in colon cancer risk. x x x Approximately 20% of cancers are associated with a family history of colon cancer. And 5% of colon cancers are due to hereditary colon cancer syndromes. Hereditary colon cancer syndromes are disorders where affected family members have inherited cancer-causing genetic defects from one or both of the parents. (Emphasis supplied, citations omitted)

To emphasize, the Court identified in *Leonis Navigation Co., Inc.* that the following factors increase the risk of colorectal cancer: high fat intake, a family history of colorectal cancer and polyps, the presence of polyps in the large intestine, and ulcerative colitis. While, surely, the petitioners herein could not be faulted for Roderos's family history of colorectal cancer or polyps, nothing prohibits the respondent from proving the causal connection between the other factors and Roderos's work. In fact, the respondent bears this burden specifically, and that the failure of which would result to the resolution of the case against her favor.

Thus, in ruling *against* the seafarer who likewise contracted colon cancer, the Court said in *Talosig vs. United Philippine Lines, Inc.*:[38]

As aptly ruled by the CA, petitioner did not present any proof of a causal connection or at least a work relation between the employment of Talosig and his colon cancer. Petitioner merely relied on presumption of causality. She failed either to establish or even to mention the risks that could have caused or, at the very least, contributed to the disease contracted by Talosig.[39]

In the present case, the respondent's Position Paper asserted that Roderos's food intake and his exposure to dangerous chemicals aboard "MT ANNELISE THERESA" caused his diagnosed illness, *viz*:

The Complainant's (Roderos's) meals consisted of processed meats and high fat and low-fiber foods. The Complainant is also of advance (sic) age at 48 years old, an age more likely to develop colon cancer. What is more, the Complainant was constantly exposed to chemicals and substances known to be carcinogenic. It needs to be stressed that Complainant served respondents under three (3) contracts and was exposed to the following at any one time: **Coal Tar, Tall Oil, Fuel, Asphalt, Gasoline, Diesel and Crude Oil**.

x x x x x x x x x

Although complainant's (Roderos's) illness, colon cancer, is not listed under Article 32-A of the POEA contract as occupational diseases (sic), this does not preclude the possibility that complainant's illnesses (sic) were caused by exposure to **asphalt and crude oil** which both contain the toxic substance, benzene. This is especially so if we consider the fact that, as shown in the immediately preceding paragraph, the POEA contract recognizes the harmful characteristics of asphalt and benzene and the potential risks that are associated with exposure to these substances.[40] (Emphasis supplied)

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[38] 739 Phil. 774 (2014).

[39] *Id*. at 783.

[40] *Rollo*, pp. 213-215, 302-305.

In the petition for *certiorari* submitted to the CA, the respondent reiterated these assertions, to wit:

> Needless to state that even the diet that he is into is also a much contributing factor because their provisions are usually meat and fatty foods which is beyond their control as this is with the imprimatur of the owner of the vessels as well as by the conditions they are into considering that meat last longer than that of foods (sic) which are rich in fiber during the long voyage with different weather conditions.
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> x x x x x x x x x
>
> Roderos' meals routine (sic) usually consisted of processed meats, high fat and low fiber foods. Roderos at the age 48 he is more likely to develop or acquire colon cancer. It is also interesting to emphasize that Roderos was constantly and continuously exposed to harmful and hazardous chemicals and substances known to be carcinogenic. It is undeniable that Roderos served respondents under three (3) contracts and was certainly exposed to Coal, Tar, Tall Oil, Fuel, Asphalt, Gasoline, Diesel and Crude Oil.[41]

It must be emphasized, however, that with regard to Roderos's dietary intake while on board the vessel, no evidence other than these self-serving allegations were presented. There was absolutely no proof of what Roderos supposedly ate during his work that would have aggravated his illness. In fact, as the Chief Cook of the vessel, it would have been within Roderos's control to submit before the Labor Tribunals what meals he may have prepared during the course of his employment. It is quite unfortunate that he failed to do so.

In contrast, the petitioners have presented several affidavits of other seafarers who served with Roderos during his last stint aboard the vessel. A reading of these statements would reveal that the vessel was well-provisioned and that there was variety in the kinds and quality of food served. The list included fresh milk, fruit juices, yogurt, cereals, oatmeal, eggs, meat, and vegetables.[42]

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[41] *Id*. at 437-439.

[42] *Id*. at 184-204.

Also, nowhere in the pleadings was it asserted that the enumerated harmful chemicals could be found aboard "MT ANNELISE THERESA" at the time when Roderos served as its Chief Cook. There was even no averment as to how Roderos could have been in contact with the same. Neither was any evidence, documentary or otherwise, submitted before the Court to support such causation.

Relying heavily on online sources,[43] the respondent argued that the quoted substances are "known to cause cancer in humans,"[44] or are "carcinogenic to humans,"[45] or that there are "increased risk of cancer among workers in occupations with the potential for exposures to asphalt."[46] The respondent also asserted that "bitumen or asphalt is listed as a substance that may cause cancer or ulceration of the skin or coreal surface of the eye" and that "benzene, an active chemical in crude oil and asphalt, as a harmful substance that causes poisoning."[47]

However, while the respondent's Position Paper and Petition for *Certiorari* were replete with these supposed studies regarding the risks that the mentioned chemicals may have to cancer, *none* of the studies mentioned Cancer of the Bowel (Colon), which was Roderos's diagnosed illness.

Jurisprudence has held time and again that substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as *adequate to support a conclusion*, even if other minds equally reasonable might conceivably opine otherwise.[48]

This, the respondent has failed to do.

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[43] *Id.* at 214.

[44] *Id*.

[45] *Id*.

[46] *Id*.

[47] *Id*. at 215.

[48] *Miro v. Mendoza*, 721 Phil. 772, 787 (2013).

The Court had devoted sufficient time in scouring the records of this case, and after a careful perusal of all documents submitted, the resolution of the foregoing issue could lead to no other conclusion than that the respondent has failed to support her claims. She presented no substantial evidence that could lead the Court to state that the exigencies of Roderos's work on board the "MT ANNELISE THERESA" caused, or at the very least, aggravated, his diagnosed illness.

In addition, that the company-designated physician issued a medical report stating that Roderos's diagnosed illness, Cancer of the Bowel (Colon), is deemed not work-related militates against the respondent's claims.

It is settled jurisprudence that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment.[49] While this is so, the same finding is not automatically final, binding or conclusive.[50]

In fact, should the seafarer disagree with the assessment by the company designated physician, the former may dispute the assessment by seasonably exercising his/her prerogative to seek a second opinion and consult a doctor of his/her choice.[51] In case of disagreement between the findings of the company-designated physician and the seafarer's doctor of choice, the employer and the seafarer may agree jointly to refer the latter to a third doctor whose decision shall be final and binding on them.

In *Formerly INC Shipmanagement, Inc. vs. Rosales*,[52] the Court clarified the ruling in *Philippine Hammonia Ship Agency,*

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[49] *Coastal Safeway Marine Services, Inc. v. Esguerra*, 671 Phil. 56, 65 (2011); *German Marine Agencies, Inc. v. National Labor Relations Commission*, 403 Phil. 572, 588 (2001).

[50] *Andrada v. Agemar Manning Agency, Inc.*, 698 Phil. 170, 182 (2012).

[51] *Seagull Maritime Corp. v. Dee*, 548 Phil. 660, 669 (2007).

[52] 737 SCRA 438, (2014).

Inc. vs. Dumadag[53] by categorically saying that the referral to a third doctor is **mandatory**, and should the seafarer fail to abide by this method, he/she would be in breach of the POEA-SEC, and the assessment of the company designated physician shall be final and binding. Thus, the Court said:

> This referral to a third doctor has been held by this Court to be a **mandatory procedure** as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. In other words, **the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties**. We have followed this rule in a string of cases. x x x[54] (Emphasis supplied)

In the case at hand, contrary to the mandatory proceedings identified by the Court, Roderos did not demand for his re-examination by a third doctor, and instead opted to initiate the instant case. This, as the Court already ruled, is a fatal defect that militates against his claims. To reiterate, the referral to a third doctor is now a mandatory procedure, and that the failure to abide thereby is a breach of the POEA-SEC, and has the effect of consolidating the finding of the company-designated physician as final and binding.

Thus, for the respondent's failure to (1) present substantial evidence that would prove reasonable causation, or at the very least, aggravation of Roderos's work while aboard the petitioners' vessel, and for Roderos's failure to (2) insist on his re-examination of a third doctor that could determine with finality as to whether or not his diagnosed illness was work-related, the Court is constrained to rule for the petitioners.

This considering, there is no need to proceed and discuss further the other issue in this case.

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[53] 712 Phil. 507, 520 (2013).

[54] *Supra* note 52, at 450-451.

WHEREFORE, premises considered, the Decision of the Court of Appeals dated July 18, 2016 in CA-G.R. SP No. 135249, and the subsequent Resolution dated March 8, 2017, are hereby **REVERSED** and **SET ASIDE**. The Decision of the National Labor Relations Commission dated April 30, 2013 in NLRC NCR CN. OFW (M)-01-01649-12, which affirmed *in toto* the Decision of the Labor Arbiter dated June 27, 2012, is hereby **REINSTATED**.

SO ORDERED.

Carpio,[*] *Acting C.J. (Chairperson), del Castillo,*[**] *Perlas-Bernabe*, and *Caguioa, JJ.*, concur.

SECOND DIVISION

[G.R. No. 232247. April 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RONILLO LOPEZ, JR. *y* MANTALABA @ "DODONG",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; WHEN THE ACCUSED ADMITS KILLING THE VICTIM BUT PLEADS SELF-DEFENSE, IT BECOMES INCUMBENT UPON HIM TO PROVE BY CLEAR, SATISFACTORY AND CONVINCING EVIDENCE ALL THE ELEMENTS OF SAID JUSTIFYING CIRCUMSTANCE IN ORDER TO

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

[**] Designated additional member per Raffle dated April 23, 2018.

ESCAPE LIABILITY.— In criminal cases, the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused that he was in fact innocent. If the accused, however, admits killing the victim, but pleads self-defense, it now becomes incumbent upon him to prove by clear, satisfactory and convincing evidence all the elements of said justifying circumstance in order to escape liability. In the case at bench, Ronillo failed to discharge his burden.

2. **ID.; ID.; ID.; ID.; ELEMENTS.—** Self-defense is appreciated as a justifying circumstance only if the following requisites were present, namely: (1) the victim committed unlawful aggression amounting to actual or imminent threat to the life and limb of the person acting in self-defense; (2) there was reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) there was lack of sufficient provocation on the part of the person claiming self-defense, or, at least, any provocation executed by the person claiming self-defense was not the proximate and immediate cause of the victim's aggression. The justifying circumstance of self-defense must be established with certainty through satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the persons invoking it. Self-defense cannot be appreciated where it was uncorroborated by competent evidence, or is patently doubtful.

3. **ID.; ID.; PARRICIDE; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; and (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendants or other descendants, or the legitimate spouse of the accused. All these elements were duly established and proven by the prosecution. The fact of death by Lopez, Sr. was shown in the medico-legal report and the victim's death certificate; Ronillo admitted that he killed Lopez, Sr. by stabbing the latter with a kitchen knife; and the relationship between appellant and Lopez, Sr. as son and father was established through the former's birth certificate and the marriage certificate of his parents.

4. **ID.; ID.; ID.; FLIGHT IS AN INDICATION OF GUILT; RATIONALE.—** The flight of an accused, in the absence of

a credible explanation, would be a circumstance from which an inference of guilt may be established "for a truly innocent person would normally grasp the first available opportunity to defend himself and to assert his innocence."

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the January 6, 2017 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 07936, which affirmed the December 1, 2015 Decision[2] of the Regional Trial Court, Branch 197, Las Piñas City (*RTC*), finding accused-appellant Ronillo Lopez, Jr. y Mantalaba (*Ronillo*), *alias* "Dodong" guilty beyond reasonable doubt of Parricide as defined and penalized under Article 246 of the Revised Penal Code (*RPC*), as amended.

The Facts

Ronillo was charged with the crime of Parricide in an Information[3] dated May 19, 2014, the accusatory portion of which reads:

That on or about the 16th day of May, 2014, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon RONILLO LOPEZ y MADROÑO, his father, by then and there stabbing him, which directly caused his death.

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[1] Penned by Associate Justice Manuel M. Barrios, with Associate Justice Francisco P. Acosta and Associate Justice Maria Elisa Sempio Diy, concurring; *rollo*, pp. 2-8.

[2] Penned by Judge Ismael T. Duldulao; CA *rollo*, pp. 65-76.

[3] CA *rollo*, pp. 19-20.

CONTRARY TO LAW.[4]

When arraigned, Ronillo pleaded not guilty to the charge. After pre-trial was terminated, trial on the merits followed.

Version of the Prosecution

As summarized by the Office of the Solicitor General in the Appellee's Brief,[5] the People's version of the event is as follows:

> At 2:00 A.M. of May 16, 2014, Martita Lopez was at her house in Sambayanihan, Las Piñas City, when she heard her grandson, appellant herein, shout "*Lola! Lola! Tulungan mo po ako*." When she asked what happened, appellant told her that "*nasaksak ko si papa*." They immediately went to the house located at 2461 Panay Street, Timog CAA, Las Piñas City, where she found her son, Ronillo Lopez, Sr. lying on the ground. Saturnino Madroño, who also heard appellant's admission and cry for help, went with Martita and appellant to the house at Panay Street, checked the victim's pulse and determined that he was already dead. Thereafter, they reported the incident to the police.
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> The medico-legal examination conducted on the victim revealed that he suffered multiple physical injuries including abrasions and contusions. The cause of death was the stab wound to his chest.
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> Appellant fled from the scene after the incident, but was later arrested at his brother-in-law's house in Dela Rama St., BF Homes, Parañaque City, based on a tip by a certain Samuel Lopez.[6]

Version of the Defense

Ronillo admitted that he stabbed his father, but maintained that he merely acted in self-defense. The defense gave the following version in the Appellants' Brief[7] to support Ronillo's plea for exoneration:

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[4] *Id.* at 19.

[5] *Id.* at 87-98.

[6] *Id.* at 91-92.

[7] *Id.* at 54-63.

On 15 May 2014, the accused RONILLO LOPEZ, JR. was with his father, Lopez, Sr., and his cousins and uncles at an uncle's home having a drinking spree. He, thereafter, went home ahead, in a drunken state. When he arrived home, he slept. He then woke up to the beatings inflicted upon him by his drunken father, Lopez, Sr., who was saying "BAKIT KA NAGSUSUMBONG!" He answered back that he knows nothing his father was accusing him of. Lopez, Sr. then urged his own son to fight back, but the latter would not. Lopez, Sr. then took a hard object and struck it on his son's head. The accused, overcome with passion and his judgment obfuscated by the blows done by his father ("Nagdilim po ang aking paningin at di nakapagpigil"), struck back with a knife, stabbing his father. When he saw his stricken father lying down, he cried and sought help, first with Michael who was renting the second floor of his home, then from his grandmother, and later visited his mother at her workplace. Accused's sister, ROBILIE LOPEZ, was informed of her father's death by her grandmother. He went to his sister and remorsefully told her what happened. Afraid, he then stayed at his brother-in-law's house and surrendered the next day. He was then brought to the Las Piñas Health Center by the police for the injuries he sustained from his father's attacks. Robilie revealed that her father, when drunk, would utter curses at his son. In one previous incident, she witnessed her drunken father pushed and collared her brother.[8]

The RTC Ruling

On December 1, 2015 , the RTC rendered its Decision finding accused-appellant guilty beyond reasonable doubt of the crime charged. According to the RTC, all the elements of the crime of Parricide were satisfactorily proven by the prosecution. The RTC rejected the self-defense invoked by Ronillo declaring that the same was not only uncorroborated by competent and independent evidence but, in itself, extremely doubtful under the circumstances obtaining in the case. It ruled that the element of unlawful aggression is wanting. The RTC debunked Ronillo's claim for entitlement to the mitigating circumstance of voluntary surrender stating that he never surrendered but was in fact arrested by the police the following morning after the stabbing incident. In the end, the RTC decreed:

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

WHEREFORE, premises considered, this court finds accused Ronillo Lopez, Jr. y Mantalaba @ "Dodong", guilty beyond reasonable doubt of the crime of Parricide under Article 246, as amended by R.A. 7659, and further amended by R.A. 9346, and hereby sentences him to suffer the penalty of *reclusion perpetua* without eligibility of parole.

Further, the accused is hereby ordered to indemnify the heirs of the deceased/victim Ronillo Lopez y Madroño the amount of Php60,000.00 as actual damages, Php75,000.00 as civil indemnity, Php75,000.00 as moral damages, and another amount of Php50,000.00 as exemplary damages.

SO ORDERED.[9]

Not in conformity, Ronillo appealed his conviction for Parricide before the CA.

The CA Ruling

On January 6, 2017, the CA rendered its assailed Decision affirming Ronillo's conviction for Parricide. The appellate court did not lend credence to Ronillo's claim of self-defense, stressing that not an iota of evidence was adduced to show any form of aggression on the part of the deceased victim. It sustained the findings of the RTC that all the elements of the crime charged were duly established by the prosecution. The CA held that the proper penalty is *reclusion perpetua* since no modifying circumstances attended the commission of the crime and, thus, deleted the phrase "without eligibility of parole." Finally, the CA increased the amount awarded by way of exemplary damages to ₱75,000.00. The *fallo* of which reads:

WHEREFORE, premises considered, the Decision dated 01 December 2015 of the Regional Trial Court, Branch 197, Las Piñas City, in Criminal Case No. 14-0396, is hereby AFFIRMED with MODIFICATION in that the penalty on accused-appellant shall be *Reclusion Perpetua* and that he is ordered to pay Sixty Thousand Pesos (₱60,000.00) as actual damages, Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos

[9] *Id.* at 76.

(₱75,000.00) as moral damages, and Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages.

SO ORDERED.[10]

The Issues

Unfazed, Ronillo filed the present appeal and posited the same lone assignment of error he previously raised before the CA, to wit:

THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING THE ACCUSED-APPELLANT'S CLAIM OF SELF-DEFENSE DESPITE THE FACT THAT ALL THE ELEMENTS THEREOF ARE PRESENT IN THIS CASE.[11]

In the Resolution[12] dated August 9, 2017, the Court directed both parties to submit their supplemental briefs, if they so desired. On October 23, 2017, the Office of the Solicitor General filed its Manifestation (in Lieu of Supplemental Brief)[13] stating that it will no longer file a supplemental brief as its Appellee's Brief had sufficiently ventilated the lone issue raised. On October 27, 2017, the accused-appellant filed a Manifestation (in Lieu of Supplemental Brief)[14] averring that he would adopt all his arguments in his Appellant's Brief filed before the CA.

The Court's Ruling

The appeal is devoid of merit. Accordingly, Ronillo's conviction must stand.

The factual premises with regard to the killing of Lopez, Sr. and its commission by Ronillo are clear and undisputed. Ronillo did not at all deny the allegations against him and openly admitted

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[10] *Rollo*, p. 7.

[11] CA *rollo,* p. 56.

[12] *Rollo,* pp. 14-15.

[13] *Id*. at 16-18.

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

the authorship of the crime. However, he interposes self-defense to seek his exculpation from criminal liability. In *Macalino, Jr. v. People*,[15] the Court elucidated the implications of pleading self-defense insofar as the burden of proof is concerned, thus:

> In pleading self-defense, petitioner in effect admitted that he stabbed the victim. It was then incumbent upon him to prove that justifying circumstance to the satisfaction of the court, relying on the strength of his evidence and not on the weakness of the prosecution. The reason is that even if the prosecution evidence were weak, such could not be disbelieved after petitioner admitted the fact of stabbing the victim.

In criminal cases, the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused that he was in fact innocent. If the accused, however, admits killing the victim, but pleads self-defense, it now becomes incumbent upon him to prove by clear, satisfactory and convincing evidence all the elements of said justifying circumstance in order to escape liability.[16] In the case at bench, Ronillo failed to discharge his burden.

Self-defense is appreciated as a justifying circumstance only if the following requisites were present, namely: (1) the victim committed unlawful aggression amounting to actual or imminent threat to the life and limb of the person acting in self-defense; (2) there was reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) there was lack of sufficient provocation on the part of the person claiming self-defense, or, at least, any provocation executed by the person claiming self-defense was not the proximate and immediate cause of the victim's aggression.[17] The justifying circumstance of self-defense must be established with certainty through satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the persons invoking it.

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[15] 394 Phil. 309, 323 (2000). (Citation omitted)

[16] *Flores v. People*, 705 Phil. 119, 133 (2013).

[17] *Razon v. People*, 552 Phil. 359, 373 (2007).

Self-defense cannot be appreciated where it was uncorroborated by competent evidence, or is patently doubtful.[18]

At the heart of the claim for self-defense is the element of unlawful aggression committed by the victim against the accused, which is the condition *sine qua non* for upholding the same as a justifying circumstance. There can be no self-defense, complete or incomplete, unless the victim committed unlawful aggression against the accused.[19] If there is nothing to prevent or repel, the other two requisites of self-defense will have no factual and legal bases.[20] Unlawful aggression as an indispensable requisite is aptly described in *People v. Nugas*,[21] 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 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.

Ronillo argues that the justifying circumstance of self-defense should have been appreciated in his favor because all its elements had been present in the commission of the crime. Accused-appellant is mistaken.

In pleading self-defense, Ronillo testified that it was the victim who initially assaulted him. According to Ronillo, he was awakened on that fatal early morning of May 16, 2014 by the beatings inflicted by his drunken father, Lopez, Sr., who punched and kicked him unceremoniously. Still not satisfied, Lopez,

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[18] *People v. Escobal*, G.R. No. 206292, October 11, 2017.

[19] *People v. Escarlos*, 457 Phil. 580, 598 (2003).

[20] *People v. Dulin*, G.R. No. 171284, June 29, 2015.

[21] 677 Phil. 168, 177 (2011).

Sr. took a hard object and struck it on his head. The alleged acute battering he suffered in the hands of his father overwhelmed him and put him in such an emotional and mental state which overcame his reason and impelled him to protect his life by grabbing a kitchen knife and used it to stab the latter. He maintains that he sustained injuries on the left side of his forehead and broken lips due to the attacks launched by the victim. Defense witness Robilie, sister of Ronillo, corroborated her brother's claim that the latter sustained injuries during the stabbing incident. She testified that while she was talking to said appellant, who was at her house at that time, about the incident, she noticed that the latter had a wound on his forehead, his cheeks were swollen and he had some abrasions on his hands. Appellant insists that he merely acted under the instinct of self-preservation and thus, he was legally justified in using the knife to ward off the unlawful aggression so as not to expose him to unnecessary danger.

The Court is not persuaded.

Ronillo's plea of self-defense was belied by the physical evidence in the case at bench tending to show that Lopez, Sr. did not commit unlawful aggression against said appellant. Indeed, had Lopez, Sr. mauled and attacked Ronillo, the latter would have sustained some injury from the aggression. It remains, however, that no injury of any kind or gravity was found on the person of Ronillo when he was brought to the Las Piñas City Health Center by his arresting officer, PO2 Marcelino Fuller, for medical examination. The attending physician, Dr. Joseph Aron Rey I. Manapsal (*Dr. Manapsal*), testified that after examining Ronillo, he found that the latter has no external signs of physical injuries and such diagnosis was reflected in the Medical Certificate dated May 16, 2014 he issued. It is important to point out also that no medication was applied or prescribed by Dr. Manapsal on Ronillo which further confirmed that such injuries never existed. Even granting *arguendo* that Ronillo suffered injuries as claimed by the defense, such injuries were surely not serious or severe as it was not even detected by Dr.

Manapsal. The superficiality of the injuries was not an indication that appellant's life and limb were in actual peril.[22]

In stark contrast, Lopez, Sr. suffered multiple injuries consisting of an abrasion on the forehead, an abrasion on the left eyebrow, a hematoma on the right hand, contusion and abrasion on the right leg and a stab wound on the chest as shown in the Medico Legal Report No. A-14-299. Prosecution witness PSI Reah Cornelio testified that she examined the cadaver of Lopez, Sr. and noted that the cause of his death was the single stab wound on the victim's chest because it pierced the left lung, pericardial sac and heart and fractured the ribs. PSI Cornelio further testified that the hematoma may have been caused by punching, while the abrasion on the forehead and left eyebrow may have been caused by fist blows.

Taken in the light of the foregoing, this Court is convinced that Lopez, Sr. was by no means the unlawful aggressor. We consider as significant the means used by Ronillo, the gravity and location of the stab wound as well as the abrasions, contusion and hematoma sustained by Lopez, Sr. which revealed his intent to kill, not merely an effort to prevent or repel an alleged attack from said victim. The nature and location of the victim's wound manifest appellant's resolve to end the life of the victim,[23] and not just to defend himself. In any event, the question as to who between the accused and the victim was the unlawful aggressor was a question of fact best addressed to and left with the trial court for determination based on the evidence on record.[24] In the case at bench, the RTC found appellant Ronillo to be the unlawful aggressor.

Even if it were to be granted that Lopez, Sr. was the initial aggressor, the nature of the wound and the weapon used showed that the means employed by Ronillo was not reasonable and commensurate to the alleged unlawful aggression of the victim.

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[22] *Mahawan v. People*, 595 Phil. 397, 415 (2008).

[23] *People v. Vicente*, 452 Phil. 986, 1002 (2003).

[24] *People v. Mayingque*, 638 Phil. 119, 138 (2010).

The unreasonableness became even more apparent from the fact, as duly admitted by appellant himself, that the victim had obviously been inebriated at the time of the aggression. It would have then been easier for Ronillo to have subdued Lopez, Sr. without resorting to the excessive means of stabbing the latter's chest with a kitchen knife. Verily, it was far from a reasonably necessary means to repel the supposed aggression of Lopez, Sr. Appellant thereby fails in satisfying the second requisite of self-defense.

Other circumstances also render appellant's claim of self-defense as dubious and unworthy of belief. Here, appellant did not inform the authorities at the earliest opportunity that he stabbed his father in self-defense, neither did he surrender right away the kitchen knife which he used in stabbing the victim. Instead, appellant hid himself from the authorities and was arrested only after a certain Samuel Lopez tipped his whereabouts to the police. Jurisprudence has repeatedly declared that flight is an indication of guilt. The flight of an accused, in the absence of a credible explanation, would be a circumstance from which an inference of guilt may be established "for a truly innocent person would normally grasp the first available opportunity to defend himself and to assert his innocence."[25] Also, Ronillo only invoked self-defense when he could no longer conceal his deed.

In his attempt at exculpation, Ronillo asserts that credence should not have been accorded to the testimony of Dr. Manapsal because said prosecution witness admitted that his nurse was the one who filled up the medical certificate and that there are injuries that might appear a few hours after they were inflicted.

Ronillo's argument deserves scant consideration. Let it be underscored that during his cross-examination, Dr. Manapsal explained that the variance of handwritings in the medical certificate was due to the fact that it was his nurse who wrote appellant's name and other personal details thereon, but the

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[25] *People v. Diaz*, 443 Phil. 67, 89 (2003), citing *People v. del Mundo*, 418 Phil. 740, 753 (2001).

notation "no external signs of physical injuries" was in his handwriting. The Court notes that the defense took inconsistent stands. During trial, it claimed that right after the stabbing incident, appellant already had visible injuries allegedly caused by the attack of his father through the testimonies of Ronillo and his sister, Robilie. However, on appeal, it contended that the reason why Dr. Manapsal saw no such injuries in the body of appellant at the time of his physical examination was because there are some injuries that become visible a few hours after they were inflicted. At any rate, Dr. Manapsal clarified that by his experience, it would not be possible in appellant's case that the injuries would manifest only after examination. Dr. Manapsal stood firm in his observation that he did not see any injury on Ronillo when he examined the latter on May 16, 2014. The Court lends credence to Dr. Manapsal, a government physician, for he is presumed to have performed his duty in a regular manner, unless there is evidence to the contrary suggesting ill-motive on his part. Appellant failed to overcome the aforesaid presumption.

With appellant's failure to prove self-defense, the inescapable conclusion is that he is guilty of Parricide as correctly found by the RTC and affirmed by the CA. Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; and (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendants or other descendants, or the legitimate spouse of the accused. All these elements were duly established and proven by the prosecution. The fact of death by Lopez, Sr. was shown in the medico-legal report and the victim's death certificate; Ronillo admitted that he killed Lopez, Sr. by stabbing the latter with a kitchen knife; and the relationship between appellant and Lopez, Sr. as son and father was established through the former's birth certificate and the marriage certificate of his parents.

We find that the prison term imposed by the CA in Criminal Case No. 14-0396 is proper and, hence, shall no longer be disturbed by this Court. Finally, the CA is correct in awarding ₱75,000.00 each for civil indemnity, moral damages and

exemplary damages being consistent with the Court's pronouncement in *People v. Jugueta*.[26] The award of ₱60,000.00 as actual damages is maintained. Further, six percent (6%) interest *per annum* shall be imposed on all damages awarded to be reckoned from the date of the finality of this judgment until fully paid.[27]

WHEREFORE, the appeal is **DISMISSED**. The Decision of the Court of Appeals dated January 6, 2017 in CA-G.R. CR-HC No. 07936 is hereby **AFFIRMED** with **MODIFICATION**. Accused-appellant Ronillo Lopez, Jr. y Mantalaba @ "Dodong" is found **GUILTY** beyond reasonable doubt of Parricide and is sentenced to suffer the penalty of *Reclusion Perpetua*. He is **ORDERED** to **PAY** the heirs of Ronillo Lopez, Sr. y Madroño the amounts of ₱60,000.00 as actual damages, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 by way of exemplary damages.

Accused-appellant is also **ORDERED** to **PAY** interest at the rate of six percent (6%) *per annum* from the time of finality of this Decision until fully paid, to be imposed on the actual damages, civil indemnity, moral damages and exemplary damages.

SO ORDERED.

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

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[26] 783 Phil. 806 (2016).

[27] *People v. Romobio*, G.R. No. 227705, October 11, 2017.

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

THIRD DIVISION

[G.R. No. 234048. April 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MALOU ALVARADO *y* FLORES, ALVIN ALVAREZ *y* LONQUIAS and RAMIL DAL *y* MOLIANEDA,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUG; ELEMENTS.— To secure a conviction for illegal sale of *shabu*, the following essential elements must be established: (*a*) the identities of the buyer and the seller, the object of the sale, and the consideration; and (*b*) the delivery of the thing sold and the payment for the thing. What is material in prosecutions for illegal sale of *shabu* is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— For illegal possession of a dangerous drug, like *shabu*, the elements are: (*a*) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (*b*) such possession is not authorized by law; and (*c*) the accused freely and consciously possessed the drug.

3. ID.; ID.; THE PROSECUTION MUST NOT ONLY PROVE THE ILLEGAL SALE OF DANGEROUS DRUG BUT ALSO TO ESTABLISH THE INTEGRITY OF THE *CORPUS DELICTI* BEYOND REASONABLE DOUBT.— [T]he Court has ruled that even when the illegal sale of a dangerous drug was proven by the prosecution, the latter is still burdened to prove the integrity of the *corpus delicti.* Thus, even if there was a sale, the *corpus delicti* is not proven if the chain of custody was defective. The *corpus delicti* is the body of the crime that would establish that a crime was committed. In cases involving the sale of drugs, the *corpus delicti* is the confiscated illicit

drug itself, the integrity of which must be preserved. Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti*: every fact necessary to constitute the crime must be established. The chain of custody requirement performs this function in buy-bust operations as it ensures that doubts concerning the identity of the evidence are removed.

4. ID.; ID.; ID.; PRESERVATION OF THE CHAIN OF CUSTODY IS ESSENTIAL IN THE SUCCESSFUL PROSECUTION OF THE ILLEGAL SALE OF DANGEROUS DRUG; THREE-WITNESS REQUIREMENT, VIOLATED IN CASE AT BAR.— The preservation of the chain of custody is x x x essential in a successful prosecution for the illegal sale of dangerous drug. The adoption of a special rule in the handling of the dangerous drugs in particular is necessitated by the nature of the dangerous drug itself which is likely to be tampered, altered, contaminated, or substituted. x x x The apprehending team is required to "document the chain of custody each time a specimen is handled, transferred or presented in court until its disposal, and every individual in the chain of custody shall be identified following the laboratory control and chain of custody form." x x x In this case, after the plastic sachets containing white crystalline substance were seized by the arresting officers, they were marked by PO2 Burgos with his initials and brought to the nearby house of Malou. It is there where an inventory of the seized items was done in the presence of appellants and *Kgd.* Azarcon, as shown in the pictures taken by PO2 Julaton. However, only a *barangay kagawad* was present during the inventory and photographing of the seized items. Section 1(A.1.6) of the Chain of Custody Implementing Rules and Regulations states that "[a] representative of the [National Prosecution Service] is anyone from its employees, while the media representative is any media practitioner. The elected public official is any incumbent public official regardless of the place where he/she is elected." The presence of these three (3) persons required by law can be ensured in a planned operation such as a buy-bust operation.

5. ID.; ID.; ID.; FAILURE TO STRICTLY COMPLY WITH THE PRESCRIBED PROCEDURE IN THE HANDLING OF THE SEIZED DRUG MAY BE EXCUSED ON JUSTIFIABLE GROUND, PROVEN AS FACT, AS LONG

AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE EVIDENCE SEIZED HAVE BEEN PRESERVED; CASE AT BAR.— The Court has recognized the saving clause provided in the last paragraph of Section 21 (a), Article II of the IRR of R.A. No. 9165 such that failure to strictly comply with the said directive is not necessarily fatal to the prosecution's case. Strict compliance with the legal prescriptions of R.A. No. 9165 may not always be possible given the field conditions in which the police officers operate. However, the lapses in procedure must be recognized, addressed and explained in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved. x x x During his cross examination, PO2 Burgos was asked regarding the absence of the DOJ and media representative but he failed to give any justifiable reason. x x x The Implementing Rules and Regulations on the chain of custody thus require that the apprehending officers not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item. In this case, there was no justifiable ground given by the arresting officers for the absence of DOJ and media representatives in their *Pinagsamang Salaysay*. PO2 Burgos' testimony in court further highlighted the lack of justifiable ground for the buy-bust team's failure to strictly comply with the requirements of Section 21.

6. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY OF THE POLICE OFFICERS; NEGATED BY FAILURE TO OBSERVE THE PROPER PROCEDURE REQUIRED BY LAW.— The prosecution cannot rely on the presumption of regularity in the performance of official functions and weakness of the defense's evidence to bolster its case. Any doubt on the conduct of the police operations cannot be resolved in the prosecution's favor by relying on the presumption of regularity in the performance of official functions. The failure to observe the proper procedure negates the operation of the regularity accorded to police officers. Moreover, to allow the presumption to prevail notwithstanding clear lapses on the part of the police is to negate the safeguards precisely placed by the law to ensure that no abuse is committed.

APPEARANCES OF COUNSEL

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

D E C I S I O N

GESMUNDO, *J.*:

This is an appeal from the May 19, 2017 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR No. 07568 which affirmed the March 1, 2015 Decision[2] of the Regional Trial Court *(RTC)* of Parañaque City, finding accused-appellant Malou F. Alvarado *(Malou)* guilty beyond reasonable doubt for violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, while Alvin L. Alvarez *(Alvin)* and Ramil M. Dal *(Ramil)* [collectively referred to as appellants] were found guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165.

The Antecedents

In Criminal Case No. 11-0124, Malou was charged with Violation of Section 11, Article II of R.A. No. 9165. The accusatory portion of the Information states:

> That on or about the 26th day of January 2011, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and feloniously have in her possession and under her control and custody four (4) pieces of small heat-sealed transparent plastic sachets containing white crystalline substance weighing 0.01 gram each or a total of 0.04 gram, marked as "RB-1" to "RB-4", which when tested was found to be positive for Methylamphetamine Hydrochloride, a dangerous drug.[3]

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[1] *Rollo,* pp. 2-15; penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Ramon R. Garcia and Renato C. Francisco.

[2] CA *rollo*, pp. 54-65; penned by Judge Danilo V. Suarez.

[3] Records, p. 2.

In a separate Information, docketed Criminal Case No. 11-0125, Malou, Alvin and Ramil were charged with Violation of Section 5, Article II of R.A. No. 9165, the accusatory portion of which states:

> That on or about the 26th day of January 2011, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport one (1) heat-sealed transparent plastic sachet containing white crystalline substance weighing 0.01 gram, marked as "RB", to Police Poseur PO2 ROLLY BURGOS, which content of the said plastic sachet when tested was found to be positive for Methylamphetamine Hydrochloride, a dangerous drug.[4]

In another Information, docketed as Criminal Case No. 11-0123, Beata E. Lonquias *(Beata)* was also charged with violation of Section 12, Article II of R.A. No. 9165 or illegal possession of drug paraphernalia.

When arraigned, appellants pleaded not guilty. Trial ensued.

From the evidence presented at the trial court, the CA summarized the respective versions of the parties, as follows:

Version of the Prosecution

The prosecution presented Forensic Chemist Police Inspector Richard Mangalip (P/Insp. Mangalip), PO3 Eric Sarino, PO2 Rolly Burgos, and PO3 Edwin Plopinio and from their testimonies, the following events were gathered:

On 26 January 2011, around 2:00 o'clock in the afternoon, an Informant reported to the Parañaque City Police Station Anti-Illegal Drug Special Operations Task Group (SAIDSOTG) about the illegal drug activity of certain *[Betsy]* and *Malou* at Sampaloc Site, Barangay BF Homes, Parañaque City. The police immediately formed a team, headed by Senior Inspector Roque Tome (P/Sr. Insp.Tome), to conduct

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[4] *Id.* at 3.

a buy-bust operation against the suspects, with PO2 Rolly Burgos (PO2 Burgos) as *poseur* buyer and PO3 Eric Sarino (PO3 Sarino), and PO3 [Edwin] Plopinio as back-up. The Team Leader provided PO2 Burgos with [buy]-bust money consisting of 5 pieces of ₱100.00 bills, which were marked with "RB" on the upper left portion of the bills. After coordinating with the Philippine Drug Enforcement Agency (PDEA), the team, together with the Informant, proceeded to Sampaloc Site, Barangay BF Homes, Parañaque City to conduct a buy-bust operation. Upon reaching the target area, PO3 Sarino and PO3 Plopinio strategically positioned themselves as perimeter back-up officers while PO2 Burgos and the Informant went ahead and when they reached Chico Street, the Informant and PO2 Burgos spotted two men and a woman in blue blouse standing at the side of the street. The Informant identified the woman in blue blouse as Malou Alvarado, their target, while the two men were identified as Alvin Alvarez (the live-in partner of Malou) and Ramil Dan (Ramil), their runner. Ramil approached them and offered them *shabu* from Malou, who he boasted had ample supply (of drugs). PO2 Burgos handed the five ₱100.00 bills to Ramil to buy ₱500.00 worth of shabu. Ramil gave the money to Alvin and then approached Malou, who handed him a small plastic sachet, containing white crystalline substance suspected to be *shabu*, which he (Ramil) handed to PO2 Burgos, who immediately executed the pre-arranged signal of throwing his cigarette to alert the rest of the team that the transaction was consummated. PO2 Burgos introduced himself as a police officer and then arrested Ramil and Malou, from whom he confiscated a canister containing four (4) sachets of suspected *shabu.* Meanwhile, Alvin immediately ran away but PO3 Plopinio chased and apprehended him inside the house of Beata Lonquias *alias* Betty (the subject of the buy-bust operation and later identified as Alvin's mother). PO3 Plopinio recovered the buy-bust money from Alvin. Beata likewise ran and was chased and apprehended by PO3 Sarino, who confiscated from her a small plastic container containing numerous aluminum foil strips, which he did not bother to count. P/Sr. Insp. Tome contacted the barangay authorities and thus, in the presence of *Barangay Kagawad* Noel Azarcon and the four suspects, PO2 Burgos placed markings on the seized items at the scene of the arrest - *RB* on the plastic sachet subject of the sale, *RB-5* on the white canister and *RB-1* to *RB-4* on the [four] 4 sachets inside said canister. Meanwhile, PO3 Sarino marked the plastic container of aluminum foils with *ES* and placed his initials thereon. While SPO2 Burgos was preparing the inventory of the seized item, PO2 Julaton took photographs of the arrested suspects and the seized items.

Thereafter, the team brought the accused-appellants to the police station for documentation and to submit the confiscated items to the PNP Crime Laboratory for examination.

After a request for laboratory examination was made by PO2 Julaton, PO2 Burgos personally brought the confiscated specimens to the PNP Crime Laboratory for examination. Forensic Chemist P/Insp. Richard Mangalip found the sachets (in the possession of Malou) and the sachets subject of the sale positive for *methamphetamine hydrochloride* or *shabu*. However, the aluminum foils inside the plastic canister seized from Beata E. Lonquias alias Betty were found negative of *shabu*.[5]

Version of the Accused

Malou Alvarado and her common-law husband Alvin Alvarez were at their house at Chico Street, Sampaloc Site, Sucat, Parañaque City at around 3 o'clock in the afternoon of 26 January 2011. Alvin was watching television when PO2 Burgos kicked open their door and together with Police Officers Sarino and Plopinio entered and searched their house without any warrant and without their consent. PO2 Burgos poked a gun at Alvin and though the police found nothing, they proceeded to handcuff the accused-appellants and brought them outside. While outside, Malou saw her mother-in-law Beata and a man (Ramil) she did not know, who was also handcuffed. Then they saw PO2 Burgos brought out from a black bag small plastic sachets and money. Subsequently, their pictures were taken and they were forced to board a police mobile that brought them to Manila Memorial Park. The police officers then told them to alight from the vehicle and demanded ₱30,000.00 from each of them to settle their case. When they told them that they had no money, the police officers brought them to the police station. At the police station, they were ordered to call their relatives so that they could bring the money. When they were brought for inquest, they admitted that they did not tell the prosecutor that the police were extorting money from them. They claimed that they did not file any case against the police officers who apprehended them because they had no money.

Ramil, who testified on 18 December 2014, declared that he was on his way to a friend's house at Sampaloc Site, for possible employment in a construction project, when he met six men (who

[5] *Rollo,* pp. 4-6.

turned out to be police officers), one of whom (PO3 Plopinio) poked a gun at him and told him to face the wall. When he did not follow, he was hit on the stomach and handcuffed. Thereafter, he saw a man (Alvin), a woman (Malou) and an elderly woman (whom he later identified as Beata) coming from an alley. Then the four of them were gathered together and they were made to sign a document. He saw a police officer handed to PO2 Burgos several plastic sachets and five ₱100.00 bills from his small bag. Thereafter, they were photographed, accused of selling illegal drugs and made to board a vehicle. They were brought to Manila Memorial Park, where policemen asked them to produce ₱30,000.00 each but they were not able to give them any money. Consequently, the police brought them to the police station, where they were detained.

Beata testified that: on 26 January 2011, she was alone in her house when several men forcibly entered their house, searched it and then arrested her; the police did not have any warrant with them and she did not know why they arrested and detained her; Malou was just a neighbor.[6]

Ruling of the RTC

On March 1, 2015, the RTC rendered its decision finding appellants guilty as charged. It, however, acquitted Beata based on reasonable doubt.

The RTC held that all the elements of the crimes of illegal possession and illegal sale of *shabu* were clearly established by the prosecution. It gave credence to the testimonies of police officers who composed the buy-bust team, particularly PO2 Burgos who testified on the conduct of the buy-bust operation that resulted in the arrest of the appellants. As to the failure of the arresting officers to strictly comply with the requirements under Section 21 of R.A. 9165, it was noted that a *barangay kagawad* was present during the inventory and hence there was substantial compliance with the law and that the integrity of the drugs seized from appellants was preserved.

On the other hand, the defenses of denial and frame-up failed to convince the RTC, which noted that none of the appellants

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[6] *Id*. at 6-8; CA *rollo*, pp. 97-99.

filed a complaint against the police officers who allegedly arrested them on false charges and even tried extorting money from them.

However, the RTC ruled that the prosecution failed to establish its case against accused Beata who was not involved or present during the conduct of the buy-bust. Also, none of the 114 aluminum foils allegedly found in her possession was marked by PO3 Sarino who searched her person after he spotted her leaving the house of Malou.

The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered the court renders judgement as follows:

1. In *Criminal Case No. 11-0123 for Violation of Sec. 12, Art. II, RA 9165*, the court finds accused BEATA ESCUADRA LONQUIAS is hereby ACQUITTED on ground of reasonable doubt;

2. In *Criminal Case No. 11-0124 for Violation of Sec. 11, Art. II, RA 9165*, the court finds accused MALOU FLORES ALVARADO, GUILTY beyond reasonable doubt and is hereby sentenced to Imprisonment of twelve (12) years and one (1) day as minimum to seventeen (17) years and four (4) months as maximum and to pay a fine of Php 300,000.00 and;

3. In *Criminal Case No. 11-0125 for Violation of Sec. 5, Art. II, RA 9165*, the Court finds accused MALOU FLORES ALVARADO, ALVIN LONQUIAS ALVAREZ and RAMIL MOLIANEDA DAL, GUILTY beyond reasonable doubt and are hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Php 500,000.00 each;

It appearing that the accused MALOU FLORES ALVARADO, ALVIN LONQUIAS ALVAREZ and RAMIL MOLIANEDA DAL are detained at the Parañaque City Jail and considering the penalty imposed, the OIC Branch Clerk of Court is directed to prepare the *Mittimus* for the immediate transfer of accused ALVIN LONQUIAS ALVAREZ and RAMIL MOLIANEDA DAL from the Parañaque City Jail to the New Bilibid Prisons, Muntinlupa City and the transfer of accused MALOU FLORES ALVARADO from the Parañaque City Jail to the Women's Correctional Facility in Mandaluyong City.

The bail bond posted by accused BEATA ESCUADRA LONQUIAS is hereby cancelled.

The specimens consisting of five (5) sachets of shabu marked "RB" to "RB-4" each weighing 0.01 gram for a total of 0.05 gram, as well as the one hundred fourteen (114) pieces of aluminum foil strips placed inside a plastic container marked as "ES", are forfeited in favor of the government and the OIC-Branch Clerk of Court is likewise directed to immediately turn over the same to the Philippine Drug Enforcement Agency (PDEA) for proper disposal pursuant to Sec. 21 of RA 9165 and Supreme Court OCA Circular No. 51-2003.

SO ORDERED.[7]

Ruling of the CA

On appeal, the CA affirmed the decision of the RTC. It held that based on the totality of the evidence, the prosecution was able to prove that the illegal sale of *shabu* took place, and that Malou then had in her possession *shabu* contained in four (4) heat-sealed transparent plastic sachets. The appellate court likewise concluded that there was compliance with the chain of custody rule which clearly showed that the drug specimens presented in court were the same items in the possession of Malou at the time of the buy-bust operation. On the other hand, appellants failed to show that the *shabu* seized from Malou, were tampered with, or switched before they were delivered to the PNP Crime Laboratory for examination.

The appellate court observed that the appellants "repeatedly harped on the absence of [sic] the accused, media and DOJ representatives during the inventory of the seized items." Citing *People v. Salvador,*[8] the CA ruled that failure to strictly comply with Section 21 of R.A. 9165 was not fatal.

As to appellants' defense of denial, the CA said that aside from being self-serving, the same was unsupported and unsubstantiated by clear and convincing evidence. Even their testimonies regarding the incident were found conflicting.

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[7] CA *rollo*, pp. 64-65.

[8] 726 Phil. 389 (2014).

Dissatisfied with the affirmance of the decision, the appellants filed this appeal before the Court.

In compliance with the Court's Resolution,[9] the Public Attorney's Office *(PAO),* on behalf of the appellants, filed a manifestation stating that they are adopting and re-pleading all the arguments raised in their appeal brief filed with the CA. A similar manifestation was filed by the Office of the Solicitor General *(OSG).*

Arguments of the Parties

In their appeal brief, appellants assail the CA in upholding their conviction despite the police officers' non-compliance with procedural safeguards prescribed by Section 21 of R.A. No. 9165. They assert that no evidence was presented showing that the inventory and photographing of the seized items were conducted in their presence and/or their representative, and representatives from the media and the DOJ. No justifiable ground could be found in the testimonies of prosecution witnesses that would excuse non-compliance with the said provision.

Appellants further contend that such failure of the arresting officers to show that they followed the required procedure in the chain of custody constitutes a deviation that destroys the presumption of regularity in the performance of duty. And although the defense of denial is weak, appellants assert that they should nonetheless, be acquitted. They stress that the presumption of innocence stands as a fundamental principle of both constitutional and criminal law, imposing a rule on evidence, a degree of proof that demands no less than total compliance.[10]

On the other hand, the OSG, as Peoples' counsel, maintains that appellants' guilt in the crimes they were convicted was proven beyond reasonable doubt. All the elements for both crimes of illegal sale and illegal possession of *shabu* have been sufficiently proven by the evidence presented. The drugs subject of the buy-bust sale and those seized from the possession of

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

[10] CA *rollo*, pp. 44-50.

Malou were the same drugs presented and identified in the trial court. Contrary to appellants' assertion, there was substantial compliance with Section 21 (a) of R.A. No. 9165 and the chain of custody, as well as the presentation of the *corpus delicti* in court, had likewise been sufficiently established.

As to the alleged absence of appellants when the inventory was being conducted by the arresting officers, this issue was not raised before the trial court during the stipulations made by the parties regarding *Bgy. Kgd.* Azarcon's testimony. As shown by the transcript of stenographic notes, appellants admitted that the *barangay kagawad* was present during the inventory and apart from stipulating on Azarcon's lack of personal knowledge on the source of the specimen and the circumstances surrounding the arrest of the appellants, the latter did not stipulate nor make it of record that when the *barangay kagawad* was there to witness the inventory, appellants were not around at the time.

The OSG underscores the previous rulings of this Court that non-compliance by the apprehending/buy-bust team with Section 21 is not fatal for as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved. In particular, the absence of the representative from DOJ and media was already explained by the arresting officers. Thus, if despite their efforts it was only *Bgy. Kgd.* Azarcon who arrived at the scene to witness the photographing and inventory, this predicament is obviously beyond the control of the arresting team who had no choice but to proceed with the tasks at hand. What is essential was that the police officer had done all they could to safeguard the integrity and evidentiary value of the items involved.

On appellants' defense of denial, the OSG argues that such denial cannot overcome the positive assertions of the members of the buy-bust team. The well-entrenched principle is that, over and above the accused's denial, greater weight is given to the positive testimonies of the prosecution witnesses especially when these corroborate each other on material points, particularly the positive identification of the appellants as the ones who

sold and delivered the *shabu* to the poseur-buyer and that on the occasion of their arrest, more plastic sachets of *shabu* were recovered from one of them.[11]

Issue

Whether or not the CA erred in affirming appellants' conviction for illegal sale and illegal possession of *shabu*.

The Court's Ruling

The appeal is meritorious.

To secure a conviction for illegal sale of *shabu*, the following essential elements must be established: (*a*) the identities of the buyer and the seller, the object of the sale, and the consideration; and (*b*) the delivery of the thing sold and the payment for the thing. What is material in prosecutions for illegal sale of *shabu* is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.[12]

In this case, the prosecution narrated that PO2 Burgos, the *poseur* buyer, accompanied by their informant, and the rest of the buy-bust team, went to the area where Malou and Betty *(Beata)* supposedly engaged in selling *shabu.* It was Ramil who approached PO2 Burgos and offered him *shabu*, and when PO2 Burgos gave the payment (in marked money) for ₱500.00 worth of *shabu,* Ramil handed the money to Alvin. Malou then gave Ramil one plastic sachet containing suspected *shabu*, which Ramil handed to PO2 Burgos.

With the sale consummated, PO2 Burgos threw his cigarette as pre-arranged signal for the rest of the buy-bust team. He then introduced himself as a police officer and arrested appellants with the aid of his back-up, PO3 Plopinio and PO3 Sarino. Four (4) more plastic sachets of *shabu* placed inside a plastic

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[11] *Id*. at 79-84.

[12] *People v. Bautista*, 682 Phil. 487, 497-498 (2012), citing *People v. Naquita,* 582 Phil. 422, (2008); *People v. Del Monte*, 575 Phil. 576, 587 (2008); and *People v. Santiago*, 564 Phil. 181, 193 (2007).

canister were recovered from Malou. Alvin tried to run towards their nearby house but he was chased by PO3 Plopinio. On the same day, the five plastic sachets containing white crystalline substance seized from appellants were submitted for chemical analysis to the PNP Crime Laboratory and the results confirmed the presence of *methylamphetamine-hydrochloride* or *shabu*, a dangerous drug. The *shabu* contained in one plastic sachet weighing 0.01 gram, marked "RB" sold by appellants to PO2 Burgos was duly identified and presented as evidence in court. The other four (4) plastic sachets containing *shabu,* which were seized from Malou on the same occasion marked as "RB-1", "RB-2", "RB-3"and "RB-4", were likewise presented as evidence.

For illegal possession of a dangerous drug, like *shabu*, the elements are: (*a*) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (*b*) such possession is not authorized by law; and (*c*) the accused freely and consciously possessed the drug.[13]

We have held that the confiscation of additional quantity of illegal drugs, other than those subject of the consummated sale, from the person of the accused during the buy-bust, was legally authorized after said accused had been lawfully arrested for committing drug pushing.[14]

Nonetheless, the Court has ruled that even when the illegal sale of a dangerous drug was proven by the prosecution, the latter is still burdened to prove the integrity of the *corpus delicti.* Thus, even if there was a sale, the *corpus delicti* is not proven if the chain of custody was defective.[15] The *corpus delicti* is the body of the crime that would establish that a crime was committed. In cases involving the sale of drugs, the *corpus delicti* is the confiscated illicit drug itself, the integrity of which must be preserved.[16]

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[13] *People v. Bautista*, *supra* at 498.

[14] *Id*.

[15] See *People v. Saragena*, G.R. No. 210677, August 23, 2017.

[16] *People v. Saragena*, *supra*; citing *People v. Pagaduan,* 641 Phil. 432, 447 (2010); *People v. Caiz,* 790 Phil. 183, 196 (2016).

Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti*: every fact necessary to constitute the crime must be established. The chain of custody requirement performs this function in buy-bust operations as it ensures that doubts concerning the identity of the evidence are removed. In a long line of cases, we have considered it fatal for the prosecution to fail to prove that the specimen submitted for laboratory examination was the same one allegedly seized from the accused.[17]

The preservation of the chain of custody is therefore essential in a successful prosecution for the illegal sale of dangerous drug. The adoption of a special rule in the handling of the dangerous drugs in particular is necessitated by the nature of the dangerous drug itself which is likely to be tampered, altered, contaminated, or substituted.[18]

Section 1(b) of Dangerous Drug Board (DDB) Regulation No. 1, Series of 2002,[19] defines chain of custody as follows:

> b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and used in court as evidence, and the final disposition[.]

The apprehending team is required to "document the chain of custody each time a specimen is handled, transferred or presented in court until its disposal, and every individual in

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[17] *People v. Sanchez*, 590 Phil. 214, 235 (2008).

[18] *People v. Macud,* G.R. No. 219175, December 14, 2017, citing *Malillin v. People,* 576 Phil. 576 (2008).

[19] Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

the chain of custody shall be identified following the laboratory control and chain of custody form."[20]

Section 21, paragraph 1 of R.A. No. 9165 provides for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Said provision has been amended by R.A. No. 10640.[21] Since the alleged offense was committed on January 26, 2011, the old law and its corresponding implementing rules and regulations shall be applied, being more favorable to the appellants. The original Section 21 reads 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 drugs shall, immediately after seizure and confiscation, **physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof**[.] (emphasis supplied)

This is implemented by Section 21(a), Article II of the *Implementing Rules and Regulations* (IRR) of R.A. No. 9165, which reads:

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[20] Guidelines on the Implementing Rules and Regulation (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, Sec. 1.B.5.

[21] "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 14, 2014.

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same **in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof**: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; ***Provided, further*** **that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.** (emphasis supplied)

In this case, after the plastic sachets containing white crystalline substance were seized by the arresting officers, they were marked by PO2 Burgos with his initials and brought to the nearby house of Malou. It is there where an inventory of the seized items was done in the presence of appellants and *Kgd.* Azarcon, as shown in the pictures taken by PO2 Julaton.[22] However, only a *barangay kagawad* was present during the inventory and photographing of the seized items.

Section 1(A.1.6) of the Chain of Custody Implementing Rules and Regulations states that "[a] representative of the [National Prosecution Service] is anyone from its employees, while the media representative is any media practitioner. The elected public official is any incumbent public official regardless of the place where he/she is elected." The presence of these three (3) persons required by law can be ensured in a planned operation such as a buy-bust operation.[23]

Here, the buy-bust operation was arranged and scheduled in advance. The police officers formed an apprehending team,

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[22] Exhs. H, I, P, Q, R, and S; records, pp. 359, 363-364.

[23] *People v. Saragena*, *supra* note 15.

coordinated with the Philippine Drug Enforcement Agency *(PDEA),* prepared the buy-bust money, and held a briefing. Yet, they failed to ensure that a DOJ representative and a media practitioner, would witness the inventory and photographing of the seized drugs.

Securing the presence of these persons is not impossible. Indeed, it is not enough for the apprehending officers to merely mark the seized pack of *shabu*; the buy-bust team must also conduct a physical inventory and take photographs of the confiscated item in the presence of these persons required by law.[24] Relevantly, under the Revised PNP Manual on Anti-Illegal Drugs Operations and Investigation,[25] on specific rules and procedures for planned operations such as a buy-bust operation, the designated Team Leader is required "to see to it that he has the contact numbers of representatives from the DOJ, Media and any Local Elected Official in the area for inventory purposes as required under Section 21, Article II of R.A. No. 9165."[26]

The OSG suggests that the absence of the DOJ and media representative may be overlooked, explaining that "this predicament is obviously beyond the control of the arresting team who had no choice but to proceed with the tasks at hand."

The Court cannot agree to such proposition.

In the recent case of *People v. Macud,*[27] we stressed the importance of this requirement, thus:

> We cannot even declare that there was substantial compliance with the law in this case as the police officers invited no other person to witness the procedures that were done *after* the buy-bust operation, *i.e.*, the marking, inventory, and photography of the seized drugs. **There was no representative of the media or the DOJ** and no allegation that these people could similarly compromise the operation

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[24] *Id.*; citing *Lescano v. People,* 778 Phil. 460, 469 (2016).

[25] Dated September 2014, incorporating the amendments introduced by RA 10640.

[26] Chapter 3, Sec. 3.1 (a)(2)(7).

[27] *Supra* note 18.

if they had been informed of and present before, during, and after the operation.

The presence of the persons who should witness the post-operation procedures is necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity. The insulating presence of such witnesses would have preserved an unbroken chain of custody. We have noted in several cases that a buy-bust operation is susceptible to abuse, and the only way to prevent this is to ensure that the procedural safeguards provided by the law are strictly observed. In the present case, not only have the prescribed procedures not been followed, but also (and more importantly) the lapses not justifiably explained. In *People v. Dela Cruz* where there was a similar failure to comply with Section 21 of RA No. 9165, the Court declared:

> "xxx **This inexcusable non-compliance effectively invalidates their seizure of and custody over the seized drugs, thus, compromising the identity and integrity of the same.** We resolve the doubt in the integrity and identity of the *corpus delicti* in favor of appellant as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt. Considering that the prosecution failed to present the required quantum of evidence, appellants acquittal is in order."

As in *Dela Cruz*, and in view of the foregoing, the Court finds the acquittal of Macud in order. (emphasis supplied, citations omitted)

The Court has recognized the saving clause provided in the last paragraph of Section 21 (a), Article II of the IRR of R.A. No. 9165 such that failure to strictly comply with the said directive is not necessarily fatal to the prosecution's case. Strict compliance with the legal prescriptions of R.A. No. 9165 may not always be possible given the field conditions in which the police officers operate. However, the lapses in procedure must be recognized, addressed and explained in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved.[28]

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[28] *People v. Martinez*, 652 Phil. 347, 382 (2010), citing *People v. Cervantes,* 600 Phil. 819, 843 (2009).

In *People v. Cayas,*[29] the Court reiterated this rule:

> While recent jurisprudence has subscribed to the provision in the Implementing Rules and Regulations (IRR) of R.A. 9165 providing that non-compliance with the prescribed procedure is not fatal to the prosecution's case, we find it proper to define and set the parameters on when strict compliance can be excused.
>
> **As a rule, strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.**
>
> The exception found in the IRR of R.A. 9165 comes into play when strict compliance with the proscribed procedures is not observed. **This saving clause, however, applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.** The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.[30] (emphases supplied)

During his cross examination, PO2 Burgos was asked regarding the absence of the DOJ and media representative but he failed to give any justifiable reason. The pertinent portions of his testimony are herein reproduced:

x x x x x x x x x

Q: And you would agree, as stated in Section 21 of RA 9165, the actual inventory must be witnessed by an elected public official?
A: Yes, sir.

Q: And in this case, Kgd. Noel Azarcon was present?
A: Yes, sir.

Q: And aside from that, there must also be a witness coming from the DOJ and media?

[29] 789 Phil. 70 (2009).

[30] *Id*. at 79-80.

A: Yes, sir.

Q: In these pictures, can you tell the court if a media man or DOJ representative was present during the inventory?
A: No representative from the media and DOJ.

Q: What was the reason why there were no representatives from the media and DOJ?
A: **It was our team leader who coordinated with the barangay and only Kgd. Azarcon together with the two barangay tanods arrived**.

Q: You would admit that your team leader contacted the barangay kagawad together with the barangay tanods during the actual inventory?
A: Yes, sir.

Q: **But he did not contact representatives from the DOJ and media?**
A: **I cannot remember, sir**.

xxx[31] (emphases supplied)

In the recent case of *People v. Carlit*[32] there was a DOJ representative who witnessed the inventory but no media representative and an elected official present. We held that the prosecution failed to prove every link in the chain of custody:

In the case at bar, PO3 Carvajal testified that he marked the alleged shabu at the police station, instead of doing so immediately at the place where the arrest was effected as required by law. Moreover, the arresting officers failed to strictly observe Section 21 of R.A. 9165 that requires that "an elected public official and a representative of the National Prosecution Service or the media" be present during the inventory, and be given a copy of the report of the seized items. **Such failure of the police officers to secure the presence of a representative from the media or a barangay official raises serious doubts on whether the chain of custody was actually unbroken.**

Notably, PO3 Carvajal did not offer any explanation for these lapses. Rather, he admitted that they were no longer able to coordinate with the media and the local official because he was instructed by their team leader to immediately bring Carlit to the police station.

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[31] TSN, August 14, 2014, pp. 18-19; records, pp. 317-318.

[32] G.R. No. 227309, August 16, 2017.

To Our mind, this does not constitute justifiable ground for skirting the statutory requirements under Section 21 of R.A. 9165. We are therefore constrained to rule as We did in *Bartolini, viz:*

> "**The failure to immediately mark the seized items, taken together with the absence of a representative from the media to witness the inventory, without any justifiable explanation, casts doubt on whether the chain of custody is truly unbroken.** Serious uncertainty is created on the identity of the *corpus delicti* in view of the broken linkages in the chain of custody. The prosecution has the burden of proving each link in the chain of custody - from the initial contact between buyer and seller, the offer to purchase the drug, the payment of the buy-bust money, and the delivery of the illegal drug. The prosecution must prove with certainty each link in this chain of custody and each link must be the subject of strict scrutiny by the courts to ensure that law-abiding citizens are not unlawfully induced to commit an offense."[33] (emphasis supplied)

Indeed, the prosecution's unjustified non-compliance with the safeguards of the chain of custody constitutes a fatal procedural flaw that destroys the reliability of the *corpus delicti.*[34]

The CA clearly disregarded the operative phrase—that the prosecution must provide "justifiable grounds" for non-compliance, in addition to showing that the prosecution maintained the integrity of the seized item.[35]

The appellate court further failed to take note of Sections 1(A.1.9) and 1 (A.1.10) of the Chain of Custody Implementing Rules and Regulations, which provide:[36]

> A.1.9. Noncompliance, **[a] under justifiable grounds**, with the requirements of Section 21 (1) of RA No. 9165, as amended, shall not render void and invalid such seizures and custody over the items **[b] provided the integrity and the**

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[33] *Id.*

[34] *Dela Riva v. People,* 769 Phil. 872, 894 (2015).

[35] *Supra* note 15.

[36] *Id.*

evidentiary value of the seized items are properly preserved by the apprehending officer/team.

A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of RA No. 9165, as amended, **shall be clearly stated in the sworn statements/ affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/ confiscated items**. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of RA No. 9165 shall be presented. (emphasis supplied)

The Implementing Rules and Regulations on the chain of custody thus require that the apprehending officers not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item.[37] In this case, there was no justifiable ground given by the arresting officers for the absence of DOJ and media representatives in their *Pinagsamang Salaysay*.[38] PO2 Burgos' testimony in court further highlighted the lack of justifiable ground for the buy-bust team's failure to strictly comply with the requirements of Section 21.

The CA likewise erred in simply relying on the prosecution's claim that the integrity of the evidence was preserved in accordance with the chain of custody requirements for proper handling of the drug specimen. In *People v. Sanchez,*[39] the Court said:

For greater specificity, "marking" means the placing by the apprehending officer or the *poseur-buyer* of his/her initials and signature on the item/s seized. If the physical inventory and photograph

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[37] Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, Sec. 1.A.1.10.

[38] Exh. "D"; records, pp. 353-355.

[39] *Supra* note 17.

are made at the nearest police station or office as allowed by the rules, the inventory and photography of the seized items must be made in accordance with Sec. 2 of *Board Resolution No. 1, Series of 2002* but in every case, the apprehended violator or counsel must be present. Again, this is in keeping with the desired level of integrity that the handling process requires. **Thereafter, the seized items shall be placed in an envelope or an evidence bag unless the type and quantity of the seized items require a different type of handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody.**[40] (emphasis supplied)

PO2 Burgos had testified that after marking with his own initials the confiscated plastic sachets containing suspected *shabu,* they conducted the inventory and photographing of the seized items in front of Malou's house. Thereafter, appellants were brought to their station for proper documentation and preparation of request for the PNP Crime Laboratory. From the crime scene, he, together with appellants, boarded the same car; all this time the seized items were in his possession.[41] However, no details were provided by PO2 Burgos as to how the seized items were carried or handled during the transfer to the police station.

While the small transparent plastic canister taken from Malou where the four plastic sachets of *shabu* were found has been marked as "RB-5", there was no testimony as to whether all five sachets of the drug specimen (marked "RB" to "RB-4") seized from her were actually placed inside the said canister and sealed during the transfer to the police station and submission to the PNP Crime Laboratory. Forensic Chemist P/Chief Insp. Richard Allan B. Mangalip testified that the small transparent plastic canister marked "RB-5" was received by their office together with the plastic sachets of the drug specimen, but when asked what the said canister contained, he answered none.[42] Describing the condition of the items submitted to him by their

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[40] *Id*. at 241-242.

[41] TSN, August 14, 2014, pp. 9-10; records, pp. 308-309.

[42] TSN, March 9, 2012, p. 13; records, p. 76.

Desk Officer NUP Arthur Relos, PCI Mangalip stated that the Request for Laboratory Examination "described the specimen subject for examination and the Letter Request there was also an attached specimen."[43] This confirms that the five plastic sachets of the drug specimen were not sealed and placed inside the transparent plastic canister when it was transported to the police station and submitted to the crime laboratory, as similarly reflected in the Physical Science Report No. D-047-119 describing the items submitted by apprehending team.[44]

The above lapses cast doubt on the prosecution's claim of an unbroken chain of custody. Despite the submission of a duly accomplished Chain of Custody Form,[45] the prosecution failed to establish that the plastic sachets containing *shabu* were properly handled and sealed in a container or evidence bag during the transfer to the police station and until their submission to the crime laboratory.

The prosecution cannot rely on the presumption of regularity in the performance of official functions and weakness of the defense's evidence to bolster its case. Any doubt on the conduct of the police operations cannot be resolved in the prosecution's favor by relying on the presumption of regularity in the performance of official functions. The failure to observe the proper procedure negates the operation of the regularity accorded to police officers. Moreover, to allow the presumption to prevail notwithstanding clear lapses on the part of the police is to negate the safeguards precisely placed by the law to ensure that no abuse is committed.[46]

Under the current Section 21, non-compliance with the requirements shall not render void and invalid such seizures and custody over the seized items as long as the integrity and

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[43] *Id*. at 5; records, p. 68.

[44] Records, p. 352.

[45] Exh. "O"; records, p. 362.

[46] *People v. Macud, supra* note 18, citing *People v. Dela Cruz,* 589 Phil. 259, 272 (2008).

the evidentiary value of the seized items are properly preserved by the apprehending officer/team. It must be stressed, however, that the non-compliance must be for "justifiable grounds." In this case, the arresting officers failed to convince the Court that they had justifiable reasons not to strictly comply with the provisions of the law requiring the presence of an elected official, DOJ and media representatives during the physical inventory and photographing of the seized *shabu*. Also fatal to the prosecution's case is the absence of testimony on how the plastic sachets containing white crystalline substance suspected to be *shabu* were handled from the time of arrest/seizure until their submission to the crime laboratory and to ensure that their evidentiary value is not compromised.

We have held that the buy-bust team "should have been more meticulous in complying with Section 21 of Republic Act No. 9165 to preserve the integrity of the seized *shabu,*" most especially where the weight of the seized item is a miniscule amount that can be easily planted and tampered with.[47] "Law enforcers should not trifle with the legal requirement to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia. This is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused."[48]

As a final word, the Court reiterates its ruling in *People v. Holgado, et al.*:[49]

> It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors

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[47] *People v. Saragena*, *supra* note 15; citing *People v. Casacop*, 755 Phil. 265 (2015).

[48] *People v. Dela Cruz,* 744 Phil. 816, 820 (2014).

[49] 741 Phil. 78 (2014).

should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.[50]

WHEREFORE, the appeal is **GRANTED.** The Decision dated May 19, 2017 of the Court of Appeals in CA-G.R. CR No. 07568 is hereby **REVERSED** and **SET ASIDE** for failure of the prosecution to prove beyond reasonable doubt the guilt of accused-appellants Malou F. Alvarado, Alvin L. Alvarez and Ramil M. Dal. They are accordingly **ACQUITTED** of the crime(s) charged against them and ordered immediately **RELEASED** from custody, unless they are being held for some other lawful cause.

The Director of the Bureau of Corrections is **ORDERED** to implement this decision and to inform this Court of the date of the actual release from confinement of the accused-appellants within five (5) days from receipt hereof.

SO ORDERED.

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

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[50] *Id*. at 100.

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parties, which, if properly considered, would justify a different conclusion; in light of the apparent conflict between the findings of facts of the NLRC and the CA, and on the strength of the relaxation of the rules quoted above, the Court can and will delve into the present controversy. (Seacrest Maritime Mgm't., Inc. *vs*. Roderos, G.R. No. 230473, April 23, 2018) p. 750

Factual findings of the Court of Appeals — The Court of Appeals has the jurisdiction to review, and even reverse, the factual findings of the trial court; for the Court of Appeals' factual findings to be reviewed by this Court, it must be shown that it gravely abused its discretion in appreciating the parties' respective evidence; MERALCO has failed to show how the Court of Appeals acted with grave abuse of discretion in arriving at its factual findings and conclusions, or how it grossly misapprehended the evidence presented as to warrant a finding that its review and reversal of the trial court's findings of fact had been in error. (Mla. Electric Co. *vs*. Nordec Phils., G.R. No. 196020, April 18, 2018) p. 61

Factual findings of the Court of Tax Appeals — The CTA *En Banc*, based on their appreciation of the evidence presented to them, unequivocally ruled that petitioner corporation has sufficiently proven its entitlement to the refund or the issuance of a tax credit certificate in its favor for unutilized input VAT; it is well settled that factual findings of the CTA when supported by substantial evidence, will not be disturbed on appeal; due to the nature of its functions, the tax court dedicates itself to the study and consideration of tax problems and necessarily develops expertise thereon. (Team Sual Corp. *vs*. Commissioner of Internal Revenue, G.R. Nos. 201225-26 [From CTA-EB Nos. 649 & 651], April 18, 2018) p. 141

Factual findings of the trial court — The factual findings of the trial court, especially when affirmed by the CA, are entitled to great weight and respect; rationale; the accused-appellant failed to show that both tribunals overlooked a material fact that otherwise would change the outcome

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 findings of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record; the crux of the instant petition revolves around the contrasting findings of the LA and the NLRC, on one hand, and the CA on the other with respect to the issue of whether or not respondent's illnesses are work-related or work aggravated; thus, this issue may be the subject of this Court's review. (Loadstar Int'l. Shipping, Inc. *vs*. Yamson, G.R. No. 228470, April 23, 2018) p. 731

—— Such assignment of error involves questions pertaining to the credibility of the prosecution witnesses and the relevance and admissibility of the pieces of evidence presented by the prosecution; it has been consistently held that in a petition for review on *certiorari*, the Court does not sit as an arbiter of facts for it is not its function to analyze or weigh all over again the evidence already considered in the following proceedings; such factual findings can be questioned only under exceptional circumstances which are not present in this case. (Adlawan *vs*. People, G.R. No. 197645, April 18, 2018) p. 88

—— The Court holds that the petition fails as the issues it raised involves questions of fact which are not reviewable in a petition for review on certiorari under Rule 45 of the Rules of Court; it is a fundamental rule that a petition for review on *certiorari* filed with this Court under Rule

case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record; these exceptions similarly apply in petitions for review filed before this court involving civil, labor, tax, or criminal cases. (Remoticado *vs*. Typical Construction Trading Corp., G.R. No. 206529, April 23, 2018) p. 508

Points of law, issues, theories and arguments –– Generally, it is not the province of an appeal by petition for review on certiorari to determine factual matters; although there are exceptions to this general rule, none of these exist in the instant case; the issue of whether a claimant has actually presented the necessary documents that would prove its entitlement to a tax refund or tax credit, is indubitably a question of fact. (Team Sual Corp. *vs*. Commissioner of Internal Revenue, G.R. Nos. 201225-26 [From CTA-EB Nos. 649 & 651], April 18, 2018) p. 141

–– Sec. 1, Rule 65 of the Rules of Court provides that the special civil action of *certiorari* may only be invoked when there is no appeal, nor any plain, speedy and adequate remedy in the course of law; a writ of *certiorari* is not a substitute for a lost appeal; when an appeal is available, certiorari will not prosper especially if the appeal was lost because of one's own negligence or error in the choice of remedy, even if the ground is grave abuse of discretion; under the Rules of Court, the remedy against a final judgment or order is an appeal; *Pahila-Garrido v. Tortogo, et al.*, cited; here, the CTA-Special First Division disposed of the case in its entirety and no other issues were left to further rule upon; the appropriate remedy to challenge the Resolution is an ordinary appeal, not a petition for *certiorari*. (Bureau of Internal Revenue

in the presence of the accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official, who shall be required to sign the copies of the inventory and be given a copy thereof; the phrase "immediately after seizure and confiscation," explained; and only if this is not practicable, the IRR allows that the inventory and photographing could be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team; this also means that the three required witnesses should already be physically present at the time of apprehension; the buy-bust team in this case utterly failed to comply with these requirements. (*Id*.)

–– Specified in Sec. 21 (1) of R.A. No. 9165; supplementing the above provision, Sec. 21 (a) of the IRR of R.A. No. 9165, 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; 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 Sec. 21 and its IRR shall apply since the alleged crime was committed before the amendment. (People *vs*. Reyes *y* Ginove, G.R. No. 219953, April 23, 2018) p. 619

–– The buy-bust team failed to take photographs of the seized drugs; the law requires photographs of the seized drug itself and not of the accused and the witnesses. (People *vs*. Tomawis *y* Ali, G.R. No. 228890, April 18, 2018) p. 385

–– The Court has recognized the saving clause provided in the last paragraph of Sec. 21 (a), Art. II of the IRR of

the possibility of planting, contamination, or loss of the seized drug. *People v. Mendoza*, cited; the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation." (*Id*.)

–– The prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Sec. 21 of R.A. No. 9165, as amended; its failure to follow the mandated procedure must be adequately explained and must be proven as a fact in accordance with the rules on evidence; the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item. (People *vs*. Mola *y* Selbosa, G.R. No. 226481, April 18, 2018) p. 364

–– The seized drug is the *corpus delicti* of the crime itself; it is crucial for the prosecution to prove the identity and integrity of the seized drugs; the process of the inventory, marking, and photograph of the seized drugs imposes another layer of protection to ensure that the substance seized from the accused is the same one that is presented and submitted in evidence; the failure of the apprehending team to comply with these requirements greatly diminished the evidentiary value of the seized drugs. (People *vs*. Tomawis *y* Ali, G.R. No. 228890, April 18, 2018) p. 385

–– There are unexplained gaps in the custody of the seized drugs; thus, the prosecution was unable to establish the unbroken chain of custody; the uncertainties and inconsistencies in the testimony of the buy"bust team and lack of information at specific stages of the seizure, custody, and examination of the seized drugs create doubt as to the identity and integrity thereof. (*Id*.)

for reformation of instrument to prosper: (1) there must have been a meeting of the minds of the parties to the contract; (2) the instrument does not express the true intention of the parties; and (3) the failure of the instrument to express the true intention of the parties is due to mistake, fraud, inequitable conduct or accident; the burden of proof then rests upon the party asking for the reformation of the instrument. (Makati Tuscany Condominium Corp. *vs*. Multi-Realty Dev't. Corp., G.R. No. 185530, April 18, 2018) p. 1

Tortuous interference –– Under the principle of relativity of contracts, only those who are parties to a contract are liable to its breach; under Art. 1314 of the Civil Code, however, any third person who induces another to violate his contract shall be liable to damages to the other contracting party; said provision of law embodies what we often refer to as tortuous or contractual interference; elements of tortuous interferenc, laid out in *So Ping Bun v. CA*: (1) existence of a valid contract; (2) knowledge on the part of the third person of the existence of a contract; and (3) interference of the third person is without legal justification or excuse. (Excellent Essentials Int'l. Corp. *vs*. Extra Excel Int'l. Phils., Inc., G.R. No. 192797, April 18, 2018) p. 24

Void contract –– A void contract is equivalent to nothing; it produces no civil effect; and it does not create, modify or extinguish a juridical relation; under the Civil Code, Art. 1409. The following contracts are inexistent and void from the beginning: (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy. (Son *vs*. Univ. of Sto. Tomas, G.R. No. 211273, April 18, 2018) p. 243

CORPORATIONS

Concept –– It is difficult to impute confusion and bad faith, which are states of mind appropriate for a natural individual person, to an entire corporation; the fiction where corporations are granted both legal personality separate from its owners and a capacity to act should

DAMAGES

EMPLOYER-EMPLOYEE RELATIONSHIP

Elements –– The elements of the four-fold test are: 1) the selection and engagement of the employees; 2) the payment of wages; 3) the power of dismissal; and 4) the power to control the employee's conduct; the power of an employer to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship; control in such relationships, explained. (Marsman & Co., Inc. *vs*. Sta. Rita, G.R. No. 194765, April 23, 2018) p. 470

Management prerogative — The transfer of employees through the Memorandum of Agreement was proper and did not violate any existing law or jurisprudence; jurisprudence has long recognized what are termed as "management prerogatives"; *SCA Hygiene Products Corporation Employees Association-FFW v. SCA Hygiene Products Corporation* and *Tinio v. Court of Appeals*, cited; the Court has upheld the transfer/absorption of employees from one company to another, as successor employer, as long as the transferor was not in bad faith and the employees absorbed by a successor-employer enjoy the continuity of their employment status and their rights and privileges with their former employer; this conclusion draws its force from the right of an employer to select his/her employees and equally, the right of the employee to refuse or voluntarily terminate his/her employment with his/her new employer by resigning or retiring. (Marsman & Co., Inc. *vs*. Sta. Rita, G.R. No. 194765, April 23, 2018) p. 470

EMPLOYMENT, TERMINATION OF

Illegal dismissal –– It is true that in illegal termination cases, the burden is upon the employer to prove that termination of employment was for a just cause; the complaining employee must first establish by substantial evidence the fact of termination by the employer; petitioner failed to present convincing evidence. (Remoticado *vs*. Typical Construction Trading Corp., G.R. No. 206529, April 23, 2018) p. 508

of which party is successful, amount to res judicata in the other; exists in this case. (*Id*.)

MARRIAGES

Declaration of presumptive death — The Court in *Republic v. Cantor* pointed out that the term, "well-founded belief" has no exact definition under the law; the Court notes that such belief depends on the circumstances of each particular case; as such, each petition must be judged on a case-to-case basis; however, in *Republic vs. Orcelino-Villanueva*, the Court, through Justice Mendoza, provided that such belief must result from diligent efforts to locate the absent spouse; such diligence entails an active effort on the part of the present spouse to locate the missing one. (Rep. of the Phils. *vs*. Catubag, G.R. No. 210580, April 18, 2018) p. 226

–– The four (4) requisites under Art. 41 of the Family Code that must be complied with for the declaration of presumptive death to prosper: first, the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Art. 391 of the Civil Code; second, the present spouse wishes to remarry; third, the present spouse has a well-founded belief that the absentee is dead; fourth, the present spouse files for a summary proceeding for the declaration of presumptive death of the absentee; it is the present spouse who has the burden of proving that all the requisites under Art. 41 of the Family Code are present. (*Id*.)

Psychological incapacity — The Court clarified in *Marcos v. Marcos* that for purposes of establishing the psychological incapacity of a spouse, it is not required that a physician conduct an actual medical examination of the person concerned; it is enough that the totality of evidence is strong enough to sustain the finding of psychological incapacity; in such case, the petitioner bears a greater burden in proving the gravity, juridical antecedence, and incurability of the other spouse's psychological

MORTGAGES

Foreclosure of mortgage — The foreclosure suit is a real action so far as it is against property, and seeks the judicial recognition of a property debt, and an order for the sale of the res; as foreclosure of mortgage is a real action, it is the assessed value of the property which determines the court's jurisdiction; considering the assessed value of the mortgaged property, the RTC correctly found that the action falls within the jurisdiction of the first level court under Sec. 33(3) of B.P. Blg. 129 as amended. (Roldan *vs*. Sps. Barrios, G.R. No. 214803, April 23, 2018) p. 583

MOTION TO QUASH

Applicability of Omnibus Motion Rule — The Court has consistently ruled that the omnibus motion rule under Sec. 8, Rule 15 is applicable to motion to quash search warrants; *Abuan v. People*, cited; the trial court could only take cognizance of an issue that was not raised in a motion to quash if: (1) said issue was not available or existent when they filed the motion to quash the search warrant; or (2) the issue was one involving jurisdiction over the subject matter. (Dimal *vs.* People, G.R. No. 216922, April 18, 2018) p. 309

Filing of — Sec. 3(g), Rule 117 of the Rules of Criminal Procedure allows an accused to move for the quashal of the complaint or information on the ground that the criminal action or liability is extinguished; generally, the accused should make the objection before entering his plea, otherwise, the accused is deemed to have waived this defense; however, Sec. 9, Rule 117 of the same Rules carves out an exception for grounds involving the extinguishment of the criminal action or liability, which includes the prescription of the crime; *People v. Castro* and *Syhunliong v. Rivera*, cited. (Lim *vs*. People, G.R. No. 226590, April 23, 2018) p. 669

at hand, the seaman did not demand for his re-examination by a third doctor, and instead opted to initiate the instant case. (Seacrest Maritime Mgm't., Inc. *vs*. Roderos, G.R. No. 230473, April 23, 2018) p. 75

Assessment of injury or illness — In the event that a seafarer suffers a worker related/aggravated illness or an injury during the course of his/her employment, it is the company-designated physician's medical assessment that shall control the determination of the seafarer's disability grading; should the seafarer's personal physician disagree, then the matter shall be referred to a neutral third party physician, who shall then issue a final and binding assessment; this process is mandatory. (Gere *vs*. Anglo-Eastern Crew Mgm't. Phils., Inc., G.R. No. 226656, April 23, 2018) p. 695

Compensable disability — For disability to be compensable under the above 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; it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted; the burden is placed upon the claimant to present substantial evidence that his work conditions caused or at least increased the risk of contracting the disease. (Loadstar Int'l. Shipping, Inc. *vs*. Yamson, G.R. No. 228470, April 23, 2018) p. 731

–– Under Sec. 20 of the 2010 Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, failure of the seafarer to comply with the mandatory reporting requirements as prescribed by the company-designated physician would result in the forfeiture of the right to claim, among others, sickness allowance and reimbursement of medical and transportation expenses incurred as a result of the seafarer's continued treatment;

conditions set therein satisfied; second, for illnesses not mentioned under Sec. 32, the POEA-SEC creates a disputable presumption in favor of the seafarer that these illnesses are work-related; in order to establish compensability of a non-occupational disease, reasonable proof of work-connection – but not direct causal relation – is required. (*Id*.)

Permanent total disability –– Application of the 120-day period found in Art. 192(c)(1) of the Labor Code *vis-a-vis* the application of the 240-day period found in Sec. 2, Rule X of the Amended Rules on Employees' Compensation Implementing Title II, Book IV of the Labor Code; the Court formulated guidelines in the case of *Elburg Shipmanagement Phils., Inc. vs. Quiogue, Jr.*, as cited in the recent case of *Paulino M. Aldaba vs. Career Philippines Ship-Management, Inc. Columbia Ship Management Ltd., and/or Verlou Carmelino*; the rules to be followed are: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.* seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days; the employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification; the company-designated physician must also – and the Court cannot emphasize this enough – "give" his assessment to the seafarer concerned. (Gere *vs*. Anglo-Eastern Crew Mgm't. Phils., Inc., G.R. No. 226656, April 23, 2018) p. 695

PROSECUTION OF OFFENSES

victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult." (Perez *vs*. People, G.R. No. 201414, April 18, 2018) p. 162

REGIONAL TRIAL COURT

Jurisdiction — The RTC exercises exclusive original jurisdiction in civil actions where the subject of the litigation is incapable of pecuniary estimation; it also has jurisdiction in civil cases involving title to, or possession of, real property or any interest in it where the assessed value of the property involved exceeds 20,000.00, and if it is below 20,000.00, it is the first level court which has jurisdiction; an action "involving title to real property" means that the plaintiffs cause legal right to have exclusive control, possession, enjoyment, or disposition of the same. (Roldan *vs*. Sps. Barrios, G.R. No. 214803, April 23, 2018) p. 583

RES JUDICATA

Elements — For *res judicata* to serve as a bar to a subsequent action, the following elements must be present: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action; in this case, the elements of *res judicata*, as a bar by prior judgment, are present. (Cruz *vs*. Tolentino, G.R. No. 210446, April 18, 2018) p. 196

–– There is *res judicata* when the following concur: a) the former judgment must be final; b) the court which rendered judgment had jurisdiction over the parties and the subject matter; c) it must be a judgment on the merits; d) and there must be between the first and second actions identity of parties, subject matter, and cause of action; respondent corporation did not take on the merits of the case but only tackled the issue of prescription raised to this Court

degrees, and for petitioners, agreeing to be employed despite knowledge of their lack of the necessary qualifications. (*Id.*)

RIGHTS OF ACCUSED

Presumption of innocence of the accused — People v. Andaya, cited; the criminal accusation against a person must be substantiated by proof beyond reasonable doubt; the presumption of regularity "will never be stronger than the presumption of innocence in favor of the accused; otherwise, a mere rule of evidence will defeat the constitutionally enshrined right of an accused." (People *vs*. Mola *y* Selbosa, G.R. No. 226481, April 18, 2018) p. 364

ROBBERY

Elements — Simple robbery is committed by means of violence against or intimidation of persons, but the extent of the violation or intimidation does not fall under paragraphs 1 to 4 of Art. 294 of the RPC; the following elements must be established: a) that there is personal property belonging to another; b) that there is unlawful taking of that property; c) that the taking is with intent to gain; and d) that there is violence against or intimidation of persons or force upon things; unlawful taking and intent to gain or *animus lucrandi*, defined. (PO2 Flores *y* De Leon *vs*. People, G.R. No. 222861, April 23, 2018) p. 635

ROBBERY WITH RAPE

Elements — To be convicted of robbery with rape, the following elements must concur: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape; the first three elements of the crime were clearly established in this case. (People *vs*. Llamera *y* Atienza, G.R. No. 218703, April 23, 2018) p. 607

sufficiently describes the place to be searched with manifest intention that the search be confined strictly to the place described. (Dimal *vs*. People, G.R. No. 216922, April 18, 2018) p. 309

–– A search warrant may be said to particularly describe the things to be seized: (1) when the description therein is as specific as the circumstances will ordinarily allow; or (2) when the description expresses a conclusion of fact – not of law by which the warrant officer may be guided in making the search and seizure; (3) and when the things to be described are limited to those which bear direct relation to the offenses for which the warrant is being issued; purpose for this requirement. (*Id*.)

–– Under American jurisprudence, an otherwise overbroad warrant will comply with the particularity requirement when the affidavit filed in support of the warrant is physically attached to it, and the warrant expressly refers to the affidavit and incorporates it with suitable words of reference; conversely, a warrant which lacks any description of the items to be seized is defective and is not cured by a description in the warrant application which is not referenced in the warrant and not provided to the subject of the search. (*Id*.)

Plain view doctrine –– Although the Alien Certificates of Registration are inadmissible in evidence, for not having been seized in accordance with the "plain view doctrine," these personal belongings should be returned to the heirs of the respective victims; anent the live ammo of caliber 0.22 (marked as E-29 with JAM markings), which could not have been used in a 0.9mm caliber pistol, the same shall remain in *custodia legis* pending the outcome of a criminal case that may be later filed against petitioner; *Alih v. Castro*, cited. (Dimal *vs*. People, G.R. No. 216922, April 18, 2018) p. 309

–– Application; once the valid portion of the search warrant has been executed, the "plain view doctrine" can no longer provide any basis for admitting the other items subsequently found. (*Id*.)

unable to fully take care of herself/himself or protect himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the nomenclature of the offense should be Lascivious Conduct under Sec. 5(b) of R.A. No. 7610, since the law no longer refers to Art. 336 of the RPC, and the perpetrator is prosecuted solely under R.A. No. 7610; application. (People *vs*. Molejon, G.R. No. 208091, April 23, 2018) p. 519

–– Jurisprudentially, before an accused can be held criminally liable for lascivious conduct under Sec. 5(b) of R.A. No. 7610, the requisites of the crime of acts of lasciviousness as penalized under Art. 336 of the RPC must be met in addition to the requisites for sexual abuse under Sec. 5(b) of R.A. No. 7610; on the one hand, conviction under Art. 336 of the RPC requires that the prosecution establish the following elements: (a) the offender commits any act of lasciviousness or lewdness upon another person of either sex; and (b) the act of lasciviousness or lewdness is committed either: (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under 12 years of age; on the other hand, sexual abuse under Sec. 5(b), Art. III of R.A. No. 7610 has three elements, enumerated. (*Id*.)

–– Since the crime was committed by the stepfather of the offended parties, the alternative circumstance of relationship should be appreciated; in crimes against chastity, such as acts of lasciviousness, relationship is always aggravating; presence of this aggravating circumstance and no mitigating circumstance; penalty in consonance with Sec. 31(c) of R.A. No. 7610. (*Id*.)

–– We have held in *People v. Caoili*: Based on Sec. 5(b) of R.A. No. 7610, however, the offense designated as Acts of Lasciviousness under Art. 336 of the RPC in relation to Sec. 5 of R.A. No. 7610 should be used when the victim is under 12 years of age at the time the offense was committed; this finds support in the first proviso in

—— It is not impossible for petitioner to commit the crime even if there were other people nearby; cases cited; the Court cannot emphasize enough that "lust is no respecter of time and place"; thus, "rape can be committed even in places where people congregate, in parks, along the roadside, within school premises and even inside a house where there are other occupants or where other members of the family are also sleeping." (*Id.*)

—— The aggressive expression of infatuation from a 12-year-old girl is never an invitation for sexual indignities; consistent with the pronouncement in Amarela, the victim was no Maria Clara; not being the fictitious and generalized demure girl, it does not make her testimony less credible especially when supported by the other pieces of evidence presented in this case. (*Id.*)

—— This Court affirms the finding of guilt beyond reasonable doubt of petitioner for the charge of child abuse under Sec. 5(b) of R.A. No. 7610; penalty imposed by the trial court, modified; under Sec. 5(b), "the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period"; *People v. Pusing*, cited. (*Id.*)

—— Under Art. III, Sec. 5(b) of R.A. No. 7610, the elements of sexual abuse are: (1) The accused commits the act of sexual intercourse or lascivious conduct; (2) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) The child, whether male or female, is below 18 years of age. (*Id.*)

SUCCESSION

Notarial will —— When Art. 805 of the Civil Code requires the testator to subscribe at the end of the will, it necessarily refers to the logical end thereof, which is where the last testamentary disposition ends; as the probate court correctly appreciated, the last page of the will does not contain any testamentary disposition; it is but a mere continuation of the Acknowledgment. (Mitra *vs*. Sablan-Guevarra, G.R. No. 213994, April 18, 2018) p. 277

presumptive death, they may challenge the decision of the court *a quo* through a petition for *certiorari* to question grave abuse of discretion amounting to lack of jurisdiction; in *Republic vs. Sareñogon, Jr.*, the Court outlined the legal remedies available in a summary proceeding for the declaration of presumptive death. (Rep. of the Phils. *vs*. Catubag, G.R. No. 210580, April 18, 2018) p. 226

TREACHERY

As a qualifying circumstance — Art. 14(16) of the RPC defines treachery in this manner: There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make; two requirements in order that treachery may be appreciated: (1) the victim was in no position to defend himself or herself when attacked; and, (2) the assailant consciously and deliberately adopted the methods, means, or form of one's attack against the victim; *People v. Vilbar*, cited; in this case, the crime committed was only homicide. (People *vs*. Abina *y* Latorre, G.R. No. 220146, April 18, 2018) p. 352

UNLAWFUL DETAINER

Requisites — A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) the defendant's initial possession of the property was lawful, either by contact with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon the plaintiff's notice to the defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession and deprived the plaintiff of the enjoyment of the property; and (4) the plaintiff instituted the complaint for ejectment within one (1) year from the last demand to vacate the property. (The Iglesia De Jesucristo Jerusalem Nueva of Mla., Phils., Inc. *vs*. Dela Cruz, G.R. No. 208284, April 23, 2018) p. 547

WITNESSES

Affidavit of desistance –– Mere retraction by a witness or by complainant of his or her testimony does not necessarily vitiate the original testimony or statement, if credible; the general rule is that courts look with disfavor upon retractions of testimonies previously given in court; it is only where there exist special circumstances which, when coupled with the desistance or retraction raise doubts as to the truth of the testimony or statement given, can a retraction be considered and upheld. (Adlawan *vs*. People, G.R. No. 197645, April 18, 2018) p. 88

–– It is settled that an affidavit of desistance made by a witness, including the private complainant, after conviction of the accused is not reliable, and deserves only scant attention; rationale; the Court finds credible the testimony given in open court. (*Id*.)

Credibility of –– Inconsistencies on minor details do not undermine the integrity of a prosecution witness. (Adlawan *vs*. People, G.R. No. 197645, April 18, 2018) p. 88

–– It is a fundamental rule that when the issue is one of credibility of witnesses, an appellate court will normally not disturb the factual findings of the trial court, unless the lower court has reached conclusions that are clearly unsupported by evidence, or unless it has overlooked some facts or circumstances of weight and influence which, if considered, would affect the results; as aptly observed by the appellate court, no ground exists which would prompt it to overturn the factual findings of the trial court. (*Id*.)

–– The Court has held that discrepancies between a sworn statement and testimony in court will not instantly result in the acquittal of the accused; in appreciating the facts of the case, the RTC gave credence to the testimonies of the prosecution witnesses; as ruled in a multitude of cases, the trial court judge is in the best position to make this determination as the judge was the one who personally heard the witnesses of both parties, as well

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