PHILIPPINE REPORTS

VOL. 832

JUNE 4, 2018 TO JUNE 6, 2018

VOLUME 832

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JUNE 4, 2018 TO JUNE 6, 2018

SUPREME COURT
MANILA
2019

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2019

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

FE CRESCENCIA QUIMSON-BABOR
ASSISTANT CHIEF OF OFFICE

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

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

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

LEUWELYN TECSON-LAT
COURT ATTORNEY V

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY V

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY IV

MA. CHRISTINA GUZMAN CASTILLO
COURT ATTORNEY IV

LORELEI SANTOS BAUTISTA
COURT ATTORNEY III

SUPREME COURT OF THE PHILIPPINES

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

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

FIRST DIVISION

Chairperson

Hon. Maria Lourdes P.A. Sereno

Members

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

Division Clerk of Court

Atty. Librada C. Buena

SECOND DIVISION

Chairperson

Hon. Antonio T. Carpio

Members

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

Division Clerk of Court

Atty. Ma. Lourdes C. Perfecto

THIRD DIVISION

Chairperson

Hon. Presbitero J. Velasco, Jr.

Members

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

Division Clerk of Court

Atty. Wilfredo Y. Lapitan

PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.C. No. 11550. June 4, 2018]

MANUEL B. TROVELA, *complainant, vs.* **MICHAEL B. ROBLES, Assistant City Prosecutor; EMMANUEL L. OBUNGEN, Prosecutor II; JACINTO G. ANG, City Prosecutor; CLARO A. ARELLANO, Prosecutor General; and LEILA M. DE LIMA, Former Secretary, Department of Justice,** *respondents.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; INTEGRATED BAR OF THE PHILIPPINES; HAS NO JURISDICTION TO INVESTIGATE LAWYERS OF THE GOVERNMENT CHARGED WITH ADMINISTRATIVE OFFENSES INVOLVING THE PERFORMANCE OR DISCHARGE OF THEIR OFFICIAL DUTIES.— The acts complained of undoubtedly arose from the respondents' performance or discharge of official duties as prosecutors of the Department of Justice. Hence, the authority to discipline respondents Robles, Obuñgen, Ang and Arellano exclusively pertained to their superior, the Secretary of Justice. In the case of Secretary De Lima, the authority to discipline pertained to the President. In either case, the authority may also pertain to the Office of the Ombudsman, which similarly exercises disciplinary jurisdiction over them as public officials pursuant to Section 15, paragraph 1, of Republic Act No. 6770 *(Ombudsman Act of* 1989). Indeed, the accountability of respondents as officials performing or

discharging their official duties as lawyers of the Government is always to be differentiated from their accountability as members of the Philippine Bar. The IBP has no jurisdiction to investigate them as such lawyers.

D E C I S I O N

BERSAMIN, *J.*:

The Integrated Bar of the Philippines (IBP) has no jurisdiction to investigate government lawyers charged with administrative offenses involving the performance of their official duties.

The Case

The complainant initiated this disbarment complaint against Pasig City Assistant Prosecutor Michael B. Robles (Robles) of Pasig City for issuing a resolution dated September 29, 2011 recommending the dismissal of his complaint for *estafa* under Article 315, paragraph 1(b) of the *Revised Penal Code* against Carlo L. Katigbak (Katigbak), Carlos Pedro C. Salonga (Salonga) and Barbara B. Reyes (Reyes) for insufficiency of evidence; and against Prosecutor II Emmanuel L. Obuñgen (Obuñgen) and City Prosecutor Jacinto G. Ang (Ang), both of Pasig City, for approving the recommendation of dismissal.

The complainant also seeks the disbarment of former Prosecutor General Claro A. Arellano (Arellano) and former Secretary of Justice Leila M. De Lima (De Lima) for allegedly incurring inordinate delay in issuing their resolutions resolving his petition for review and motion for reconsideration before the Department of Justice (DOJ).

Antecedents

On May 25, 2011, the complainant criminally charged Katigbak, Salonga and Reyes with *estafa* under Article 315(1)(b) of the *Revised Penal Code*.

In his complaint-affidavit, the complainant stated that he became the Employee Relations Director of Sky Cable on November 1, 2004; that he later on received a termination letter

dated July 6, 2006 signed by Salonga informing him of his relief from work and of his compensation being paid until the effective date of his termination; that his payslips for the periods from July 16, 2006 to July 31, 2006 and from August 1, 2006 to August 15, 2006 still reflected deductions of his savings contributions to the Meralco Employees Savings and Loan Association (MESALA) amounting to ₱2,520.00 per payday period; that withholding taxes of ₱4,509.45 and ₱4,235.70, respectively, were also deducted from his compensation; that he discovered that such deductions were not remitted to MESALA when he closed his account on September 6, 2006; and that Sky Cable did not reimburse the amounts of his unremitted deductions despite demand.[1]

In his resolution dated September 29, 2011,[2] Robles recommended the dismissal of the complaint for insufficiency of evidence.

Obuñgen and Ang approved the recommendation of dismissal on October 11, 2011.

The complainant filed his petition for review dated November 3, 2011 to appeal the dismissal of his complaint.[3]

On February 12, 2013, Arellano issued his resolution finding no reversible error in the September 29, 2011 resolution of Robles, hence, affirming the dismissal of the complaint.[4]

The complainant moved for reconsideration, but his motion was denied by Secretary De Lima on April 21, 2015.[5]

Consequently, the complainant initiated disbarment proceedings against the respondents, insisting thusly:

---

[1] *Rollo,* pp. 2-4.

[2] *Id*. at 34-36.

[3] *Id*. at 42-52.

[4] *Id*. at 37-38.

[5] *Id*. at 39-41.

I.

THE PREMISES CONSIDERED BY THE OPCP IN NOT FINDING PROBABLE CAUSE IN THE CASE ARE **VERY MUCH CONTRARY** TO **LONG STANDING JURISPRUDENCE** HOLDING THAT **DEMAND IS NOT A CONDITION PRECEDENT** TO THE EXISTENCE OF THE CRIME OF EMBEZZLEMENT WHICH MAY BE ESTABLISHED BY **OTHER PROOF** AND THAT **FAILURE TO ACCOUNT,** UPON DEMAND, FOR **FUNDS OR PROPERTY HELD IN TRUST IS CIRCUMSTANTIAL EVIDENCE OF MISAPPROPRIATION.**[6]

II.

BUT WHILE THE APPLICATION OF THESE RULINGS HAS BEEN CONSISTENTLY, REPEATEDLY AND UNEQUIVOCABLY MADE IN **MORE RECENT** CASES, IN ACTING ON MY **3 NOVEMBER 2011** PETITION FOR REVIEW AND ON MY **13 MARCH 2013** MOTION FOR RECONSIDERATION, RESPECTIVELY, RESPONDENTS **ARELLANO** AND **DE LIMA** STILL **SUSTAINED** THE **WRONG** PRESUMPTIONS MADE BY THE OPCP, ONE WAY OR THE OTHER.[7]

III.

TOGETHER WITH SUCH OMISSIONS, THE **INORDINATE DELAYS** ON THE PART OF RESPONDENTS **ARELLANO** AND **DE LIMA** IN COMING OUT WITH THEIR SEPARATE RESOLUTIONS THAT ARE MERELY ANCHORED ON THE **GROSSLY ERRONEOUS FINDINGS** OF THE OPCP **NEGATE** THEIR ALLEGATIONS THAT THEY ACTUALLY EXAMINED THE RECORDS OF THE CASE AND THE EVIDENCE THAT I HAVE PRESENTED AND INDICATED THEIR **LACK OF RESOLVE** TO SEE THAT **JUSTICE IS DONE.**[8]

IV.

WHILE THE PRESENCE OF THE ***PRIMA FACIE*** **EVIDENCE OF CORRUPTION** AND OTHER **ANOMALOUS CIRCUMSTANCES** IN THE *PERJURY* AND *UNJUST JUDGMENT*

---

[6] *Id*. at 6-7.

[7] *Id*. at 10.

[8] *Id*. at 14.

CASES, THE **MANIPULATIVE SCHEMES** EMPLOYED BY SKY CABLE IN CERTAIN OF ITS PLEADINGS (sic) AND THE **INORDINATE DELAYS** IN ALL THE RELATED CASES ARE **VERY OBVIOUS,** RESPONDENT **DE LIMA,** DESPITE BEING THE SECRETARY OF JUSTICE THEN, **TOTALLY IGNORED** THE SAME.[9]

V.

ABOVE ALL, RESPONDENT **DE LIMA** TOOK ACTION ON THE *ESTAFA* CASE **AHEAD** OF THE OTHER CASES **WITHOUT CONSOLIDATING** THEM DESPITE THE FACT THAT ALL INDICATIONS CLEARLY POINT TO SUCH CONSOLIDATION.[10]

VI.

THAT SAID, IT IS **QUITE OBVIOUS** THAT ALL OF THE RESPONDENTS HAD NOT ONLY **RENEGED** ON THEIR **SWORN DUTY** TO **UPHOLD** THE LAWS OF THE LAND, BASICALLY AS LAWYERS AND AS PROSECUTORS OR DISPENSERS OF JUSTICE, WHICH **COMPROMISED** THE **EFFICIENT ADMINISTRATION OF JUSTICE,** BUT THEY ALSO COMMITTED **GROSS VIOLATIONS** OF CERTAIN LAWS THEMSELVES.[11]

Should the respondents be administratively disciplined based on the allegations of the complainant?

Ruling of the Court

We dismiss the administrative case against the respondents for lack of jurisdiction.

In his complaint-affidavit, the complainant has posited that Robles, Obuñgen and Ang committed grave errors of facts and law that require an inquiry into their mental and moral fitness as members of the Bar; and that Arellano and Secretary De Lima be declared guilty of dereliction of duty or gross inexcusable negligence for belatedly resolving his petition for review and

---

[9] *Id*. at 17.

[10] *Id*. at 20.

[11] *Id*. at. 21.

motion for reconsideration. He specifically prays that the Court grants the following reliefs, namely:

x x x x x x x x x

1. Finding *prima facie* cases against them for violation of *Art. 208* of the RPC and *R.A. No. 3019,* as amended, a.k.a. the *Anti-Graft and Corrupt Practices Act,* and referring the matter to the appropriate governmental agency for the prosecution thereof;

2. Imposing appropriate disciplinary action against them, including their **disbarment** and/or **removal from office,** for gross violation of the canons of the legal profession or for unprofessional conduct that casts serious doubt upon their mental and moral fitness as members of the Bar and as prosecutors;

3. Awarding costs of suit hereof in such amounts as may be commensurate with the extent and degree of misconduct committed by each of them and recommending that I be awarded corresponding actual, as well as moral, exemplary and compensatory damages; and

4. Providing such other reliefs as this Honorable Court may deem just and equitable under the premises.[12]

x x x x x x x x x

The acts complained of undoubtedly arose from the respondents' performance or discharge of official duties as prosecutors of the Department of Justice. Hence, the authority to discipline respondents Robles, Obuñgen, Ang and Arellano exclusively pertained to their superior, the Secretary of Justice. In the case of Secretary De Lima, the authority to discipline pertained to the President. In either case, the authority may also pertain to the Office of the Ombudsman, which similarly exercises disciplinary jurisdiction over them as public officials pursuant to Section 15, paragraph 1, of Republic Act No. 6770 (*Ombudsman Act of* 1989). Indeed, the accountability of respondents as officials performing or discharging their official duties as lawyers of the Government is always to be differentiated from their accountability as members of the Philippine Bar. The IBP has no jurisdiction to investigate them as such lawyers.

---

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

The Court has recently made this clear in *Alicias, Jr. v. Macatangay*[13] by holding as follows:

> Republic Act No. 6770 (R.A. No. 6770), otherwise known as "The Ombudsman Act of 1989," prescribes the jurisdiction of the Office of the Ombudsman. Section 15, paragraph 1 of R.A. No. 6770 provides:
>
> > Section 15. *Powers, Functions and Duties*. — The Office of the Ombudsman shall have the following powers, functions and duties:
> >
> > (1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of his primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases.
>
> The 1987 Constitution clothes the Office of the Ombudsman with the administrative disciplinary authority to investigate and prosecute any act or omission of any government official when such act or omission appears to be illegal, unjust, improper, or inefficient. The Office of the Ombudsman is the government agency responsible for enforcing administrative, civil, and criminal liability of government officials "in every case where the evidence warrants in order **to promote efficient service by the Government to the people**." In *Samson v. Restrivera*, the Court ruled that the jurisdiction of the Ombudsman encompasses all kinds of malfeasance, misfeasance, and non-feasance committed by any public officer or employee during his or her tenure. Consequently, acts or omissions of public officials relating to the performance of their functions as government officials are within the administrative disciplinary jurisdiction of the Office of the Ombudsman.
>
> In *Spouses Buffe v. Secretary Gonzales*, the Court held that the IBP has no jurisdiction over government lawyers who are charged with administrative offenses involving their **official duties**. In the present case, the allegations in Alicias' complaint against Atty. Macatangay,

---

[13] A.C. No. 7478, January 11, 2017.

Atty. Zerna, Atty. Ronquillo, and Atty. Buenaflor, which include their (1) failure to evaluate CSC records; (2) failure to evaluate documentary evidence presented to the CSC; and (3) non-service of CSC Orders and Resolutions, all relate to their misconduct in the discharge of their official duties as government lawyers working in the CSC. Hence, the IBP has no jurisdiction over Alicias' complaint. These are acts or omissions connected with their duties as government lawyers exercising official functions in the CSC and within the administrative disciplinary jurisdiction of their superior or the Office of the Ombudsman.

WHEREFORE, the Court **DISMISSES** the disbarment complaint filed against all the respondents for lack of jurisdiction.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 200630. June 4, 2018]

KIM LIONG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; RIGHT TO CONFRONTATION; RIGHT TO CROSS-EXAMINE; MAY BE WAIVED EXPRESSLY OR IMPLIEDLY BY CONDUCT AMOUNTING TO A RENUNCIATION OF THE RIGHT TO CROSS-EXAMINATION.— "To meet the witnesses face to face" is the right of confrontation. Subsumed in this right to confront is the right of an accused to cross-

examine the witnesses against him or her, i.e., to propound questions on matters stated during direct examination, or connected with it. The cross-examination may be done "with sufficient fullness and freedom to test [the witness'] accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue." x x x Denying an accused the right to cross-examine will render the testimony of the witness incomplete and inadmissible in evidence. "[W]hen cross-examination is not and cannot be done or completed due to causes attributable to the party offering the witness, the uncompleted testimony is thereby rendered incompetent." However, like any right, the right to cross-examine may be waived. It "is a personal one which may be waived expressly or impliedly by conduct amounting to a renunciation of the right of cross-examination." When an accused is given the opportunity to cross-examine a witness but fails to avail of it, the accused shall be deemed to have waived this right. The witness' testimony given during direct examination will remain on record. If this testimony is used against the accused, there will be no violation of the right of confrontation.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; MAY ONLY RAISE QUESTIONS OF LAW; EXCEPTIONS.— [T]he matters raised in this Petition are questions of fact not proper in a Rule 45 petition. This Court is not a trier of facts, and rightfully so. This Court, as the court of last resort, should focus more on performing "the functions assigned to it by the fundamental charter and immemorial tradition." The rule, therefore, is that petitions for review on certiorari may only raise questions of law. x x x It is true that this rule is subject to exceptions. This Court may review factual issues if any of the following is present: "(1) [W]hen the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation

of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion."

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; RIGHT TO CONFRONTATION AND CROSS-EXAMINATION; DEEMED WAIVED WHEN THE ACCUSED ABUSES HIS OPTION TO CHOOSE HIS COUNSEL; CASE AT BAR.— The right to confront and cross-examine witnesses is a basic, fundamental human right vested inalienably to an accused. This right ensures that courts can confidently ferret out the facts on the basis of which they can determine whether a crime occurred and the level of culpability of the accused. It is a basic requirement of criminal justice. However, this right does not exist in isolation. The State, representing the people that may have been wronged by a crime, also has the right to due process. This means that the prosecution must not be denied unreasonably of its ability to be able to prove its case through machinations by the accused. When the accused abuses its option to choose his counsel as in this case, he can be deemed to have waived his right to confrontation and cross-examination. The pattern of postponements and changes of counsel in this case is so obvious and patent. Petitioner should have been dissuaded by any of the lawyers, unless they, too, connived in such an amateurish strategy, which wastes the time and resources of our judicial system.

APPEARANCES OF COUNSEL

A.M. Burigsay Law Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

The right to confront and cross-examine an adverse witness is a basic fundamental constitutional right. However, this is personal to the accused, who can waive the right.

This resolves the Petition for Review on Certiorari[1] assailing the October 7, 2011 Decision[2] and February 20, 2012 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 113152. The Court of Appeals found no grave abuse of discretion in the issuance of the Orders dated August 27, 2009[4] and February 9, 2010[5] of Branch 44, Regional Trial Court, Manila declaring Kim Liong (Liong) to have waived his right to cross-examine prosecution witness Antonio Dela Rama (Dela Rama).

In an Information[6] dated January 28, 2002, Liong was charged with estafa for allegedly failing to return to Equitable PCI Bank, despite demand, a total of US$50,955.70, which was erroneously deposited in his dollar account. The accusatory portion of this Information read:

That on or about March 16, 2000, and for sometime subsequent thereto, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously defraud the **EQUITABLE PCI BANK**, Roxas Blvd. Branch, this City, a banking

---

[1] *Rollo,* pp. 8-31.

[2] *Id*. at 33-41. The Decision was penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Fernanda Lampas Peralta and Agnes Reyes-Carpio of the Thirteenth Division, Court of Appeals, Manila.

[3] *Id*. at 43-44. The Resolution was penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Fernanda Lampas Peralta and Agnes Reyes-Carpio of the Former Thirteenth Division, Court of Appeals, Manila.

[4] *Id*. at 54. The Order was issued by Presiding Judge Jose P. Morallos.

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

[6] *Id*. at 45-46.

institution duly organized and existing under and by virtue of the Philippine laws, with place of business located at the corner of Padre Faura and Roxas Boulevard, Ermita, this City, represented by its Branch Manager, **ERMELINDA V. CONTRERAS**, in the following manner, to wit: the said accused, being then a depositor of the said bank, with Dollar Savings Account Deposit No. 5265-00761-9, well knowing that a mistake has been inadvertently committed by the said bank in posting and crediting to his said account the following amounts in U.S. dollars, to wit:

$ 11,989.70
14,565.30
8,610.40
15,790.30

or all in the total amount of **US$50,955.70** which amount should have been instead credited and posted to the account of **WALLEN** (sic) **MARITIME SERVICES, INC.** under Account No. 5265-00431-8, and by reason of said misposting and crediting of the said amount to the accused's account, his dollar deposit balance with the said bank had increased by US$50,955.70 of which, accused is under obligation to inform the said bank as regards to the excess amount unduly posted and/or credited in his said account but instead of doing so, did then and there make and/or cause the series of withdrawals until the full amount of said US$50,955.70 was withdrawn from the said bank, and once in possession of the same, in serious breach of his legal obligation to return the said amount of US$50,955.70, failed and refused and still fails and refuses to do so despite repeated demands made upon him, and instead, with intent to defraud, with unfaithfulness and grave abuse of trust and confidence, misappropriated, misapplied and converted the said amount of US$50,955.70 to his own personal use and benefit, to the damage and prejudice of the said EQUITABLE PCI BANK, Roxas Blvd. Branch, in the aforesaid amount of US$50,955.70, or its equivalent in Philippine Currency.

Contrary to law.[7]

Liong was arraigned on January 20, 2003, pleading not guilty to the charge.[8] The pre-trial conference was terminated on July 13, 2004.[9]

---

[7] *Id*.

[8] *Id*. at 34.

[9] *Id*.

The initial presentation of the prosecution's evidence was set on December 19, 2005. However, on that day, private prosecutor Atty. Aceray Pacheco (Atty. Pacheco) requested a resetting, which was granted by the trial court. The December 19, 2005 hearing was reset to January 26, 2006.[10]

On January 26, 2006, the hearing was again reset to March 30, 2006. The March 30, 2006 hearing was likewise reset, this time, on the instance of a certain Atty. Villaflor, also one of the private prosecutors. The initial presentation of the prosecution's evidence was, thus, moved to June 8, 2006.[11]

The first prosecution witness, Antonio Dela Rama (Dela Rama), was finally presented as scheduled on June 8, 2006. His direct examination was terminated on January 25, 2007, and the initial date for his cross-examination was set on March 15, 2007. On March 15, 2007, Atty. Danilo Banares (Atty. Banares) appeared as collaborating counsel of Atty. Jovit Ponon (Atty. Ponon), Liong's counsel of record. Atty. Banares then moved for the resetting of the hearing to April 19, 2007.[12]

On April 19, 2007, the hearing was again reset on the instance of Liong because Atty. Ponon was allegedly a fraternity brother of the private prosecutor, Atty. Pacheco. Thus, Liong terminated the services of Atty. Ponon and the hearing was reset to June 28, 2007.[13]

On July 31, 2008, the hearing was again reset to October 16, 2008 because Dela Rama had suffered a stroke.[14]

On February 5, 2009, Atty. Banares failed to appear in court. Liong subsequently filed a Motion to Suspend Proceedings and,

---

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Id*. at 11-12. The cancelled June 28, 2007 hearing was also referred to as June 26, 2007. See *rollo*, pp. 12 and 38.

[14] *Id*. at 13, 34, and 52.

eventually, a Motion to Dismiss.[15] The hearing was reset to May 7, 2009, which seems to have been cancelled again.[16]

On August 27, 2009, Atty. Banares again failed to appear in court. Thus, private prosecutor Atty. Ma. Julpha Maningas moved that Liong be declared to have waived his right to cross-examine Dela Rama.[17] The Motion was granted by the trial court in its August 27, 2009 Order,[18] hereby reproduced below, thus:

ORDER

When this case was called for hearing, accused Kim Liong appeared. However, his counsel, Atty. Dan Banares, failed to appear.

Private prosecutor, Atty. Ma. Julpha Maningas, is present in court. She moved that the right of the accused to cross-examine prosecution's witness, Antonio dela Rama, be deemed waived considering that his testimony was given way back November 2006 and up to now he has not yet been cross-examined by the defense. The same is granted.

Meanwhile, set the continuation of the presentation of prosecution's evidence on October 29, 2009 at 8:30 in the morning.

Notify Atty. Banares.

SO ORDERED.[19]

Liong, through a new counsel, Atty. Arnold Burigsay, filed an Entry of Appearance with Motion for Reconsideration.[20] Liong argued that his former counsel, Atty. Banares, was grossly negligent in handling his case as he repeatedly failed to attend hearings, including the August 27, 2009 hearing where Liong was declared to have waived his right to cross-examine Dela Rama. He did not even file a motion for reconsideration of the

---

[15] *Id*. at 34.

[16] *Id*. at 13.

[17] *Id*. at 13 and 34.

[18] *Id*. at 54.

[19] *Id*.

[20] *Id*. at 55-58.

August 27, 2009 Order. According to Liong, Dela Rama was a vital witness, and to allow his testimony to remain on record without Liong having to cross-examine him would be extremely damaging to the defense. Thus, Liong prayed that the trial court reconsider its August 27, 2009 Order and grant him another chance to cross-examine Dela Rama.[21]

The trial court, however, found that Liong's abuse of his right by changing his counsels repeatedly was a tactic to delay the proceedings. Thus, it denied Liong's Motion for Reconsideration in its February 9, 2010 Order,[22] which stated:

ORDER

Accused thru his new counsel, Atty. Arnold M. Burigsay filed on October 26, 2009 an Entry of Appearance with Motion for Reconsideration of the order of this court dated August 27, 2009 declaring the accused to have waived his right to cross examine prosecution witness, Antonio dela Rama.

Accused admitted that the failure to cross examine prosecution witness was due to the negligence of his counsel who failed to appear and perform his task as counsel for the accused. Accused should not be punished for the negligence of his counsel.

In opposition to the motion, the private prosecutor thru Atty. Ma. Julpha P. Maningas averred that the cross examination of witness Antonio dela Rama had been reset a number of times due to the fault of the accused who kept on changing his counsel; that accused was given more than sufficient opportunities to cross examine the said witness but simply delayed the proceedings of this case until it lapsed two (2) years.

The records will show that this case has been filed on February 12, 2002. Accused was arraigned on January 20, 2003. Pre-trial was terminated on July 13, 2004. The first witness for the prosecution in the person of Antonio dela Rama was presented on June 8, 2006, August 3, 2006, November 9, 2006 and January 25, 2007. Because of the lengthy testimony of the witness on direct examination, the cross examination was deferred and reset to March 15, 2007. The

---

[21] *Id.* at 57.

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

cross examination was reset several times upon motion of the accused who engaged the services of the new counsel (March 15, 2007 and April 19, 2007).

On January 31, 2008[,] witness Antonio dela Rama was hospitalized. Accused also got sick on April 17, 2008. On February 5, 2009[,] accused['s] counsel, Atty. Banares[,] failed to appear. Accused likewise filed several motions, Motion to Suspend Proceedings on February 5, 2009 and Motion to Dismiss on July 30, 2009. Again[,] on August 27, 2009[,] counsel for the accused failed to appear. No motion has been filed for his non-appearance, hence, the court upon motion of private prosecutor, Atty. Maningas[,] in conformity of Prosecutor Meneses, declared accused to have waived his right to cross examine the witness Antonio dela Rama.

The direct examination of said witness was concluded on January 25, 2007. The delay in the cross examination of the witness was due to the fault of the accused and counsel. The court has noted the ploy employed by the accused like the filing of baseless motions and the changing of his counsel to delay the proceedings of this case. More than two (2) years has lapsed and still accused has not started his cross examination. Witness has been coming to court despite his condition (after his hospitalization) only to be reset due to the unpreparedness of accused['s] counsel or his non-appearance. The court has to put end to this unreasonable delay.

WHEREFORE, in view of the foregoing considerations, the Motion for Reconsideration is hereby denied due course.

SO ORDERED.[23]

Alleging grave abuse of discretion on the part of Presiding Judge Jose P. Morallos (Presiding Judge Morallos) in declaring him to have waived his right to cross-examine Dela Rama, Liong filed a Petition for Certiorari before the Court of Appeals.[24]

The Court of Appeals agreed with the trial court judge and denied Liong's Petition. It held that what is essential is for an accused to be granted the *opportunity* to confront and cross-examine the witnesses against him, not to actually cross-examine

---

[23] *Id*.

[24] *Id*. at 35.

them. In other words, when an accused fails to avail himself or herself of this right, he or she is deemed to have waived it.[25]

The Court of Appeals found that Liong repeatedly delayed his cross-examination of Dela Rama specifically on March 15, 2007, April 19, 2007, February 5, 2009, and August 27, 2009. On those dates, Liong's counsel was either unprepared or absent. While there were hearings that were reset on the instance of witness Dela Rama, those were caused by his then hospitalization due to stroke. The Court of Appeals likewise said that Liong could not use in his favor the cancelled hearings on June 28, 2007, September 30, 2007, November 22, 2007, and October 16, 2008. The allegations that the hearings on these dates were cancelled due to the absence of the public prosecutor or the trial court judge were not substantiated.[26]

On Liong's claim that his former counsel was grossly negligent, the Court of Appeals nevertheless said that the negligence of counsel binds the client and, in this case, Liong was not blameless. The Court of Appeals cited an Order dated October 8, 2003 of the former presiding judge trying the case, Presiding Judge Edelwina Catubig Pastoral (Judge Pastoral), where Liong was admonished because he frequently changed counsels.[27]

The dispositive portion of the Court of Appeals October 7, 2011 Decision[28] read:

WHEREFORE, premises considered, the present petition is **DENIED**. Accordingly, the assailed Orders of the Regional Trial Court dated August 27, 2009 and February 9, 2010 are hereby **AFFIRMED**.

SO ORDERED.[29]

---

[25] *Id*. at 37-38.

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

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

[28] *Id*. at 33-41.

[29] *Id*. at 40.

Liong filed a Motion for Reconsideration, which the Court of Appeals denied in its February 20, 2012 Resolution,[30] thus:

> An assiduous evaluation of the said Motion for Reconsideration led US to conclude that there exists no compelling and justifiable reason for US to veer away from OUR earlier pronouncement. The arguments presented by petitioner had already been traversed and ruled upon by US. There is no need to belabor the issues one more time.
>
> WHEREFORE, on account of the foregoing, WE deny the said Motion for Reconsideration.
>
> SO ORDERED.[31]

On March 26, 2012, Liong filed his Petition for Review on Certiorari[32] before this Court. The Office of the Solicitor General, on behalf of the People of the Philippines, filed a Comment[33] to which petitioner filed his Reply.[34]

Petitioner alleges that the cross-examination of Dela Rama was reset 13 times. However, out of those 13 resettings, only four (4) are attributable to him while the rest are due to reasons beyond his control, such as witness Dela Rama's stroke and the absence of the public prosecutor.[35] He adds that the order of waiver was made in open court and at a time when his counsel was absent; thus, he was not able to oppose the declaration.[36] Therefore, he argues that the trial court judge, Presiding Judge Morallos, gravely abused his discretion in depriving him of the rights to confront and cross-examine prosecution witness Dela Rama.[37]

---

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

[31] *Id*.

[32] *Id*. at 8-31.

[33] *Id*. at 73-82.

[34] *Id*. at 87-90.

[35] *Id*. at 21.

[36] *Id*. at 22.

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

Respondent People of the Philippines counters that petitioner raises a question of fact, specifically on which of the resettings are not attributable to him. It contends that questions of facts are not allowed in a Rule 45 Petition, and therefore, this Court is "not duty-bound to analyze again and weigh the evidence introduced in and considered by the [trial court and the Court of Appeals]."[38]

On the supposed negligence of petitioner's former counsel, respondent argues that this was not gross so as to discharge petitioner from any liability. Respondent alleges that petitioner benefited from the absences of his former counsel and his other dilatory tactics such as frequently changing counsels.[39] For these reasons, the trial court judge, Presiding Judge Morallos, correctly deemed petitioner's right to cross-examine Dela Rama as waived.

The issues for this Court's resolution are:

First, whether or not this Petition for Review on Certiorari should be denied for raising factual issues; and

Second, whether or not the trial court gravely abused its discretion in declaring as waived petitioner Kim Liong's right to cross-examine prosecution witness Antonio Dela Rama.

This Petition must be denied.

I

The fundamental rights of the accused are provided in Article III, Section 14 of the Constitution:

Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public

---

[38] *Id*. at 76.

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

trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. (Underscoring supplied)

"To meet the witnesses face to face" is the right of confrontation. Subsumed in this right to confront is the right of an accused to cross-examine the witnesses against him or her, i.e., to propound questions on matters stated during direct examination, or connected with it.[40] The cross-examination may be done "with sufficient fullness and freedom to test [the witness'] accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue."[41]

Rule 115 of the Rules of Court with its lone section is devoted entirely to the rights of the accused during trial. Rule 115, Section 1(f) on the right to cross-examine provides:

Section 1. *Rights of accused at the trial.* — In all criminal prosecutions, the accused shall be entitled to the following rights:

. . . . . .

(f) To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or can not with due diligence be found in the Philippines, unavailable, or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having the opportunity to cross-examine him.

Denying an accused the right to cross-examine will render the testimony of the witness incomplete and inadmissible in evidence. "[W]hen cross-examination is not and cannot be done or completed due to causes attributable to the party offering

---

[40] RULES OF COURT, Rule 132, Sec. 6.

[41] RULES OF COURT, Rule 132, Sec. 6

the witness, the uncompleted testimony is thereby rendered incompetent."[42]

However, like any right, the right to cross-examine may be waived.[43] It "is a personal one which may be waived expressly or impliedly by conduct amounting to a renunciation of the right of cross-examination."[44] When an accused is given the opportunity to cross-examine a witness but fails to avail of it, the accused shall be deemed to have waived this right.[45] The witness' testimony given during direct examination will remain on record.[46] If this testimony is used against the accused, there will be no violation of the right of confrontation.

In *People v. Narca*,[47] the trial court deferred to another date the cross-examination of the prosecution witness on the instance of the accused. However, in the interim, the prosecution witness was murdered. Thus, the accused moved that the testimony of the prosecution witness be stricken off the record for lack of cross-examination. This Court rejected the argument, finding that the accused waived their right to cross-examine the prosecution witness when they moved for postponement. It said that "mere *opportunity and not actual* cross-examination is the essence of the right to cross-examine."[48]

In *Gimenez v. Nazareno*,[49] the accused, after arraignment but before trial, escaped from his detention center. Trial ensued

---

[42] *People v. Givera*, 402 Phil. 547, 571 (2001) [Per *J.* Mendoza, Second Division] *citing Bachrach Motor Co., Inc. v. CIR,* 175 Phil. 225 (1978) [Per *J.* Muñoz Palma, First Division] and *Ortigas, Jr. v. Lufthansa German Airlines*, 159-A Phil. 863 (1975) [Per *J.* Barredo, Second Division].

[43] See *Savory Luncheonette v. Lakas ng Manggagawang Pilipino, et al.,* 159 Phil. 310, 315-316 (1975) [Per *J.* Muñoz-Palma, First Division].

[44] See *People v. Narca*, 341 Phil. 696, 706 (1997) [Per *J.* Francisco, Third Division] *citing Savory Luncheonette v. Lakas ng Manggagawang Pilipino*, 159 Phil. 310 (1975) [Per *J.* Muñoz Palma, First Division].

[45] *Id*.

[46] *Id*.

[47] 341 Phil. 696 (1997) [Per *J.* Francisco, Third Division].

[48] *Id*. at 706.

[49] 243 Phil. 274 (1988) [Per *J.* Gancayco, *En Banc*].

despite his absence and the accused was subsequently convicted of murder. On appeal, the accused contended that the testimonies against him should be stricken off the record because he failed to exercise his right to cross-examine the witnesses against him. Rejecting this contention, this Court held that an escapee who has been tried *in absentia* does not retain the rights to confront and cross-examine the witnesses against him. These rights are personal and "by his failure to appear during the trial of which he had notice," this Court said that the accused "virtually waived these rights."[50]

II

Petitioner maintains that he did not waive his right to cross-examine witness Dela Rama, attributing the successive cancellation of hearings on the absence either of the witness, the public prosecutor, or the trial court judge. He adds that his counsel was grossly negligent in handling the case.

However, as pointed out by respondent, the matters raised in this Petition are questions of fact not proper in a Rule 45 petition. This Court is not a trier of facts,[51] and rightfully so. This Court, as the court of last resort, should focus more on performing "the functions assigned to it by the fundamental charter and immemorial tradition."[52] The rule, therefore, is that petitions for review on certiorari may only raise questions of law. Rule 45, Section 1 of the Rules of Court 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,

---

[50] *Id*. at 280.

[51] See *Carbonell v. Carbonell-Mendes*, 762 Phil. 529, 536 (2015) [Per *J*. Carpio, Second Division] *citing Spouses Binua v. Ong,* 736 Phil. 698 (2014) [Per *J*. Reyes, First Division]; *INC Shipmanagement, Inc. v. Moradas*, 724 Phil. 374 (2014) [Per *J*. Perlas-Bernabe, Second Division]; *Sandoval Shipyards, Inc. v. Philippine Merchant Marine Academy (PMMA)*, 708 Phil. 535 (2013) [Per *C.J*. Sereno, First Division].

[52] See *Vergara v. Suelto*, 240 Phil. 719, 732 (1987) [Per *J*. Narvasa, First Division].

the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

It is true that this rule is subject to exceptions. This Court may review factual issues if any of the following is present:

(1) [W]hen the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[53]

Nevertheless, this Court finds that none of the exceptions applies in this case. Even if this Court considers the facts as alleged by petitioner, it will still arrive at the conclusion that the trial court judge did not gravely abuse his discretion in

---

[53] See *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, 472 Phil. 11, 22-23 (2004) [Per *J.* Austria-Martinez, Second Division] *citing Langkaan Realty Development, Inc. v. United Coconut Planters Bank,* 400 Phil. 1349 (2000) [Per *J.* Gonzaga-Reyes, Third Division]; *Nokom v. National Labor Relations Commission*, 390 Phil. 1228 (2000) [Per *J.* De Leon, Jr., Second Division]; *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541 (1999) [Per *J.* Pardo, First Division]; *Sta. Maria v. Court of Appeals*, 349 Phil. 275 (1998) [Per *J.* Davide, Jr., First Division].

deeming petitioner's right to cross-examination as waived. Therefore, the Court of Appeals did not err in denying petitioner's Petition for Certiorari.

The table below is a summary of the hearing dates set for the cross-examination of Dela Rama and the reasons for their cancellation. It is based on the dates as alleged in the Petition.[54]

Hearing Dates	**Reasons for Cancellation**
March 15, 2007	Atty. Banares appeared as collaborating counsel for accused's counsel of record, Atty. Ponon.
April 19, 2007	Petitioner terminated the services of Atty. Ponon, who was allegedly a fraternity brother of private prosecutor, Atty. Pacheco.
June 28, 2007	No reason indicated.
September 30, 2007	No reason indicated.
November 22, 2007	Public prosecutor was absent.
January 31, 2008	Witness Dela Rama was absent.
April 17, 2008	Petitioner was indisposed, and therefore, absent.
June 26, 2008	Witness Dela Rama was absent.
July 31, 2008	Witness Dela Rama was absent because he suffered a stroke.
October 16, 2008	Presiding Judge Morallos was on leave.
February 5, 2009	Petitioner's counsel was absent.
May 7, 2009	No reason indicated.
August 27, 2009	Petitioner's counsel was absent and, on motion by the private prosecutor, Presiding Judge Morallos deemed petitioner's right to cross-examine witness Dela Rama as waived.

[54] *Rollo,* pp. 11-13.

The table shows that petitioner was given more than enough opportunity to cross-examine witness Dela Rama. Contrary to his allegation, five (5) of the cancellations are attributable to him. For instance, the March 15, 2007 hearing was cancelled on petitioner's motion because Atty. Banares appeared as collaborating counsel for his counsel of record, Atty. Ponon. The next hearing set on April 19, 2007 was again cancelled because petitioner terminated the services of Atty. Ponon who was allegedly a fraternity brother of one of the private prosecutors, Atty. Pacheco. On April 17, 2008, petitioner was allegedly indisposed and did not attend the hearing. On February 5, 2009, petitioner had no counsel. Finally, on August 27, 2009, petitioner again had no counsel and Presiding Judge Morallos deemed petitioner's right to cross-examine Dela Rama as waived.

Of course, there were cancellations due to the absence of either the prosecutor or witness Dela Rama himself. There was even one hearing, which was cancelled because Presiding Judge Morallos was on leave. However, even after Dela Rama suffered a stroke, he attended the hearings on February 5, 2009 and August 27, 2009, with the hearings only to be cancelled because petitioner did not have his counsel with him. These show that petitioner failed to aggressively exercise his rights to confront and cross-examine witness Dela Rama. The absence of counsel during the February 5, 2009 and August 27, 2009 hearings was never explained.

Petitioner had the habit of frequently changing counsels. In an Order issued as early as October 8, 2003, former Presiding Judge Pastoral admonished petitioner for "again" changing his counsel during pre-trial, thus, delaying the proceedings:

> The accused again has engaged another lawyer and he asked for a resetting.
>
> Atty. Ponon is the new counsel for the accused and he asked for a last resetting.
>
> The court warned the accused not to hire another lawyer only for the purpose of delaying this case.

For the last time[,] reset the pre-trial to December 11[,] 2003, at 8:30 o'clock in the morning.

Notify the bonding company and the accused is duly notified in open court of the resetting.

SO ORDERED.[55]

No gross negligence is attributable to petitioner's counsel. Ordinary diligence and prudence could have prevented the cancellation of the hearings. If there is any negligence in this case, it is that of petitioner himself. For failure to avail himself of the several opportunities given to him, he is deemed to have waived his right to confront and cross-examine witness Dela Rama.

The right to confront and cross-examine witnesses is a basic, fundamental human right vested inalienably to an accused. This right ensures that courts can confidently ferret out the facts on the basis of which they can determine whether a crime occurred and the level of culpability of the accused. It is a basic requirement of criminal justice.

However, this right does not exist in isolation. The State, representing the people that may have been wronged by a crime, also has the right to due process. This means that the prosecution must not be denied unreasonably of its ability to be able to prove its case through machinations by the accused.

When the accused abuses its option to choose his counsel as in this case, he can be deemed to have waived his right to confrontation and cross-examination. The pattern of postponements and changes of counsel in this case is so obvious and patent. Petitioner should have been dissuaded by any of the lawyers, unless they, too, connived in such an amateurish strategy, which wastes the time and resources of our judicial system.

All told, Presiding Judge Morallos did not gravely abuse his discretion in deeming as waived petitioner's right to cross-

---

[55] *Id*. at 40.

examine prosecution witness Dela Rama. The Court of Appeals correctly denied petitioner's Petition for Certiorari. Dela Rama's testimony given during direct examination shall remain on record. We sustain both courts.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The October 7, 2011 Decision and February 20, 2012 Resolutions of the Court of Appeals in CA-G.R. SP No. 113152 are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 200678. June 4, 2018]

BANCO FILIPINO SAVINGS AND MORTGAGE BANK, *petitioner, vs.* **BANGKO SENTRAL NG PILIPINAS and THE MONETARY BOARD**, *respondents.*

SYLLABUS

1. MERCANTILE LAW; REPUBLIC ACT NO. 7653 (THE NEW CENTRAL BANK ACT); BANKS; A CLOSED BANK UNDER RECEIVERSHIP CAN ONLY SUE OR BE SUED THROUGH ITS RECEIVER, THE PHILIPPINE DEPOSIT INSURANCE CORPORATION.— A closed bank under receivership can only sue or be sued through its receiver, the Philippine Deposit Insurance Corporation. Under Republic Act No. 7653, when the Monetary Board finds a bank insolvent, it may "summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate

the Philippine Deposit Insurance Corporation as receiver of the banking institution." x x x The relationship between the Philippine Deposit Insurance Corporation and a closed bank is fiduciary in nature. Section 30 of Republic Act No. 7653 directs the receiver of a closed bank to "immediately gather and *take charge* of all the assets and liabilities of the institution" and "administer the same for the benefit of its creditors." The law likewise grants the receiver "the general powers of a receiver under the Revised Rules of Court." Under Rule 59, Section 6 of the Rules of Court, "a receiver shall have the power to bring and defend, in such capacity, actions in his [or her] own name." Thus, Republic Act No. 7653 provides that the receiver shall also "in the name of the institution, and with the assistance of counsel as [it] may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution." Considering that the receiver has the power to take charge of *all* the assets of the closed bank and to institute for or defend *any* action against it, only the receiver, in its fiduciary capacity, may sue and be sued on behalf of the closed bank.

2. ID.; ID.; ID.; THE PHILIPPINE DEPOSIT INSURANCE CORPORATION'S PARTICIPATION IN ALL SUITS INVOLVING AN INSOLVENT BANK IS NECESSARY AND IMBUED WITH PUBLIC INTEREST.— Petitioner's suit concerned its Business Plan, a matter that could have affected the status of its insolvency. Philippine Deposit Insurance Corporation's participation would have been necessary, as it had the duty to conserve petitioner's assets and to examine any possible liability that petitioner might undertake under the Business Plan. Philippine Deposit Insurance Corporation also safeguards the interests of the depositors in all legal proceedings. Most bank depositors are ordinary people who have entrusted their money to banks in the hopes of growing their savings. When banks become insolvent, depositors are secure in the knowledge that they can still recoup some part of their savings through Philippine Deposit Insurance Corporation. Thus, Philippine Deposit Insurance Corporation's participation in all suits involving the insolvent bank is necessary and imbued with the public interest.

3. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; VERIFICATION AND CERTIFICATION OF NON-

FORUM SHOPPING; A PETITION FILED BY SIGNATORIES WHO WERE NOT VALIDLY AUTHORIZED TO DO SO DOES NOT PRODUCE LEGAL EFFECT; CASE AT BAR.— [P]etitioner's verification and certification of non-forum shopping was signed by its Executive Vice Presidents Maxy S. Abad and Atty. Francisco A. Rivera, as authorized by its Board of Directors. x x x When petitioner was placed under receivership, the powers of its Board of Directors and its officers were suspended. Thus, its Board of Directors could not have validly authorized its Executive Vice Presidents to file the suit on its behalf. The Petition, not having been properly verified, is considered an unsigned pleading. A defect in the certification of non-forum shopping is likewise fatal to petitioner's cause. Considering that the Petition was filed by signatories who were not validly authorized to do so, the Petition does not produce any legal effect. Being an unauthorized pleading, this Court never validly acquired jurisdiction over the case. The Petition, therefore, must be dismissed.

4. ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ANY PETITION FOR *CERTIORARI* AGAINST AN ACT OR OMISSION OF BANGKO SENTRAL NG PILIPINAS, WHEN IT ACTS THROUGH THE MONETARY BOARD, MUST BE FILED WITH THE COURT OF APPEALS.— Pursuant to Article XII, Section 20 of the Constitution, Congress constituted Bangko Sentral as an independent central monetary authority. As an administrative agency, it is vested with quasi-judicial powers, which it exercises through the Monetary Board. x x x Bangko Sentral's Monetary Board is a quasi-judicial agency. Its decisions, resolutions, and orders are the decisions, resolutions, and orders of a quasi-judicial agency. Any action filed against the Monetary Board is an action against a quasi-judicial agency. This does not mean, however, that Bangko Sentral only exercises quasi-judicial functions. As an administrative agency, it likewise exercises "powers and/or functions which may be characterized as administrative, investigatory, regulatory, quasi-legislative, or quasi-judicial, or a mix of these five, as may be conferred by the Constitution or by statute." x x x The Rules of Court categorically provide that petitions for certiorari involving acts or omissions of a quasi-judicial agency "shall be filed in and cognizable only by

the Court of Appeals." x x x [R]espondent Bangko Sentral exercises a myriad of functions, including those that may not be necessarily exercised by a quasi-judicial agency. It is settled, however, that it exercises its quasi-judicial functions through respondent Monetary Board. Any petition for certiorari against an act or omission of Bangko Sentral, when it acts through the Monetary Board, must be filed with the Court of Appeals.

5. ID.; ID.; ID.; ID.; A MOTION FOR RECONSIDERATION IS A *SINE QUA NON* CONDITION FOR THE FILING OF A PETITION FOR *CERTIORARI*; EXCEPTIONS.— Rule 65, Section 1 of the Rules of Court requires that there be "no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law" available before a petition for certiorari can be filed. An order denying a motion to dismiss is merely an interlocutory order of the court as it does not finally dispose of a case. x x x In labor cases, it was necessary to first file a motion for reconsideration before resorting to a petition for *certiorari* since the National Labor Relations Commission's rules of procedure provided for this remedy. The same rule has since applied to civil cases through *Estate of Salvador Serra Serra*, regardless of the absence of a provision in the Rules of Court requiring a motion for reconsideration even for interlocutory orders. Thus, the general rule, in all cases; "is that a motion for reconsideration is a *sine qua non* condition for the filing of a petition for certiorari." There are, however, recognized exceptions to this rule, namely: "(a) where the order is a patent nullity, as where the Court *a quo* had no jurisdiction; (b) where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings [were] *ex parte* or in which the petitioner had no opportunity

to object; and (i) where the issue raised is one purely of law or where public interest is involved."

APPEARANCES OF COUNSEL

Yasay Regalado Atienza & Mendoza Law Offices for petitioner.
Cruz Marcelo & Tenefrancia for respondents.

D E C I S I O N

LEONEN, *J.*:

A bank which has been ordered closed by the Bangko Sentral ng Pilipinas (Bangko Sentral) is placed under the receivership of the Philippine Deposit Insurance Corporation. As a consequence of the receivership, the closed bank may sue and be sued only through its receiver, the Philippine Deposit Insurance Corporation. Any action filed by the closed bank without its receiver may be dismissed.

This is a Petition for Review on Certiorari[1] assailing the Court of Appeals July 28, 2011 Decision[2] and February 16, 2012 Resolution[3] in CA-G.R. SP No. 116905, which dismissed Civil Case No. 10-1042 and held that the trial court had no jurisdiction over Bangko Sentral and the Monetary Board.

On December 11, 1991, this Court promulgated *Banco Filipino Savings & Mortgage Bank v. Monetary Board and Central Bank of the Philippines*,[4] which declared void the Monetary Board's

---

[1] *Rollo*, pp. 38-82.

[2] *Id*. at 8-33. The Decision was penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Noel G. Tijam (now an Associate Justice of this Court) and Ricardo R. Rosario of the Former Special Tenth Division, Court of Appeals, Manila.

[3] *Id*. at 35-36. The Resolution was penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Noel G. Tijam (now an Associate Justice of this Court) and Ricardo R. Rosario of the Former Special Tenth Division, Court of Appeals, Manila.

[4] 281 Phil. 847 (1991) [Per *J*. Medialdea, *En Banc*].

order for closure and receivership of Banco Filipino Savings & Mortgage Bank (Banco Filipino). This Court also directed the Central Bank of the Philippines and the Monetary Board to reorganize Banco Filipino and to allow it to resume business under the comptrollership of both the Central Bank and the Monetary Board.[5]

Banco Filipino subsequently filed several Complaints before the Regional Trial Court, among them a claim for damages in the total amount of ₱18,800,000,000.00.[6]

On June 14, 1993, Congress passed Republic Act No. 7653,[7] providing for the establishment and organization of Bangko Sentral as the new monetary authority.

On November 6, 1993, pursuant to this Court's 1991 *Banco Filipino* Decision, the Monetary Board issued Resolution No. 427, which allowed Banco Filipino to resume its business.[8]

In 2002, Banco Filipino suffered from heavy withdrawals, prompting it to seek the help of Bangko Sentral. In a letter dated October 9, 2003, Banco Filipino asked for financial assistance of more than ₱3,000,000,000.00 through emergency loans and credit easement terms.[9] In a letter[10] dated November 21, 2003, Bangko Sentral informed Banco Filipino that it should first comply with certain conditions imposed by Republic Act No. 7653 before financial assistance could be extended. Banco Filipino was also required to submit a rehabilitation plan approved by Bangko Sentral before emergency loans could be granted.

---

[5] *Id*. at 893.

[6] *Rollo*, p. 9. The various Complaints are outlined in *Central Bank Board of Liquidators v. Banco Filipino*, G.R. No. 173399, February 21, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/173399.pdf> [Per *C.J.* Sereno, *En Banc*].

[7] Rep. Act No. 7653 (1993), The New Central Bank Act.

[8] *Rollo*, p. 9.

[9] *Id*.

[10] *Id*. at 112-114.

In a letter[11] dated April 14, 2004, Banco Filipino submitted its Long-Term Business Plan to Bangko Sentral. It also claimed that Bangko Sentral already extended similar arrangements to other banks and that it was still awaiting the payment of ₱18,800,000,000.00 in damage claims, "the entitlement to which the Supreme Court has already decided with finality."[12]

In response, Bangko Sentral informed Banco Filipino that its business plan could not be acted upon since it was neither "confirmed nor approved by [Banco Filipino's Board of Directors]."[13]

On July 8, 2004, Banco Filipino filed a Petition for Revival of Judgment with the Regional Trial Court of Makati to compel Bangko Sentral to approve its business plan. The case was docketed as Civil Case No. 04-823 and was raffled to Branch 62.[14]

During the pendency of its Petition, Banco Filipino entered into discussions and negotiations with Bangko Sentral, which resulted to seven (7) revisions in the business plan. Thus, Banco Filipino filed a Proposal for Settlement dated September 21, 2007 before Branch 62, Regional Trial Court, Makati City to settle the issues between the parties.[15]

On April 8, 2009, Banco Filipino submitted its 8th Revised Business Plan to Bangko Sentral for evaluation.[16] In this business plan, Banco Filipino requested, among others, a ₱25,000,000,000.00 income enhancement loan. Unable to come to an agreement,

---

[11] *Id*. at 115-116.

[12] *Id*. at 115. The damages suit is still pending before the Regional Trial Court of Makati, Branch 136 as per *Central Bank Board of Liquidators v. Banco Filipino*, G.R. No. 173399, February 21, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/173399.pdf> 4 [Per *C.J.* Sereno, *En Banc*].

[13] *Id*. at 117.

[14] *Id*. at 10.

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

[16] *Id*. at 144.

the parties constituted an Ad Hoc Committee composed of representatives from both parties to study and act on the proposals. The Ad Hoc Committee produced an Alternative Business Plan, which was accepted by Banco Filipino, but was subject to the Monetary Board's approval.[17]

In a letter[18] dated December 4, 2009, Bangko Sentral informed Banco Filipino that the Monetary Board issued Resolution No. 1668 granting its request for the ₱25,000,000,000.00 Financial Assistance and Regulatory Reliefs to form part of its Revised Business Plan and Alternative Business Plan. The approval was also subject to certain terms and conditions, among which was the withdrawal or dismissal with prejudice to all pending cases filed by Banco Filipino against Bangko Sentral and its officials.[19] The terms also included the execution of necessary quitclaims and commitments to be given by Banco Filipino's principal stockholders, Board of Directors, and duly authorized officers "not to revive or refile such similar cases in the future."[20]

In a letter[21] dated January 20, 2010, Banco Filipino requested reconsideration of the terms and conditions of the ₱25,000,000,000.00 Financial Assistance and Regulatory Reliefs package, noting that the salient features of the Alternative Business Plan were materially modified.[22] However, in a letter[23] dated April 8, 2010, Banco Filipino informed Bangko Sentral that it was constrained to accept the "unilaterally whittled down version of the [₱25,000,000,000.00] Financial Assistance Package and Regulatory Reliefs."[24] It, however, asserted that it did not agree

---

[17] *Id*. at 11.

[18] *Id*. at 160.

[19] *Id*. at 161-166.

[20] *Id*. at 165.

[21] *Id*. at 167-168.

[22] *Id*. at 167.

[23] *Id*. at 176-177.

[24] *Id*. at 176.

with the condition to dismiss and withdraw its cases since this would require a separate discussion.[25]

In a letter[26] dated April 19, 2010, Bangko Sentral informed Banco Filipino that it was surprised by the latter's hesitation in accepting the terms and conditions, in particular, the withdrawal of the cases against it, since this condition had already been discussed from the start of the negotiations between the parties.[27]

In a letter[28] dated June 21, 2010, Banco Filipino informed Bangko Sentral that it never accepted the condition of the withdrawal of the cases in prior negotiations but was willing to discuss this condition as a separate and distinct matter.

In a letter[29] dated August 10, 2010, Bangko Sentral and the Monetary Board, through counsel CVC Law, informed Banco Filipino that its rejection of certain portions of Resolution No. 1668, particularly its refusal to withdraw all cases filed against Bangko Sentral, was deemed as a failure to reach a mutually acceptable settlement.

In a letter[30] dated August 13, 2010, Banco Filipino questioned the legality of referring the matter to private counsel and stated that it had not been notified of the action taken on the acceptance of its Business Plan.

In a letter[31] dated September 13, 2010, CVC Law told Banco Filipino that the matter was referred to it as an incident of Civil Case No. 04-823, which it was handling on behalf of Bangko Sentral. It also informed Banco Filipino that the latter's rejection of the terms and conditions of Resolution No. 1668 made this Resolution legally unenforceable.

---

[25] *Id*. at 177.

[26] *Id*. at 178-179.

[27] *Id*. at 179.

[28] *Id*. at 180-181.

[29] *Id*. at 186-187.

[30] *Id*. at 188-192.

[31] *Id*. at 193-195.

Banco Filipino sent letters[32] dated September 22, 2010 and September 28, 2010, questioning the legality of Bangko Sentral's referral to private counsel and reiterating that the terms and conditions embodied in Resolution No. 1668 were not meant to be a settlement of its ₱18,800,000,000.00 damage claim against Bangko Sentral.

In a letter[33] dated October 4, 2010, Bangko Sentral reiterated that its referral of the matter to CVC Law was due to the matter being incidental to the civil case pending before the Regional Trial Court.

On October 20, 2010, Banco Filipino filed a Petition For Certiorari and Mandamus with prayer for issuance of a temporary restraining order and writ of preliminary injunction[34] before Branch 66, Regional Trial Court, Makati City, docketed as Civil Case No. 10-1042. It assailed the alleged "arbitrary, capricious and illegal acts"[35] of Bangko Sentral and of the Monetary Board in coercing Banco Filipino to withdraw all its present suits in exchange of the approval of its Business Plan. In particular, Banco Filipino alleged that Bangko Sentral and the Monetary Board committed grave abuse of discretion in imposing an additional condition in Resolution No. 1668 requiring it to withdraw its cases and waive all future cases since it was unconstitutional and contrary to public policy. It prayed that a writ of mandamus be issued to compel Bangko Sentral and the Monetary Board to approve and implement its business plan and release its Financial Assistance and Regulatory Reliefs package.[36]

The trial court issued a Notice of Hearing on the prayer for a temporary restraining order on the same day, setting the hearing on October 27, 2010.[37]

---

[32] *Id*. at 196-203.

[33] *Id*. at 204-205.

[34] *Id*. at 207-253.

[35] *Id*. at 207.

[36] *Id*. at 227.

[37] *Id*. at 13.

On October 27, 2010, Bangko Sentral and the Monetary Board filed their Motion to Dismiss Ad Cautelam,[38] assailing the Regional Trial Court's jurisdiction over the subject matter and over the persons of Bangko Sentral and the Monetary Board. Banco Filipino, on the other hand, filed its Opposition[39] to this Petition.

In its October 28, 2010 Order,[40] the Regional Trial Court granted the request for the issuance of a temporary restraining order against Bangko Sentral and the Monetary Board. The dispositive portion of this Order read:

> WHEREFORE, premises considered and pursuant to Rule 58 of the Revised Rules of Court, Petitioner's prayer for a Temporary Restraining Order is hereby GRANTED. Respondent[s] Ban[gk]o Sentral ng Pilipinas and [t]he Monetary Board, as well as [their] representatives, agents, assigns and/or third person or entity acting for and [their] behalf are hereby enjoined from (a) employing acts inimical to the enforcement and implementation of the approv[ed] Business Plan, (b) continuing and committing acts prejudicial to Petitioner's operations, (c) withdrawing or threatening to withdraw the approval of the Business Plan containing financial assistance, and package of regulatory reliefs, and (d) otherwise enforcing other regulatory measures and abuses calculated to coerce Banco Filipino Savings and Mortgage Bank into agreeing to drop and/or withdraw its suits and damage claims against BSP and MB, and to waive future claims against Respondents or their official[s] and employees.
>
> Further, the Court directs Sheriff Leodel N. Roxas to personally serve a copy of this Order to the herein Respondent Ban[gk]o Sentral ng Pilipinas and [t]he Monetary Board. Finally, let this case be set on November 11, 2010 and November 12, 2010 both at 2:00 in the afternoon for hearing on the prayer for issuance of a Writ of Preliminary Mandatory Injunction.
>
> SO ORDERED.[41]

---

[38] *Id*. at 257-301.

[39] *Id*. at 394-412.

[40] *Id*. at 303-305. The Order was penned by Judge Joselito C. Villarosa of the Regional Trial Court of Makati City, Branch 66.

[41] *Id*. at 305.

On the same day or on October 28, 2010, summons was served on Bangko Sentral through a staff member of the Office of the Governor, as certified by the Process Server's Return dated November 4, 2010.[42]

On November 5, 2010, Bangko Sentral and the Monetary Board filed a Petition For Certiorari with prayer for temporary restraining order and/or writ of preliminary injunction[43] with the Court of Appeals, assailing the Regional Trial Court's October 28, 2010 Order for having been issued without jurisdiction. The Petition was docketed as CA-G.R. SP No. 116627.[44]

On November 17, 2010, the trial court issued an Order[45] denying the Bangko Sentral and the Monetary Board's Motion to Dismiss Ad Cautelam, stating that the acts complained of pertained to Bangko Sentral's regulatory functions, not its adjudicatory functions.[46] It likewise stated that as requested in the handwritten letter[47] dated October 21, 2010 by Bangko Sentral's general counsel requesting for an advanced copy of Banco Filipino's Petition, it furnished Bangko Sentral a copy of the Petition. It also held that Bangko Sentral's subsequent participation in the preliminary hearing and its receipt of the summons on October 28, 2010 satisfied the requirements of procedural due process.[48]

The trial court likewise found that *litis pendencia* and forum shopping were not present in the case, that Bangko Sentral's verification and certification of non-forum shopping were validly

---

[42] *Id*. at 302.

[43] *Id*. at 306-393.

[44] *Id*. at 21.

[45] *Id*. at 417-420. The Order, docketed as Civil Case No. 10-1042, was penned by Presiding Judge Joselito C. Villarosa of Branch 66, Regional Trial Court, Makati City.

[46] *Id*. at 417.

[47] *Id*. at 413-415.

[48] *Id*. at 418.

signed by the Executive Committee, and that Banco Filipino's Petition did not fail to state a cause of action.[49]

On November 25, 2010, Bangko Sentral and the Monetary Board filed another Petition for Certiorari[50] with prayer for temporary restraining order and writ of preliminary injunction with the Court of Appeals, this time assailing the November 17, 2010 Order. The case was docketed as CA-G.R. SP No. 116905. However, the trial court issued a writ of preliminary injunction on November 18, 2010[51] so they filed their Urgent Motion to Admit Attached Amended Petition[52] with the Court of Appeals to include the issuance.

In the meantime, or on November 23, 2010, Bangko Sentral and the Monetary Board filed a Motion to Admit Attached Supplemental Petition for Certiorari with Application for Interim Relief[53] in CA-G.R. SP No. 116627 seeking to include the trial court's October 28, 2010 Order.

In its December 28, 2010 Resolution,[54] the Court of Appeals granted[55] Bangko Sentral and the Monetary Board's Urgent Motion to Admit Attached Amended Petition in CA-G.R. SP No. 116905.

---

[49] *Id*. at 418-420.

[50] *Id*. at 421-505.

[51] *Id*. at 596-598. The Order was penned by Judge Joselito C. Villarosa of the Regional Trial Court of Makati City, Branch 66.

[52] *Id*. at 506-594.

[53] *Id*. at 4073-4074. The Resolution was penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Ricardo R. Rosario and Samuel H. Gaerlan of the Tenth Division, Court of Appeals, Manila.

[54] *Id*. at 4073-4074. The Resolution was penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Ricardo R. Rosario and Samuel H. Gaerlan of the Tenth Division, Court of Appeals, Manila.

[55] *Id*. at 14.

Meanwhile, Banco Filipino filed its Opposition dated January 18, 2011 in CA-G.R. SP No. 116905.[56]

After oral arguments were held on February 7, 2011,[57] the Court of Appeals issued its February 14, 2011 Resolution[58] in CA-G.R. SP No. 116905. It granted the application for a writ of preliminary injunction and enjoined the trial court from conducting further proceedings in Civil Case No. 10-1042 pending a decision on the merits.

On February 16, 2011, Banco Filipino filed an Urgent Motion for Consolidation[59] in CA-G.R. SP No. 116905, requesting for the consolidation of the two (2) Petitions for Certiorari filed by Bangko Sentral and the Monetary Board before the Court of Appeals. On March 1, 2011, it also filed a Motion for Reconsideration[60] of the Court of Appeals February 14, 2011 Resolution.

In its June 2, 2011 Resolution,[61] the Court of Appeals in CA-G.R. SP No. 116905 denied Banco Filipino's Motion for Reconsideration, holding that special civil actions against quasi-judicial agencies should be filed before the Court of Appeals, not before a trial court.[62] The Court of Appeals also denied the Urgent Motion for Consolidation for the following reasons:

---

[56] *Id*. at 732-803.

[57] *Id*. at 804-845.

[58] *Id*. at 847-851. The Resolution was penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Noel G. Tijam (now an Associate Justice of this Court) and Ricardo R. Rosario of the Special Tenth Division, Court of Appeals, Manila.

[59] *Id*. at 852-860.

[60] *Id*. at 861-871.

[61] *Id*. at 873-881. The Resolution was penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Noel G. Tijam (now an Associate Justice of this Court) and Associate Justice Ricardo R. Rosario of the Special Tenth Division, Court of Appeals, Manila.

[62] *Id*. at. 876-877.

1) [I]t would cause not only further congestion of the already congested docket of the *ponente* of CA-G.R. SP No. 116627, but also in the delay in the disposition of both cases; 2) the subject matters and issues raised in the instant petition are different from those set forth in CA-G.R. SP No. 116627, hence, they can be the subject of separate petitions; and 3) Since a writ of preliminary injunction was earlier issued, Section 2 (d), Rule VI of the 2009 IRCA requires that the instant petition remain with the undersigned *ponente* for decision on the merits with dispatch.[63]

On July 28, 2011, the Court of Appeals rendered its Decision[64] in CA-G.R. SP No. 116905 granting Bangko Sentral and the Monetary Board's Amended Petition. According to the Court of Appeals, the trial court had no jurisdiction over the Petition for Certiorari and Mandamus filed by Banco Filipino since special civil actions against quasi-judicial agencies are only cognizable by the Court of Appeals.[65] It also found that the trial court gravely abused its discretion in acquiring jurisdiction over Bangko Sentral and the Monetary Board by reason of their voluntary appearance in the preliminary hearing since their counsel had made it clear that the appearance was specifically to question the absence of a service of summons.[66]

The Court of Appeals likewise found that the delegation of authority from Banco Filipino's Board of Directors to the Executive Committee to sign pleadings on its behalf validated the verification and certification of non-forum shopping signed only by the Executive Vice Presidents.[67] It also ruled that there was no *litis pendencia* or forum shopping in the case docketed as Civil Case No. 10-1042 despite the pendency of Civil Case

---

[63] *Id*. at 877-878.

[64] *Id*. at 8-33. The Decision was penned by Associate Justice Hakim S. Abdulwahid (Chair) and concurred in by Associate Justice Noel G. Tijam (now an Associate Justice of this Court) and Associate Justice Ricardo R. Rosario of the Former Special Tenth Division.

[65] *Id*. at 21-24.

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

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

No. 04-823 since the causes of action and the reliefs prayed for were not the same.[68] The dispositive portion of the Court of Appeals July 28, 2011 Decision read:

> WHEREFORE, the petition is GRANTED. The Order dated November 17, 2010 issued by respondent Judge Joselito C. Villarosa of the Regional Trial Court (RTC), Branch 66, Makati City, in Civil Case No. 10-1042, is ANNULLED and SET ASIDE. In lieu thereof, judgment is hereby rendered DISMISSING Civil Case No. 10-1042 on the ground of the RTC's lack of jurisdiction over the same.
>
> Accordingly, the writ of preliminary injunction issued by this Court on February 14, 2011, enjoining respondent Judge, private respondent and their representatives from conducting further proceedings in Civil Case No. 10-1042, is hereby made PERMANENT.
>
> SO ORDERED.[69]

Banco Filipino filed a Motion for Reconsideration,[70] which was denied by the Court of Appeals in its February 16, 2012 Resolution.[71] Hence, it filed this Petition[72] on April 10, 2012

---

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

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

[70] *Id*. at 882-897.

[71] *Id*. at 35-36. The Resolution was penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Noel G. Tijam (now an Associate Justice of this Court) and Ricardo R. Rosario of the Former Special Tenth Division, Court of Appeals, Manila.

[72] *Id*. at 38-82. Respondents were ordered to comment on April 25, 2012 (*Rollo*, pp. 1035-1036). On May 8, 2012, however, respondents filed a Motion for Leave to File and to Admit Attached Motion to Dismiss (*Rollo*, pp. 898-902) and a Motion to Dismiss (*Rollo*, pp. 903-915) assailing the Petition for having been filed without authority from the Philippine Deposit Insurance Corporation. On July 11, 2012, this Court granted the Motion for Leave and ordered petitioner to comment on the Motion to Dismiss (*Rollo*, pp. 1036-A-1036-B). Respondents filed their Comment *Ad Cautelam* (*Rollo*, pp. 1407-1465) on August 1, 2012. Petitioner, meanwhile, filed its Opposition to the Motion to Dismiss (*Rollo*, pp. 3618-3622) on October 25, 2012 and a Motion for Leave to Admit Attached Reply (*Rollo*, pp. 3625-3628) and Reply (*Rollo*, pp. 3629-3643) on November 20, 2012. The parties were directed to file their respective Memoranda (*Rollo*, pp. 3649-3708 and 4245-4284) on January 30, 2013 (*Rollo*, pp. 3647-3648).

against Bangko Sentral and the Monetary Board before this Court.

Petitioner claims that it had the authority to file this Petition since the Court of Appeals promulgated its January 27, 2012 Decision in CA-G.R. SP No. 118599, finding petitioner's closure and receivership to have been illegal.[73] It argues that to dismiss its Petition now pending before this Court for lack of authority from its receiver Philippine Deposit Insurance Corporation would be "an absurd and unjust situation."[74] Petitioner admits, however, that this decision was eventually overturned on reconsideration[75] in the Court of Appeals November 21, 2012 Amended Decision.[76]

Petitioner points out that there was nothing in the Philippine Deposit Insurance Corporation Charter or in Republic Act No. 7653 that precludes its Board of Directors from suing on its behalf. It adds that there was an obvious conflict of interest in requiring it to seek Philippine Deposit Insurance Corporation's authority to file the case considering that Philippine Deposit Insurance Corporation was under the control of herein respondent Monetary Board.[77]

Petitioner asserts that the trial court had jurisdiction over special civil actions against respondents, accordingly with *Merchants Rural Bank of Talavera v. Monetary Board, et al.*,[78] a decision promulgated by the Court of Appeals in 2006.[79]

Petitioner likewise argues that the trial court acquired jurisdiction over respondents considering that they were able

---

[73] *Id.* at 4278.

[74] *Id.*

[75] *Id.* at 4279-4280.

[76] *Id.* at 4219-4236. The Amended Decision was penned by Associate Justice Noel G. Tijam (now an Associate Justice of this Court) and concurred in by Associate Justices Ramon A. Cruz and Eduardo B. Peralta, Jr. of the Special Seventh Division, Court of Appeals, Manila.

[77] *Id.* at 4280-4281.

[78] CA-G.R. SP No. 93118, August 3, 2006.

[79] *Rollo*, pp. 4268-4270.

to participate in the summary hearing. It points out that respondents questioned before the trial court the service of the petition on October 21, 2010 but never actually questioned the service of summons on October 28, 2010 until it filed its petition with the Court of Appeals.[80] It argues that respondents' private counsel was present during the raffle of the case on October 21, 2010 and even assisted respondents' general counsel in receiving copies of the petition that the latter requested, showing that respondents' due process was never violated.[81] It asserts that the Court of Appeals should have dismissed outright respondents' Petition for Certiorari for "maliciously omitt[ing]" the handwritten letter dated October 21, 2010 of their general counsel.[82] It likewise points out that respondents failed to file a motion for reconsideration before the trial court before filing their petition for certiorari with the Court of Appeals.[83]

Respondents, on the other hand, counter that the Petition should be dismissed outright for being filed without Philippine Deposit Insurance Corporation's authority. It asserts that petitioner was placed under receivership on March 17, 2011, and thus, petitioner's Executive Committee would have had no authority to sign for or on behalf of petitioner absent the authority of its receiver, Philippine Deposit Insurance Corporation.[84] They also point out that both the Philippine Deposit Insurance Corporation Charter and Republic Act No. 7653 categorically state that the authority to file suits or retain counsels for closed banks is vested in the receiver.[85] Thus, the verification and certification of non-forum shopping signed by petitioner's Executive Committee has no legal effect.[86]

---

[80] *Id.* at 4271-4274.

[81] *Id.* at 4274-4275.

[82] *Id.* at 4276.

[83] *Id.* at 4267-4268.

[84] *Id.* at 3668-3670.

[85] *Id.* at 3671-3673.

[86] *Id.* at 3676-3680.

Respondents likewise claim that the Court of Appeals did not err in finding that the trial court had no jurisdiction over respondents. It cited this Court's ruling in *United Coconut Planters Bank v. E. Ganzon, Inc.*[87] and *National Water Resources Board v. A. L. Ang Network*,[88] where this Court categorically stated that special civil cases filed against quasi-judicial agencies must be filed before the Court of Appeals.[89] They argue that there was no showing that *Merchants Rural Bank of Talavera* was ever upheld by this Court.[90] They contend that petitioner should be estopped from raising the issue of jurisdiction considering that during the pendency of this case, or on March 21, 2011 and November 20, 2011, it filed two (2) separate petitions for certiorari against respondent Monetary Board directly before the Court of Appeals.[91]

Respondents maintain that the trial court did not acquire jurisdiction over them since there was no valid service of summons. They argue that when they filed their Motion to Dismiss on October 27, 2010, they could not have validly argued the propriety of the summons on them on October 28, 2010.[92] They likewise contend that their voluntary appearance in the summary hearing before the trial court was not a submission to the trial court's jurisdiction since they consistently manifested that their appearance would be special and limited to raise the issues of jurisdiction.[93] They also assert that the service of summons to a staff member of the Office of the Governor General is not equivalent to the service of summons to the Governor General, making the service of summons ineffective.[94]

---

[87] 609 Phil. 104 (2009) [Per *J.* Chico-Nazario, Third Division].

[88] 632 Phil. 22 (2010) [Per *J.* Carpio Morales, First Division].

[89] *Rollo*, pp. 3681-3684.

[90] *Id.* at 3685-3686.

[91] *Id.* at 3688-3689.

[92] *Id.* at 3680-3683.

[93] *Id.* at 3690-3696.

[94] *Id.* at 3697-3699.

Respondents likewise claim that their filing of their Petition before the Court of Appeals without a prior motion for reconsideration was justified by certain exceptional circumstances. They mention, among others, the trial court's lack of jurisdiction, the fact that the issues have already been raised and passed upon by the trial court, the prejudice to government interest in delaying the case, and their denied due process because of the improper service of summons.[95] They further argue that the only significance of the October 21, 2010 handwritten letter was to show that respondents were informed that a Petition was filed, and not that the trial court had already acquired jurisdiction over their persons.[96]

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

First, whether or not trial courts have jurisdiction to take cognizance of a petition for certiorari against acts and omissions of the Monetary Board;

Second, whether or not respondents Bangko Sentral ng Pilipinas and the Monetary Board should have filed a motion for reconsideration of the trial court's denial of their motion to dismiss before filing their petition for certiorari before the Court of Appeals; and

Finally, whether or not the trial court validly acquired jurisdiction over respondents Bangko Sentral ng Pilipinas and the Monetary Board.

However, before any of these issues can be addressed, this Court must first resolve the issue of whether or not petitioner Banco Filipino, as a closed bank under receivership, could file this Petition for Review without joining its statutory receiver, the Philippine Deposit Insurance Corporation, as a party to the case.

---

[95] *Id*. at 3701-3703.

[96] *Id*. at 3704-3705.

I

A closed bank under receivership can only sue or be sued through its receiver, the Philippine Deposit Insurance Corporation.

Under Republic Act No. 7653,[97] when the Monetary Board finds a bank insolvent, it may "summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution."[98]

Before the enactment of Republic Act No. 7653, an insolvent bank under liquidation could not sue or be sued except through its liquidator. In *Hernandez v. Rural Bank of Lucena*:[99]

> [A]n insolvent bank, which was under the control of the finance commissioner for liquidation, was without power or capacity to sue or be sued, prosecute or defend, or otherwise function except through the finance commissioner or liquidator.[100]

This Court in *Manalo v. Court of Appeals*[101] reiterated this principle:

> A bank which had been ordered closed by the monetary board retains its juridical personality which can sue and be sued through its liquidator. The only limitation being that the prosecution or defense of the action must be done through the liquidator. Otherwise, no suit for or against an insolvent entity would prosper.[102]

---

[97] Rep. Act No. 7653 (1993). The New Central Bank Act.

[98] Rep. Act No. 7653 (1993), Sec. 30(d).

[99] 171 Phil. 70 (1978) [Per *J*. Aquino, Second Division].

[100] *Id*. at 84, citing *Wauer vs. Bank of Pendleton*, 65 S.W. 2nd 167 228 Mo. App. 1150.

[101] 419 Phil. 215 (2001) [Per *J*. Puno, First Division].

[102] *Id*. at 230-231, citing *Hernandez v. Rural Bank of Lucena, Inc*., 171 Phil. 70 (1978) [Per *J*. Aquino, Second Division] and *Wauer v. Bank of Pendleton*, 65 S.W. 2nd 167.

Under the old Central Bank Act, or Republic Act No. 265,[103] as amended,[104] the same principle applies to the receiver appointed by the Central Bank. The law explicitly stated that a receiver shall "represent the [insolvent] bank personally or through counsel as he [or she] may retain in all actions or proceedings for or against the institution." Section 29 of the old law states:

> Section 29. Proceedings upon insolvency. — Whenever, upon examination by the head of the appropriate supervising or examining department or his examiners or agents into the condition of any bank or non-bank financial intermediary performing quasi-banking functions, it shall be disclosed that the condition of the same is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors, it shall be the duty of the department head concerned forthwith, in writing, to inform the Monetary Board of the facts. The Board may, upon finding the statements of the department head to be true, forbid the institution to do business in the Philippines and designate an official of the Central Bank or a person of recognized competence in banking or finance, as receiver to immediately take charge of its assets and liabilities, as expeditiously as possible collect and gather all the assets and administer the same for the benefit of its creditors, and represent the bank personally or through counsel as he [or she] may retain in all actions or proceedings for or against the institution, exercising all the powers necessary for these purposes including, but not limited to, bringing and foreclosing mortgages in the name of the bank or non-bank financial intermediary performing quasi-banking functions.

In Republic Act No. 7653, this provision is substantially altered. Section 30 now states, in part:

> *The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the*

---

[103] Republic Act No. 265 (1948). An Act Establishing The Central Bank Of The Philippines, Defining Its Powers In The Administration Of The Monetary And Banking System, Amending The Pertinent Provisions Of The Administrative Code With Respect To The Currency And The Bureau Of Banking, And For Other Purposes, as amended by Exec. Order No. 289 (1987).

[104] See Exec. Order No. 289 (1987).

benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court but shall not, with the exception of administrative expenditures, pay or commit any act that will involve the transfer or disposition of any asset of the institution: Provided, That the receiver may deposit or place the funds of the institution in non-speculative investments. The receiver shall determine as soon as possible, but not later than ninety (90) days from take-over, whether the institution may be rehabilitated or otherwise placed in such a condition so that it may be permitted to resume business with safety to its depositors and creditors and the general public: Provided, That any determination for the resumption of business of the institution shall be subject to prior approval of the Monetary Board.

If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall:

(1) file ex parte with the proper regional trial court, and without requirement of prior notice or any other action, a petition for assistance in the liquidation of the institution pursuant to a liquidation plan adopted by the Philippine Deposit Insurance Corporation for general application to all closed banks. In case of quasi-banks, the liquidation plan shall be adopted by the Monetary Board. Upon acquiring jurisdiction, the court shall, upon motion by the receiver after due notice, adjudicate disputed claims against the institution, assist the enforcement of individual liabilities of the stockholders, directors and officers, and decide on other issues as may be material to implement the liquidation plan adopted. The receiver shall pay the cost of the proceedings from the assets of the institution.

(2) convert the assets of the institution to money, dispose of the same to creditors and other parties, for the purpose of paying the debts of such institution in accordance with the rules on concurrence and preference of credit under the Civil Code of the Philippines and he may, *in the name of the institution, and with the assistance of counsel as he may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution*. The assets of an institution under receivership or liquidation shall be deemed in *custodia legis* in the hands of the receiver and shall, from the moment the institution was placed under

such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution. (Emphasis supplied)

The relationship between the Philippine Deposit Insurance Corporation and a closed bank is fiduciary in nature. Section 30 of Republic Act No. 7653 directs the receiver of a closed bank to "immediately gather and *take charge* of all the assets and liabilities of the institution" and "administer the same for the benefit of its creditors."[105]

The law likewise grants the receiver "the general powers of a receiver under the Revised Rules of Court."[106] Under Rule 59, Section 6 of the Rules of Court, "a receiver shall have the power to bring and defend, in such capacity, actions in his [or her] own name."[107] Thus, Republic Act No. 7653 provides that the receiver shall also "in the name of the institution, and with the assistance of counsel as [it] may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution."[108] Considering that the receiver has the power to take charge of *all* the assets of the closed bank and to institute for or defend *any* action against it, only the receiver, in its fiduciary capacity, may sue and be sued on behalf of the closed bank.

---

[105] Rep. Act No. 7653 (1993), Sec. 30.

[106] Rep. Act No. 7653 (1993), Sec. 30.

[107] RULES OF COURT, Rule 59, Sec. 6 provides:

Section 6. General powers of receiver. — Subject to the control of the court in which the action or proceeding is pending, a receiver shall have the power to bring and defend, in such capacity, actions in his own name; to take and keep possession of the property in controversy; to receive rents; to collect debts due to himself as receiver or to the fund, property, estate, person, or corporation of which he is the receiver; to compound for and compromise the same; to make transfers; to pay outstanding debts; to divide the money and other property that shall remain among the persons legally entitled to receive the same; and generally to do such acts respecting the property as the court may authorize. However, funds in the hands of a receiver may be invested only by order of the court upon the written consent of all the parties to the action.

[108] Rep. Act No. 7653 (1993), Sec. 30.

In *Balayan Bay Rural Bank v. National Livelihood Development Corporation*,[109] this Court explained that a receiver of a closed bank is tasked with the duty to hold the assets and liabilities in trust for the benefit of the bank's creditors.

As fiduciary of the insolvent bank, Philippine Deposit Insurance Corporation conserves and manages the assets of the bank to prevent the assets' dissipation. This includes the power to bring and defend any action that threatens to dissipate the closed bank's assets. *Balayan Bay Rural Bank* explained that Philippine Deposit Insurance Corporation does so, not as the real party-in-interest, but as a representative party, thus:

> As the fiduciary of the properties of a closed bank, the PDIC may prosecute or defend the case by or against the said bank as a representative party while the bank will remain as the real party in interest pursuant to Section 3, Rule 3 of the Revised Rules of Court which provides:
>
> > SEC. 3. Representatives as parties. — Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.
>
> The inclusion of the PDIC as a representative party in the case is therefore grounded on its statutory role as the fiduciary of the closed bank which, under Section 30 of R.A. 7653 (New Central Bank Act), is authorized to conserve the latter's property for the benefit of its creditors.[110] (Citation omitted)

---

[109] 770 Phil. 30 (2015) [Per *J.* Perez, First Division].

[110] *Id*. at 35.

For this reason, Republic Act No. 3591,[111] or the Philippine Deposit Insurance Corporation Charter, as amended,[112] grants Philippine Deposit Insurance Corporation the following powers as a receiver:

> (c) In addition to the powers of a receiver pursuant to existing laws, the Corporation is empowered to:
>
> (1) bring suits to enforce liabilities to or recoveries of the closed bank;
>
> . . . .
>
> (6) hire or retain private counsels as may be necessary;
>
> . . . .
>
> (9) exercise such other powers as are inherent and necessary for the effective discharge of the duties of the Corporation as a receiver.[113]

Balayan Bay Rural Bank summarized, thus:

> [T]he legal personality of the petitioner bank is not *ipso facto* dissolved by insolvency; it is not divested of its capacity to sue and be sued after it was ordered by the Monetary Board to cease operation. The law mandated, however, that the action should be brought through its statutory liquidator/receiver which in this case is the PDIC. The authority of the PDIC to represent the insolvent bank in legal actions emanates from the fiduciary relation created by statute which reposed upon the receiver the task of preserving and conserving the properties of the insolvent for the benefit of its creditors.[114]

Petitioner contends that it was not a closed bank at the time of the filing of this Petition on April 10, 2012 since the Court

---

[111] Rep. Act No. 3591 (1963). An Act Establishing the Philippine Deposit Insurance Corporation, Defining Its Powers And Duties And For Other Purposes.

[112] *See* Rep. Act No. 9302 (2004).

[113] Rep. Act No. 9302 (2004), Sec. 10, amending Rep. Act No. 3591 (1963), Sec. 9-A.

[114] *Balayan Bay Rural Bank v. National Livelihood Development Corporation*, 770 Phil. 30, 39 (2015) [Per *J.* Perez, First Division].

of Appeals January 27, 2012 Decision, docketed as CA-G.R. SP No. 118599, found the closure to have been illegal.[115]

This Court of Appeals Decision, however, was not yet final since the Monetary Board filed a timely motion for reconsideration.[116] There is also nothing in its dispositive portion which states that it was immediately executory.[117] Through its November 21, 2012 Amended Decision, the Court of Appeals reversed its January 27, 2012 Decision,[118] confirming petitioner's status as a closed bank under receivership. It was, therefore, erroneous for petitioner to presume that it was not a closed bank on April 10, 2012 when it filed its Petition with this Court considering that there was no final declaration yet on the matter.

Petitioner should have attempted to comply after the promulgation of the November 21, 2012 Amended Decision. Its substantial compliance would have cured the initial defect of its Petition.

Petitioner likewise claims that there was "an obvious conflict of interest"[119] if it was required to sue respondents only through Philippine Deposit Insurance Corporation, considering that respondent Monetary Board appointed Philippine Deposit Insurance Corporation as petitioner's receiver. This is a fact, however, that petitioner failed to address when it filed its Petition, signifying that petitioner had no intention of complying with the law when it filed its Petition or anytime after.

It was speculative on petitioner's part to presume that it could file this Petition without joining its receiver on the ground that Philippine Deposit Insurance Corporation might not allow the suit. At the very least, petitioner should have shown that it attempted to seek Philippine Deposit Insurance Corporation's

---

[115] *Rollo*, pp. 4278-4280.

[116] *Id*. at 3674-3675.

[117] *Id*. at 4278-4279.

[118] *Id*. at 3674-3675.

[119] *Id*. at 4280.

authorization to file suit. It was possible that Philippine Deposit Insurance Corporation could have granted its permission to be joined in the suit. If it had refused to allow petitioner to file its suit, petitioner still had a remedy available to it. Under Rule 3, Section 10 of the Rules of Court,[120] petitioner could have made Philippine Deposit Insurance Corporation an unwilling co-petitioner and be joined as a respondent to this case.

Petitioner's suit concerned its Business Plan, a matter that could have affected the status of its insolvency. Philippine Deposit Insurance Corporation's participation would have been necessary, as it had the duty to conserve petitioner's assets and to examine any possible liability that petitioner might undertake under the Business Plan.

Philippine Deposit Insurance Corporation also safeguards the interests of the depositors in all legal proceedings. Most bank depositors are ordinary people who have entrusted their money to banks in the hopes of growing their savings. When banks become insolvent, depositors are secure in the knowledge that they can still recoup some part of their savings through Philippine Deposit Insurance Corporation.[121] Thus, Philippine Deposit Insurance Corporation's participation in all suits involving the insolvent bank is necessary and imbued with the public interest.

In any case, petitioner's verification and certification of non-forum shopping was signed by its Executive Vice Presidents Maxy S. Abad and Atty. Francisco A. Rivera, as authorized by its Board of Directors.[122] Under Section 10(b) of the Philippine Deposit Insurance Corporation Charter, as amended:

---

[120] RULES OF COURT, Rule 3, Sec. 10 provides:

Section 10. Unwilling co-plaintiff. — If the consent of any party who should be joined as plaintiff cannot be obtained, he may be made a defendant and the reason therefor shall be stated in the complaint.

[121] See Rep. Act No. 9302 (2004), Sec. 16.

[122] *Rollo*, pp. 79–80.

b. The Corporation as receiver shall control, manage and administer the affairs of the closed bank. Effective immediately upon takeover as receiver of such bank, *the powers, functions and duties, as well as all allowances, remunerations and prerequisites of the directors, officers, and stockholders of such bank are suspended*, and the relevant provisions of the Articles of Incorporation and By-laws of the closed bank are likewise deemed suspended. [123] (Emphasis supplied)

When petitioner was placed under receivership, the powers of its Board of Directors and its officers were suspended. Thus, its Board of Directors could not have validly authorized its Executive Vice Presidents to file the suit on its behalf. The Petition, not having been properly verified, is considered an unsigned pleading.[124] A defect in the certification of non-forum shopping is likewise fatal to petitioner's cause.[125]

Considering that the Petition was filed by signatories who were not validly authorized to do so, the Petition does not produce any legal effect.[126] Being an unauthorized pleading, this Court never validly acquired jurisdiction over the case. The Petition, therefore, must be dismissed.

---

[123] See Rep. Act No. 9302 (2004), Sec. 10, amending Rep. Act No. 3591 (1963).

[124] See RULES OF COURT, Rule 7, Sec. 4, which provides:

Section 4. Verification. — Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

[125] See *Altres v. Empleo*, 594 Phil. 246 (2008) [Per *J.* Carpio Morales, *En Banc*].

[126] See *Tamondong v. Court of Appeals*, 486 Phil. 730 (2004) [Per *J.* Callejo, Sr., Second Division].

II

Even assuming that the Petition did not suffer from procedural infirmities, it must still be denied for lack of merit.

Unless otherwise provided for by law and the Rules of Court, petitions for certiorari against a quasi-judicial agency are cognizable only by the Court of Appeals. The Regional Trial Court had no jurisdiction over the Petition for Certiorari filed by petitioner against respondents.

Pursuant to Article XII, Section 20 of the Constitution,[127] Congress constituted Bangko Sentral[128] as an independent central monetary authority. As an administrative agency, it is vested with quasi-judicial powers, which it exercises through the Monetary Board. In *United Coconut Planters Bank v. E. Ganzon, Inc.*:[129]

A quasi-judicial agency or body is an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts. A "quasi-judicial function" is a term which applies to the action, discretion, etc., of

---

[127] CONST., Art. XII, Sec. 20 provides:

Section 20. The Congress shall establish an independent central monetary authority, the members of whose governing board must be natural-born Filipino citizens, of known probity, integrity, and patriotism, the majority of whom shall come from the private sector. They shall also be subject to such other qualifications and disabilities as may be prescribed by law. The authority shall provide policy direction in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.

Until the Congress otherwise provides, the Central Bank of the Philippines, operating under existing laws, shall function as the central monetary authority.

[128] See Rep. Act No. 7653 (1993).

[129] 609 Phil. 104 (2009) [Per J. Chico-Nazario, Third Division].

public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.

Undoubtedly, the BSP Monetary Board is a quasi-judicial agency exercising quasi-judicial powers or functions. As aptly observed by the Court of Appeals, the BSP Monetary Board is an independent central monetary authority and a body corporate with fiscal and administrative autonomy, mandated to provide policy directions in the areas of money, banking and credit. It has power to issue subpoena, to sue for contempt those refusing to obey the subpoena without justifiable reason, to administer oaths and compel presentation of books, records and others, needed in its examination, to impose fines and other sanctions and to issue cease and desist order. Section 37 of Republic Act No. 7653, in particular, explicitly provides that the BSP Monetary Board shall exercise its discretion in determining whether administrative sanctions should be imposed on banks and quasi-banks, which necessarily implies that the BSP Monetary Board must conduct some form of investigation or hearing regarding the same.[130]

Bangko Sentral's Monetary Board is a quasi-judicial agency. Its decisions, resolutions, and orders are the decisions, resolutions, and orders of a quasi-judicial agency. Any action filed against the Monetary Board is an action against a quasi-judicial agency.

This does not mean, however, that Bangko Sentral only exercises quasi-judicial functions. As an administrative agency, it likewise exercises "powers and/or functions which may be characterized as administrative, investigatory, regulatory, quasi-

---

[130] *Id*. at 122-124, citing *The Presidential Anti-Dollar Salting Task Force v. Court of Appeals*, 253 Phil. 344 (1989) [Per *J*. Sarmiento, *En Banc*]; *Tropical Homes, Inc. v. National Housing Authority*, 236 Phil. 580 (1987) [Per *J*. Gutierrez Jr., *En Banc*]; *Villarosa v. Commission on Elections*, 377 Phil. 497, 506 (1999) [Per *J*. Gonzaga-Reyes, *En Banc*]; Rep. Act No. 7653 (1993), Ch. I, Art. 1, Sec. 3; Rep. Act No. 7653 (1993), Ch. 1, Art. IV, Sec. 23; Rep. Act No. 7653 (1993) Ch. 1, Art. IV, Sec. 25; Rep. Act No. 7653 (1993), Ch. 1, Art. IV, Secs. 36-37.

legislative, or quasi-judicial, or a mix of these five, as may be conferred by the Constitution or by statute."[131]

In this case, the issue between the parties was whether the trial court had jurisdiction over petitions for certiorari against Bangko Sentral and the Monetary Board. Rule 65, Section 4 of the Rules of Court provides:

> Section 4. Where and when petition to be filed. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.
>
> The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. *If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals*. (Emphasis supplied)

The Rules of Court categorically provide that petitions for certiorari involving acts or omissions of a quasi-judicial agency "shall be filed in and cognizable only by the Court of Appeals."

As previously discussed, respondent Bangko Sentral exercises a myriad of functions, including those that may not be necessarily exercised by a quasi-judicial agency. It is settled, however, that it exercises its quasi-judicial functions through respondent Monetary Board. Any petition for certiorari against an act or omission of Bangko Sentral, when it acts through the Monetary Board, must be filed with the Court of Appeals. Thus, this Court in *Vivas v. Monetary Board and Philippine Deposit*

---

[131] *Bank of Commerce v. Planters Development Bank and Bangko Sentral Ng Pilipinas*, 695 Phil. 627, 660 (2012) [Per *J.* Brion, Second Division].

Insurance Corporation[132] held that the proper remedy to question a resolution of the Monetary Board is through a petition for certiorari filed with the Court of Appeals.

The Court of Appeals, therefore, did not err in dismissing the case before the Regional Trial Court since the trial court did not have jurisdiction over the Petition for Certiorari filed by petitioner against respondents.

This Court cannot subscribe to petitioner's contention that a Court of Appeals decision already provided for an exception to Rule 65. A Court of Appeals decision, no matter how persuasive or well written, does not function as *stare decisis*.[133] Neither can a Court of Appeals decision amend the Rules of Court.[134] As it stands, Rule 65 and jurisprudence hold that petitions for certiorari against the Monetary Board must be filed with the Court of Appeals.

III

While this Petition is considered dismissed, this Court takes the opportunity to address other lingering procedural issues raised by the parties in their pleadings.

Petitioner assails respondents' failure to file a motion for reconsideration of the trial court's denial of its motion to

---

[132] 716 Phil. 132 (2013) [Per *J.* Mendoza, Third Division].

[133] See *Government Service Insurance System v. Cadiz*, 453 Phil. 384 (2003) [Per *J.* Ynares-Santiago, First Division].

[134] CONST., Art. VIII, Sec. 5(5) provides:

Section 5. The Supreme Court shall have the following powers:

. . . . . .

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

dismiss before filing a petition for certiorari with the Court of Appeals.[135]

Rule 65, Section 1 of the Rules of Court requires that there be "no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law" available before a petition for certiorari can be filed. An order denying a motion to dismiss is merely an interlocutory order of the court as it does not finally dispose of a case.[136] In *BA Finance Corporation v. Pineda*,[137] a case citing the 1964 Rules of Court:

> It must be remembered that, normally, when an interlocutory order is sought to be reviewed or annulled by means of any of the extra legal remedies of prohibition or certiorari, it is required that a motion for reconsideration of the question[ed] order must first be filed, such being considered a speedy and adequate remedy at law which must first be resorted to as a condition precedent for filing of any of such proceedings (Secs. 1 and 2, Rule 65, Rules of Court).[138]

In contrast, Rule 41, Section 1(c) of the Revised Rules of Court now provides:

> Section 1. Subject of appeal. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> No appeal may be taken from:
>
> . . . .
>
> (c) An interlocutory order;
>
> . . . .
>
> In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

---

[135] *Rollo*, pp. 4267-4268.

[136] See *Rayos v. City of Manila*, 678 Phil. 952 (2011) [Per *J.* Carpio, Second Division].

[137] 204 Phil. 813 (1982) [Per *J.* Vasquez, First Division].

[138] *Id.* at 824.

It would appear that the Revised Rules of Court allow a direct filing of a petition for certiorari of an interlocutory order without need of a motion for reconsideration. However, in *Estate of Salvador Serra Serra v. Primitivo Hernaez*,[139] a case decided after the Rules of Court were revised in 1997:

> The settled rule is that a motion for reconsideration is a *sine qua non* condition for the filing of a petition for certiorari. The purpose is to grant an opportunity to public respondent to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case.[140]

This rule evolved from several labor cases of this Court. *Estate of Salvador Serra Serra* cited *Interorient Maritime Enterprises v. National Labor Relations Commission*[141] as basis for this rule, which in turn, cited *Palomado v. National Labor Relations Commission*[142] and *Pure Foods Corporation v. National Labor Relations Commission*.[143] This Court, in formulating the rule in *Palomado*, declared:

> The unquestioned rule in this jurisdiction is that certiorari will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against the acts of public respondent. In the instant case, the plain and adequate remedy expressly provided by [Sec. 9, Rule X, New Rules of the National Labor Relations Commission] was a motion for reconsideration of the assailed decision, based on palpable or patent errors, to be made under oath and filed within ten (10) calendar days from receipt of the questioned decision.[144]

Pure Foods Corporation, on the other hand, stated:

---

[139] 503 Phil. 736 (2005) [Per *J.* Ynares-Santiago, First Division].

[140] *Id*. at 743 citing *Interorient Maritime Enterprises, Inc. v. National Labor Relations Commission*, 330 Phil. 493 (1996) [Per *J*. Panganiban, Third Division].

[141] 330 Phil. 493 (1996) [Per *J*. Panganiban, Third Division].

[142] 327 Phil. 472 (1996) [Per *J*. Panganiban, Third Division].

[143] 253 Phil. 411 (1989) [Per *J*. Regalado, Second Division].

[144] *Palomado v. National Labor Relations Commission*, 327 Phil. 281 (1996) [Per *J*. Panganiban, Third Division].

In the present case, the plain and adequate remedy expressly provided by law was a motion for reconsideration of the assailed decision and the resolution thereof, which was not only expected to be but would actually have provided adequate and more speedy remedy than the present petition for certiorari. This remedy was actually sought to be availed of by petitioner when it filed a motion for reconsideration albeit beyond the 10-day reglementary period. For all intents and purposes, petitioner cannot now be heard to say that there was no plain, speedy and adequate remedy available to it and that it must, therefore, be allowed to seek relief by certiorari. This contention is not only untenable but would even place a premium on a party's negligence or indifference in availing of procedural remedies afforded by law.[145]

In labor cases, it was necessary to first file a motion for reconsideration before resorting to a petition for certiorari since the National Labor Relations Commission's rules of procedure provided for this remedy. The same rule has since applied to civil cases through *Estate of Salvador Serra Serra*, regardless of the absence of a provision in the Rules of Court requiring a motion for reconsideration even for interlocutory orders.

Thus, the general rule, in all cases, "is that a motion for reconsideration is a *sine qua non* condition for the filing of a petition for certiorari."[146] There are, however, recognized exceptions to this rule, namely:

(a) where the order is a patent nullity, as where the Court *a quo* had no jurisdiction; (b) where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration

---

[145] *Pure Foods Corporation v. National Labor Relations Commission*, 253 Phil. 411, 420 (1989) [Per *J.* Regalado, Second Division] citing *Plaza v. Mencias*, 116 Phil. 875 (1962) [Per *J.* Labrador, *En Banc*].

[146] *Estate of Salvador Serra Serra v. Heirs of Hernaez*, 503 Phil. 736, 743 (2005) [Per *J.* Ynares-Santiago, Third Division].

would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings [were] *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.[147] (Citations omitted)

In this instance, the trial court had no jurisdiction over the petition filed by petitioner against respondents, an issue which respondents properly asserted before the Court of Appeals when they filed *their* Petition for Certiorari.[148] They were, thus, excused from filing the requisite motion for reconsideration.

Considering that there is sufficient basis to dismiss this Petition outright, this Court finds it unnecessary to address the other issues raised.

In sum, this Court holds that petitioner did not have the legal capacity to file this Petition absent any authorization from its statutory receiver, Philippine Deposit Insurance Corporation. Even assuming that the Petition could be given due course, it would still be denied. The Court of Appeals did not err in dismissing the action pending between the parties before the trial court since special civil actions against quasi-judicial agencies must be filed with the Court of Appeals.

WHEREFORE, the Petition is **DISMISSED** on the ground of petitioner's lack of capacity to sue.

SO ORDERED.

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

---

[147] *Tan v. Court of Appeals*, 341 Phil. 576 (1997) [Per *J.* Francisco, Third Division].

[148] *Rollo*, p. 3703.

FIRST DIVISION

[G.R. No. 202324. June 4, 2018]

CONCHITA GLORIA and MARIA LOURDES GLORIA-PAYDUAN, *petitioners, vs.* **BUILDERS SAVINGS AND LOAN ASSOCIATION, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; MODES OF ACQUIRING OWNERSHIP; SUCCESSION; NO JUDICIAL DECLARATION OF HEIRSHIP IS NECESSARY IN ORDER THAT AN HEIR MAY ASSERT HIS RIGHT TO THE PROPERTY OF THE DECEASED.— The evidence reveals that Lourdes is the daughter of Juan and Conchita. There is on record a Certification of Birth issued by the Lipa City Office of the Local Civil Registrar indicating that Lourdes was born to Juan and Conchita; this document was marked as Exhibit "H" during the proceedings below, and remains uncontested. Moreover, Lourdes categorically testified during trial that she was the natural child of Juan and Conchita x x x. Being the daughter of the deceased Juan and Conchita, Lourdes has an interest in the subject property as heir to Juan and co-owner with Conchita. The fact that she was not judicially declared as heir is of no moment, for, as correctly argued by petitioners, there was no need for a prior declaration of heirship before heirs may commence an action arising from any right of their predecessor, such as one for annulment of mortgage. "[N]o judicial declaration of heirship is necessary in order that an heir may assert his or her right to the property of the deceased."

2. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING; IN A CASE INVOLVING CO-OWNERS OF PROPERTY WHICH IS THE SUBJECT MATTER OF THE SUIT, THE FAILURE OF THE OTHER CO-OWNERS TO SIGN THE VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING IS NOT FATAL.— As regards the supposed defective verification occasioned by Conchita's failure to sign the amended complaint with its concomitant verification and certification against forum

shopping, the Court has repeatedly held that in a case involving co-owners of property where said property is the subject matter of the suit, the failure of the other co-owners to sign the verification and certification against forum shopping is not fatal, as the signing by only one or some of them constitutes substantial compliance with the rule. x x x "As such co-owners, each of the heirs may properly bring an action for ejectment, forcible entry and detainer, or any kind of action for the recovery of possession of the subject properties. Thus, a co-owner may bring such an action, even without joining all the other co-owners as co-plaintiffs, because the suit is deemed to be instituted for the benefit of all."

3. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; MORTGAGES; A REAL ESTATE MORTGAGE CONTRACT IS VOID IF THE MORTGAGOR IS NOT THE ABSOLUTE OWNER OF THE PROPERTY MORTGAGED.—** As a consequence of Biag's fraud and forgery of the loan and mortgage documents, the same were rendered null and void. This proceeds from the fact that Biag was not the Owner of the subject property and may not thus validly mortgage it, as well as the well-entrenched rule that a forged or fraudulent deed is a nullity and conveys no title. "In a real estate mortgage contract, it is essential that the mortgagor be the absolute owner of the property to be mortgaged; otherwise, the mortgage is void." And "when the instrument presented for registration is forged, even if accompanied by the owner's duplicate certificate of title, the registered owner does not thereby lose his title, and neither does the mortgagee acquire any right or title to the property. In such a case, the mortgagee under the forged instrument is not a mortgagee protected by Law." Lastly, when "the person applying for the loan is other than the registered owner of the real property being mortgaged[, it] should have already raised a red flag and x x x should have induced the [mortgagee] to make inquiries into and confirm [the authority of the mortgagor]."

APPEARANCES OF COUNSEL

Law Office of Calanog & Associates for petitioners.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the March 13, 2012 Decision[2] and June 18, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 82774, which respectively reversed the March 12, 2004 Order[4] of the Quezon City Regional Trial Court, Branch 224 (RTC) in Civil Case No. Q-93-16621 and denied herein petitioner' Motion for Reconsideration.[5]

Factual Antecedents

Spouses Juan and herein petitioner Conchita Gloria (Conchita) are registered owners of a parcel of land located in Kamuning, Quezon City covered by Transfer Certificate of Title No. 35814 (TCT 35814).[6] Petitioner Maria Lourdes Gloria-Payduan (Lourdes) is their daughter.[7]

On August 14, 1987, Juan passed away.[8]

On December 7, 1993, Conchita and Lourdes filed before the RTC a Second Amended Complaint[9] against respondent Builders Savings and Loan Association, Inc. (Builders Savings), Benildo Biag (Biag), and Manuel F. Lorenzo for "declaration of null and void real estate mortgage, promissory note, cancellation of notation in the transfer certificate of title, and

---

[1] *Rollo*, pp. 8-24.

[2] *Id*.at 120-134; penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Fernanda Lampas Peralta and Mario V. Lopez.

[3] *Id*. at 146-147.

[4] *Id*. at 55-64; penned by Pairing Judge Ramon A Cruz.

[5] *Id*. at 135-144.

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

[7] *Id*. at 153.

[8] *Id*. at 29.

[9] *Id*. at 41-46.

damages"[10] with prayer for injunctive relief. The case was docketed as Civil Case No. Q-93-16621. Petitioners claimed that Biag duped them into surrendering TCT 35814 to him under the pretense that Biag would verify the title, which he claimed might have been fraudulently transferred to another on account of a fire that gutted the Quezon City Registry of Deeds; that Biag claimed that the title might need to be reconstituted; that Biag instead used the title to mortgage the Kamuning property to respondent Builders Savings; that Conchita was fraudulently made to sign the subject loan and mortgage documents by Biag, who deceived Conchita into believing that it was actually Lourdes who requested that these documents be signed; that the subject Mortgage[11] and Promissory Note[12] contained the signature not only of Conchita, but of Juan, who was by then already long deceased, as mortgagor and co-maker; that at the time the loan and mortgage documents were supposedly executed, Conchita was already sickly and senile, and could no longer leave her house; that Biag and Builders Savings conspired in the execution of the forged loan and mortgage documents, that the forged loan and mortgage documents were not signed/affirmed before a notary public; that on account of Biag and Builders Savings' collusion, the subject property was foreclosed and sold at auction to the latter; and that the loan and mortgage documents, as well as the foreclosure and sale proceedings, were null and void and should he annulled. Petitioners thus prayed that the Mortgage and Promissory Note be declared null and void; that the encumbrances/annotations in the subject title be cancelled; that the certificate of title be returned to them; and that they be awarded ₱500,000.00 moral damages, ₱50,000.00 exemplary damages, ₱20,000.00 actual damages, ₱20,000.00 attorney's fees and other legal expenses, and costs of suit.

On the other hand, Builders Savings claimed that —

---

[10] *Id*. at 41.

[11] *Id*. at 33.

[12] *Id*. at 34.

x x x Lourdes Payduan had neither the capacity to sue nor the authority and interest to file the case *a quo*. She was merely an "ampon" or "palaki" of the Spouses Juan and Conchita Gloria and was not legally adopted by them. Moreover, Conchita neither signed the verification attached to the complaint nor executed a special power of attorney to authorize her daughter Maria Lourdes to pursue the case *a quo*. Further, Conchita never appeared in court to testify during trial. BLSA presented its Credit Investigator Danilo Reyes who testified that he personally met Spouses Juan and Conchita Gloria, Maria Lourdes and her husband, and Benildo Biag when they went to their office to apply for a loan. He also saw the identification card presented by Juan to verify and confirm his identity. Likewise, Conchita was a retired public school teacher who could not be cajoled by Benildo to execute a real estate mortgage on her property against her will. In the same vein, the fact that Conchita submitted floor plans of her house and its tax declarations only signified that she voluntarily mortgaged her property.[13]

Ruling of the Regional Trial Court

On September 26, 2003, the RTC issued its Decision in Civil Case No. Q-93-16621 dismissing petitioners' complaint for lack of merit. The counterclaims and crossclaims were likewise dismissed.

Petitioners moved to reconsider.

On March 12, 2004, the RTC issued its Order granting petitioners' motion for reconsideration. The trial court held:

When plaintiff Marides Gloria Payduan testified, she told the Court that Benildo Biag was introduced to her by her husband for the purpose or reconstituting TCT No. 35814 because it was one of those burned. Benildo Biag told them that he [knows] of someone who could help them reconstitute the title. This happened sometime [in] June of 1988. So, they gave him the original copy of the title on June 26 at their residence at 161 K-3rd Street, Kamuning, Quezon City. Mr. Benildo Biag promised to return the title to them, but failed to [do so] until they knew that it has already been mortgaged. (TSN April 25, 1997, pp. 21 to 26).

---

[13] *Id*. at 123-124.

x x x x x x x x x

[Thus, when p]laintiff Conchita Gloria x x x signed the promissory note and the real estate mortgage[, she] was not acting freely and with all her faculties functioning. She signed the papers given to her by Benildo Biag under the thought that this will be used in the reconstitution of her original certificate of title but it turned out however that Benildo Biag used them to secure the loan proceeds from the defendant Builders.

Under Article 1330 of the Civil Code, a contract where consent is given through mistake, violence, intimidation, undue influence or fraud is voidable.

x x x x x x x x x

Under the circumstances, defendant Builders should have exerted extra diligence before it approved the loan application of Benildo Biag and had it [exerted] extra effort in investigating the factual circumstances of the loan application, it could have discovered that plaintiff Conchita Gloria's signature in the promissory note x x x and the deed of real estate mortgage x x x were not authorized and that her husband Juan Gloria had died x x x before the filing of the loan application. These are factual milieu which militates against Builders. As held in Gatioan vs. Gaffud (27 SCRA 706), before a bank grants a loan on the security of land, it must undertake a careful examination of the title of the applicant as well as a physical and on the spot investigation of the land offered as a security. There is a dearth of proof in the Builders evidence that it has investigated the person of plaintiff Conchita Gloria and the land offered as a collateral.

The case of Rural Bank of Caloocan City vs. CA (104 SCRA 151) is also four square. It was held therein that 'A contract may be annulled on the ground of vitiated consent, if deceit by a third person, even without connivance or complicity with one of the contracting parties, resulted in mutual error on the part of the parties to the contract. x x x The possibility of her not knowing that she signed the promissory note as co-maker x x x, and that her property was mortgaged to secure the x x x loans, in view of her personal circumstances - ignorance, lack of education and old age - should have placed the Bank on prudent inquiry to protect its interest and that of the public it serves. With the recent occurrence of events that have supposedly affected adversely our banking system, attributable to laxity in the conduct of bank business by its bank officials, the need [for] extreme caution and

prudence by said officials and employees in the discharge of their functions cannot be overemphasized.'

Art. 2085 of the Civil Code, is also appropriate. It provides that:

x x x x x x x x x

3. The mortgagor should have the free disposal of the property mortgaged and in the absence thereof, he should be authorized for the purpose.

Thus, it is settled that if a forger mortgages another's property, the mortgage is void. (De Lara vs. Ayroso, 95 Phil. 185)

x x x x x x x x x

Similarly, in Parqui vs. PNB (96 Phil. 157), the Court said, 'there can be no question that the mortgage under consideration is a nullity the same having been executed by an impostor without the authority of the owner of the interest mortgaged. Its registration under the Land Registration Law lends no validity because, according to the last proviso to the second paragraph of Section 55 of that law, registration procured by the presentation of a forged deed is null and void.'

The evidence extant in the records being preponderant to establish the negligence of Builders, the Court next looks at plaintiffs' claim tor damages. x x x

x x x x x x x x x

Under Article 2217 of the New Civil Code, moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary estimation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission. An amount of ₱200,000.00 to answer for her sufferings, anguish and fright appears to be reasonable and fair.

On the other hand, the Court has to deny plaintiffs' prayer for actual damages since plaintiffs failed to substantiate the same, either by testimonial or documentary evidence. It is a basic rule that one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. (Art. 2219, NCC). x x x

The Court likewise finds it proper to award an attorney's fees in the amount of ₱20,000.00 in favor of the plaintiffs as they were compelled to litigate the instant case through their counsel. x x x

x x x x x x x x x

Accordingly, therefore, the decision of the Court dated September 26, 2003 is hereby reconsidered and set aside and a new one is entered in favor of the plaintiff[s] and as against the defendant:

a) declaring the real estate mortgage dated June 26, 2001 and the promissory note dated June 28, 2001 null and void;

b) directing the cancellation of the annotations in the TCT No. 35814 of Conchita Gloria;

c) directing the defendant Builders Savings and Loan Association, Inc. to return to plaintiffs TCT No. 35814 of the Registry of Deeds of Quezon City free from all liens and encumbrances;

d) directing the defendant Builders to pay plaintiffs moral damages in the amount of ₱200,000.00; and

e) directing the defendant Builders to pay plaintiffs attorney's fees in the amount of ₱20,000.00.

SO ORDERED.[14]

Ruling of the Court of Appeals

Respondent interposed an appeal before the CA. On March 13, 2012, the CA issued the assailed Decision, decreeing as follows:

In fine, BSLA asserts that x x x Conchita voluntarily executed the real estate mortgage who submitted supporting documents to secure the loan of Benildo Biag. The testimony of Maria Lourdes assailing the contract was merely hearsay and could not be used as evidence and basis for the nullification of the contract.

x x x x x x x x x

The appeal is impressed with merit.

x x x x x x x x x

---

[14] *Id*. at 56-64.

Here, after a careful perusal of the records, this Court finds that there are procedural infirmities that warrant the dismissal of the complaint *a quo.*

First, the complaint sought for the nullification of real estate mortgage contract and promissory note executed by Conchita to secure the loan of Benildo with BSLA on the ground that Conchita's signature was obtained through fraud, without her full knowledge of the import of her act.

The parties to a contract are the real parties in interest in an action upon it. Thus, Rule 3 of the Rules of Court defines a real party in interest, thus:

> Sec. 2. Parties in interest. — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

The aforestated provision has two (2) requirements: 1) to institute an action, the plaintiff must be the real party in interest, and 2) the action must be prosecuted in the name of the real party in interest. x x x When the plaintiff is not the real party in interest, the case is dismissible on the ground of lack of cause of action. Accordingly, only the contracting parties are bound by the stipulations in the contract since they are the ones who would benefit from and could violate it. Hence, one who is not a party thereto, and for whose benefit it was not expressly made, cannot maintain an action on it. x x x In the case at bar, the real party in interest was Conchita being the person who executed the real estate mortgage contract. It was she who would stand to suffer by the fulfillment of its terms because she obligated herself as a mortgagor who would answer to BSLA upon the default of Benildo.

On the other hand, Maria Lourdes claimed that she is a real party in interest because she is a co-owner of the property for having inherited a portion thereof from her deceased father, Juan.

We are not persuaded.

When an alleged heir [sues] to nullify a document which would impair her interest as such heir, her successional rights must first be determined in a special proceeding. x x x

x x x x x x x x x

Thus, in order that Maria Lourdes be clothed with personality to institute the complaint *a quo,* she must show that she has a real interest which would suffer any detriment by its performance or annulment. This she must do only after establishing that she is a legal heirs of Juan and that she inherited the property subject of the mortgage and accordingly, a co-owner thereof. This, however, Maria failed to do. Nothing in the records appear that a judicial or extrajudicial partition was made by Juan's heirs. Neither does it appear that the only property left by Juan is the same property subject of the mortgage. Further, Maria Lourdes did not present any evidence to establish her rights as heir or prove that Juan had no other heirs who are not parties in this case. Apparently, there is yet a need to first determine Maria Lourdes' rights through a special proceeding. Clearly, then, Maria Lourdes could not be considered a real party in interest to institute the action in the court *a quo* to nullify the real estate mortgage executed by Conchita absent any proof to show that she has an interest over the subject property.

On this note, this brings us to the second point in issue. A careful perusal of the record shows that plaintiffs-appellees' *Second Amended Complaint* appears to have been accompanied with a defective verification which was signed by Maria Lourdes only and not Conchita, with no reasonable justification for the omission whatsoever. It was likewise not accompanied by a certification against non-forum shopping [sic] with no justification presented by plaintiffs-appellees. x x x

x x x x x x x x x

It is true that defect in the verification will not render the pleading fatally detective. This, however, does not hold true for a certification against forum shopping which must be signed by all the plaintiffs. Failure to do so will result to the dropping of the parties who did not sign. Here, the failure of Conchita to sign the certification against non-forum shopping [sic], not once, but thrice, [in] the *Complaint, Amended Complaint,* and *Second Amended Complaint,* would result to dropping her from the case as plaintiff therein. She was not able to provide any justification for this omission to warrant the relaxation of the rules. Moreover, Conchita and Maria Lourdes do not hold a common interest because Conchita was the party who executed the real estate mortgage contract and the registered owner of the subject property, while as above-discussed, Maria Lourdes's interest was not established.

Assuming *arguendo* that Conchita will not be dropped as party to the case, the evidence presented by plaintiffs-appellees are not sufficient to support the grant of their complaint. The allegations of fraud were established only through the testimony of Maria Lourdes who had no personal knowledge of the circumstances that would constitute the fraud allegedly committed by BSLA. She merely relied on the statement made by Conchita that she was misled into signing the contract making her believe that it was for the reconstitution of her title with the Register of Deeds. Thus, Maria Lourdes' statement has no probative value absent any showing that the evidence falls within the exception to the hearsay evidence rule.

Based on the foregoing, this Court is constrained to dismiss plaintiffs-appellees' complaint.

WHEREFORE, the *Order* dated March 12, 2004 of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 224, Quezon City, in Civil Case No. Q-93-16621, entitled "Conchita Gloria, et al., Plaintiffs, versus Builders Savings and Loan Association Inc., et al., Defendants, is REVERSED AND SET ASIDE. The *Second Amended Complaint* dated December 3, 1993 filed by plaintiffs-appellees Conchita Gloria and Maria Lourdes Payduan is DISMISSED.

SO ORDERED.[15]

Petitioners moved to reconsider, but in a June 18, 2012 Resolution, the CA held its ground. Hence, the present Petition.

Issues

Petitioners submit the following issues to be resolved:

1. WHETHER x x x PETITIONER MARIA LOURDES GLORIA-PAYDUAN AS CO-OWNER OF SUBJECT REAL PROPERTY, IS A REAL PARTY IN INTEREST IN THIS CASE.

2. WHETHER x x x IT IS APPROPRIATE FOR THE APPELLATE COURT TO PASS UPON ISSUE NOT RAISED BY APPELLANT IN ITS APPELLANT'S BRIEF'S ASSIGNMENT OF ERRORS.[16]

---

[15] *Id.* at 126-133.

[16] *Id.* at 14.

Petitioners' Arguments

Petitioners contend that Lourdes had proved that she was the daughter of Conchita and Juan; that the subject property was conjugal property belonging to both Juan and Conchita; that when Juan died in 1987, Lourdes became a co-owner of the subject property by virtue of her being a compulsory heir of Juan; that as co-owner of the subject property, she has the required interest to prosecute Civil Case No. Q-93-16621; that the CA erred in declaring that Lourdes must first obtain a declaration of heirship, since Article 777 of the Civil Code specifically provides that successional rights are transmitted from the decedent to his/her heirs from the moment of death of the former; that even if there were no pending settlement proceedings for the distribution of a decedent's estate, there was no need for a prior declaration of heirship before the heirs may commence an action arising from any right of the deceased, such as the right to bring an action to annul a sale;[17] that the issue of lack or improper verification was never raised by the respondent at any stage of the proceedings, yet the CA unduly took cognizance thereof that even if Conchita failed to sign the amended complaint, this could not affect the same since both she and Lourdes shared a common interest in the subject property as co-owners thereof; and that the subject real estate mortgage and promissory note were null and void for being simulated, since they were supposedly signed and executed by Juan in 1991, when he actually passed away in 1987.

Petitioners pray that the CA dispositions be annulled and in lieu thereof, the RTC's March 12, 2004 Order be reinstated.

Respondent's Arguments

Respondent, on the other hand, failed to comment on the Petition despite repeated directives from the Court.

Our Ruling

The Petition is granted.

---

[17] Citing *Quison v. Salud,* 12 Phil. 109 (1908), cited in Paras, *Civil Code of the Philippines* Annotated, 12th Edition, Volume 3, p. 18.

The evidence reveals that Lourdes is the daughter of Juan and Conchita. There is on record a Certification of Birth[18] issued by the Lipa City Office of the Local Civil Registrar indicating that Lourdes was born to Juan and Conchita; this document was marked as Exhibit "H" during the proceedings below, and remains uncontested. Moreover, Lourdes categorically testified during trial that she was the natural child of Juan and Conchita, thus:

CROSS-EXAMINATION

ATTY. TAMPOC	-	Ms. Marides Gloria, you claimed to be the daughter of Conchita Gloria, one of the plaintiffs in this case?
A	-	Yes, sir.
Q	-	You are, however, claiming only to be the adopted daughter of plaintiff Conchita Gloria, correct?
A		No, sir, I am the true daughter, sir.
COURT	-	Tunay na anak?
A	-	I was the daughter, Your Honor.
Q	-	Being a daughter she is a compulsory heir, Atty. Tampo.
x x x		x x x x x x
COURT	-	Ano ka ba, tunay na anak o adopted ka lang?
A		I am a true daughter, Your Honor. In fact, I have a birth certificate.[19]

Being the daughter of the deceased Juan and Conchita, Lourdes has an interest in the subject property as heir to Juan and co-owner with Conchita. The fact that she was not judicially declared as heir is of no moment, for, as correctly argued by petitioners, there was no need for a prior declaration of heirship before heirs may commence an action arising from any right of their

---

[18] *Rollo.* p. 153.

[19] *Id.* at 149-152.

predecessor, such as one for annulment of mortgage. "[N]o judicial declaration of heirship is necessary in order that an heir may assert his or her right to the property of the deceased."[20]

> x x x. A prior settlement of the estate is not essential before the heirs can commence any action originally pertaining to the deceased as we explained in *Quison v. Salud* –
>
> > Claro Quison died in 1902. It was proven at the trial that the present plaintiffs are next of kin and heirs, but it is said by the appellants that they [were] not entitled to maintain this action because there [was] no evidence that any proceedings [had] been taken in court for the settlement of the estate of Claro Quison; and that without such settlement, the heirs cannot maintain this action. There is nothing in this point. [Under] the Civil Code [and/or] Code of Civil Procedure, the title to the property owned by a person who dies intestate passes at once to his heirs. Such transmission is, under the present law, subject to the claims of administration and the property may be taken from the heirs for the purpose of paying debts and expenses, but this does not prevent an immediate passage of the title, upon the death of the intestate, from himself to his heirs. Without some showing that a judicial administrator had been appointed in proceedings to settle the estate of Claro Quison, the right of the plaintiffs to maintain this action is established.
>
> Conformably with the foregoing and taken in conjunction with Arts. 777 and 494 of the Civil Code, from the death of Lourdes Sampayo her rights as a co-owner, incidental to which is the light to ask for partition at any time or to terminate the co-ownership, were transmitted to her rightful heirs. In so demanding partition private respondents merely exercised the right originally pertaining to the decedent, their predecessor-in-interest.[21] (Citations omitted)

As regards the supposed defective verification occasioned by Conchita's failure to sign the amended complaint with its concomitant verification and certification against forum shopping the Court has repeatedly held that in a case involving co-owners

---

[20] *Capablanca v. Bas*, G.R. No. 224144, June 28, 2017.

[21] *Heirs of Ignacio Conti v. Court of Appeals,* 360 Phil. 536, 546 (1998).

of property where said property is the subject matter of the suit, the failure of the other co-owners to sign the verification and certification against forum shopping is not fatal, as the signing by only one or some of them constitutes substantial compliance with the rule.

Finally, we find no merit in respondents' argument that the present petition should be dismissed for failure of the other co-heirs/co-petitioners to sign the verification and certification against forum-shopping as required by Sections 4 and 5, Rule 7 of the 1997 Rules of Civil Procedure.

In the case of *Iglesia Ni Cristo v. Judge Ponferrada* we expounded on the purpose and sufficiency of compliance with the verification and certification against forum shopping requirements, *viz.*:

> The issue in the present case is not the lack of verification but the sufficiency of one executed by only one of [the] plaintiffs. This Court held in *Ateneo de Naga University v. Manalo,* that the verification requirement is deemed substantially complied with when, as in the present case, only one of the heirs-plaintiffs, who has sufficient knowledge and belief to swear to the truth of the allegations in the petition (complaint), signed the verification attached to it. Such verification is deemed sufficient assurance that the matters alleged in the petition have been made in good faith or are true and correct, not merely speculative.
>
> The same liberality should likewise be applied to the certification against forum shopping. The general rule is that the certification must be signed by all plaintiffs in a case and the signature of only one of them is insufficient. However, the Court has also stressed in a number of cases that the rules on forum shopping were designed to promote and facilitate the orderly administration of justice and thus should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective. The rule of substantial compliance may be availed of with respect to the contents of the certification. This is because the requirement of strict compliance with the provisions merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded.
>
> The substantial compliance rule has been applied by this Court in a number of cases: *Cavile v. Heirs of Cavile,* where

> the Court sustained the validity of the certification signed by only one of petitioners because he is a relative of the other petitioner and co-owner of the properties in dispute; *Heirs of Agapito T. Olarte v. Office of the President of the Philippines,* where the Court allowed a certification signed by only two petitioners because the case involved a family home in which all the petitioners shared a common interest; *Gudoy v. Guadalquiver,* where the Court considered as valid the certification signed by only four of the nine petitioner because all petitioners filed as co-owners pro indiviso a complaint against respondents for quieting of title and damages, as such, they all have joint interest in the undivided whole; and *Dar v. Alonzo-Legasto,* where the Court sustained the certification signed by only one of the spouses as they were sued jointly involving a property in which they had a common interest.
>
> It is noteworthy that in all of the above cases, the Court applied the rule on substantial compliance because of the commonality of interest of all the parties with respect to the subject of the controversy.[22] (Citations omitted)

"As such co-owners, each of the heirs may properly bring an action for ejectment, forcible entry and detainer, or any kind of action for the recovery of possession of the subject properties. Thus, a co-owner may bring such an action, even without joining all the other co-owners as co-plaintiffs, because the suit is deemed to be instituted for the benefit of all."[23]

Finally, the Court finds the trial court to be correct in issuing the March 12, 2004 Order granting petitioners' motion for reconsideration and declaring the mortgage and promissory note as null and void. The evidence indicates that these documents were indeed simulated; as far as petitioners were concerned, they merely entrusted the title to the subject property to Biag for the purpose of reconstituting the same as he claimed that the title on file with the Registrar of Deeds of Quezon City may have been lost by fire. Petitioners did not intend for Biag

---

[22] *Heirs of Renato L. Delfino, Sr. (Deceased) v. Anasao,* 742 Phil. 699, 717-718 (2014).

[23] *Iglesia ni Cristo v. Judge Ponferrada,* 536 Phil. 705, 722 (2006).

to mortgage the subject property in 1991 to secure a loan; yet the latter, without petitioners' knowledge and consent, proceeded to do just that, and in the process, he falsified the loan and mortgage documents and the accompanying promissory note by securing Conchita's signatures thereon through fraud and misrepresentation and taking advantage of her advanced age and naivete and forged Juan's signature and made it appear that the latter was still alive at the time, when in truth and in fact, he had passed away in 1987. A Certificate of Death[24] issue d by the Quezon City Local Civil Registrar and marked as Exhibit "D" and admitted by the trial court proves this fact. Under the Civil Code,

> Art. 1346. An absolutely simulated or fictitious contract is void.
>
> x x x x x x x x x
>
> Art. 1409. The following contracts are in existent and void from the beginning:
>
> (1) x x x;
>
> (2) Those which are absolutely simulated or fictitious;

In the case of *Spouses Solivel v. Judge Francisco,*[25] the Court made the following pronouncement:

> x x x Thus, in *Ayroso,* this Court annulled a mortgage executed by an impostor who had unauthorizedly gained possession of the certificate of title thru the owner's daughter and forged said owner's name to the deed of mortgage which was subsequently registered. In so doing, the Court found more applicable the case of *Ch. Veloso vs. La Urbana and Del Mar,* which also voided a mortgage of real property owned by plaintiff Veloso constituted by her brother-in-law, the defendant Del Mar, using two powers-of-attorney to which he had forged the signatures of said plaintiff and her husband, and which mortgage was later registered with the aid of the certificate of title that had come into Del Mar's possession by unknown means. x x x

---

[24] *Rollo,* p. 29.

[25] 252 Phil. 223, 229-230 (1989).

Even more in point and decisive or the issue here raised, however, is the much later case of *Joaquin vs. Madrid,* where the spouses Abundio Madrid and Rosalinda Yu, owners of a residential lot in Makati, seeking a building construction loan from the then Rehabilitation Finance Corporation, entrusted their certificate of title for surrender to the RFC to Rosalinda's godmother, a certain Carmencita de Jesus, who had offered to expedite the approval of the loan. Later having obtained a loan from another source, the spouses decided to withdraw the application they had filed with the RFC and asked Carmencita to retrieve their title and return it to them. Carmencita failed to do so, giving the excuse that the employee in charge of keeping the title was on leave. It turned out, however, that through the machinations of Carmencita, the property had been mortgaged to Constancio Joaquin in a deed signed by two persons posing as the owners and that after said deed had been registered, the amount for which the mortgage was constituted had been given to the person who had passed herself off as Rosalinda Yu. x x x (Citations omitted)

As a consequence of Biag's fraud and forgery of the loan and mortgage documents, the same were rendered null and void. This proceeds from the fact that Biag was not the Owner of the subject property and may not thus validly mortgage it, as well as the well-entrenched rule that a forged or fraudulent deed is a nullity and conveys no title. "In a real estate mortgage contract, it is essential that the mortgagor be the absolute owner of the property to be mortgaged; otherwise, the mortgage is void."[26] And "when the instrument presented for registration is forged, even if accompanied by the owner's duplicate certificate of title, the registered owner does not thereby lose his title, and neither does the mortgagee acquire any right or title to the property. In such a case, the mortgagee under the forged instrument is not a mortgagee protected by Law."[27] Lastly, when "the person applying for the loan is other than the registered owner of the real property being mortgaged[,it] should have already raised a red flag and x x x should have induced the

---

[26] *Land Bank of the Philippines v. Poblete,* 704 Phil. 610, 621 (2013).

[27] *Id.* at 620.

[mortgagee] to make inquiries into and confirm [the authority of the mortgagor]."[28]

WHEREFORE, the Petition is **GRANTED.** The assailed March 13, 2012 Decision and June 18, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 82774 are **ANNULLED** and **SET ASIDE.** The March 12, 2004 Order of the Quezon City Regional Trial Court Branch 224 in Civil Case No. Q-93-16621 is **REINSTATED**.

SO ORDERED.

Leonardo-de Castro[*] (*Acting Chairperson*), *Jardeleza,* and *Gesmundo, JJ.,* concur.

Tijam, J.,[**] on official leave.

FIRST DIVISION

[G.R. No. 204131. June 4, 2018]

SPOUSES JAIME AND CATHERINE BASA, SPOUSES JUAN AND ERLINDA OGALE represented by WINSTON OGALE, SPOUSES ROGELIO AND LUCENA LAGASCA represented by LUCENA LAGASCA, AND SPOUSES CRESENCIO AND ELEADORA APOSTOL, *petitioners, vs.* **ANGELINE LOY *VDA. DE* SENLY LOY, HEIRS OF ROBERT CARANTES, THE REGISTER OF DEEDS FOR BAGUIO CITY, and THE CITY ASSESSOR'S OFFICE OF BAGUIO CITY,** *respondents.*

---

[28] *Bank of Commerce v. Spouses San Pablo, Sr.,* 550 Phil. 805, 822-823 (2007).

[*] Per Special Order No. 2559 dated May 11, 2018.

[**] Per Special Order No. 2560 dated May 11, 2018.

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; OWNERSHIP; QUIETING OF TITLE; CANNOT PROSPER WITHOUT DULY PROVING THE EXISTENCE OF LEGAL OR EQUITABLE TITLE; CASE AT BAR.—** By petitioners' failure to present the original copies of the purported deeds of sale in their favor, the case for quieting of title did not have a leg to stand on. Petitioners were unable to show their claimed right or title to the disputed property, which is an essential element in a suit for quieting of title. Their belated presentation of the supposed originals of the deeds of sale by attaching the same to their motion for reconsideration does not deserve consideration as well; the documents hardly qualify as evidence. x x x Even if petitioners are in possession of the disputed property, this does not necessarily prove their supposed title. It may be that their possession of the disputed property is by lease or any other agreement or arrangement with the owner — or simply by mere tolerance. Without adequately proving their title or right to the disputed portions of the property, their case for quieting of title simply cannot prosper.

2. **ID.; ID.; ID.; ID.; ID.; REQUISITES.—** "[F]or an action to quiet title to prosper, two (2) indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy." "Legal title denotes registered ownership, while equitable title means beneficial ownership."

APPEARANCES OF COUNSEL

Basa Balagtey Law Offices for petitioners.

Marvin C. Yang-Ed for respondent A. Loy.

Geronimo R. Evangelista, Jr. for respondent heirs of Robert Carantes.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the May 31, 2012 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 95490 affirming the January 22, 2010 Decision of the Regional Trial Court (RTC) of Baguio City, Branch 7 in Civil Case No. 6280-R, and the CA's subsequent October 11, 2012 Resolution[3] denying herein petitioners' Motion for Reconsideration.[4]

Factual Antecedents

This case revolves around a 496-square meter residential lot situated in New Lucban, Baguio City covered by Transfer Certificate of Title No. T-30086 (subject property) in the name of the late Busa Carantes, who is the predecessor-in-interest of Manuel Carantes and herein respondent Robert Carantes.

The subject property was mortgaged to respondent Angeline Loy and her husband in 1994. Thereafter, they foreclosed on the mortgage, and at the auction sale, they emerged the highest bidder. On March 31, 2006, after consolidating ownership over the subject property, Branch 6 of the Baguio RTC — in LRC ADM Case No. 1546-R — issued in their favor a writ of possession.

On May 30, 2006, herein petitioners — spouses Jaime and Catherine Basa, spouses Juan and Erlinda Ogale, spouses Rogelio and Lucena Lagasca, and spouses Cresencio and Eleadora Apostol — filed before Branch 7 of the Baguio RTC a petition for quieting of title with prayer for injunctive relief and damages, docketed as Civil Case No. 6280-R, against respondents Angeline Loy, Robert Carantes, the Registry of Deeds for Baguio City, and

---

[1] *Rollo,* pp. 12-30.

[2] *Id*. at 32-47; penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Mario V. Lopez and Socorro B. Inting.

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

[4] *Id*. at 48-56.

the Baguio City Sheriff and Assessor's Office. They essentially claimed that in 1992 and 1993, portions of the subject property — totaling 351 square meters — have already been sold to them by respondent Robert Carantes, by virtue of deeds of sale executed in their favor, respectively; that they took possession of the portions sold to them; and that the titles issued in favor of Angeline Loy created a cloud upon their title and are prejudicial to their claim of ownership. They thus prayed that the documents, instruments, and proceedings relative to the sale of the subject property to respondent Angeline Loy be cancelled and annulled, and that they be awarded damages and declared owners of the respective portions sold to them.

In her answer with counterclaim, Angeline Loy alleged that she was entitled to the subject property as a result of the foreclosure and consequent award to her as the highest bidder during the foreclosure sale; that the subject property was later divided by judicial partition, and new certificates of title were issued in the name of Manuel and Robert Carantes, which titles were later cancelled and new titles were issued in her name as co-owner of the subject property together with Manuel Carantes; that she had no knowledge of the supposed sales to petitioners by Robert Carantes as these transactions were not annotated on the title of Busa Carantes; and that the sales to the petitioners were either unnotarized or unconsummated for failure to pay the price in full.

In his answer, Robert Carantes alleged that the sales to petitioners did not materialize; that petitioners failed to fully pay the purchase price; that his transactions with Angeline Loy and her husband were null and void; and that he was the real owner of the subject property in issue.

Respondents Angeline Loy and Robert Carantes failed to appear during the scheduled mediation. Petitioners were then allowed to present their evidence *ex parte*.

Petitioners thereafter filed a Formal Offer of Evidence praying for admission of the following documentary evidence:

1. Exhibit "A" - unnotarized 'Deed of Absolute Sale of a Portion of a Registered Parcel of a Residential Land' between respondent Robert Carantes and petitioners, spouses Jaime and Catherine Basa covering 107 square meters;
2. Exhibit "B" - unnotarized 'Deed of Absolute Sale of a Portion of a Parcel of Land' between Robert Carantes and petitioners, spouses Juan and Erlinda Ogale, covering 84 square meters;
3. Exhibit "C" - 'Deed of Sale of Undivided Rights and Interests' in favor of petitioners Rogelio and Lucena Lagasca, covering 80 square meters;
4. Exhibit "D" - 'Deed of Sale of Undivided Rights and Interests' in favor of petitioners Cresencio and Eleadora Apostol, covering 80 square meters; and
5. Exhibit "E" - Affidavit of Robert Carantes.[5]

On July 24, 2009, the trial court issued an Order denying admission of Exhibits "A" to "D" on the ground that Exhibits "A" to "C" were mere photocopies and were only previously provisionally marked, while there was no such document marked Exhibit "D".

Ruling of the Regional Trial Court

On January 22, 2010, the trial court rendered its Decision in Civil Case No. 6280-R, declaring thus:

> At the outset, the Court would like to put emphasis on the ruling of the Supreme Court in the case of Acabal vs. Acabal, 454 SCRA 555 that, *'It is a basic rule in evidence that the burden of proof lies on the party who makes the allegations - el encumbit probatio, qui dicit, non qui negat; cum per rerum natruam factum negatis probatio nulla sit* (the proof lies upon him who affirms, not upon him who denies; since by nature of things, he who denies a fact cannot produce any proof). *If he claims a right granted by law, he must prove it by competent evidence, relying on the strength of his own evidence and not upon the weakness of that of his opponent.'*
>
> In the present case, the petitioners Cresencio Apostol, Jaime Basa, Lucena Lagasca and Erlinda Ogale was [sic] presented to substantiate

[5] *Id*. at 37-38.

the allegations in their petition. All four gave similar testimonies that respondent Robert Carantes sold to them certain portions of a parcel of land for different sums of money on different occasions. However, although they identified photocopies of the deeds covering the transactions which were provisionally marked, they failed to submit the original copies thereof for which reason, the Court denied admission of the said documents when they were formally offered. The only other piece of documentary evidence the petitioners presented to back up their claims was an Affidavit purportedly executed by respondent Robert Carantes. However, the said respondent was never presented to testify on his affidavit, thus, the contents thereof could not be appreciated in favor of the petitioners following the ruling in the case of People vs. Brioso, 37 SCRA 336, that, *'Affidavits are generally rejected in judicial proceeding as hearsay, unless the affiants themselves are placed on the witness stand to testify thereon.'*

Considering that the petitioners failed to discharge their burden of proving the truth of their claims even by preponderance of evidence, the court is left with no recourse but to deny the reliefs prayed for in their petition.[6]

WHEREFORE, all the foregoing premises considered, the petition is hereby DENIED and the above-entitled case is hereby DISMISSED without pronouncement as to costs.

SO ORDERED.[7]

Petitioners moved to reconsider, but the trial court — in a June 18, 2010 Order — would not reverse. It held —

The court finds no cogent reason to reconsider the decision.

In the case of Llemos vs. Llemos, 513 SCRA 128, the Supreme Court had the occasion to rule that, *'Under Section 3, Rule 130, Rules of Court, the original document must be produced and no evidence shall be admissible other than the original document itself, except in the following cases: x x x a) When the original has been lost or destroyed or cannot be produced in court, without bad faith on the part of the offeror: b) When the original is in the custody or under the control of the party against whom the evidence is offered,*

---

[6] *Id.* at 40-41.

[7] *Id.* at 38.

and the latter fails to produce it after reasonable notice; c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and d) When the original is a public record in the custody of a public officer or is recorded in a public office.'

In the present case, there is no showing that the plaintiffs' failure to produce the original documents was based on the exceptions aforementioned. Moreover, the plaintiffs never questioned the Court's resolution of their formal offer of evidence contained in an Order dated July 24, 2009 admitting only Exhibit "E". Thus, their assertion that they did not have to present the originals there being no objection from the defendants who incidentally have lost their standing in this case as early as January 22, 2008, all the more appears to be untenable.[8]

Ruling of the Court of Appeals

Petitioners interposed their appeal before the CA which, on May 31, 2012, rendered the assailed Decision containing the following pronouncement:

Petitioners x x x argue that ownership over the portions they occupied should be transferred to them because (i) they were able to establish that the same were sold to them by respondent x x x Robert Carantes and they had fully paid the purchase price thereof; (ii) respondent x x x Angeline Loy was in bad faith 'in not making an investigation before entering into mortgage with Robert Carantes'; and (iii) the trial court should have reconsidered its Decision dated January 22, 2010 since petitioners x x x filed a 'motion for reconsideration explaining the reason and simultaneously submitting the original pieces of evidence.'

It is a basic rule that in civil cases, the burden of proof is on the plaintiff to establish his case by preponderance of evidence. x x x

x x x x x x x x x

Thus, although the trial court allowed petitioners x x x to present their evidence *ex-parte* for failure of respondents x x x to appear in the mediation proceedings, petitioners x x x still had to prove their allegations in their petition by preponderance of evidence.

---

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

In *Saguid vs. Court of Appeals,* wherein respondent therein was allowed to present her evidence *ex-parte,* the Supreme Court stressed:

> 'As in other civil cases, the burden of proof rests upon the party who, as determined by the pleading or the nature of the case, asserts an affirmative issue. Contentions must be proved by competent evidence and reliance must be had on the strength of the party's own evidence and not upon the weakness of the opponent's defense. This applies with more vigor where, as in the instant case, the plaintiff was allowed to present evidence *ex parte.* The plaintiff is not automatically entitled to the relief prayed for. The law gives the defendant some measure of protection as the plaintiff must still prove the allegations in the complaint. Favorable relief can be granted only after the court is convinced that the facts proven by the plaintiff warrant such relief: Indeed, the party alleging a fact has the burden of proving it and a mere allegation is not evidence.'

In support of their allegation that portions of Lot No. T-30086 were sold to them by respondent x x x Robert Carantes, petitioners x x x presented during the *ex-parte* hearing two (2) sets of documents, to wit: (i) four (4) photocopied deeds of sale, and (ii) an original affidavit executed by respondent x x x Robert Carantes. In its Decision dated January 22, 2010, the trial court did not consider these pieces of evidence because (i) petitioners x x x did not submit the original deeds of sale, and (ii) respondent x x x Robert Carantes was not presented in court to identify his affidavit.

The trial court cannot be faulted in so ruling. Neither can it be faulted for not reconsidering its Decision dated January 22, 2010 despite the purported 'original' deeds of sale appended to petitioners' x x x motion for reconsideration. It must be considered that:

Firstly, petitioners' x x x failure to append the original deeds of sale cannot be excused on their alleged mistaken belief that submission of the same was no longer necessary when respondents x x x did not object to the presentation of photocopies during the *ex-parte* hearing, as the trial court itself required the submission of the original deeds of sale. Record bears that the Branch Clerk of Court provisionally marked the photocopied deeds of sole as Exhibits 'A' to 'D' subject to the submission of the original thereof. In fact, petitioners x x x

counsel manifested that they reserved the right to present the original deeds of sale.

Secondly, while during the *ex-parte* hearing, two (2) documents, both denominated as 'Deed of Sale of Undevided [sic] Rights and Interests,' were presented to prove the sale of portions of subject lot to petitioners x x x spouses Rogelio and Lucena Lagasca and spouses Cresencio and Eleadora Apostol, what was appended to petitioners' x x x motion for reconsideration was a different document, a carbon copy of a document denominated as 'Deed of Sale or Undivided Portions of Registered Land,' between respondent x x x Robert Carantes and petitioners x x x Rogelio Lagasca and Cresencio Apostol.

Thirdly, the 'Deed of Absolute Sale of a Portion of a Registered Parcel of a Residential Land' between respondent x x x Robert Carantes and petitioners x x x spouses Jaime and Catherine Basa was a mere carbon copy.

The Court thus finds that the evidence adduced during the *ex-parte* hearing was unsatisfactory and inconclusive. Moreover, instead of substantiating respondent x x x Robert Carantes' 'Affidavit', the testimonies of petitioners' x x x witnesses contradicted said 'Affidavit' as regards the areas allegedly sold and the price per square meter. In the Affidavit, respondent x x x Robert Carantes stated that he sold to petitioners x x x spouses Cresencio and Eleadora Apostol and spouses Rogelio and Lucena Lagasca portions of the subject property measuring 80 square meters each for ₱320,000.00 per portion. But during the *ex-parte* hearing, petitioner x x x Cresencio Apostol testified that what was actually sold by respondent x x x Robert Carantes for ₱320,000.00 was 95 square meters. In petitioners' x x x motion for reconsideration, it appeared that respondent x x x Robert Carantes sold to petitioners x x x spouses Cresencio and Eleadora Apostol for ₱100,000.00 a total of 95 square meters. On the other hand, the testimony of petitioner x x x Lucena Lagasca did not indicate the number of square meters sold for the purchase price of ₱320,000.00, while the motion for reconsideration indicated that a total of 99 square meters was sold by respondent x x x Robert Carantes to petitioners x x x spouses Rogelio and Lucena Lagasca for ₱100,000.00.

In sum, the pieces of evidence presented by petitioners x x x do not preponderate in their favor. The Court finds no cogent reason to reverse the findings of the trial court. x x x

WHEREFORE, the appealed Decision dated January 22, 2010 and Order dated June 18, 2010 are **AFFIRMED.**

SO ORDERED.[9] (Citations omitted; emphasis and italics in the original)

Petitioners flied their motion for reconsideration, which was denied by the CA via its October 11, 2012 Resolution. Hence, the instant Petition.

Issue

Petitioners submit the lone issue of whether they have proved, by preponderant evidence, their case for quieting of title.

Petitioners' Arguments

Praying that the assailed CA dispositions be set aside and that they be declared owners of the respective portions of the subject property which they claim were bought from respondent Robert Carantes, petitioners argue that they have adequately proved their ownership of the disputed property; that the lower courts disregarded the fact that they were in possession of the respective portions claimed, which otherwise constituted proof of delivery and, thus, consummation of the sales in their favor; that while the trial court dismissed their case for failure to present the originals of the deeds of sale in their favor during trial, the same were nonetheless attached to their motion for reconsideration — but the trial court just the same refused to consider them, which is erroneous on account of the principle that substantive law and considerations of justice should outweigh technicalities and rules of procedure; that respondent Angeline Loy was a buyer in bad faith, knowing as she did that they were in possession of the disputed property when she and her husband acquired the same; and that between a prior unrecorded sale and a subsequent mortgage by the seller, the former prevails on account of the better right accorded to the buyer as against the subsequent mortgagee.

---

[9] *Id*. at 42-46.

Private Respondents' Arguments

In her Comment,[10] respondent Angeline Loy maintains that the CA committed no error in affirming the trial court; that petitioners' case was frivolous and dilatory in that it was aimed at delaying or thwarting the execution of the writ of possession issued in her favor in LRC ADM Case No. 1546-R; and that the petition raised issues of fact which were ably passed upon by the courts below and were beyond review by this Court.

On the other hand, the surviving heirs of Robert Carantes — who passed away during these proceedings — failed to comment on the instant petition.

Our Ruling

The Petition lacks merit.

In order that an action for quieting of title may prosper, it is essential that the plaintiff must have legal or equitable title to, or interest in, the property which is the subject-matter of the action. Legal title denotes registered ownership, while equitable title means beneficial ownership. In the absence of such legal or equitable title, or interest, there is no cloud to be prevented or removed.

x x x x x x x x x

An action for quieting of title is essentially a common law remedy grounded on equity. The competent court is tasked to determine the respective rights of the complainant and other claimants, not only to place things in their proper place, to make the one who has no rights to said immovable respect and not disturb the other, but also for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce the improvements he may desire, to use, and even to abuse the property as he deems best. But 'for an action to quiet title to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on

[10] *Id*. 206-210.

his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.'[11]

Petitioners' case for quieting of title was dismissed by the trial court for the reason that they failed to present the originals of the purported deeds of sale executed by respondent Robert Carantes in their favor. In other words, short of saying that petitioners failed to prove the first element in a suit for quieting of title — the existence of a legal or equitable title — the trial court simply held that they failed to discharge the burden of proof required in such case. Petitioners then attempted to obtain a reversal by attaching the supposed originals of the deeds of sale to their motion for reconsideration, but the trial court did not reconsider as they failed to show that the reason for their failure to present the original copies of the deeds fell within the exceptions under the best evidence rule, or Section 3, Rule 130 of the Rules of Court.[12]

The trial court cannot be faulted for ruling the way it did. By petitioners' failure to present the original copies of the purported deeds of sale in their favor, the case for quieting of title did not have a leg to stand on. Petitioners were unable to

---

[11] *Mananquil v. Moico,* 699 Phil. 120, 122, 126-127 (2012), citing *Eland Philippines, Inc. v. Garcia,* 626 Phil. 735, 758 (2010), citing *Baricuatro, Jr. v. Court of Appeals,* 382 Phil. 15, 25 (2000).

[12] Sec. 3. Original document must be produced; exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

show their claimed right or title to the disputed property, which is an essential element in a suit for quieting of title. Their belated presentation of the supposed originals of the deeds of sale by attaching the same to their motion for reconsideration does not deserve consideration as well; the documents hardly qualify as evidence.

The CA correctly found that petitioners' failure to append the original copies of the deeds of sale was inexcusable; that the document that was appended to their motion for reconsideration was different from what was presented and marked during the *ex-parte* hearing; and that the testimonies of petitioners contradicted the affidavit of Roberto Carantes, their supposed seller, with regard to the price and lot area of the subject properties.[13]

Moreover, the unnotarized "Deed of Absolute Sale of a Portion of a Registered Parcel of a Residential Land" between respondent Robert Carantes and petitioner-spouses Jaime and Catherine Basa cannot stand without the corroboration or affirmation of Robert Carantes. On its own, the unnotarized deed is self-serving. Since Robert Carantes's affidavit — Exhibit "E" — was rendered inadmissible by his failure to appear and testify thereon, then the supposed unnotarized deed of sale executed by him in favor of the Basa spouses cannot sufficiently be proved.

To repeat, "for an action to quiet title to prosper, two (2) indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy."[14] "Legal title denotes registered ownership, while equitable title means beneficial ownership."[15]

---

[13] CA *rollo,* pp. 44-46.

[14] *Eland Philippines, Inc. v. Garcia, supra* note 11 at 759.

[15] *Mananquil v. Moico, supra* note 11 at 122.

Even if petitioners are in possession of the disputed property, this does not necessarily prove their supposed title. It may be that their possession of the disputed property is by lease or any other agreement or arrangement with the owner — *et al.* or simply by mere tolerance. Without adequately proving their title or right to the disputed portions of the property, their case for quieting of title simply cannot prosper.

WHEREFORE, for the foregoing reasons, the Petition is **DENIED.** The assailed dispositions of the Court of Appeals are **AFFIRMED.**

SO ORDERED.

Leonardo-de Castro[*] (*Acting Chairperson*), *Jardeleza,* and *Gesmundo, JJ.,* concur.

Tijam, J.,[**] on official leave.

THIRD DIVISION

[G.R. No. 206331. June 4, 2018]

DEPARTMENT OF AGRARIAN REFORM MULTI-PURPOSE COOPERATIVE (DARMPC), *petitioner, vs.* **CARMENCITA DIAZ, REPRESENTED BY MARY CATHERINE M. DIAZ; EMMA CABIGTING; AND NINA T. SAMANIEGO,**[1] *respondents.*

---

[*] Per Special Order No. 2559 dated May 11, 2018.

[**] Per Special Order No. 2560 dated May 11, 2018.

[1] Spelled "Samanego" in the Petition for Review.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL, BEING A MERE STATUTORY RIGHT, MUST BE EXERCISED IN THE MANNER AND ACCORDING TO PROCEDURES LAID DOWN BY LAW.—** Rule 45, Section 2 of the Rules of Court clearly provides for the period within which a petition for review must be filed x x x. Failure to file a petition for review on certiorari, or a motion for extension to file it, within the period prescribed under Rule 45, Section 2 results in a party's loss of right to appeal. It is settled that appeal, being a mere statutory right, must "be exercised in the manner and according to procedures laid down by law." Failure to file one's appeal within the reglementary period is fatal to a party's cause, "precluding the appellate court from acquiring jurisdiction over the case."

2. **ID.; RULES OF PROCEDURE; A LIBERAL CONSTRUCTION OF RULES OF PROCEDURE MUST BE BASED ON JUSTIFIABLE REASONS OR AT LEAST A REASONABLE ATTEMPT AT COMPLIANCE WITH THEM.—** Petitioner's plea that this Court be liberal in its application of procedural rules is unavailing. A liberal construction of rules of procedure must be based on "justifiable reasons or ... at least a reasonable attempt at compliance with them," as stated in *Magsino v. De Ocampo* x x x. Evidently, no reasonable attempt has been made by petitioner to comply with the mandatory requirement of filing within the reglementary period. Atty. Tamaca's excuses of failing to monitor the date of the receipt of the Court of Appeals September 12, 2012 Resolution and his electoral activities do not deserve any consideration from this Court.

3. **ID.; CIVIL PROCEDURE; JUDGMENTS; IMMUTABILITY OF JUDGMENTS; A FINAL AND IMMUTABLE JUDGMENT CANNOT BE MODIFIED, ALTERED, OR REVERSED BY ANY COURT, NOT EVEN THE SUPREME COURT; EXCEPTIONS.—** When petitioner failed to timely file its appeal by certiorari, the Court of Appeals May 11, 2012 Decision and September 12, 2012 Resolution became final and executory, pursuant to Rule 39, Section 1 of the Rules of Court x x x. No court, not even this Court, may thereafter modify, alter, or let alone reverse a final and immutable judgment. The

> only exceptions are the correction of clerical errors, *nunc pro tunc* entries that cause no prejudice to the parties, and void judgments. Even when there are facts or circumstances that would render the execution of a final judgment unjust and inequitable, it must be shown that they arose after the finality as to warrant a court's modification or alteration. As respondents point out, "all litigation must come to an end, however unjust the result of error may appear." Here, petitioner concedes that the Court of Appeals May 11, 2012 Decision has become final. x x x There is no showing that any circumstance arose after the finality of judgment as to warrant the judgment's alteration. Thus, the ruling of the Court of Appeals can no longer be disturbed.

APPEARANCES OF COUNSEL

Rivera Tamaca & Loyola Law Offices for petitioner.
James Dennis C. Gumpal for respondents.

D E C I S I O N

LEONEN, *J.*:

A liberal construction of the rules of procedure, including the period within which a petition for review must be filed, requires justifiable reasons or at least a reasonable attempt at compliance with them.

This is a Petition for Review on Certiorari[2] under Rule 45 of the Rules of Court, assailing the May 11, 2012 Decision[3] and September 12, 2012 Resolution[4] of the Court of Appeals

---

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

[3] *Id*. at 20-33. The Decision was penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Michael P. Elbinias and Rodil V. Zalameda of the Special Seventeenth Division, Court of Appeals, Manila.

[4] *Id*. at 46-48. The Resolution was penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Michael P. Elbinias and Rodil V. Zalameda of the Former Special Seventeenth Division, Court of Appeals, Manila.

in CA-G.R. SP No. 118549. The Court of Appeals reversed and set aside the April 30, 2009 Decision of the National Labor Relations Commission in NLRC NCR Case No. 00-12-1407-2003/NLRC LAC No. 043647-05.[5] It found that Carmencita Diaz (Diaz), Emma Cabigting (Cabigting), and Nina T. Samaniego (Samaniego) were illegally dismissed by the Department of Agrarian Reform Multi-Purpose Cooperative (the Cooperative).[6]

Diaz, Cabigting, and Samaniego worked for the Cooperative as Accounting Clerk, Loan Officer and Verifier, and Lending Supervisor, respectively.[7]

On October 24, 2003, the Cooperative's accountant discovered that duplicate original receipts showing the members' cash payments of share capital contributions were missing and unrecovered. Cabigting explained that she found that the entries in the members' index cards were written by Cashier Lorelie C. Matel (Matel) and Loan Officer Roslyn G. Sengson (Sengson). Matel admitted that she manipulated the index card entries to misappropriate funds. Matel and Sengson later confessed that there was nothing left from the misappropriated funds and that they had already destroyed the missing receipts.[8]

On October 26, 2003, Diaz, Cabigting, and Samaniego learned that Matel and Sengson allegedly claimed that they were all in a conspiracy in the anomalous transactions. The next day, Diaz, Cabigting, and Samaniego were forced to admit their participation despite their denial and claims that the official receipts showed that payments were received only by Matel or Sengson.[9]

Diaz, Cabigting, and Samaniego were placed under a 30-day preventive suspension on October 29, 2003. After the period

---

[5] *Id*. at 32.

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

[7] *Id*. at 21.

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

[9] *Id*. at 22.

lapsed, they tried to return to work but were told that the Cooperative had already terminated their employment.[10]

On December 9, 2003, Diaz, Cabigting, and Samaniego filed a complaint for illegal dismissal against the Cooperative before the Regional Arbitration Branch of the National Labor Relations Commission.[11]

The Labor Arbiter dismissed their complaint on January 31, 2005 and found that Diaz, Cabigting, and Samaniego were mere members, and not employees of the Cooperative. Moreover, assuming that they were employees, their dismissal from service was justified due to their failure to fully account for the missing funds and explain the anomalous transactions.[12]

On appeal, the National Labor Relations Commission reversed the Labor Arbiter's findings and found that Diaz, Cabigting, and Samaniego were employees of the Cooperative. Nonetheless, the Cooperative ruled to dismiss them based on just cause under Article 282, paragraphs (a) and (c) of the Labor Code. But since the Cooperative failed to observe the requirements of due process in terminating their employment, they were given ₱10,000.00 each in nominal damages.[13] Both parties' motions for reconsideration were denied.[14]

Diaz, Cabigting, and Samaniego then filed a Petition for Certiorari before the Court of Appeals, assailing the April 30, 2009 Decision and October 28, 2010 Resolution of the National Labor Relations Commission.[15]

On May 11, 2012, the Court of Appeals granted the Petition for Certiorari, finding that Diaz, Cabigting, and Samaniego were

---

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Id*. at 22-23.

[14] *Id*. at 24.

[15] *Id*. at 21.

illegally dismissed. The dispositive portion of this Decision read:

> WHEREFORE, the instant petition is **GRANTED** and the assailed Decision dated April 30, 2009 of the public respondent NLRC in NLRC NCR Case No. 00-12-1407-2003/NLRC LAC No. 043647-05 is **REVERSED AND SET ASIDE**. Private respondent cooperative is hereby ordered to:
>
> 1. pay petitioners their backwages, including 13th month pay, unpaid vacation and sick leaves and the monetary equivalent of other benefits, computed from the time their compensation was withheld from them on December 1, 2003 up to the finality of this decision;
>
> 2. pay petitioners their separation pay equivalent to at least one month salary for every year of service, computed from the time of engagement up to the finality of this decision; and
>
> 3. pay petitioners' attorney's fees at 10% of the total monetary award to be recovered.
>
> All other claims are denied for lack of merit.
>
> Let the records of this case be remanded to the Arbiter Branch of origin for the proper computation of the backwages, 13th month pay, unpaid vacation and sick leaves and the monetary equivalent of other benefits, and separation pay, in lieu of reinstatement.
>
> SO ORDERED.[16]

First, it upheld the National Labor Relations Commission's finding that Diaz, Cabigting, and Samaniego were employees of the Cooperative.[17]

Second, it found that the Cooperative failed to prove that it had lawful cause to dismiss Diaz, Cabigting, and Samaniego. It found that the Cooperative based their dismissal on their admission that they were privy to Matel and Sengson's acts,

---

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

[17] *Id*. at 25.

and that they were given a "small token for merienda and that this was the amount they said was divided among [themselves]."[18] According to the Cooperative, this had the effect of an admission of their participation in the anomalous transactions.[19]

However, the Court of Appeals found that Diaz, Cabigting, and Samaniego only divided among themselves "money for merienda" given by the Cooperative members whose loans had been released earlier than their scheduled date of release. Diaz, Cabigting, and Samaniego received the small token from the members through Matel and Sengson, who were the ones who received cash payments from the members. The Court of Appeals found that Diaz, Cabigting, and Samaniego's act of receiving this token could not prove that they conspired with Matel and Sengson to malverse the Cooperative's funds.[20] It held that "[m]ere knowledge, acquiescence to or approval of the act without cooperation or agreement to cooperate [was] not enough to constitute one a party to the conspiracy absent the intentional participation in the act with a view to the furtherance of the common design and purpose."[21] It further noted that Matel and Sengson retracted under oath their claims that Diaz, Cabigting, and Samaniego were involved in the anomalous transactions. Thus, when the Cooperative dismissed them, it did so based on unsubstantiated claims and suspicions, and did not discharge its burden of proving the validity of their dismissal.[22]

Third, the Cooperative failed to comply with the requirements of due process when it dismissed Diaz, Cabigting, and Samaniego. The Court of Appeals held that the Cooperative failed to comply with the twin-notice and hearing requirement prescribed by law for termination of employment. It found that after the lapse of the 30-day preventive suspension, Diaz, Cabigting, and Samaniego

---

[18] *Id*. at 26.

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

[20] *Id*. at 28.

[21] *Id* at 28-29.

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

were merely advised that they were already terminated from work by virtue of Board Resolution No. 62 dated December 1, 2003, which they received under protest.[23]

Since they were illegally dismissed by the Cooperative, Diaz, Cabigting, and Samaniego were entitled to the protections granted under Article 279 of the Labor Code, such as reinstatement and full backwages. However, due to the circumstances showing the Cooperative's loss of trust and confidence in them, the Court of Appeals granted separation pay in lieu of reinstatement.[24]

Finally, the Court of Appeals denied Diaz, Cabigting, and Samaniego's claims for unpaid salaries during their preventive suspension and moral damages, but awarded 10% attorney's fees as it was just and equitable, pursuant to Article 2208 of the Civil Code.[25]

The Cooperative's motion for reconsideration[26] was denied in the Court of Appeals September 12, 2012 Resolution.[27]

On April 5, 2013, the Cooperative filed before this Court an Urgent Motion to Admit Attached Petition,[28] with an attached Petition for Review on Certiorari with Prayer for Issuance of Temporary Restraining Order/Writ of Preliminary Injunction against Diaz, Cabigting, and Samaniego.[29]

In the motion, Atty. Ferdinand O. Tamaca (Atty. Tamaca), counsel for the Cooperative, alleges that a copy of the Court of Appeals September 12, 2012 Resolution was "misplaced at his office during the holiday season last December when it was

---

[23] *Id*. at 30.

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

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

[26] *Id*. at 34-44.

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

[28] *Id*. at 3-6.

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

served at his office."[30] Further, he claims that he was staying in his province during that period and was busy preparing for elections in Carigara, Leyte.[31] He likewise admits that due to his secretary's resignation, he failed to know that the Court of Appeals May 11, 2012 Decision had become final and that the period to appeal had already lapsed.[32]

In its Petition for Review, the Cooperative argues that the Court of Appeals erred in finding that there was no just cause for respondents' dismissal. It points out that the Labor Arbiter and the National Labor Relations Commission both found that respondents committed serious misconduct and fraud or willful breach of trust due to their participation in Matel and Sengson's scheme. It argues that the factual findings of the Labor Arbiter, when affirmed by the National Labor Relations Commission, are accorded respect, if not finality.[33]

Moreover, the Cooperative claims that it did not violate respondents' right to due process since they failed to request a formal hearing and representation by counsel during the investigations that the Cooperative conducted. Further, even if there had been non-compliance with the due process requirements, this does not invalidate the finding of just cause for termination.[34]

Finally, the Cooperative prays for the issuance of a temporary restraining order or writ of preliminary injunction as the May 11, 2012 Decision has already become final and executory. It claims that there is a need to restrain the execution of that Decision because the judgment would cause the bankruptcy of the Cooperative.[35]

---

[30] *Id*. at 3.

[31] *Id*.

[32] *Id*. at 4.

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

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

[35] *Id*. at 15.

On April 17, 2013, this Court issued a Resolution[36] requiring respondents to comment on the Petition for Review.

On July 10, 2013, respondents filed their Comment to the Petition.[37] There, they claim that they were not served a copy of the Petition,[38] that the Petition failed to state the material dates as required under Rule 45, Section 4(b) of the Rules of Court,[39] and that it was filed beyond the reglementary period.[40] They argue that the negligence of the counsel binds the Cooperative, especially as the Cooperative was accorded full opportunity to present its evidence before the National Labor Relations Commission and the Court of Appeals.[41]

Further, respondents argue that the Petition raises factual issues not cognizable in a Rule 45 petition. They claim that the issue of illegal dismissal seeks a review of the factual bases relied upon by the Court of Appeals in rendering its decision.[42]

On July 18, 2013, respondents filed a Manifestation in Support to the Comment to the Petition with Motion for the Outright Dismissal of the Petition.[43] In their Manifestation, respondents allege, in support of their claim in their Comment, that the actual receipt by the Cooperative of a copy of the Court of Appeals September 12, 2012 Resolution was on September 20, 2012,[44] as shown by the Registry Return Receipt[45] in the records of the Court of Appeals. Thus, when the Cooperative filed its Petition

---

[36] *Id*. at 50.

[37] *Id*. at 57-73.

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

[39] *Id*. at 58.

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

[41] *Id*. at 59-65.

[42] *Id*. at 67-70.

[43] *Id*. at 75-81.

[44] *Id*. at 76.

[45] *Id*. at 80-A.

for Review before this Court, more than six (6) months from the end of the 15-day reglementary period had already elapsed.[46]

The Cooperative filed its Counter Manifestation on July 30, 2013,[47] where Atty. Tamaca states that he inadvertently lost track of the date of actual receipt of the Resolution, especially as he was working on the elections in Carigara, Leyte.[48] Moreover, in the Petition, Atty. Tamaca claims that he received the Resolution during the "Christmas holidays" and this includes the months from September to December.[49] Finally, the Petition raises a question of law, namely, which between the National Labor Relations Commission and the Court of Appeals is correct.[50]

This Court noted the Comment and ordered the Cooperative to file its reply to it in its September 11, 2013 Resolution. It likewise noted without action respondents' manifestation and the Cooperative's counter manifestation.[51]

On November 11, 2013, the Cooperative filed its Reply[52] to the Comment, which this Court noted in its January 29, 2014 Resolution.[53] In its Reply, the Cooperative prayed that its Counter Manifestation be adopted as its reply to respondents' comment.[54]

The sole issue to be resolved by this Court is whether or not this Petition for Review should be denied for being filed out of time.

Rule 45, Section 2 of the Rules of Court clearly provides for the period within which a petition for review must be filed:

---

[46] *Id*. at 76.

[47] *Id*. at 82-86.

[48] *Id*. at 82.

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

[50] *Id*. at 83-84.

[51] *Id*. at 88-88-A.

[52] *Id*. at 89-91.

[53] *Id*. at 92.

[54] *Id*. at 89.

Section 2. *Time for filing; extension. — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment.* On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition. (Emphasis supplied)

Failure to file a petition for review on certiorari, or a motion for extension to file it, within the period prescribed under Rule 45, Section 2 results in a party's loss of right to appeal. It is settled that appeal, being a mere statutory right, must "be exercised in the manner and according to procedures laid down by law."[55] Failure to file one's appeal within the reglementary period is fatal to a party's cause, "precluding the appellate court from acquiring jurisdiction over the case."[56]

Here, petitioner filed its Petition before this Court on April 5, 2013.[57] It has attempted to obfuscate the true date of notice of the denial of its Motion for Reconsideration by merely alleging that the September 12, 2012 Resolution "was received by [Atty. Tamaca] during the Christmas Holidays last December 2012."[58] Not only is this contrary to the requirement in Rule 45, Section 4 of the Rules of Court concerning the statement of material dates in a petition for review,[59] this allegation is also false. As pointed

---

[55] *Rigor v. Tenth Division of the Court of Appeals*, 526 Phil. 852, 858 (2006) [Per *J.* Garcia, Second Division].

[56] *Villanueva v. Court of Appeals*, 282 Phil. 555, 561 (1992) [Per *J.* Regalado, Second Division]; *Nueva Ecija II Electric Cooperative Inc. v. Mapagu,* G.R. No. 196084, February 15, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/196084.pdf> [Per *J.* Jardeleza, Third Division].

[57] *Rollo*, p. 7.

[58] *Id.* at 8.

[59] RULES OF COURT, Rule 45, Sec. 4 states:

out by respondents in their Manifestation and as borne out by the records of the Court of Appeals, the actual date of receipt by petitioner of the September 12, 2012 Resolution was September 20, 2012.[60] Atty. Tamaca cannot disclaim responsibility for the false allegation in the Petition by arguing that both September and December are months covered by the "Christian holidays" averred in it.[61] Clearly, the lapse of more than six (6) months from petitioner's receipt of the September 12, 2012 Resolution until the filing of the Petition on April 5, 2013 is beyond the contemplation of Rule 45, Section 2 of the Rules of Court.

Moreover, even if petitioner received a copy of the September 12, 2012 Resolution in December 2012 as it alleges, the Petition would have still been filed out of time, four (4) months having already elapsed from notice until filing.

Petitioner's plea that this Court be liberal in its application of procedural rules is unavailing. A liberal construction of rules of procedure must be based on "justifiable reasons or . . . at least a reasonable attempt at compliance with them," as stated in *Magsino v. De Ocampo*:[62]

> The petitioner is further reminded that any "resort to a liberal application or suspension of the application of procedural rules, must remain as the exception to the well-settled principle that rules must be complied with for the orderly administration of justice." It cannot

---

Section 4. *Contents of petition*. — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) *indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received;* . . . (Emphasis supplied)

[60] *Rollo*, pp. 75-81.

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

[62] 741 Phil. 394 (2014) [Per *J*. Bersamin, First Division].

be otherwise for him, for, as the Court aptly put it in *Republic v. Kenrick Development Corporation*:

> Procedural requirements which have often been disparagingly labeled as mere technicalities have their own valid *d' etre* in the orderly administration of justice. To summarily brush them aside may result in arbitrariness and injustice.
>
> The Court's pronouncement in *Garbo v. Court of Appeals* is relevant:
>
> > Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.
>
> Like all rules, procedural rules should be followed except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the prescribed procedure.

The rules were instituted to be faithfully complied with, and allowing them to be ignored or lightly dismissed to suit the convenience of a party like the petitioner was impermissible. Such rules, often derided as merely technical, are to be relaxed only in the furtherance of justice and to benefit the deserving. Their liberal construction in exceptional situations should then rest on a showing of justifiable reasons and of at least a reasonable attempt at compliance with them.[63] (Citations omitted)

---

[63] *Id.* at 408-410.

Evidently, no reasonable attempt has been made by petitioner to comply with the mandatory requirement of filing within the reglementary period. Atty. Tamaca's excuses of failing to monitor the date of the receipt of the Court of Appeals September 12, 2012 Resolution and his electoral activities do not deserve any consideration from this Court.

Moreover, contrary to petitioner's claim, its counsel's negligence is binding upon it.[64] "[E]quity aids the vigilant, not those who slumber on their rights."[65] Despite petitioner's claim that the execution of the Court of Appeals' ruling would put its very existence at stake, it still made no effort to assiduously monitor the status of its appeal or to ensure that the judgment would not be executed against it.

When petitioner failed to timely file its appeal by certiorari, the Court of Appeals May 11, 2012 Decision and September 12, 2012 Resolution became final and executory, pursuant to Rule 39, Section 1 of the Rules of Court:

> Section 1. *Execution upon judgments or final orders.* — Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding *upon the expiration of the period to appeal therefrom if no appeal has been duly perfected*. (Emphasis supplied)

In *Asuncion v. National Labor Relations Commission*:[66]

> Well-settled is the principle that perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional and failure to do so renders the questioned decision final and executory that deprives the appellate court of jurisdiction to alter the final judgment much less to entertain the appeal.

---

[64] *Filipinas (Pre-Fabricated Bldg.) Systems "Filsystems" Inc. v. National Labor Relations Commission*, 463 Phil. 813, 821 (2003) [Per *J.* Puno, Second Division].

[65] *Ampo v. Court of Appeals*, 517 Phil. 750, 755 (2006) [Per *J.* Ynares-Santiago, First Division].

[66] 340 Phil. 36 (1997) [Per *J.* Romero, Second Division].

In the case at bar, it is admitted that the decision of the Labor Arbiter was received by private respondent's counsel on April 26, 1991, making the last day for perfecting the appeal May 6, 1991. The decision became final and executory upon failure of petitioner to appeal within the ten-day period. Private respondent, therefore, as the prevailing party, is entitled as a matter of right to the execution of the final and executory judgment in his favor.

This Court has held that once a decision attains finality, it becomes the law of the case whether or not said decision is erroneous. Having been rendered by a court of competent jurisdiction acting within its authority, the judgment may no longer be altered even at the risk of legal infirmities and errors it may contain, which cannot be corrected by certiorari.[67] (Citations omitted)

No court, not even this Court, may thereafter modify, alter, or let alone reverse a final and immutable judgment.[68] The only exceptions are the correction of clerical errors, *nunc pro tunc* entries that cause no prejudice to the parties, and void judgments.[69] Even when there are facts or circumstances that would render the execution of a final judgment unjust and inequitable, it must be shown that they arose after the finality as to warrant a court's modification or alteration.[70] As respondents point out,[71] "all litigation must come to an end, however unjust the result of error may appear."[72]

---

[67] *Id.* at 38.

[68] *Dy Chiao v. Bolivar*, G.R. No. 192491, August 17, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/192491.pdf> 7 [Per *J.* Bersamin, First Division].

[69] *Briones-Vasquez v. Court of Appeals*, 491 Phil. 81, 91-92 (2005) [Per *J.* Azcuna, First Division].

[70] *Aboitiz Shipping Employees Association v. Hon. Undersecretary of Labor and Employment*, 343 Phil. 910, 914 (1997) [Per *J.* Francisco, Third Division].

[71] *Rollo*, pp. 65-67.

[72] *Industrial and Transport Equipment, Inc. v. National Labor Relations Commission*, 348 Phil. 158, 165 (1998) [Per *J.* Romero, Third Division].

Here, petitioner concedes that the Court of Appeals May 11, 2012 Decision has become final. It even prays for the issuance of a temporary restraining order or writ of preliminary injunction to enjoin the Labor Arbiter from executing the Court of Appeals ruling.[73] However, it has not pointed to, much less alleged, the presence of any exceptions to the doctrine of immutability of judgments. Further, petitioner's basis to reverse and set aside the judgment of the Court of Appeals is the same evidence that it has presented during the proceedings before the Labor Arbiter, the National Labor Relations Commission, and the Court of Appeals. There is no showing that any circumstance arose after the finality of judgment as to warrant the judgment's alteration. Thus, the ruling of the Court of Appeals can no longer be disturbed.

WHEREFORE, the Petition for Review on Certiorari is **DENIED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 216728. June 4, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DECITO FRANCISCO *y* VILLAGRACIA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS.— Murder is defined and penalized under Article

---

[73] *Rollo*, p. 15.

248 of the Revised Penal Code (*RPC*), as amended x x x. Generally, the elements of murder are: 1) that a person was killed; 2) that the accused killed him; 3) that the killing was attended by *any* of the qualifying circumstances mentioned in Article 248; and 4) that the killing is not parricide or infanticide.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY; FINDINGS OF FACT AND ASSESSMENT OF CREDIBILITY OF WITNESSES ARE MATTERS BEST LEFT TO THE TRIAL COURT AND MAY NOT BE DISTURBED ON APPEAL.—** That the victim died, that accused-appellant killed him, and that the killing is neither parricide nor infanticide remain undisputed. These circumstances have already been established by the trial and appellate courts. Accused-appellant did not offer any substantial reason to deviate from the well-known rule that findings of fact and assessment of credibility of witnesses are matters best left to the trial court. No facts of substance and value were overlooked by the trial court which, if considered, might affect the result of the case. The testimonies of the prosecution witnesses are clear and straightforward. x x x [I]t was not impossible for Daantos not to see accused-appellant's face. It is worthy to note that accused-appellant was not wearing any mask at the time of the incident and the place was well-lit. Daantos' testimony was even corroborated by Elias who was then in front of the victim. Thus, accused-appellant's allegation that the witnesses could not have seen him is nothing but a futile attempt to reverse his conviction. He did not aver, much less prove, any ill motive on the part of the witnesses to testify against him. Hence, the Court finds no compelling reason to disturb the findings of the trial court which were affirmed by the appellate court.

3. **CRIMINAL LAW; REVISED PENAL CODE; AGGRAVATING CIRCUMSTANCES; TREACHERY; CONDITIONS.—** Treachery is present when the offender commits any of the crimes against persons, 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. To constitute treachery, two conditions must be present: 1) the employment of means of execution that gave the person attacked no opportunity to defend himself or to retaliate; and 2) the means of execution were deliberately or consciously adopted.

4. ID.; ID.; ID.; ID.; THE SUDDENNESS OF THE ATTACK DOES NOT, OF ITSELF, SUFFICE TO SUPPORT A FINDING OF TREACHERY, EVEN IF THE PURPOSE IS TO KILL, SO LONG AS THE DECISION IS MADE ALL OF A SUDDEN AND THE VICTIM'S HELPLESS POSITION IS ACCIDENTAL.— The mere fact that the attack was inflicted when the victim had his back turned will not in itself constitute treachery. It must appear that such mode of attack was consciously adopted with the purpose of depriving the victim of a chance to either fight or retreat. Treachery cannot be appreciated where there is nothing in the record to show that the accused had pondered upon the mode or method to insure the killing of the deceased or remove or diminish any risk to himself that might arise from the defense that the deceased might make. When there is no evidence that the accused had, prior to the moment of the killing, resolved to commit the crime, or there is no proof that the death of the victim was the result of meditation, calculation or reflection, treachery cannot be considered. The suddenness of attack does not, of itself, suffice to support a finding of treachery, even if the purpose was to kill, so long as the decision was made all of a sudden and the victim's helpless position was accidental. It does not always follow that because the attack is sudden and unexpected, it is tainted with treachery. Indeed, it could have been done on impulse, as a reaction to an actual or imagined provocation offered by the victim. Where no particulars are known as to the manner in which the aggression was made or how the act which resulted in the death of the deceased began and developed, it can in no way be established from mere suppositions that the accused perpetrated the killing with treachery.

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 23 June 2014 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 01362 which affirmed with modification the 11 April 2011 Decision[2] of the Regional Trial Court, Branch 6, Tacloban City (*RTC*), in Criminal Case No. 2001-09-646 finding Decito Francisco y Villagracia (*accused-appellant*) guilty of Murder.

THE FACTS

In an Information, dated 24 September 2001, accused-appellant was charged with murder, as follows:

> That on or about the 23rd day of September 2001, in the City of Tacloban, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with intent to kill and with treachery and evident premeditation armed with a deadly weapon did, then and there wilfully, unlawfully and feloniously attack, assault and stab one Jaime Noriega III on his body, thereby inflicting upon said Jaime Noriega III stab wounds which caused his death.[3]

Upon arraignment, accused-appellant pleaded not guilty to the charge.

Version of the Prosecution

The prosecution presented Pacifico Daantos (*Daantos*) and Francis Elias (*Elias*) as its witnesses. Their combined testimonies sought to prove the following:

---

[1] *Rollo*, pp. 4-16; penned by Associate Justice Gabriel T. Ingles, and concurred in by Associate Justices Pamela Ann Abella Maxino and Renato C. Francisco.

[2] Records, pp. 176-183; penned by Assisting Judge Lauro A.P. Castillo, Jr.

[3] *Id.* at 1.

On 23 September 2001, at around 10:00 o'clock in the evening, Jaime Noriega III (*the victim*) was watching a game of Lucky Nine at the wake of the daughter of Anacleto Noriega at Baybay, San Jose, Tacloban City.[4] During the game, accused-appellant suddenly came from behind the victim and, without warning, stabbed him on the left side of his body with a 13-inch knife, locally known as "pisao." The victim, who was then seated at the table, fell down.[5] Accused-appellant pulled out the knife from the victim's body. The victim was able to utter the words, "I am wounded." Accused-appellant then fled while still holding the knife he used to stab the victim.[6]

Daantos, the victim's uncle, who was sitting near him at the time, chased accused-appellant but the latter managed to escape.[7] On the same evening, however, accused-appellant was apprehended by the responding officers while he was crossing a street at Manlurip, San Jose, Tacloban City.[8]

Meanwhile, the victim was brought to the hospital where he expired in the early morning of 24 September 2001, due to massive blood loss as a result of the stab wound.[9]

Version of the Defense

On 23 September 2001, at around 6:30 p.m., accused-appellant was at McArthur Park when two persons boarded his pedicab and told him to bring them to VicMar Beach Resort. Upon arrival at the resort, the two persons disembarked and asked him to wait for them. At around 7:00 o'clock in the evening, with no sign of the two persons, accused-appellant left. Thereafter, a certain Martin, his friend, called him up and invited him to drink tuba at the former's place. At around 10:00 o'clock in

---

[4] TSN, 26 August 2002, pp. 5-9.

[5] TSN, 26 November 2002, pp. 5-7.

[6] TSN, 26 August 2002, pp. 10-11.

[7] *Id.* at 11.

[8] TSN, 10 December 2003, p. 5.

[9] Records, p. 7.

the evening, accused- appellant left Martin's place. While he was riding his pedicab, two strangers accosted him. One of them suddenly stabbed him in his left arm. Accused- appellant then jumped to the right side of his pedicab, but the other assailant hit his back with an iron pipe. Accused-appellant was able to stab one of his assailants with his short bolo. Thereafter, his assailants ran away.[10]

The RTC Ruling

In its decision, the RTC found accused-appellant guilty of murder, ruling that accused-appellant failed to prove that he had acted in self- defense. While he claimed that he was stabbed and then hit by an iron pipe, he did not offer any proof to show that he had indeed suffered injuries. The trial court observed that accused-appellant was arrested almost immediately after the stabbing incident and that following established police procedure, he would have been subjected to a body search at the police station. Whatever injuries the policemen may have seen on his body would have been recorded in the police logbook and he would have been brought by the arresting officers to the hospital for treatment. Further, the trial court declared that the attack was attended by treachery because accused-appellant suddenly came from behind the victim and immediately stabbed him, concluding that there was no way for the victim to defend himself from the attack. The *fallo* reads:

WHEREFORE, premises considered, Judgment is hereby rendered, finding the accused **DECITO FRANCISCO y VILLAGRACIA**, Guilty beyond reasonable doubt for the murder of Jaime Noriega III. He is hereby sentenced to suffer the penalty of *reclusion perpetua*. His preventive detention shall be credited in full if he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners. Otherwise, he shall be credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment. The accused is also **ORDERED** to indemnify the Heirs of Jaime Noriega III the sum of **Php75,000.00**

[10] TSN, 21 September 2006, pp. 4-12.

for civil indemnity arising out of the felony; **Php75,000.00** for moral damages and **Php30,000.00** for exemplary damages.

No costs.[11]

Aggrieved, accused-appellant elevated an appeal before the CA.

The CA Ruling

In its decision, the CA affirmed the conviction of accused-appellant. As regards the contention that the prosecution witnesses could not have identified him, it held that Daantos positively affirmed that he saw accused--appellant. The CA noted that the table where the victim was seated at collapsed and that such peculiar occurrence would naturally divert a person's attention to the source of the commotion, such that when Daantos turned his gaze towards the victim, accused-appellant was already pulling out a short bolo from the left side of the victim. It added that from Elias' account, the victim was sitting at the edge of the table while he was standing; and that from such elevated position, he could clearly see what transpired. The appellate court opined that the attack on the victim came from the rear showing that accused-appellant had consciously adopted such means of execution to prevent any risk to himself. The CA disposed the case in this wise:

WHEREFORE, the appeal is hereby **DENIED**. The Decision of the Regional Trial Court, Branch 6 of Tacloban City promulgated on April 11, 2011, in Criminal Case No. 2001-09-646 in finding accused-appellant Decito Francisco y Villagracia guilty of the crime of murder is ***AFFIRMED IN TOTO***.[12]

Hence, this appeal.

ISSUE

WHETHER THE GUILT OF ACCUSED-APPELLANT FOR MURDER HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

---

[11] CA *rollo*, p. 20.

[12] *Rollo*, p. 15.

Accused-appellant argues that Daantos could not have identified him because his view was obstructed by the body of the victim; that Daantos did not notice the presence of accused-appellant prior to the stabbing incident; that Elias could not have seen his face because it was likewise obstructed by the victim's body; and that the prosecution failed to discharge its burden of proving that accused-appellant consciously adopted such means and methods to ensure that the victim could not defend himself from the unlawful attack.

THE COURT'S RULING

Murder is defined and penalized under Article 248 of the Revised Penal Code (*RPC*), as amended, which provides:

> ART. 248. *Murder*. Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
> 2. In consideration of a price, reward, or promise;
> 3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
> 4. On occasion of any calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;
> 5. With evident premeditation;
> 6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Generally, the elements of murder are: 1) that a person was killed; 2) that the accused killed him; 3) that the killing was

attended by *any* of the qualifying circumstances mentioned in Article 248; and 4) that the killing is not parricide or infanticide.[13]

That the victim died, that accused-appellant killed him, and that the killing is neither parricide nor infanticide remain undisputed. These circumstances have already been established by the trial and appellate courts. Accused-appellant did not offer any substantial reason to deviate from the well-known rule that findings of fact and assessment of credibility of witnesses are matters best left to the trial court.[14] No facts of substance and value were overlooked by the trial court which, if considered, might affect the result of the case.[15] The testimonies of the prosecution witnesses are clear and straightforward. Moreover, they are supported by medical findings and they stand the test of reason. Accused-appellant contends that Daantos could not have seen him because he was not facing the victim at the exact time of the stabbing incident. However, it was precisely because of the commotion that Daantos' attention was drawn to the victim and the accused-appellant. Consequently, it was not impossible for Daantos not to see accused-appellant's face. It is worthy to note that accused-appellant was not wearing any mask at the time of the incident and the place was well-lit. Daantos' testimony was even corroborated by Elias who was then in front of the victim. Thus, accused-appellant's allegation that the witnesses could not have seen him is nothing but a futile attempt to reverse his conviction. He did not aver, much less prove, any ill motive on the part of the witnesses to testify against him. Hence, the Court finds no compelling reason to disturb the findings of the trial court which were affirmed by the appellate court.

What remains to be resolved is the appreciation of treachery as a qualifying circumstance.

Treachery is present when the offender commits any of the crimes against persons, employing means, methods or forms

---

[13] Luis B. Reyes, *The Revised Penal Code Criminal Code*, Book Two, 17th Ed., p. 496 (2008).

[14] *People v. Mamaruncas*, 680 Phil. 192, 198 (2012).

[15] *Id*.

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.[16]

To constitute treachery, two conditions must be present: 1) the employment of means of execution that gave the person attacked no opportunity to defend himself or to retaliate; and 2) the means of execution were deliberately or consciously adopted.[17]

In this case, the victim was stabbed suddenly and he was totally unprepared for the unexpected attack as he was watching a card game at the precise time of the incident. He had absolutely no chance to defend himself.

The prosecution, however, failed to prove the existence of the second condition. The mere fact that the attack was inflicted when the victim had his back turned will not in itself constitute treachery.[18] It must appear that such mode of attack was consciously adopted with the purpose of depriving the victim of a chance to either fight or retreat.[19]

Treachery cannot be appreciated where there is nothing in the record to show that the accused had pondered upon the mode or method to insure the killing of the deceased or remove or diminish any risk to himself that might arise from the defense that the deceased might make.[20] When there is no evidence that the accused had, prior to the moment of the killing, resolved to commit the crime, or there is no proof that the death of the victim was the result of meditation, calculation or reflection, treachery cannot be considered.[21]

---

[16] Revised Penal Code, Article 14.

[17] *People v. Villalba*, 746 Phil. 270, 289 (2014).

[18] *People v. Albao*, 383 Phil. 873, 882 (2000).

[19] *People v. Academia, Jr.*, 366 Phil. 690, 696 (1999).

[20] *People v. Catbagan*, 467 Phil. 1044, 1082 (2004).

[21] *Tuburan v. People*, 479 Phil. 1009, 1018 (2004).

The suddenness of attack does not, of itself, suffice to support a finding of treachery, even if the purpose was to kill, so long as the decision was made all of a sudden and the victim's helpless position was accidental.[22] It does not always follow that because the attack is sudden and unexpected, it is tainted with treachery.[23] Indeed, it could have been done on impulse, as a reaction to an actual or imagined provocation offered by the victim.[24] Where no particulars are known as to the manner in which the aggression was made or how the act which resulted in the death of the deceased began and developed, it can in no way be established from mere suppositions that the accused perpetrated the killing with treachery.[25]

In this case, Daantos testified that his attention was drawn to the victim and accused-appellant only when the table where the victim was seated at collapsed. At that moment, Daantos only saw accused-appellant pulling out a short bolo from the victim's left side.[26] Elias, on the other hand, narrated that accused-appellant approached the victim from behind and stabbed him.[27] Aside from showing that accused-appellant's attack on the victim was sudden and unexpected, there is nothing in the record which would prove that such method or form of attack was deliberately chosen by accused-appellant. Thus, treachery cannot be appreciated in order to qualify the killing to murder.

Penalty and Award of Damages

The Court downgrades accused-appellant's conviction to the crime of Homicide. In consequence, accused-appellant is instead meted with the penalty of imprisonment with an indeterminate period of six (6) years and one (1) day of *prision mayor*, as

---

[22] *People v. Escoto*, 313 Phil. 785, 802 (1995).

[23] *People v. Flores*, 466 Phil. 683, 694 (2004).

[24] *People v. Templo*, 400 Phil. 471, 492 (2000).

[25] *People v. Bahenting*, 363 Phil. 181, 191 (1999).

[26] TSN, 26 August 2002, p. 10.

[27] TSN, 26 November 2002, p. 6.

minimum, to seventeen (17) years of *reclusion temporal*, as maximum, with all the concomitant accessory penalties.

The downgrading of accused-appellant's conviction results in the deletion of the award of ₱30,000.00 in exemplary damages.[28] Further, in line with prevailing jurisprudence,[29] the Court reduces the awards of civil indemnity and moral damages from ₱75,000.00 to ₱50,000.00.

WHEREFORE, the appeal is **PARTIALLY GRANTED**. The 23 June 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01362 is **AFFIRMED** with **MODIFICATION**. Accused-appellant Decito Francisco y Villagracia is found **GUILTY** beyond reasonable doubt of the crime of **HOMICIDE** for the killing of Jaime Noriega III and is hereby sentenced to suffer the penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years of *reclusion temporal*, as maximum. He is ordered to pay the heirs of Jaime Noriega III the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity and Fifty Thousand Pesos (₱50,000.00) as moral damages.

All monetary awards shall earn interest at the rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

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

---

[28] *People v. Jugueta*, 183 Phil. 806, 852 (2016).

[29] *Id.*

EN BANC

[A.M. No. P-16-3586. June 5, 2018]
(Formerly A.M. No. 14-4-43-MCTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **CLERK OF COURT II MICHAEL S. CALIJA, MUNICIPAL CIRCUIT TRIAL COURT (MCTC), DINGRAS-MARCOS, ILOCOS NORTE,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; ACT AS CUSTODIANS OF COURT FUNDS, AND AS SUCH, THEY ARE REQUIRED TO IMMEDIATELY DEPOSIT THE FUNDS WHICH THEY RECEIVE IN THEIR OFFICIAL CAPACITY TO THE AUTHORIZED GOVERNMENT DEPOSITORIES.— Clerks of court are important functionaries of the judiciary. As chief administrative officers of their respective courts, they are entrusted to perform delicate functions with regard to the collection of legal fees, and as such, are expected to implement regulations correctly and effectively. This Court has often reminded clerks of court that they act as custodians of court funds, and as such, they are required to immediately deposit the funds which they receive in their official capacity to the authorized government depositories for they are not supposed to keep such funds in their custody. For this reason, they are mandated to timely deposit judiciary collections as well as to submit monthly financial reports on the same. In this regard, OCA Circular No. 113-2004 dated September 16, 2004 outlines the guidelines for the uniform submission of Monthly Reports of Collections and Deposits by clerks of courts x x x.

2. ID.; ID.; ID.; ID.; ID.; GROSS NEGLECT OF DUTY; NON-SUBMISSION OF MONTHLY FINANCIAL REPORTS CONSTITUTES NEGLIGENCE IN THE PERFORMANCE OF DUTIES; PENALTY IN CASE AT BAR.— The directive of OCA Circular No. 113-2004 requiring the submission of monthly reports of collections of court funds and fees is

mandatory. In the present case, it cannot be denied that respondent has been consistently remiss in complying with this mandate. In view thereof, the Court adopts the findings of the OCA and finds respondent guilty of dereliction of duty. x x x Respondent's attention had been repeatedly called by the OCA for his failure to submit the required monthly financial reports, but he refused to heed the said office's directives on numerous occasions. Worse, his habitual dereliction of his duties had resulted to the withholding of his salaries numerous times. Respondent had been warned and even admonished for his blatant disregard of the Court and OCA directives; yet, no amount of warning nor admonition caused him to be more circumspect in the performance of his duties to seasonably comply with OCA Circular No. 113-2004. His obstinate refusal to promptly perform his tasks even prompted the Court to utilize its resources and form an audit team to look over respondent's accounts. The various violations by respondent, committed with such frequency and without conscientious regard to their consequences, and despite constant reminder from this Court, are testament to his gross negligence in the performance of his duties. Accordingly, We find respondent to be grossly negligent of his duties as a clerk of court for non-submission of monthly financial reports. Under Sec. 50 (A) of the 2017 Rules of Administrative Cases in the Civil Service, gross neglect of duty is classified as a grave offense, which merits the penalty of dismissal from service even at the first instance.

3. ID.; ID.; ID.; DERELICTION OF DUTY; MAY BE CLASSIFIED AS GROSS OR SIMPLE NEGLECT OF DUTY OR NEGLIGENCE.— Dereliction of duty may be classified as gross or simple neglect of duty or negligence. Simple neglect of duty means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference." In contrast, gross neglect of duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty. **It is such neglect which, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare.**

D E C I S I O N

***PER CURIAM*:**

The instant administrative complaint stemmed from the habitual failure of respondent Michael S. Calija, Clerk of Court II of the Municipal Circuit Trial Court (MCTC) of Dingras-Marcos, Ilocos Norte, to submit the Monthly Financial Reports of court funds on several occasions under Office of the Court Administrator (OCA) Circular No. 113-2004.

The factual antecedents, as summarized in the Memorandum Report dated March 14, 2014 of Atty. Lilian Barribal-Co (Atty. Barribal-Co), Chief of Office of the Financial Management Office, OCA, are as follows:

In May 2006, respondent's salary was withheld for his failure to submit monthly financial reports on the Judicial Development Fund (JDF), Special Allowance for the Judiciary (SAJ), and Fiduciary Fund (FF) for the period of July 2005 to May 2006 received by the MCTC. His salary was released in July 2006 upon submitting the required monthly financial reports. In a letter dated June 14, 2006, he explained that the delay was due to missing deposit slips which he only located recently.

Yet again, respondent's salary was withheld in April 2008 for non-submission of financial reports for the years 2005 to 2008. Respondent was eventually able to submit the above-stated reports, and thus, was able to receive his salary starting February 2009. For this infraction, he was admonished and sternly warned by the Court to be more circumspect in the performance of his duties and that a repetition of the same shall be dealt with more severely.

Respondent's salary was again withheld in May 2010 for failing to submit the financial reports for the following periods:

JDF	June 2009 to May 2010
SAF	June 2009 to May 2010
Fiduciary Fund	August 2005, April 2006, January 2008, September 2008, November

	to December 2008, April 2009, and June 2009 until March 2014
Sheriff's Trust Fund (STF)	March 2009, June 2009 until March 2014
General Fund	1st quarter of 2009 to 1st quarter of 2010

Due to respondent's repeated failure to comply with his duties to timely submit the required reports, the Legal Office of the OCA recommended that a financial audit be immediately conducted by the Fiscal Monitoring Division of the Court Management Office to ascertain apparent irregularities and wrongdoings in the course of respondent's duties that would warrant the filing of appropriate civil, criminal, and administrative charges.

After respondent submitted the latest required reports, the OCA, in a Memorandum dated July 12, 2011, recommended the release of respondent's withheld salaries. In a Resolution dated August 2, 2011 in A.M. No. 11-7-83-MCTC (*Re: Withheld Salaries of Mr. Michael S. Calija, Clerk of Court, MCTC, Dingras, Ilocos Norte*), the Court *En Banc* adopted the OCA's recommendation. Respondent, however, was sternly warned once more by this Court that he should be more circumspect in the performance of his obligation and that the further commission of a similar infraction shall be dealt with more severely.

Nevertheless, respondent was notified yet again on July 4, 2013 to submit the financial reports for the following periods:

JDF	March to July 2013
SAJ	May 2011, March to July 2013
Fiduciary Fund	September 2011, August 2012, and March to July 2013
STF	June 2011, March 2012, and March to July 2013
General Fund	4th quarter of 2012 up to 2nd quarter of 2013

Thereafter, in a letter dated November 7, 2013, the OCA required the respondent to show cause within a non-extendible

period of five days from notice why his salary should not be withheld for failure to submit the monthly financial reports on the JDF, SAJ, FF, and STF for the periods below:

JDF	May 2013 up to present[1]
SAJ	May 2011, and May 2013 up to present
Fiduciary Fund	September 2011, August 2012, and May 2013 to the present
STF	June 2011, May 2012, and May 2013 up to the present

In view of respondent's repeated failure to submit the monthly financial reports of court funds, Atty. Barribal-Co charged the respondent with dereliction of duty in her Memorandum Report.

The OCA twice required respondent to submit his comment on the Memorandum Report: *first*, in an Indorsement dated May 6, 2014, and *second*, through a Tracer letter dated December 5, 2014. Respondent, however, failed to submit his comment thereon. Thus, for the continuous non-compliance of respondent with the directives of the OCA, the Court, in a Resolution dated October 19, 2016 resolved to:

(1) RE-DOCKET the Report dated March 14, 2014 of Atty. Lilian Barribal-Co, Chief of Office, Financial Management Office, Office of the Court Administrator, as a regular administrative matter against respondent Clerk of Court Michael S. Calija, MCTC, Dingras-Marcos, Ilocos Norte;

(2) HOLD respondent Calija GUILTY of gross insubordination for his repeated failure to comply with the show cause letter dated May 6, 2014 and tracer letter dated December 5, 2014, all from the OCA, and IMPOSE upon him a FINE in the amount of Ten Thousand Pesos (₱10,000.00), with STERN WARNING that a repetition of the same or similar infraction will warrant a more severe penalty; and

(3) REQUIRE respondent Calija to (a) COMPLY with the show cause letter dated November 7, 2013 for his failure to comply with office rules and regulations on the submission of monthly

[1] As of November 7, 2013, the date of the Show Cause Letter.

> reports; and (b) SUBMIT the required comment on the Report dated March 14, 2014 of Atty. Barribal-Co, both within a non-extendible period of five (5) days, failing which, the Court shall take the necessary action against him and decide the matter on the basis of the record at hand.

From the issuance of the adverted Resolution, the records show that respondent has still failed to comply with the above directives of the Court. The Court has given the respondent ample opportunity to explain his side. He, however, has chosen to ignore the numerous orders issued by this Court requiring him to file his comment on the charges against him. We thus have no other option but to base Our decision on what is found in the records.

Ruling of the Court

Clerks of court are important functionaries of the judiciary.[2] As chief administrative officers of their respective courts,[3] they are entrusted to perform delicate functions with regard to the collection of legal fees, and as such, are expected to implement regulations correctly and effectively.[4] This Court has often reminded clerks of court that they act as custodians of court funds, and as such, they are required to immediately deposit the funds which they receive in their official capacity to the authorized government depositories for they are not supposed to keep such funds in their custody.[5] For this reason, they are mandated to timely deposit judiciary collections as well as to submit monthly financial reports on the same.[6]

---

[2] *In Re: Failure of Atty. Jacinto B. Peñaflor, Jr., Clerk of Court VI, Regional Trial Court, San Jose, Camarines Sur, to Submit the Required Monthly Report of Collections, Deposits, and Withdrawals*, A.M. No. P-07-2339, August 20, 2008. (citations omitted)

[3] *Office of the Court Administrator v. Fortaleza*, A.M. No. P-01-1524, July 29, 2002, 385 SCRA 293.

[4] *Id*. at 531-532.

[5] *Office of the Court Administrator v. Zerrudo*, A.M. No. P-11-3006, October 23, 2013, 708 SCRA 348.

[6] *Office of the Court Administrator v. Viesca*, A.M. No. P-12-3092, April 14, 2015. (citations omitted)

In this regard, OCA Circular No. 113-2004 dated September 16, 2004 outlines the guidelines for the uniform submission of Monthly Reports of Collections and Deposits by clerks of courts, as follows:

OCA CIRCULAR NO. 113-2004

TO: ALL CLERKS OF COURT OF THE REGIONAL TRIAL COURTS (RTC), SHARI'A DISTRICT COURTS (SDC), METROPOLITAN TRIAL COURTS (MeTC), MUNICIPAL TRIAL COURT IN CITIES (MTCC), MUNICIPAL CIRCUIT TRIAL COURTS (MCTC), MUNICIPAL TRIAL COURTS (MTC), AND SHARI'A CIRCUIT COURTS (SCC)

SUBJECT: SUBMISSION OF MONTHLY REPORTS OF COLLECTIONS AND DEPOSITS

The following guidelines and procedures are hereby established for purposes of uniformity in the submission of Monthly Reports of Collections and Deposits, to wit:

1. The Monthly Reports of Collections and Deposits for the Judiciary Development Fund (JDF), Special Allowance and Deposits for the Judiciary (SAJ) and Fiduciary Fund (FF) shall be:

1.1 Certified correct by the Clerk of Court

1.2 Duly subscribed and sworn to before the Executive/Presiding Judge

1.3 **Sent not later than the 10th day of each succeeding month** to—

The Chief Accountant
Accounting Division
Financial Management Office
Office of the Court Administrator
Supreme Court of the Philippines
Taft Avenue, Ermita
Manila

x x x x x x x x x

3. In case no transaction is made within the month, written notice thereof shall be submitted to the aforesaid Office not later that the 10th day of the succeeding month. (Emphasis supplied)

The directive of OCA Circular No. 113-2004 requiring the submission of monthly reports of collections of court funds and fees is mandatory.[7] In the present case, it cannot be denied that respondent has been consistently remiss in complying with this mandate. In view thereof, the Court adopts the findings of the OCA and finds respondent guilty of dereliction of duty.

Dereliction of duty may be classified as gross or simple neglect of duty or negligence.[8] Simple neglect of duty means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference."[9] In contrast, gross neglect of duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty.[10] **It is such neglect which, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare**.[11]

Respondent's attention had been repeatedly called by the OCA for his failure to submit the required monthly financial reports, but he refused to heed the said office's directives on numerous occasions. Worse, his habitual dereliction of his duties had resulted to the withholding of his salaries numerous times. Respondent had been warned and even admonished for his blatant disregard of the Court and OCA directives; yet, no amount of warning nor admonition caused him to be more circumspect in

---

[7] *Office of the Court Administrator v. Mendoza*, A.M. No. P-14-3257, July 22, 2015.

[8] *Re: Complaint of Aero Engr. Darwin A. Reci against Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Thelma C. Bahia relative to Criminal Case No. 05-236956*, A.M. No. 17-01-14-SC, February 7, 2017. (citations omitted)

[9] *Ombudsman v. De Leon*, G.R. No. 154083, February 27, 2013.

[10] *Office of the Court Administrator v. Viesca*, *supra* note 6, citing *Court of Appeals v. Manabat, Jr.*, A.M. No. CA-11-24-P, November 16, 2011, 660 SCRA 159.

[11] *Office of the Court Administrator v. Mendoza*, *supra* note 7.

the performance of his duties to seasonably comply with OCA Circular No. 113-2004. His obstinate refusal to promptly perform his tasks even prompted the Court to utilize its resources and form an audit team to look over respondent's accounts. The various violations by respondent, committed with such frequency and without conscientious regard to their consequences, and despite constant reminder from this Court, are testament to his gross negligence in the performance of his duties.

Accordingly, We find respondent to be grossly negligent of his duties as a clerk of court for non-submission of monthly financial reports. Under Sec. 50 (A) of the 2017 Rules of Administrative Cases in the Civil Service,[12] gross neglect of duty is classified as a grave offense, which merits the penalty of dismissal from service even at the first instance.

WHEREFORE, the Court finds respondent Michael S. Calija, Clerk of Court II of the Municipal Circuit Trial Court of Dingras-Marcos, Ilocos Norte, **GUILTY** of Gross Neglect of Duty and hereby **DISMISSES** him from service effectively immediately, with forfeiture of all retirement benefits, except accrued leave benefits, and with prejudice to re-employment in the government, including government-owned or controlled corporations.

SO ORDERED.

Carpio (*Acting C.J.*), *Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires, Reyes, Jr.,* and *Gesmundo, JJ.,* concur.

Peralta, J., on official leave.

Tijam, J., on official business.

---

[12] Section. 50. *Classification of Offenses*. Administrative offenses with corresponding penalties are classified into grave, less grave and light, depending on their gravity or depravity and effects on the government service:

A. The following grave offenses shall be punishable by dismissal from the service:

1. Serious Dishonesty;
2. Gross Neglect of Duty.

SECOND DIVISION

[A.C. No. 12084. June 5, 2018]

HERNANIE P. DANDOY, *complainant, vs.* **ATTY. ROLAND G. EDAYAN**, *respondent.*

SYLLABUS

1. **LEGAL ETHICS; NOTARIES PUBLIC; NOTARIZATION; CONVERTS A PRIVATE DOCUMENT INTO A PUBLIC DOCUMENT, MAKING IT ADMISSIBLE IN EVIDENCE WITHOUT FURTHER PROOF OF ITS AUTHENTICITY.—** [T]he act of notarization is impressed with public interest. Notarization converts a private document to a public document, making it admissible in evidence without further proof of its authenticity. A notarial document is, by law, entitled to full faith and credence. As such, a notary public must observe with utmost care the basic requirements in the performance of his duties in order to preserve the confidence of the public in the integrity of the notarial system. In this light, the Court has ruled that notaries must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions.

2. **ID.; ID.; 2004 RULES ON NOTARIAL PRACTICE; A NOTARY PUBLIC SHOULD NOT NOTARIZE A DOCUMENT UNLESS THE PERSON WHO SIGNED THE SAME IS THE VERY PERSON WHO EXECUTED AND PERSONALLY APPEARED BEFORE HIM TO ATTEST TO THE CONTENTS AND THE TRUTH OF WHAT ARE STATED THEREIN.—** The 2004 Rules on Notarial Practice provides that a notary public should not notarize a document unless the signatory to the document is in the notary's presence personally at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity. Section 12, Rule II of the same rules defines "competent evidence of identity" x x x. Pursuant to these Rules, a notary public should not notarize a document unless the person who signed the same is the very person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein.

3. ID.; ID.; ID.; EVIDENCE OF IDENTITY; A COMMUNITY TAX CERTIFICATE OR *CEDULA* IS NO LONGER CONSIDERED AS A VALID AND COMPETENT EVIDENCE OF IDENTITY.— In this case, respondent x x x was remiss in the faithful observance of his duties as a notary public when he failed to confirm the identity of the person claiming to be Jacinto through the competent evidence of identity required by the 2004 Notarial Rules. Jurisprudence provides that a community tax certificate or *cedula* is no longer considered as a valid and competent evidence of identity not only because it is not included in the list of competent evidence of identity under the Rules; but more so, it does not bear the photograph and signature of the persons appearing before them, which the Rules deem as the more appropriate and competent means by which notaries public can ascertain the person's identity. Records show that Jacinto passed away on July 13, 1999, and therefore, clearly could not have appeared before respondent to sign and execute the two (2) documents. x x x [B]y accepting the residence certificates presented by the person who claimed to be Jacinto as evidence of identity, respondent made it appear that Jacinto personally appeared before him and subscribed the SPA and the Deed in violation of the 2004 Notarial Rules x x x.

4. ID.; ID.; ID.; ID.; CREDIBLE WITNESSES MAKING OATH AS TO THE IDENTITY OF THE INDIVIDUAL SUBSCRIBING THE DOCUMENT, QUALIFICATIONS.— [T]he statements made by the witnesses to the documents as regards the identity of the persons who claimed to be Felipe and Jacinto and those made by the person purporting to be Felipe as regards the latter do not comply with the 2004 Notarial Rules' requirements on competent evidence of identity. Section 12 clearly states that the credible witness/es making the oath – as to the identity of the individual subscribing the document – must: not be a privy to the document, *etc.*; personally know/s the individual subscribing; and, must either be (*a*) personally known to the notary public, or (*b*) must show to the notary public a photograph-and-signature-bearing identification document. In this case, Felipe and Garzo were both privies to the document, and the records are bereft of any evidence showing that the other witnesses to the document had shown to respondent the documentary identification which the 2004 Notarial Rules require.

5. ID.; ID.; A NOTARY PUBLIC WHO FAILS TO PROPERLY PERFORM HIS DUTY CAUSES DAMAGES TO THOSE DIRECTLY AFFECTED BY THE NOTARIZED DOCUMENT, UNDERMINES THE INTEGRITY OF THE OFFICE OF A NOTARY PUBLIC AND DEGRADES THE FUNCTION OF NOTARIZATION.— [A]s a lawyer, respondent is expected at all times to uphold the integrity and dignity of the legal profession and refrain from any act or omission which might erode the trust and confidence reposed by the public in the integrity of the legal profession. By notarizing the subject documents, he engaged in unlawful, dishonest, immoral, or deceitful conduct which makes him liable as well for violation of the CPR, particularly Canon 1, Rule 1.01 thereof x x x. [R]espondent's failure to properly perform his duty as a notary public resulted not only in damage to those directly affected by the notarized document, but also in undermining the integrity of the office of a notary public and in degrading the function of notarization. He should thus be held liable for such negligence not only as a notary public but also as a lawyer. Consistent with prevailing jurisprudence, he should be meted out with the modified penalty of immediate revocation of his notarial commission, if any, disqualification from being commissioned as notary public for a period of two (2) years, and suspension from the practice of law for one (1) year.

APPEARANCES OF COUNSEL

Persephone D.C. Evangelista for complainant.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This administrative case stemmed from a verified letter-complaint[1] dated December 17, 2010 filed by Hernanie P. Dandoy (Dandoy) before the Integrated Bar of the Philippines (IBP) against respondent Atty. Roland G. Edayan (respondent) for

[1] *Rollo*, pp. 4-10.

violation of Canons 1, 3, and 7 of the Code of Professional Responsibility (CPR).[2]

The Facts

In the complaint, Dandoy alleged that on October 17, 2006, respondent notarized: (*a*) a Special Power of Attorney[3] (SPA) executed by his (Dandoy) father, Jacinto S. Dandoy (Jacinto), in favor of a certain Antoine Cyrus C. Garzo (Garzo) granting the latter authority to offer as collateral two (2) parcels of land located in San Juan, Siquijor; and (*b*) a Deed of Extrajudicial Settlement of Real Estate[4] (Deed) of Dandoy's late grandmother, Eutiquia Sumagang, wherein his father was also one of the parties.[5] According to Dandoy, Jacinto could not have been present before respondent on October 17, 2006 because he passed away on July 13, 1999.[6] He added that, through the SPA and the Deed, Garzo was able to mortgage the two (2) parcels of land as security for a ₱400,000.00 loan. The mortgage was, however, foreclosed and the mortgaged properties were not redeemed to the great prejudice of Dandoy and his siblings.[7] In support thereof, Dandoy attached a certified true copy of the SPA, death certificate of Jacinto stating that he died on July 13, 1999, a copy of the Deed, and a copy of the Deed of Real Estate Mortgage[8] dated October 17, 2006 executed by Garzo on behalf of Jacinto and Felipe Dandoy (Felipe), Dandoy's uncle.

In his Sworn Statement[9] dated May 22, 2011, respondent admitted to having notarized the two (2) documents, but claimed

---

[2] See Dandoy's Position Paper dated July 8, 2015 (*id.* at 26-33), where he likewise charged respondent for violation of the 2004 Rules on Notarial Practice.

[3] *Id.* at 6.

[4] *Id.* at 8.

[5] See *id.* at 4.

[6] See Jacinto's Death Certificate issued on December 16, 2010; *id.* at 7.

[7] *Id.* at 4.

[8] *Id.* at 10.

[9] *Id.* at 11-14.

that he verified the identities of the signatories thereto through their residence certificates. He narrated that on the said date, two (2) persons came to his office claiming to be Jacinto and Felipe and asked him to draft and notarize the SPA and the Deed. He added that Felipe even confirmed the identity of Jacinto in the same manner that the witnesses to the documents, who were likewise present at that time, confirmed the identities of the two. Finally, he submitted that while residence certificates are not mentioned in the list of competent evidence of identity enumerated under Section 12, Rule II of the 2004 Rules on Notarial Practice[10] (2004 Notarial Rules), these are still necessary

---

[10] Section 12, Rule II of the 2004 Notarial Rules reads:

> Sec. 12. *Competent Evidence of Identity*. – The phrase "competent evidence of identity" refers to the identification of an individual based on:
>
> (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or
>
> (b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

Section 12(a) of Rule II was amended in the February 19, 2008 Resolution of the Court *En Banc*; it now reads:

"Sec. 12. *Competent Evidence of Identity*. – The phrase "competent evidence of identity" refers to the identification of an individual based on:

> (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual, such as but not limited to, passport, driver's license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter's ID, Barangay certification, Government Service and Insurance System (GSIS) e-card, Social Security System (SSS) card, Philhealth card, senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman's book,

for the proper execution of the notarial act as it is still prescribed by various laws, *i.e.*, Commonwealth Act No. 465,[11] the Notarial Law,[12] and the Local Government Code.[13]

The Report and Recommendation of the IBP

In its Report and Recommendation[14] dated October 22, 2015, the IBP Investigating Commissioner (IBP-IC) found respondent administratively liable for failure to comply with the 2004 Notarial Rules, and accordingly, recommended that respondent's notarial commission, if existing, be revoked and that he be disqualified from being commissioned as a notary public for a period of two (2) years.[15]

The IBP-IC found that respondent failed to confirm the identity of the person claiming to be Jacinto through the competent evidence of identity required by the 2004 Notarial Rules – the controlling rules on notarial practice at the time of the notarization of the SPA and the Deed, not the Notarial Law invoked by respondent. In this regard, the IBP-IC pointed out that under the 2004 Notarial Rules, competent evidence of identity includes:

> alien certificate of registration/immigrant certificate of registration, government office ID, certification from the National Council for the Welfare of Disable Persons (NCWDP), Department of Social Welfare and Development (DSWD) certification; or
>
> x x x x x x x x x."

[11] Otherwise known as "AN ACT TO IMPOSE A RESIDENCE TAX," effective on January 1, 1940.

[12] See Chapter 11, Title IV of Act No. 2711, otherwise known as "AN ACT AMENDING THE ADMINISTRATIVE CODE," approved on March 10, 1917.

[13] See *rollo*, pp. 11-12.

[14] *Id*. at 58-64. Penned by Commissioner Joel L. Bodegon. Prior thereto, Dandoy filed a Manifestation dated August 28, 2015 (*id.* at 74-75), manifesting that it was impossible for Felipe to have helped Garzo because at the time of the execution of the subject documents, he was terminally ill and was confined to his bed; he died soon after on February 10, 2007 as evidenced by copy of his death certificate (*id*. at 76).

[15] See *id*. at 64.

(*a*) a government-issued identification document bearing their respective photographs, which clearly does not include the community tax certificate presented in this case; and (*b*) affirmation of one credible witness not privy to the instrument, *etc*. who is personally known to the notary public and who personally knows the individual, which, in this case, was not satisfied by the statements made by Felipe or Garzo as to the identity of Jacinto because they are privy to the Deed and the SPA. Finally, the IBP-IC noted the apparent discrepancy between the signatures affixed by the person claiming to be Jacinto in the SPA and in the Deed which, to the IBP-IC, should have already raised suspicion on respondent's part and prompted him to require a signature and photograph-bearing identification card from said person. Being a notary public, and therefore an officer of the court, the IBP-IC pointed out that respondent must strictly comply with the rules on notarial practice as may be issued by the Court.[16]

The IBP-IC, however, found the evidence insufficient to show that respondent wilfully and maliciously conspired with Garzo and Felipe in depriving Dandoy and his siblings of their grandmother's property in order to hold him administratively liable under the CPR.[17]

In a Resolution[18] dated February 25, 2016, the IBP Board of Governors adopted the above report and recommendation of the IBP-IC. Dissatisfied, respondent sought reconsideration,[19] which the IBP denied in a Resolution[20] dated April 20, 2017.

The Issue Before the Court

The issue for the Court's resolution is whether or not the IBP correctly found respondent liable for violation of the 2004 Notarial Rules.

---

[16] See *id*. at 61-64.

[17] See *id*. at 60-61.

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

[19] See Motion for Reconsideration dated July 7, 2016; *id*. at 65-67.

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

The Court's Ruling

The Court affirms the findings and adopts the recommendations of the IBP with modifications.

Time and again, the Court has emphasized that the act of notarization is impressed with public interest. Notarization converts a private document to a public document, making it admissible in evidence without further proof of its authenticity.[21] A notarial document is, by law, entitled to full faith and credence.[22] As such, a notary public must observe with utmost care the basic requirements in the performance of his duties in order to preserve the confidence of the public in the integrity of the notarial system.[23] In this light, the Court has ruled that notaries must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions.[24]

The 2004 Rules on Notarial Practice provides that a notary public should not notarize a document unless the signatory to the document is in the notary's presence personally at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity.[25] Section 12, Rule II of the same rules defines "competent evidence of identity" as follows:

Section 12. *Competent Evidence of Identity*. – The phrase "competent evidence of identity" refers to the identification of an individual based on:

(a) at least **one current identification document issued by an official agency bearing the photograph and signature of the individual**; or

---

[21] *Gaddi v. Velasco*, 742 Phil. 810, 815 (2014); citation omitted.

[22] See *id*.

[23] See *id*. See also *Bartolome v. Basilio*, 771 Phil. 1, 5 (2015) and *Baysac v. Aceron-Papa*, A.C. No. 10231, August 10, 2016, 800 SCRA 1, 11-12.

[24] See *Bartolome v. Basilio, id*. at 9. See also *Sultan v. Macabanding*, 745 Phil. 12, 20 (2014).

[25] See Section 2(b), Rule IV of the 2004 Rules on Notarial Practice.

(b) the oath or affirmation of one credible witness **not privy** to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses **neither of whom is privy** to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification. (Emphases and underscoring supplied)

Pursuant to these Rules, a notary public should not notarize a document unless the person who signed the same is the very person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein.[26]

In this case, respondent, as duly found by the IBP, was remiss in the faithful observance of his duties as a notary public when he failed to confirm the identity of the person claiming to be Jacinto through the competent evidence of identity required by the 2004 Notarial Rules. Jurisprudence[27] provides that a community tax certificate or *cedula* is no longer considered as a valid and competent evidence of identity not only because it is not included in the list of competent evidence of identity under the Rules; but moreso, it does not bear the photograph and signature of the persons appearing before them, which the Rules deem as the more appropriate and competent means by which notaries public can ascertain the person's identity. Records show that Jacinto passed away on July 13, 1999, and therefore, clearly could not have appeared before respondent to sign and execute the two (2) documents. Had respondent been more circumspect in performing his duties as notary public and asked for the photograph-and-signature-bearing identification document required by the 2004 Notarial Rules, he would have immediately discovered that the person before him was not the person whom he purports to be. All told, by accepting the residence certificates presented by the person who claimed to be Jacinto as evidence

---

[26] *Bartolome v. Basilio, supra* note 23, at 9.

[27] See *Baysac v. Atty. Aceron-Papa*, *supra* note 23, at 11 and *Agbulos v. Viray*, 704 Phil. 1 (2013).

of identity, respondent made it appear that Jacinto personally appeared before him and subscribed the SPA and the Deed in violation of the 2004 Notarial Rules and to the detriment of Dandoy and his siblings.

Moreover, the statements made by the witnesses to the documents as regards the identity of the persons who claimed to be Felipe and Jacinto and those made by the person purporting to be Felipe as regards the latter do not comply with the 2004 Notarial Rules' requirements on competent evidence of identity. Section 12 clearly states that the credible witness/es making the oath – as to the identity of the individual subscribing the document – must: not be a privy to the document, *etc.*; personally know/s the individual subscribing; and, must either be (*a*) personally known to the notary public, or (*b*) must show to the notary public a photograph-and-signature-bearing identification document. In this case, Felipe and Garzo were both privies to the document, and the records are bereft of any evidence showing that the other witnesses to the document had shown to respondent the documentary identification which the 2004 Notarial Rules require.

Moreover, as a lawyer, respondent is expected at all times to uphold the integrity and dignity of the legal profession and refrain from any act or omission which might erode the trust and confidence reposed by the public in the integrity of the legal profession.[28] By notarizing the subject documents, he engaged in unlawful, dishonest, immoral, or deceitful conduct which makes him liable as well for violation of the CPR, particularly Canon 1, Rule 1.01 thereof which provides:

> CANON 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.
>
> Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

As a final note, the Court finds it unfortunate that notwithstanding the findings of the IBP, respondent still fails

---

[28] See *Sappayani v. Gasmen*, 768 Phil. 1, 8-9 (2015).

to recognize the fact that his actions violated the provisions of the 2004 Notarial Rules, as he maintains that the residence certificates presented before him sufficiently complied with the Rules' identification requirements.[29] It must be remembered, however, that a lawyer is duty-bound to keep abreast of legal developments;[30] the changes in our notarial rules are no exception.

As herein discussed, respondent's failure to properly perform his duty as a notary public resulted not only in damage to those directly affected by the notarized document, but also in undermining the integrity of the office of a notary public and in degrading the function of notarization.[31] He should thus be held liable for such negligence not only as a notary public but also as a lawyer. Consistent with prevailing jurisprudence,[32] he should be meted out with the modified penalty of immediate revocation of his notarial commission, if any, disqualification from being commissioned as notary public for a period of two (2) years, and suspension from the practice of law for one (1) year.

WHEREFORE, the Court hereby finds respondent Atty. Roland G. Edayan (respondent) **GUILTY** of violation of the 2004 Rules on Notarial Practice and of the Code of Professional Responsibility. Accordingly, the Court resolves to: **SUSPEND** him from the practice of law for one (1) year; **REVOKE** his incumbent commission as a notary public, if any; and, **PROHIBIT** him from being commissioned as a notary public for two (2) years. He is **WARNED** that a repetition of the same offense or similar acts in the future shall be dealt with more severely.

---

[29] See *rollo*, pp. 48-49 and 66.

[30] See Canon 5 of the Code of Professional Responsibility.

[31] See *Baysac v. Aceron-Papa*, *supra* note 23, at 11-12; *Bartolome v. Basilio*, *supra* note 23, at 10; and *Sappayani v. Gasmen*, *supra* note 28, at 8.

[32] See the following cases where the Court imposed similar penalty for violation of the 2004 Rules on Notarial Practice: *Baysac v. Aceron-Papa*, *supra* note 23; *Bartolome v. Basilio*, *supra* note 23; *Dizon v. Cabucana, Jr.*, 729 Phil. 109 (2014); *Sappayani v. Gasmen*, *supra* note 28; and *Isenhardt v. Real*, 682 Phil. 19 (2012).

The suspension in the practice of law, the revocation of his notarial commission, and his disqualification from being commissioned as notary public shall take effect immediately upon receipt of this Resolution by respondent. He is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Resolution be furnished to: the Office of the Bar Confidant to be appended to respondent's personal record as an attorney; the Integrated Bar of the Philippines for its information and guidance; and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Carpio[*]*, Senior Associate Justice* (*Chairperson*), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[A.M. No. P-16-3617. June 6, 2018]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **GILBERT T. INMENZO, Clerk of Court III, Metropolitan Trial Court, Branch 52, Caloocan City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL;

---

[*] Per Section 12, Republic Act No. 296, the Judiciary Act of 1948, As Amended.

CLERKS OF COURT; AS COURT CUSTODIAN, THE CLERK OF COURT IS RESPONSIBLE IN ENSURING THAT EXHIBITS ARE SAFELY KEPT AND THE SAME ARE READILY AVAILABLE UPON THE REQUEST OF THE PARTIES OR ORDER OF THE COURT.— The Manual for Clerks of Court provides that the clerk of court is the administrative officer of the court who controls and supervises the safekeeping of court records, exhibits, and documents, among others. Rule 136, Section 7 of the Rules of Court further provides that the clerk of court shall safely keep all records, papers, files, exhibits, and public property committed in his charge. Section 1 of Canon IV of the Code of Conduct for Court Personnel stresses that court personnel shall at all times perform official duties properly and diligently. A simple act of neglect resulting to loss of funds, documents, properties or exhibits in *custodia legis* ruins the confidence lodged by litigants or the public in our judicial process. In the present case, Inmenzo, while he was clerk of court, clearly received the firearm from PO2 Bagting and marked it as an exhibit, based on the acknowledgment receipt Inmenzo himself admittedly signed. He, however, failed to explain the whereabouts of the firearm after receiving it and consequently, lost it under his custody. As court custodian, it was his responsibility to ensure that exhibits are safely kept and the same are readily available upon the request of the parties or order of the court.

2. **ID.; ID.; ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY; THE CLERK OF COURT'S FAILURE TO GIVE DUE ATTENTION TO THE TASK EXPECTED OF HIM CONSTITUTES SIMPLE NEGLECT OF DUTY.—** For failing to give due attention to the task expected of him resulting to the loss of a firearm committed in his charge, we find Inmenzo guilty of simple neglect of duty. Simple neglect of duty is the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference. It is classified under the Revised Rules on Administrative Cases in the Civil Service as a less grave offense and carries the corresponding penalty of suspension for one month and one day to six months for the first offense.

D E C I S I O N

CARPIO, *J.*:

The Case

This administrative case arose from a letter[1] dated 11 December 2012 of then Acting Presiding Judge Lourdes Grace S. Barrientos-Sasondoncillo (Judge Sasondoncillo) of the Metropolitan Trial Court, Branch 52, Caloocan City (MeTC) to the Office of the Court Administrator (OCA).

The Facts

The facts, as culled from the records, are as follows:

On 24 March 2004, respondent Gilbert T. Inmenzo (Inmenzo) was appointed as Clerk of Court III of the MeTC.

Pursuant to the Order dated 8 March 2007 of then Acting Presiding Judge Josephine Advento-Vito Cruz, Inmenzo issued a *subpoena duces tecum/ad testificandum* directing PO2 Joselito Bagting (PO2 Bagting) to bring the evidence in Criminal Case No. 229179, entitled *People v. Hidalgo*, on 31 May 2007 before the MeTC. On 31 May 2007, Inmenzo acknowledged receiving from PO2 Bagting, "ONE (1) .38 CALIBER PISTOL marked as Exhibit E, 9MM" (firearm), among the evidence subject of the subpoena.[2]

Around the week of 8 November 2012, Judge Sasondoncillo found out that the firearm involved in Criminal Case No. 229179 was missing. Thus, on 11 December 2012, Judge Sasondoncillo wrote the OCA requesting for an investigation of the missing firearm. She attached in her letter: (a) her Memorandum to Inmenzo asking him to produce the missing firearm within 72 hours or explain in writing why the firearm could not be produced; and (b) Inmenzo's Reply to the Memorandum.

---

[1] *Rollo,* pp. 5-6.

[2] *Id*. at 20.

In the Initial Investigation Report[3] dated 19 February 2014, the investigation team found that Inmenzo received in *custodia legis* the missing firearm from PO2 Bagting on 31 May 2007, evidenced by an acknowledgment receipt. Thus, they recommended that the instant matter be considered a formal administrative complaint against Inmenzo and that he be required to comment on it.

In his Comment[4] dated 27 May 2014, Inmenzo denied receiving the firearm. He, however, admitted signing the acknowledgment receipt, but he claimed that he signed inadvertently and without reading its contents due to heavy workload. To support his claim, he attached a Joint Affidavit[5] dated 27 May 2014 of his five co-employees, namely, Court Stenographer II Esperancilla B. Kabiling (Kabiling), Court Stenographer II Cristita F. Tolentino (Tolentino), Clerk III Rosario H. Santos (Santos), Clerk III Melissa P. Pulangas (Pulangas) and Job Order Employee Archilles M. De Vera (De Vera), stating that they heard PO2 Bagting utter the following words to Inmenzo: "*Nagtataka nga po ako sa iyo sir, bakit pinirmahan niyo po yung acknowledgment receipt eh di ko po naman dito iyon ipinarereceived kungdi dun sa matandang Branch Clerk na nakasalamin.*"[6]

On 15 July 2015, Inmenzo resigned from the service as Clerk of Court III.

In a Resolution[7] dated 3 August 2015, the Court, through the Second Division, resolved to refer the instant administrative complaint to the Executive Judge of the MeTC for investigation, report and recommendation, considering that factual issues, which were material to the ultimate resolution of the case, could be ventilated only in a formal investigation.

---

[3] *Id.* at 1-4.

[4] *Id.* at 28-38.

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

[6] *Id.* at 53.

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

The Recommendation of the Investigating Judge

In the Formal Investigation Report[8] dated 20 January 2016, Investigating Judge Michael V. Francisco (Investigating Judge) stated that during the formal investigation: (1) PO2 Bagting denied uttering the statement: "*Nagtataka nga po ako sa iyo sir, bakit pinirmahan niyo po yung acknowledgment receipt eh di ko po naman dito iyon ipinarereceived kungdi dun sa matandang Branch Clerk na nakasalamin.*;" (2) Kabiling, Tolentino, Santos, Pulangas, and De Vera recanted their statement in the Joint Affidavit and unanimously declared that the Joint Affidavit was prepared by Inmenzo, who merely made them sign it without allowing them to thoroughly read its contents; (3) Kabiling, Tolentino, Santos, Pulangas, and De Vera also unanimously declared that the only words they heard from PO2 Bagting was: "*sa matandang Branch Clerk na nakasalamin;*" and (4) when confronted with the testimonies of PO2 Bagting and those of his co-employees, Inmenzo no longer contested his receipt of the missing firearm, and only pleaded for benevolence and compassion from the court.

Thus, the Investigating Judge recommended the imposition of the penalty of six months suspension on Inmenzo for simple neglect of duty, after finding that the firearm was lost while under Inmenzo's custody due to his carelessness. In imposing the penalty, the Investigating Judge considered the following circumstances: (1) in his 22 years of service, this is the first time that evidence entrusted to Inmenzo has been misplaced; (2) he exerted efforts to safeguard the evidence kept in the dilapidated storage facilities of the court by restricting access to the room; and (3) there was no discernible willful, intentional or conscious indifference to his inactions as to warrant a finding of gross neglect.

The Recommendation of the OCA

In a Memorandum[9] dated 27 September 2016 addressed to Senior Associate Justice Antonio T. Carpio, the OCA adopted

---

[8] *Id.* at 73-107. Erroneously dated 20 January 2015.

[9] *Id.* at 257-259.

in toto the findings of the Investigating Judge, except as to the penalty, to wit:

> 1. the instant administrative complaint be **RE-DOCKETED** as a regular administrative matter against respondent Gilbert T. Inmenzo, Clerk of Court III, Metropolitan Trial Court, Branch 52, Caloocan City; and
>
> 2. respondent Inmenzo be found GUILTY of simple neglect of duty and be imposed the penalty of FINE in the amount of Ten Thousand Pesos (Php 10,000.00), in lieu of suspension on account of his voluntary resignation from the service, said amount to be deducted from his retirement benefits.

In a Resolution dated 28 November 2016, the Court resolved to re-docket the instant administrative complaint as a regular administrative matter against Inmenzo.

The Ruling of the Court

The Court adopts the findings and recommendations of the OCA, except as to the penalty.

The Manual for Clerks of Court provides that the clerk of court is the administrative officer of the court who controls and supervises the safekeeping of court records, exhibits, and documents, among others.[10] Rule 136, Section 7 of the Rules of Court further provides that the clerk of court shall safely keep all records, papers, files, exhibits, and public property committed in his charge. Section 1 of Canon IV of the Code of Conduct for Court Personnel stresses that court personnel shall at all times perform official duties properly and diligently. A

---

[10] *Office of the Court Administrator v. Tandinco, Jr.*, 773 Phil. 141, 158 (2015), stating "Chapter II of the Manual for Clerks of Court provides the general functions and duties of Clerks of Court, one of which is the safekeeping of court records, to wit:

> 3. Duties —
>
> a. Safekeeping of Property — The Clerks of Court shall safely keep all records, papers, files, exhibits and public property committed to their charge, including the library of the Court, and the seals and furniture belonging to their office."

simple act of neglect resulting to loss of funds, documents, properties or exhibits in *custodia legis* ruins the confidence lodged by litigants or the public in our judicial process.[11]

In the present case, Inmenzo, while he was clerk of court, clearly received the firearm from PO2 Bagting and marked it as an exhibit, based on the acknowledgment receipt Inmenzo himself admittedly signed. He, however, failed to explain the whereabouts of the firearm after receiving it and consequently, lost it under his custody. As court custodian, it was his responsibility to ensure that exhibits are safely kept and the same are readily available upon the request of the parties or order of the court.[12] Having a heavy workload and mentioning the dilapidated state of storage facilities of the court are unavailing defenses. Being the chief administrative officer, he plays a key role in the complement of the court and cannot be permitted to slacken off in his job under one pretext or another.[13] It is likewise his duty to inform the judge of the necessary repair of the dilapidated storage facilities of the court. His attempt to escape responsibility over the loss of the exhibit under his care and custody must therefore fail.

In *Bongalos v. Monungolh*,[14] we found respondent clerk of court guilty of gross neglect of duty and ordered him to pay the fine of ₱20,000 for entrusting the prosecution's evidence, specifically gun and bullets, to a police officer, causing the loss of evidence. We held that he did not exert any effort to retrieve the evidence when it was discovered missing, and he simply blamed the prosecution for its disappearance.[15] In *Office*

---

[11] *Office of the Court Administrator v. Judge Ramirez*, 489 Phil. 262, 271 (2005).

[12] *Bongalos v. Monungolh*, 416 Phil. 695, 700 (2001).

[13] *Rivera v. Buena,* 569 Phil. 551, 557 (2008), citing *Solidbank Corp. v. Capoon, Jr.*, 351 Phil. 936, 942 (1998); *Abubacar v. Alauya,* 473 Phil. 180, 191 (2004).

[14] *Supra* note 12.

[15] *Supra* note 12, at 701.

of the Court Administrator v. Judge Ramirez,[16] we found the respondent clerk of court liable for simple neglect of duty and imposed upon her the penalty of suspension for one month and one day, for failing to inform the judge of the necessary repair of the dilapidated condition of the steel cabinet where the pieces of evidence are stored, resulting to the loss of firearms and other exhibits stored in it. In *Office of the Court Administrator v. Cabe*,[17] we admonished respondent Officer-in-Charge of the Office of the Clerk of Court and ordered him to pay a fine of ₱20,000 for failing to conduct a proper inventory of exhibits and to turn over the firearms to the nearest Constabulary Command, causing the loss of the firearms.

For failing to give due attention to the task expected of him resulting to the loss of a firearm committed in his charge, we find Inmenzo guilty of simple neglect of duty. Simple neglect of duty is the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference.[18] It is classified under the Revised Rules on Administrative Cases in the Civil Service as a less grave offense and carries the corresponding penalty of suspension for one month and one day to six months for the first offense.[19] In *Judge Sasondoncillo v. Inmenzo*,[20] we reprimanded Inmenzo for violation of Circular No. 62-97 for exceeding the allowable teaching hours of 10 hours a week. Considering the prevailing jurisprudence and this is Inmenzo's second offense, we find that the payment of an increased fine of ₱20,000 would be more reasonable than that recommended by the OCA.

---

[16] *Supra* note 11.

[17] 389 Phil. 685 (2000).

[18] *Office of the Court Administrator v. Atty. Buencamino,* 725 Phil. 110, 121 (2014).

[19] REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Rule 10, Section 46 D (1).

[20] A.M. No. P-16-3421, 25 January 2016. Unsigned Resolution.

WHEREFORE, we find respondent Gilbert T. Inmenzo **GUILTY** of **SIMPLE NEGLECT OF DUTY**. Since he had resigned from the service, he is ordered to pay a **FINE** in the amount of **₱20,000** to be deducted from his separation benefits, if any. The Office of the Court Administrator is **DIRECTED** to release the separation pay and other benefits, if any, due Inmenzo unless he is charged in some other administrative complaint or the same is otherwise withheld for some other lawful cause.

SO ORDERED.

Peralta, Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[A.M. No. RTJ-16-2454. June 6, 2018]

PHILIP SEE, *complainant, vs.* **JUDGE ROLANDO G. MISLANG, Presiding Judge, Regional Trial Court, Branch 167, Pasig City,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; ADMINISTRATIVE CASES; THE INTERVENING DISMISSAL OF RESPONDENT JUDGE DURING THE PENDENCY OF THE ADMINISTRATIVE CASE CANNOT RENDER THE CASE MOOT BECAUSE A FINE CAN STILL BE IMPOSED ON HIM IF FOUND ADMINISTRATIVELY LIABLE; CASE AT BAR.— Notwithstanding respondent's dismissal from the service, the case remains justiciable because other penalties, such as a fine, may still be imposed if he is found guilty of an administrative offense. To illustrate, in *Magtibay v. Judge Indar,*

involving a judge found guilty of undue delay in rendering an order and conduct unbecoming a judge, the Court sustained the OCA's recommendation of a fine against the erring judge despite his prior dismissal from the service x x x. Similarly, the intervening dismissal of respondent during the pendency of this case cannot render the case moot because a fine can still be imposed on him if found administratively liable.

2. ID.; ID.; SHOULD OBSERVE UTMOST CAUTION, PRUDENCE AND JUDICIOUSNESS IN THE ISSUANCE OF WRITS OF EXECUTION TO SATISFY MONEY JUDGMENTS AGAINST GOVERNMENT AGENCIES AND LOCAL GOVERNMENT UNITS.— When respondent granted complainant's application for preliminary attachment on 5 June 2012, Bautista was not yet paid the contract price of the medical procurement contract. In fact, AFP paid Bautista almost a year later when the contract price was deposited in the UCPB account of Bautista on 22 May 2013. x x x In other words, **respondent prematurely granted the application for preliminary attachment** and the AFP rightfully opposed the garnishment of Bautista's receivable in its possession because the alleged earmarked money still constituted public funds at the time. In *Pacific Products, Inc. v. Ong,* the Court categorically declared as illegal the garnishment of the receivable due a private entity while still in the possession of the government x x x. In fact, respondent's action finds basis in Administrative Circular No. 10-2000, enjoining judges "to observe utmost caution, prudence and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies and local government units." The Court issued the administrative circular precisely to prevent the circumvention of Presidential Decree No. (PD) 1445, vesting the Commission on Audit (COA) with the primary jurisdiction to examine, audit and settle all claims against the Government or any of its subdivisions, agencies and instrumentalities. By initially allowing the garnishment, respondent indirectly adjudicated a monetary claim against the AFP, which power to adjudicate is primarily vested in the COA under PD 1445. Hence, far from committing gross misconduct and gross ignorance of the law, respondent justifiably lifted the Writ of Preliminary Attachment considering the prematurity of the application for provisional relief.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; THERE CAN BE NO DENIAL OF PROCEDURAL DUE PROCESS WHERE OPPORTUNITY TO BE HEARD, EITHER THROUGH ORAL ARGUMENT OR THROUGH PLEADINGS, IS ACCORDED.— In *Philhouse Development Corporation v. Consolidated Orix Leasing and Finance Corporation,* the Court maintained the long-standing doctrine that there can be no denial of procedural due process where opportunity to be heard, either through oral argument or through pleadings, is accorded x x x. Here, when Bautista filed her Motion to Quash on 9 May 2013, Bautista set it for hearing on 10 May 2013. Despite notice, complainant failed to attend the hearing. x x x Having been notified of the date of the motion hearing and given the opportunity to comment on the motion, complainant cannot be heard to complain that his right to due process was supposedly violated.

4. LEGAL ETHICS; JUDGES; ADMINISTRATIVE CASES; AN ADMINISTRATIVE COMPLAINT AGAINST A JUDGE IS NOT A SUBSTITUTE FOR A PROPER REMEDY TAKEN IN DUE COURSE TO REVIEW HIS ACTS OR OMISSIONS DONE IN THE PERFORMANCE OF JUDICIAL DUTIES AND FUNCTIONS.— Complainant admits that he no longer filed a motion for reconsideration or a petition for *certiorari.* According to complainant, pursuing any of these judicial remedies would only be "utterly useless and highly impractical," with his money having been spirited away already. Complainant is mistaken. An administrative complaint against a judge is not a substitute for a proper remedy taken in due course to review and undo his or her acts or omissions done in the performance of judicial duties and functions.

D E C I S I O N

CARPIO, *J.*:

The Case

This is an administrative complaint by Philip See (complainant) against Judge Rolando G. Mislang (respondent), Presiding Judge of the Regional Trial Court of Pasig City, Branch 167, in relation

to Civil Case No. 73462-PSG.[1] Respondent is being charged with dishonesty, gross misconduct, and gross ignorance of the law when he lifted, upon motion, the attachment of the assets of the defendant, without awaiting the comment of complainant, the plaintiff in the civil action.

The Antecedent Facts

On 6 December 2011, the Armed Forces of the Philippines (AFP) awarded a medical procurement contract to One Top System Resources, a sole proprietorship owned by Ruth D. Bautista (Bautista). As payment, an irrevocable letter of credit was issued by United Coconut Planters Bank (UCPB). Under Section 11.2 (b) (g) of the Special Conditions of the Contract Agreement [sic], "[p]ayment shall be made to [One Top System Resources] at the time of the final acceptance of the goods by the [AFP] x x x, and submission or presentation of x x x [the] Certificate of Final Acceptance by the AFP Technical Inspection and Acceptance Committee (TIAC)."[2]

On 6 March 2012, Bautista and complainant entered into a Deed of Assignment whereby Bautista assigned to complainant the amount of PhP2.6 Million from the proceeds of the letter of credit. In turn, complainant would provide two units of portable x-ray machine and pay for the freight cost and other charges. Bautista also issued to complainant two postdated checks in the total amount of Three Million Five Hundred Twenty-Two Thousand Eight Hundred Ninety-Two Pesos (PhP3,522,892.00). Despite the delivery of the x-ray machines, complainant was unable to collect from Bautista. The two checks were also dishonored for lack of sufficient funds. Complainant, through counsel, sent demand letters, but these went unheeded.

Seeking payment with damages, complainant filed with the Regional Trial Court of Pasig City a Verified Complaint with [P]rayer for Preliminary Attachment on 28 May 2012.

---

[1] Entitled *Philip See v. Ruth D. Bautista, doing business under the name One Stop Business Resources.*

[2] *Rollo,* pp. 32, 48, 54.

Respondent granted the provisional remedy sought and a writ of preliminary attachment was issued. Pursuant to the writ, copies of the Notice of Garnishment dated 13 June 2012 were served by the court sheriff upon the UCPB Head Office and AFP Procurement Services. The AFP filed a Motion to Lift/Quash Notice of Garnishment, arguing that the medical equipment and supplies were undergoing final inspection and evaluation by the AFP Technical Inspection and Acceptance Committee. According to the AFP, because the contract price for the project was not yet due and demandable for lack of a certificate of final acceptance, the alleged earmarked money constituted public funds, which may not be attached. In the Order dated 4 January 2013, respondent denied the motion on the ground that the funds ceased to form part of the general funds of the AFP when they were allocated for payment to a private individual or entity. Instead of the AFP, Bautista filed a Motion for Reconsideration, but it was also denied by respondent in the Order dated 25 March 2013.

Bautista then filed a Motion to Quash which was set for hearing on 10 May 2013. Despite notice, complainant failed to appear. During the hearing, complainant was directed to file his comment or opposition to the motion within a period of five days. Not having received any pleading from complainant, respondent issued an Order dated 22 May 2013, granting the Motion to Quash on the ground that the funds sought to be garnished were still public funds in the absence of a certificate of final acceptance from the AFP. On the same day, the payment for the contract with the AFP was deposited in the UCPB account of Bautista who, in turn, withdrew the entire amount, including the share of complainant subject of the Deed of Assignment between Bautista and him. On 24 May 2013, complainant received a copy of the Order granting the Motion to Quash. Alleging that he was not left with any effective remedy, complainant no longer filed a motion for reconsideration nor pursued any judicial remedy. Instead, complainant instituted an administrative proceeding against respondent.

Recommendation of the Office of the Court Administrator

Sought for comment, respondent argued that complainant was not deprived of his right to due process. According to respondent, the five-day period he gave within which to comment on or oppose the Motion to Quash must be reckoned from the date of the hearing, considering that complainant was furnished a copy of the motion, yet failed to appear despite notice. Respondent also claimed that the lifting of the attachment had legal basis and that in the event he erred, what he committed was an error of judgment not proper for a disciplinary case against him.

In its Evaluation, the Office of the Court Administrator (OCA) found respondent to have violated Canon 2 of the Code of Judicial Conduct, mandating a judge to avoid impropriety and the appearance of impropriety in all activities. According to the OCA, the issuance of the Order dated 22 May 2013 by respondent, without awaiting the comment or opposition of complainant, "raises questions of impropriety that taint his credibility, probity and integrity."[3] Hence, the OCA recommended that respondent be fined and sternly warned that a repetition of the same or similar act shall be dealt with more severely, thus:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that:

1. the instant administrative complaint be RE-DOCKETED as a regular administrative matter against Presiding Judge Rolando G. Mislang, Branch 167, Regional Trial Court, Pasig City; and

2. respondent Judge Mislang be found GUILTY of violation of Canon 2 of the Code of Judicial Conduct and FINED in the amount of Ten Thousand Pesos (Php10,000.00) and STERNLY WARNED that a repetition of the same or similar act shall be dealt with more severely.[4]

---

[3] *Id.* at 76.

[4] *Id.* at 78.

Respondent's Dismissal from the Service

Incidentally, in *Department of Justice v. Judge Mislang,*[5] the Court found respondent guilty of gross ignorance of the law and ordered his dismissal from the service with forfeiture of retirement benefits and with prejudice to re-employment in the government. The dispositive portion of the Decision dated 26 July 2016 reads in its entirety:

> WHEREFORE, PREMISES CONSIDERED, the Court finds Judge Rolando G. Mislang, Regional Trial Court, Pasig City, Branch 167, GUILTY of Gross Ignorance of the Law in A.M. No. RTJ-14-2369 and A.M. No. RTJ-14-2372 and ORDERS his DISMISSAL from the service with FORFEITURE of retirement benefits, except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.
>
> SO ORDERED.[6]

Respondent sought for reconsideration four times, three of which were denied while the fourth was noted without action. Considering that a second motion for reconsideration by the same party is prohibited,[7] the dismissal of respondent from the service is now final.

The Issues

The issues can be summed up as follows:

(1) Whether respondent justifiably lifted the Writ of Preliminary Attachment he initially granted;

(2) Whether in resolving the motion without awaiting complainant's comment or opposition, respondent denied complainant his right to due process; and

---

[5] 791 Phil. 219 (2016).

[6] *Id*. at 232.

[7] Sec. 2, Rule 52, Rules of Court; Sec. 3, Rule 15, Internal Rules of the Supreme Court. See *Fortune Life Insurance Co., Inc. v. Commission on Audit,* G.R. No. 213525, 21 November 2017.

(3) Whether the alleged error of respondent warrants the Court's exercise of disciplinary authority over him.

The Ruling of this Court

The Court disagrees with the OCA.

Preliminarily, the administrative case is not rendered moot by respondent's dismissal from the service.

Notwithstanding respondent's dismissal from the service, the case remains justiciable because other penalties, such as a fine, may still be imposed if he is found guilty of an administrative offense. To illustrate, in *Magtibay v. Judge Indar,*[8] involving a judge found guilty of undue delay in rendering an order and conduct unbecoming a judge, the Court sustained the OCA's recommendation of a fine against the erring judge despite his prior dismissal from the service, thus:

> However, during the pendency of this case, we note that in *A.M. No. RTJ-10-2232,* respondent has already been dismissed from the service that already attained finality considering that respondent did not file any motion for reconsideration. Nevertheless, it should be emphasized that the same does not render the instant case moot and academic because accessory penalties may still be imposed.

In *Pagano v. Nazarro, Jr.,* indeed, we held:

> A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case. The instant case is not moot and academic, despite the petitioner's separation from government service. Even if the most severe of administrative sanctions — that of separation from service — may no longer be imposed on the petitioner, there **are other penalties which may be imposed on her if she is later found guilty of administrative offenses** charged against her, namely, the **disqualification to hold any government office and the forfeiture of benefits.**

---

[8] 695 Phil. 617 (2012).

Under Section 9 (1), Rule 140 of the Rules of Court, as amended by Administrative Matter No. 01-8-10-SC, respondent's undue delay in rendering a decision is classified as a less serious offense. It is punishable by suspension from office without salary and other benefits for not less than one month nor more than three months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. In view of respondent's dismissal from service, the OCA's recommendation of a fine in the amount of ₱20,000.00 is, therefore, in order considering that respondent was found guilty for both undue delay in rendering an order and conduct unbecoming of a judge.[9] (Emphasis in the original)

Similarly, the intervening dismissal of respondent during the pendency of this case cannot render the case moot because a fine can still be imposed on him if found administratively liable.

Respondent justifiably lifted the Writ of Preliminary Attachment, considering that the application for provisional relief was prematurely granted.

Complainant charges respondent with gross ignorance of the law for lifting the Writ of Preliminary Attachment he earlier issued. According to complainant, the garnished amount in the UCPB account of Bautista corresponds to AFP's payment to Bautista, and therefore, ceased to form part of the general funds of the AFP.

The Court disagrees.

When respondent granted complainant's application for preliminary attachment on 5 June 2012, Bautista was not yet paid the contract price of the medical procurement contract. In fact, AFP paid Bautista almost a year later when the contract price was deposited in the UCPB account of Bautista on 22 May 2013. Significantly, the third whereas clause of the Deed of Assignment between complainant and Bautista stipulates that the amount of PhP2.6 Million due complainant can only be drawn against the letter of credit issued to Bautista "upon

---

[9] *Id.* at 626-627.

presentation of documents from the AFP."[10] This stipulation must be read in relation to Section 11.2 (b) (g) of the Special Conditions of the Contract Agreement [sic], to wit: "[p]ayment shall be made to [One Top System Resources] at the time of the final acceptance of the goods by the [AFP] x x x, and submission or presentation of x x x [the] Certificate of Final Acceptance by the AFP Technical Inspection and Acceptance Committee (TIAC)."[11] In other words, **respondent prematurely granted the application for preliminary attachment** and the AFP rightfully opposed the garnishment of Bautista's receivable in its possession because the alleged earmarked money still constituted public funds at the time.

In *Pacific Products, Inc. v. Ong,*[12] the Court categorically declared as illegal the garnishment of the receivable due a private entity while still in the possession of the government, thus:

> It is noted that the notice of garnishment served upon the Bureau of Telecommunications was made pursuant to an order of attachment issued by the trial court in the case for sum of money against H.D. Labrador. At the time of such service, the amount against which the notice was issued was still in the possession and control of the Bureau. The same situation obtains in the two cases relied upon by the appellate court. While it is true that in the case at bar no salaries of public officials or employees are involved, the reasons for the ruling in the two cited cases are clear. It was held, thus:
>
> > x x x. By the process of garnishment, the plaintiff virtually sues the garnishee for a debt due to the defendant. The debtor stranger becomes a forced intervenor. The Director of the Bureau of Commerce and Industry, an officer of the Government of the Philippine Islands, when served with the writ of attachment, thus became a party to the action. *(Tayabas Land Co. vs. Sharruf* (1921), 41 Phil. 382).
> >
> > A rule, which has never been seriously questioned, is that money in the hands of public officers, although it may be due

---

[10] *Rollo,* p. 13.

[11] *Id*. at 32, 48, 54.

[12] 260 Phil. 583 (1990).

> government employees, is not liable to the creditors of these employees in the process of garnishment. One reason is, that the State, by virtue of its sovereignty, may not be sued in its own courts except by express authorization by the Legislature, and to subject its officers to garnishment would be to permit indirectly what is prohibited directly. Another reason is that moneys sought to be garnished, as long as they remain in the hands of the disbursing officer of the Government, belong to the latter, although the defendant in garnishment may be entitled to a specific portion thereof. And still another reason which covers both of the foregoing is that every consideration of public policy forbids it. *(Director of Commerce and Industry v. Concepcion,* 43 Phil. 386)
>
> x x x x x x x x x
>
> For the foregoing reasons, We affirm the ruling of the appellate court that the writ of garnishment issued against the ₱10,500.00 payable to BML Trading while still in the possession of the Bureau of Telecommunications is illegal and therefore, null and void. x x x.[13]

In fact, respondent's action finds basis in Administrative Circular No. 10-2000,[14] enjoining judges "to observe utmost caution, prudence and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies and local government units."[15] The Court issued the administrative circular precisely to prevent the circumvention of Presidential Decree No. (PD) 1445, vesting the Commission on Audit (COA) with the primary jurisdiction to examine, audit and settle all claims against the Government or any of its subdivisions, agencies and instrumentalities. By initially allowing the garnishment, respondent indirectly adjudicated a monetary claim against the AFP, which power to adjudicate is primarily vested in the COA under PD 1445.

---

[13] *Id*. at 591-593.

[14] Issued on 25 October 2000.

[15] See *University of the Philippines v. Judge Dizon,* 693 Phil. 226 (2012).

Hence, far from committing gross misconduct and gross ignorance of the law, respondent justifiably lifted the Writ of Preliminary Attachment considering the prematurity of the application for provisional relief.

Complainant was not denied his right to due process.

Complainant finds fault in respondent for not awaiting his comment or opposition before resolving the Motion to Quash filed by Bautista. According to complainant, this amounts to a violation of his right to procedural due process.

Complainant is wrong.

In *Philhouse Development Corporation v. Consolidated Orix Leasing and Finance Corporation,*[16] the Court maintained the long-standing doctrine that there can be no denial of procedural due process where opportunity to be heard, either through oral argument or through pleadings, is accorded:

> Petitioners have not been denied their day in court. It is basic that as long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process. Where opportunity to be heard, either through oral argument or through pleadings, is accorded, there can be no denial of procedural due process. If it were otherwise, "all that a defeated party would have to do to salvage his case," observed the Court in one case, would be to "claim neglect or mistake on the part of his counsel as a ground for reversing the adverse judgment," and there would then be "no end to litigation x x x as every shortcoming of counsel could be the subject of challenge by his client through another counsel who, if he (were) also found wanting, (could) x x x be disowned by the same client through another counsel, and so on *ad infinitum,"* thereby rendering court proceedings indefinite x x x.[17]

Here, when Bautista filed her Motion to Quash on 9 May 2013, Bautista set it for hearing on 10 May 2013. Despite notice,

---

[16] 408 Phil. 392 (2001).

[17] *Id*. at 398.

complainant failed to attend the hearing. As respondent correctly argued, the five-day period within which to comment on, or oppose the motion must be reckoned from the date of the hearing rather than complainant's receipt of the order, considering that his counsel was duly notified of the date of the hearing. As a rule, notice to counsel is notice to the client.[18] Consistent with his duty to serve his client with competence and diligence, complainant's counsel should have inquired from the trial court about the status of the case and what transpired during the hearing.[19] In fact, the Rules of Court merely require that the motion be heard and respondent may already rule on it during the hearing. In *Spouses Calo v. Spouses Tan,*[20] the Court thus explained:

> The absence of petitioners and their counsel at the aforesaid hearings cannot be justified by their belief that the trial court would first require respondent spouses to comment to or oppose the motions before resolving them. The Rules of Court require only that the motion be heard; it does not direct the court to order the filing of comments or oppositions to the motion before the motion is resolved. During the hearing on the motion, the opposition to the motion and the arguments of the parties may be ventilated; thereafter, the court may rule on the motion. Petitioners and their counsel should have known the significance of the hearing dates since petitioners themselves chose one of the hearing dates and the hearing dates were accordingly fixed with due notice to all the parties.[21]

Having been notified of the date of the motion hearing and given the opportunity to comment on the motion, complainant

---

[18] *Ramos v. Spouses Lim,* 497 Phil. 560, 565 (2005), citing *Lincoln Gerard, Inc. v. National Labor Relations Commission,* 265 Phil. 750 (1990).

[19] *Id.* at 567. See *Oriental Assurance Corporation v. Solidbank Corporation,* 392 Phil. 847 (2000).

[20] 512 Phil. 786 (2005).

[21] *Id.* at 797.

cannot be heard to complain that his right to due process was supposedly violated.

An administrative complaint against respondent is not a substitute for a lost judicial remedy.

Complainant admits that he no longer filed a motion for reconsideration or a petition for *certiorari.*[22] According to complainant, pursuing any of these judicial remedies would only be "utterly useless and highly impractical," with his money having been spirited away already.[23]

Complainant is mistaken.

An administrative complaint against a judge is not a substitute for a proper remedy taken in due course to review and undo his or her acts or omissions done in the performance of judicial duties and functions.[24] In *Martinez v. Judge De Vera,*[25] the Court thus explained:

> Complainants should also bear in mind that an administrative complaint is not the appropriate remedy for every irregular or erroneous order or decision issued by a judge where a judicial remedy is available, such as a motion for reconsideration, an appeal, or a petition for *certiorari.* Disciplinary proceedings against a judge are not complementary or suppletory to, nor a substitute for these judicial remedies whether ordinary or extraordinary. For, obviously, if subsequent developments prove the judge's challenged act to be correct, there would be no occasion to proceed against her at all. Besides, to hold a judge administratively accountable for every erroneous ruling or decision rendered, assuming she has erred, would be nothing short of harassment and would make her position doubly unbearable.[26]

---

[22] *Rollo,* p. 4.

[23] *Id.*

[24] *Hernandez v. Judge Gella,* 735 Phil. 500, 502 (2014).

[25] 661 Phil. 11 (2011).

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

WHEREFORE, the Court **DISMISSES** the administrative complaint against Judge Rolando G. Mislang, Presiding Judge of the Regional Trial Court of Pasig City, Branch 167, in relation to Civil Case No. 73462-PSG.

SO ORDERED.

Peralta, Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

FIRST DIVISION

[A.M. No. RTJ-18-2523. June 6, 2018]
(Formerly OCA I.P.I No. 14-4353-RTJ)

EXTRA EXCEL INTERNATIONAL PHILIPPINES, INC., REPRESENTED BY ATTY. ROMMEL V. OLIVA, *complainant, vs.* **HON. AFABLE E. CAJIGAL, Presiding Judge, Regional Trial Court, Branch 96, Quezon City,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; TO BE GUILTY THEREOF, IT MUST BE SHOWN THAT THE ACT COMPLAINED OF WAS COMMITTED WITH FRAUD, DISHONESTY, CORRUPTION, MALICE, ILL-WILL, BAD FAITH OR A DELIBERATE INTENT TO DO INJUSTICE.— [R]espondent Judge's act of granting the accused's Motion for Preliminary Investigation did not constitute gross ignorance of the law. While the Order granting the Motion for Preliminary Investigation may not be proper inasmuch as respondent Judge based the Order on accused's bare allegation of non-receipt of notice from the Office of the Prosecutor, we opine that the same did not necessarily amount to gross ignorance of the law. There was no showing that respondent Judge issued the Order because of the promptings

of fraud, dishonesty, corruption, malice, ill-will, bad faith or a deliberate intent to do injustice. Indeed, it is axiomatic that not all erroneous acts of judges are subject to disciplinary action.

2. ID.; ID.; ID.; COMMITTED WHEN A JUDGE FAILS TO CONDUCT A JUDICIAL DETERMINATION OF PROBABLE CAUSE UNDER SECTION 5, RULE 112 OF THE RULES OF COURT; CASE AT BAR.— Basic is the principle that upon setting a case for arraignment, the accused must have either been in the custody of the law or out on bail. Another basic principle is that the judge must conduct his own personal evaluation of the facts and circumstances which gave rise to the indictment, pursuant to Section 5, Rule 112 of the Rules of Court and Section 2, Article III of the 1987 Constitution. Indeed, in the present case, respondent Judge should not have waited for the accused to file an omnibus motion for a judicial determination of probable cause. As this Court held in *Leviste v. Hon. Alameda,* "[t]o move the court to conduct a judicial determination of probable cause is a mere superfluity, for with or without such motion, the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence." Thus, the failure of respondent Judge to comply with this fundamental precept constituted gross ignorance of the law and procedure. His failure to heed this precept resulted in the said accused's arraignment, without the accused in custody of the law. x x x Needless to say, the failure of respondent Judge to conduct a judicial determination of probable cause under Section 5, Rule 112 of the Rules of Court was exacerbated by his act in allowing the accused to go home (without bail) after arraignment. These acts were indicative of gross ignorance of the law and procedure for which respondent must be called to account.

3. ID.; ID.; ID.; FAILURE TO CONDUCT A HEARING ON ACCUSED'S PETITION FOR BAIL, A CASE OF.— [R]espondent Judge's failure to conduct a hearing on accused's Petition for Bail constitutes gross ignorance of the law. It is axiomatic that a bail hearing is a must, despite the prosecution's lack of objection to the same. x x x Hence, it is altogether of no consequence that the Order granting bail "was made in the presence of the public prosecutor, and the latter made no objection or comment to the oral manifestation of the defense counsel."

4. ID.; ID.; GROSS INEFFICIENCY; FAILURE TO RESOLVE MOTIONS WITHIN THE PERIOD MANDATED BY LAW CONSTITUTES GROSS INEFFICIENCY.— We agree with the OCA's finding that respondent Judge was inefficient in failing to resolve the motion for issuance of a hold departure order despite the lapse of 90 days. x x x Respondent Judge ought to know the difference between a judge's discretionary power to issue a hold departure order and his mandatory duty to resolve all kinds of motions within 90 days. Section 15, Article VIII of the Constitution mandates that all cases and matters must be decided or resolved by the lower courts within three (3) months or ninety (90) days from date of submission. In addition, Section 5, Canon 6 of the New Code of Conduct for the Philippine Judiciary directs judges to "perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness." x x x Thus, respondent's failure to resolve complainant's motion to issue a hold departure order constitutes gross inefficiency which warrants the imposition of an administrative sanction.

APPEARANCES OF COUNSEL

Oliva Firme & Associates Law Firm for complainant.

D E C I S I O N

DEL CASTILLO, *J.*:

This is an administrative complaint[1] for gross ignorance of the law, gross inefficiency, grave abuse of authority, and evident partiality filed by complainant Extra Excel International Philippines, Inc., through its representative Atty. Rommel V. Oliva (Atty. Oliva), against respondent Judge Afable E. Cajigal, relative to Criminal Case No. R-QZN-13-00488-CR *(People of the Philippines v. Ike R. Katipunan).*

Complainant narrated that an Information[2] for qualified theft was filed against Ike R. Katipunan, complainant's former

---

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

[2] *Id.* at 20.

Inventory Control Service Assistant. The case was raffled to Branch 96 of the Regional Trial Court of Quezon City with respondent as Presiding Judge. Complainant alleged that, after the filing of the Information, respondent Judge did not set the case for arraignment nor issue a warrant of arrest; instead, he granted the accused's Motion for Preliminary Investigation and Motion to Defer Further Proceedings. Incidentally, in its May 30, 2014 Decision[3] in CA-G.R SP No. 132989, the Court of Appeals found grave abuse of discretion on the part of respondent Judge in granting the accused's motion for preliminary investigation.

Meanwhile, there being no resolution on the preliminary investigation despite the lapse of the 60-day period, and pursuant to A.M. No. 11-6-10-SC which mandates the accused's arraignment upon the lapse of the 60-day period, complainant filed a Motion to Set Case for Arraignment. Upon comment of the accused, respondent Judge ordered the City Prosecution Office of Quezon City to conclude the on-going re-investigation. Thereafter, the City Prosecution Office resolved to affirm the earlier finding of probable cause.

On March 24, 2014, complainant filed a Motion for Issuance of Hold Departure Order, which motion remains unresolved. Meanwhile, the accused filed on March 28, 2014 an Omnibus Motion for Judicial Determination of Probable Cause, Recall of Warrant of Arrest, and Deferment of Proceedings, thereby prompting complainant to file a Comment/Opposition and a Motion for Inhibition.

Respondent Judge eventually arraigned the accused on June 9, 2014. However, instead of ordering the accused's commitment, and despite the offense being nonbailable, respondent Judge allowed the accused to go home. On June 13, 2014, the accused filed a Petition for Bail. During the bail heating on June 24, 2014, respondent Judge found the filing thereof premature and issued a warrant of arrest against the accused. However, instead

---

[3] *Id.* at 27-37; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Nina G. Antonio-Valenzuela and Victoria Isabel A. Paredes.

of committing the accused at the Quezon City Jail, he was instead detained at the Criminal Investigation and Detention Unit of Central Police District, Camp Karingal, Quezon City. Thereafter, respondent Judge scheduled the bail hearing on June 30, 2014 despite manifestation by complainant's counsel of his unavailability on said date.

During the June 30, 2014 bail hearing, respondent Judge declared the Petition for Bail submitted for resolution due to the absence complainant's counsel. On even date, respondent Judge issued an Order granting the bail petition and denying the motion for inhibition.

Finally, complainant claimed that respondent Judge attempted to fast-track the proceedings in the criminal case by re-scheduling the redirect examination of the prosecution's witness from February 17, 2015, as earlier agreed by the parties, to December 17, 18 and 22, 2014, in view of his impending retirement on December 29, 2014.

According to the complainant, the foregoing events clearly showed respondent Judge's gross inefficiency, incompetence, gross ignorance of the law, grave abuse of authority and evident partiality. Complainant argued that respondent Judge was guilty (1) of undue delay in resolving motions when he failed to resolve the motion for issuance of hold departure order within 90-days or despite lapse of nine months; (2) of gross ignorance of the law when he granted the accused's motion for preliminary investigation in violation of A.M. No. 11-6-10-SC since the accused was not a subject of a warrantless arrest or inquest proceedings; (3) of grave abuse of authority when he allowed the accused to go home after his arraignment for a nonbailable offense; (4) of gross ignorance of the law and evident partiality in granting the petition for bail despite complainant's pending motion for reconsideration and/or motion to set the hearing to another date; and, (5) of evident partiality when he failed to inhibit himself from further handling the case in view of his bias towards the accused.

In his Comment,[4] respondent Judge countered that he should not be sanctioned for acts done in the performance of his functions as a judge. He claimed that the allegations against him are unfounded, malicious, and intended solely to harass and embarrass him, and to cause undue delay in the release of his retirement benefits. In particular, he adverted to A.M. No. 03-10-01-SC,[5] which bars the filing of an administrative complaint "within six months before the compulsory retirement of a Justice or Judge."[6] According to respondent Judge, the administrative complaint was filed barely a week before his compulsory retirement on December 29, 2014.[7]

Respondent Judge justified his failure to resolve the motion for issuance of hold departure order on the fact that the accused had already filed an omnibus motion for the judicial determination of probable cause, recall of warrant of arrest and deferment of proceedings. According to respondent Judge, he set for hearing the motion for issuance of hold departure order alongside the accused's omnibus motion in order to accord both the prosecution and the defense ample opportunity to exercise their right to due process.[8]

As regards his alleged failure to order the commitment of the accused after his arraignment and allowing him instead to go home, respondent Judge explained that there was yet no warrant issued for the arrest of the accused; moreover, a petition for bail had been filed; hence, there was no reason to detain the accused.

With respect to the order granting bail to the accused, respondent Judge claimed that the same was not at all objected to by the public prosecutor during trial.[9]

---

[4] *Id.* at 123-128.

[5] Resolution Prescribing Measures to Protect Members of the Judiciary from Baseless and Unfounded Administrative Complaints.

[6] *Id.*

[7] *Rollo,* p. 125.

[8] *Id.* at 125.

[9] *Id.* at 126.

As to the Order setting the re-direct examination of the prosecution witness to a date earlier than previously scheduled, respondent Judge claimed that he did so with the end in view of enabling the prosecution to finish the presentation of its evidence prior to his impending retirement; and that said Order was in line with the Constitutional right of the accused to a speedy trial.[10]

Finally, respondent Judge posited that Atty. Oliva had no personality to file this administrative complaint considering that it was Atty. Elmar Malapitan (Atty. Malapitan) who represented the complainant in the qualified theft case.

In sum, respondent prayed for the dismissal of the complaint.

Report and Recommendation of the Office of the Court Administrator (OCA)

In a Report[11] dated September 18, 2015, the OCA made the following evaluation:

> On the charge of gross inefficiency, records show that there [was] delay in resolving the motion for issuance of the hold departure order. The motion was filed on 24 March 2014, however, respondent Judge had yet to resolve it. He rationalized his inaction by stating that, in his opinion, there was no need to issue a hold departure order since accused had filed an omnibus motion on 28 March 2014 and both motions were set for hearing to give the parties a chance to comment. The rules and jurisprudence are clear on the matter of delay. Failure to resolve cases and other matters within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring magistrate. x x x
>
> On the charge that respondent Judge committed gross ignorance of the law when he granted the motion for preliminary investigation x x x, the records are bereft of evidence to show that respondent Judge, assuming that he erred, was motivated by bad faith, fraud, corruption, dishonesty in granting the motion. To constitute gross ignorance of the law, it is not enough that the decision, order or

---

[10] *Id*. unpaginated in between 126 and 127.

[11] *Id*. at 129-137.

actuation of the judge in the performance of his official duties is contrary to existing law and jurisprudence. It must be established that he was moved by bad faith, fraud, dishonesty or corruption or had committed an error so egregious that it amounted to bad faith. Moreover, complainant already availed of a judicial remedy when it filed a Petition for Certiorari before the Court of Appeals x x x seeking to annul and set aside the resolution directing the Office of the City Prosecutor to conduct a preliminary investigation, which the Court of Appeals favorably acted upon. While the assailed Resolution was set aside, this is not enough to render respondent Judge liable for gross ignorance [of the law]. Jurisprudence is replete with pronouncements that not every error or mistake of a judge in the performance of his official duties renders him liable. As a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous.

On the charge of grave abuse of authority for allowing accused Katipunan to go home after his arraignment instead of committing him directly to the City Jail, the same has no merit. Respondent Judge merely exercised his sound discretion in not immediately issuing the warrant of arrest and in suspending further proceedings pending reinvestigation of the case. x x x It is not obligatory, but merely discretionary, upon the investigating judge to issue a warrant for the arrest of the accused, even after having personally examined the complainant and his witnesses in the form of searching questions and answers, for the determination of whether a probable cause exists and whether it is necessary to arrest the accused in order not to frustrate the ends of justice, is left to his sound judgment or discretion.

On the charge of gross ignorance of the law and evident partiality for granting the petition for bail without conducting a hearing to prove whether the evidence of guilt is strong or not, which will form the basis for granting or denying the petition for bail, we agree with complainant. x x x In this case, when respondent Judge set the hearing for bail on 30 June 2014, the private prosecutor manifested his unavailability on the said date, but this notwithstanding, respondent Judge pushed through with the hearing. Immediately, complainant, through lawyer, filed an urgent motion for reconsideration explaining his absence during the 30 June 2014 hearing. Nonetheless, respondent Judge granted the petition for bail for failure of the private prosecutor and the witnesses to appear and in the absence of any objection from the public prosecutor. The law and settled jurisprudence demand

that a hearing be conducted before bail could be fixed for the temporary release of the accused, if bail is at all justified. x x x The absence of any objection from the prosecution in such cases is not a basis for the grant of bail for the judge has no right to presume that the prosecutor knows what he is doing on account of the familiarity with the case. Said reasoning is tantamount to ceding to the prosecutor the duty of exercising judicial discretion to determine whether the guilt of the accused is strong. Judicial discretion is the domain of the judge before whom the petition for provisional liberty will be decided. The mandated duty to exercise discretion has never been reposed upon the prosecutor. There is gross ignorance because the need for hearing before bail is fixed/granted is so basic that respondent Judge ought to know that. So in this instance, good/bad faith is of no moment, unlike in the other instance of gross ignorance exhibited by respondent Judge when he granted the motion for preliminary investigation.

On the charge of evident partiality when respondent Judge failed to inhibit himself, the issue pertains to the second paragraph of Rule 137, Section 1 of the Rules of Court regarding voluntary inhibition of a judge, which states that 'a judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.' Based on this provision, judges have been given the exclusive prerogative to recuse themselves from heating cases for reasons other than those pertaining to their pecuniary interest, relation, previous connection, or previous rulings or decisions. The issue of voluntary inhibition in this instance becomes primarily a matter of conscience and sound discretion on the part of the judge.

On the charge of evident partiality when respondent Judge issued an order setting the case for special sessions, the same cannot stand in the absence of substantial evidence to support the same. In administrative proceedings, the complainant has the burden of proving by substantial evidence the allegations in his complaint. In the absence of evidence to the contrary, the presumption that the respondent has regularly performed his duties will prevail.

In sum, we hold that respondent Judge is administratively liable for inefficiency on account of his delay in resolving the motion for the issuance of the hold departure order. Under A.M. No. 01-8-10-SC, undue delay in rendering a decision is classified as a less serious charge punishable either by: (a) suspension from office without salary and other benefits for not less than one (1) nor more than three (3)

months; or (b) a fine of more than Php10,000.00 but not exceeding Php20,000.00.

Respondent Judge is also liable for gross ignorance of the law for granting the petition for bail without the benefit of a hearing. Under A.M. No. 01-8-10-SC, gross ignorance of the law or procedure is classified as a serious charge and should be penalized by (a) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (b) suspension from office without salary and other benefits for more than three [(3)] but not exceeding six (6) months; or (3) a fine of more than Php20,000.00 but not exceeding Php40,000.00.[12]

Pursuant to Section 50,[13] Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, which directs the imposition of the penalty corresponding to the most serious charge in the event the respondent is found guilty of two (2) or more charges or counts, and in view of respondent Judge's retirement on December 29, 2014, the OCA recommended that respondent Judge be meted the penalty of fine in the amount of ₱40,000.00, for inefficiency on account of delay in resolving the motion for issuance of a hold departure order and gross ignorance of the law in granting the petition for bail without the benefit of a hearing, which amount shall be deducted from his retirement benefits.

Issue

Is respondent Judge guilty of gross ignorance of the law, gross inefficiency, grave abuse of authority, and evident partiality?

Ruling

We substantially adopt the findings and recommendations of the OCA, with the exception of its finding that respondent

---

[12] *Id*. at 133-136.

[13] Incorrectly cited as Section 55.

Judge acted properly in allowing the accused to go home after arraignment without bail.

We agree with the OCA that respondent Judge's act of granting the accused's Motion for Preliminary Investigation[14] did not constitute gross ignorance of the law.

While the Order granting the Motion for Preliminary Investigation may not be proper inasmuch as respondent Judge based the Order on accused's bare allegation of non-receipt of notice from the Office of the Prosecutor,[15] we opine that the same did not necessarily amount to gross ignorance of the law. There was no showing that respondent Judge issued the Order because of the promptings of fraud, dishonesty, corruption, malice, ill-will, bad faith or a deliberate intent to do injustice. Indeed, it is axiomatic that not all erroneous acts of judges are subject to disciplinary action. As this Court stressed in *Office of the Court Administrator v. Salise:*[16]

> Indeed, it is settled that, unless the acts were committed with fraud, dishonesty, corruption, malice or ill will, bad faith, or deliberate intent to do an injustice, the respondent judge may not be [held] administratively liable for gross misconduct, ignorance of the law, or incompetence of official acts in the exercise of judicial functions and duties, particularly in the adjudication of cases. x x x

In *Sibulo v. Judge Toledo-Mupas,*[17] this Court further explained:

> Moreover, the fact that a judge failed to recognize a 'basic' or 'elementary' law or rule of procedure would not automatically warrant a conclusion that he is liable for gross ignorance. What is significant is whether the subject order, decision[,] or actuation of the judge unreasonably defeated the very purpose of the law or rule under consideration and unfairly prejudiced the cause of the litigants. x x x[18]

---

[14] *Rollo,* pp. 22-24.

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

[16] A.M. No. RTJ-18-2514, January 30, 2018. Citation omitted.

[17] 577 Phil. 110 (2008).

[18] *Id*. at 116-117.

However, we do not concur with the evaluation of the OCA that respondent Judge did not err in allowing the accused to go home after his arraignment. We are neither persuaded by respondent Judge's claim that there was no reason for him to detain the accused since there was yet no warrant issued for his arrest or that a petition for bail had been filed. Basic is the principle that upon setting a case for arraignment, the accused must have either been in the custody of the law[19] or out on bail. Another basic principle is that the judge must conduct his own personal evaluation of the facts and circumstances which gave rise to the indictment, pursuant to Section 5, Rule 112 of the Rules of Court and Section 2, Article III of the 1987 Constitution.

Indeed, in the present case, respondent Judge should not have waited for the accused to file an omnibus motion for a judicial determination of probable cause. As this Court held in *Leviste v. Hon. Alameda,*[20] "[t]o move the court to conduct a judicial determination of probable cause is a mere superfluity, for with or without such motion, the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence."[21] Thus, the failure of respondent Judge to comply with this fundamental precept constituted gross ignorance of the law and procedure. His failure to heed this precept resulted in the said accused's arraignment, without the accused in custody of the law.

Likewise in point is this Court's teaching in *Guillen v. Judge Nicolas,*[22] where it was stressed that:

[B]y setting the cases for arraignment and trial, respondent judge must have found probable cause to hold the accused for trial. [The

---

[19] "Custody of the law is accomplished either by arrest or voluntary surrender x x x." *Miranda v. Tuliao,* 520 Phil. 907, 919 (2006). Citation omitted.

[20] 640 Phil. 620 (2010).

[21] *Id.* at 648.

[22] 360 Phil. 1 (1998).

judge] should have proceeded to examine in writing and under oath the complainants and [the] witnesses by searching questions and answers. The records do not show that the [judge] set the case for, or conducted, such examination preparatory to issuing a warrant of arrest. Neither [was] there any subpoena or order requiring the complainants or [the] witnesses to appear in court for such examination. The inevitable conclusion is that the respondent judge skipped this procedure.[23]

Needless to say, the failure of respondent Judge to conduct a judicial determination of probable cause under Section 5, Rule 112 of the Rules of Court was exacerbated by his act in allowing the accused to go home (without bail) after arraignment. These acts were indicative of gross ignorance of the law and procedure for which respondent must be called to account.

In addition, respondent Judge's failure to conduct a hearing on accused's Petition for Bail[24] constitutes gross ignorance of the law. It is axiomatic that a bail hearing is a must, despite the prosecution's lack of objection to the same. In *Balanay v. Judge White,*[25] we said:

It is basic, however, that bail hearing is necessary even if the prosecution does not interpose any objection or leaves the application for bail to the sound discretion of the court. Thus, in V*illanueva v. Judge Buaya,* therein respondent judge was held administratively liable for gross ignorance of the law for granting an *ex parte* motion for bail without conducting a hearing. Stressing the necessity of bail hearing, this Court pronounced that:

> The Court has always stressed the indispensable nature of a bail hearing in petitions for bail. Where bail is a matter of discretion, the grant or the denial of bail hinges on the issue of whether or not the evidence on the guilt of the accused is strong and the determination of whether or not the evidence is strong is a matter of judicial discretion which remains with the judge. In order for the judge to properly exercise this discretion, [the

---

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

[24] *Rollo,* pp. 90-95.

[25] 776 Phil. 1 (2016).

> judge] must first conduct a hearing to determine whether the evidence of guilt is strong. This discretion lies not in the determination of whether or not a hearing should be held, but in the appreciation and evaluation of the weight of the prosecution's evidence of guilt against the accused.
>
> In any event, whether bail is a matter of right or discretion, a hearing for a petition for bail is required in order for the court to consider the guidelines set forth in Section 9, Rule 114 of the Rules of Court in fixing the amount of bail. This Court has repeatedly held in past cases that even if the prosecution fails to adduce evidence in opposition to an application for bail of an accused, the court may still require the prosecution to answer questions in order to ascertain, not only the strength of the State's evidence, but also the adequacy of the amount of bail.[26]

Hence, it is altogether of no consequence that the Order granting bail "was made in the presence of the public prosecutor, and the latter made no objection or comment to the oral manifestation of the defense counsel."[27]

We agree with the OCA's finding that respondent Judge was inefficient in failing to resolve the motion for issuance of a hold departure order despite the lapse of 90 days. We find his contention, that "there is no need to issue an HDO order [sic] because a Hold Departure Order (HDO) is based on sound judgment and judicial discretion of a Judge,"[28] unmeritorious. While it is true that the law gives respondent Judge considerable discretion whether to issue or not to issue a hold departure order, this grant of considerable discretion in no wise or manner means that respondent Judge need not resolve at all the pending motion.

Respondent Judge ought to know the difference between a judge's discretionary power to issue a hold departure order and his mandatory duty to resolve all kinds of motions within 90 days. Section 15, Article VIII of the Constitution mandates that all cases and matters must be decided or resolved by the

---

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

[27] *Rollo,* p. 126.

[28] *Id.* at 125.

lower courts within three (3) months or ninety (90) days from date of submission. In addition, Section 5, Canon 6 of the New Code of Conduct for the Philippine Judiciary directs judges to "perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness." Suppletorily, Rule 3.05, Canon 3 of the Code of Judicial Conduct likewise mandates:

> Rule 3.05. – A judge shall dispose of the Court's business promptly and decide cases within the required periods.

This Court has explained in *Biggel v. Judge Pamintuan*[29] the reasons for requiring speedy disposition not only of all cases but also all motions, *viz.:*

> Undue delay in the disposition of cases and motions erodes the faith and confidence of the people in the judiciary and unnecessarily blemishes its stature. No less than the Constitution mandates that lower courts must dispose of their cases promptly and decide them within three months from the filing of the last pleading, brief[,] or memorandum required by the Rules of Court or by the Court concerned. In addition, a judge's delay in resolving, within the prescribed period, pending motions and incidents constitutes a violation of Rule 3.05 of the Code of Judicial Conduct requiring judges to dispose of court business promptly.
>
> There should be no more doubt that undue in action on judicial concerns is not just undesirable but more so detestable especially now when our all-out effort is directed towards minimizing, if not totally eradicating[,] the perennial problem of congestion and delay long plaguing our courts. The requirement that cases be decided within the reglementary period is designed to prevent delay in the administration of justice, for obviously, justice delayed is justice denied. An unwarranted [slowdown] in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards[,] and brings it into disrepute.

---

[29] 581 Phil. 319, 324-325 (2008). Citations omitted.

Thus, respondent's failure to resolve complainant's motion to issue a hold departure order constitutes gross inefficiency which warrants the imposition of an administrative sanction.[30]

While this Court finds respondent Judge administratively liable for gross ignorance of the law and procedure and for gross inefficiency, we are not at all prepared to conclude that respondent Judge's denial of complainant's motion for inhibition and rescheduling the redirect examination of the prosecution's witness to an earlier date amounted to bias and partiality.

In *Luciano v. Hon. Mariano,*[31] this Court ruled:

> To allege partiality, bias[,] and discrimination or over zealousness in siding with the guilty as against the innocent is one thing, but to show basis for the same is quite another. x x x The mere fact that a judge has erroneously ruled against the same litigant on two or three occasions does not create in our minds a decisive pattern of malice on the part of the judge against that particular litigant. This is not an unusual occurrence in our courts, and unless something in addition is alleged and proved, this Court is not inclined to disregard the presumption of good faith in favor of the actuations of courts. x x x[32]

Here, respondent Judge did not act improperly at all in denying complainant's motion for inhibition. "[T]he issue of whether a judge should voluntarily inhibit [one's self] is addressed to [one's] sound discretion pursuant to paragraph 2 of Section 1 of Rule 137, which provides for the rule on voluntary inhibition x x x."[33]

Complainant's motion for inhibition was based on (1) respondent's failure to resolve the motion to issue a hold departure order; (2) the grant of a preliminary investigation and in view

---

[30] See *Dulalia v. Judge Cajigal,* 722 Phil. 690, 697 (2013). Citations omitted.

[31] 148 Phil. 177 (1971).

[32] *Id.* at 184-185.

[33] *Talag v. Judge Reyes,* 474 Phil. 481, 490 (2004).

of the appellate court's finding of grave abuse of discretion; (3) allowing the accused to go home after arraignment; and (4) granting bail without the conduct of a bail hearing.[34] While three of the four grounds stated therein are grounds for respondent Judge's administrative liability, these do not necessarily equate to bias or partiality. Respondent Judge's reasons behind his actuations seem to be more a manifestation of respondent's errors in judgment rather than "bias which excites a disposition to see and report matters as they are wished for rather than as they are."[35]

Neither is respondent's Order[36] dated December 15, 2014, setting the case for earlier dates than previously agreed indicative of bias and partiality. In light of respondent Judge's claim that he issued the said order to promote a speedy trial, *i.e.*, that the prosecution be allowed at least to complete the presentation of its evidence prior to his retirement, so that his successor need only continue hearing the defense's evidence, this Court finds complainant's accusation in this respect quite untenable and respondent's stance more in keeping with the accused's right to speedy trial under Section 16,[37] Article III of the 1987 Constitution.

Finally, there is no merit in the contention of respondent Judge that Atty. Oliva lacks personality to file this administrative complaint because he was not the counsel of record of complainant in the criminal case for qualified theft. First, we are not aware of any rule that one must be a counsel of record in another case before an administrative complaint can be filed or prosecuted. Second, contrary to the assertion of respondent Judge, Atty. Oliva was one of the counsels of record of the complainant in the qualified theft case. An examination of the records reveals that complainant was being represented by Oliva Firme and Associates Law Firm, with Atty. Malapitan as the handling lawyer.

---

[34] *Rollo,* pp. 14-15.

[35] *Sison v. People,* 628 Phil. 573, 583 (2010).

[36] *Rollo,* p. 119.

[37] Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

In sum, we find respondent Judge guilty of gross ignorance of the law and procedure in failing to make a judicial determination of probable cause and in failing to conduct a hearing on the accused's application for bail in Criminal Case No. R-QZN-13-00488-CR, and gross inefficiency in failing to resolve complainant's motion for issuance of a hold departure order.

Incidentally, this is not the first time respondent Judge is being administratively sanctioned. In *Dulalia v. Judge Cajigal,*[38] this Court had already admonished respondent Judge for his undue delay in resolving motions.

By and large, however, we take a holistic approach in the present case and we accord compassion and charity towards respondent Judge who appeared to have spent the best years of his professional life in the Judiciary. More than that, considering respondent Judge's retirement from the service on December 29, 2014, this Court believes that the imposition of a fine in the amount of ₱20,000.00 is appropriate and fair.

WHEREFORE, respondent Judge Afable E. Cajigal is found **GUILTY** of gross ignorance of the law and procedure and gross inefficiency and is hereby ordered to pay a **FINE** of ₱20,000.00 to be deducted from his retirement benefits.

SO ORDERED.

Leonardo-de Castro[*] (*Acting Chairperson*), *Jardeleza,* and *Gesmundo,*[**] *JJ.,* concur.

Tijam, J., on official leave.

---

[38] *Supra* note 30.

[*] Per Special Order No. 2559 dated May 11, 2018.

[**] Per Special Order No. 2560 dated May 11, 2018.

SECOND DIVISION

[G.R. No. 180845. June 6, 2018]

GOV. AURORA E. CERILLES, *petitioner, vs.* **CIVIL SERVICE COMMISSION, ANITA JANGAD-CHUA, MA. EDEN S. TAGAYUNA, MERIAM CAMPOMANES,[*] BERNADETTE P. QUIRANTE, MA. DELORA P. FLORES and EDGAR PARAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; CANNOT PROSPER WHERE AN APPEAL IS AVAILABLE, EVEN IF THE GROUND THEREFOR IS GRAVE ABUSE OF DISCRETION.—** It is well-established that as a condition for the filing of a petition for *certiorari*, there must be no appeal, nor any plain, speedy, and adequate remedy available in the ordinary course of law. In this case, the CA correctly observed that a Rule 43 petition for review was then an available mode of appeal from the x x x CSC resolutions. Rule 43, which specifically applies to resolutions issued by the CSC, is clear x x x. It bears reiterating that the extraordinary remedy of *certiorari* is a prerogative writ and never issues as a matter of right. Given its extraordinary nature, the party availing thereof must strictly observe the rules laid down and non-observance thereof may not be brushed aside as mere technicality. Hence, where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 6656; PROTECTS THE SECURITY OF TENURE OF OFFICERS AND EMPLOYEES IN THE CIVIL SERVICE DURING THE REORGANIZATION OF GOVERNMENT AGENCIES.—** RA 6656 was enacted to implement the State's policy of protecting the security of tenure of officers and employees in the civil service during the reorganization of government agencies. x x x The following

---

[*] Also referred to as Meriam Campones in other parts of the *rollo*.

may be derived from the x x x [pertinent] provisions [of RA 6656] — **First**, an officer or employee may be validly removed from service pursuant to a *bona fide* reorganization; in such case, there is no violation of security of tenure and the aggrieved employee has no cause of action against the appointing authority. **Second**, if, on the other hand, the reorganization is done in bad faith, as when the x x x circumstances in Section 2 are present, the aggrieved employee, having been removed *without* valid cause, may demand for his reinstatement or reappointment. **Third**, officers and employees holding permanent appointments in the old staffing pattern shall be given preference for appointment to the new positions in the approved staffing pattern, which shall be comparable to their former position or in case there are not enough comparable positions, to positions next lower in rank. **Lastly**, no new employees shall be taken in until all permanent officers and employees have been appointed unless such positions are policy-determining, primarily confidential, or highly technical in nature.

3. ID.; ID.; CIVIL SERVICE COMMISSION (CSC); MERELY ASCERTAINS WHETHER THE APPOINTEE POSSESSES THE MINIMUM REQUIREMENT UNDER THE LAW BUT IN INSTANCES OF REORGANIZATION, THERE IS NO ENCROACHMENT ON THE DISCRETION OF THE APPOINTING AUTHORITY WHEN THE CSC REVOKES AN APPOINTMENT ON THE GROUND THAT THE REMOVAL OF THE EMPLOYEE WAS DONE IN BAD FAITH.— Appointment, by its very nature, is a highly discretionary act. As an exercise of political discretion, the appointing authority is afforded a wide latitude in the selection of personnel in his department or agency and seldom questioned, the same being a matter of wisdom and personal preference. In certain occasions, however, the selection of the appointing authority is subject to review by respondent CSC as the central personnel agency of the Government. In this regard, while there appears to be a conflict between the two interests, *i.e.*, the discretion of the appointing authority and the reviewing authority of the CSC, this issue is hardly a novel one. In countless occasions, the Court has ruled that the only function of the CSC is merely to ascertain whether the appointee possesses the minimum requirements under the law; if it is so, then the CSC has no choice but to attest to such appointment. x x x The foregoing doctrine remains good law. However, in light of the circumstances unique to a government reorganization, such

pronouncements must be reconciled with the provisions of RA 6656. To be sure, this is not the first time that the Court has grappled with this issue. As early as *Gayatao v. Civil Service Commission*, which is analogous to this case, the Court already ruled that in instances of reorganization, **there is no encroachment on the discretion of the appointing authority when the CSC revokes an appointment on the ground that the removal of the employee was done in bad faith. In such instance, the CSC is not actually directing the appointment of another but simply ordering the reinstatement of the illegally removed employee** x x x.

4. **ID.; ID.; GOVERNMENT AGENCIES; REORGANIZATION; WHEN THE REORGANIZATION IS TAINTED WITH BAD FAITH, THE AGGRIEVED OFFICERS OR EMPLOYEES MAY DEMAND FOR REINSTATEMENT OR REAPPOINTMENT.—** Good faith is always presumed. Thus, to successfully impugn the validity of a reorganization — and correspondingly demand for reinstatement or reappointment — the aggrieved officer or employee has the burden to prove the existence of bad faith. x x x [T]he Court finds that Respondents were able to prove bad faith in the reorganization of the Province of Zamboanga del Sur. x x x [T]he **totality** of the circumstances gathered from the records reasonably lead to the conclusion that the reorganization of the Province of Zamboanga del Sur was tainted with bad faith. For this reason, x x x Respondents are entitled to no less than reinstatement to their former positions without loss of seniority rights and shall be entitled to full backwages from the time of their separation until actual reinstatement; or, in the alternative, in case they have already compulsorily retired during the pendency of this case, they shall be awarded the corresponding retirement benefits during the period for which they have been retired.

5. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITIONS; QUESTIONS OF FACT CANNOT BE RAISED THEREIN.—** [I]t must be stressed that the existence or non-existence of bad faith is a factual inquiry. Its determination necessarily requires a scrutiny of the evidence adduced in each individual case and only then can the circumstance of bad faith be inferred. In this respect, the Petition is infirm for raising a question of fact, which is outside the scope of the Court's discretionary power of review in Rule 45 petitions. While

questions of fact have been entertained by the Court in justifiable circumstances, the Petition is bereft of any allegation to show that the case is within the allowable exceptions.

APPEARANCES OF COUNSEL

Frederico M. Gapuz for private respondents.
Office of the Solicitor General for public respondents.

D E C I S I O N

CAGUIOA, *J.:*

Before the Court is an appeal by *certiorari*[1] (Petition) under Rule 45 of the Rules of Court (Rules) assailing the Decision[2] dated June 8, 2007 (CA Decision) and Resolution[3] dated November 28, 2007 of the Court of Appeals – Twenty First Division (CA) in CA-G.R. SP No. 86627. The CA affirmed public respondent Civil Service Commission (CSC)'s Resolution No. 031239[4] dated December 10, 2003, which upheld the CSC Regional Office No. IX (CSCRO)'s invalidation of ninety-six (96) appointments made by petitioner Governor Aurora E. Cerilles (Gov. Cerilles) while sitting as Provincial Governor of Zamboanga del Sur.

The subject appointments were made in connection with the reorganization of the provincial government of Zamboanga del Sur, which reduced the number of *plantilla* positions in the staffing pattern.[5] Herein private respondents Anita Jangad-Chua, Ma. Eden S. Tagayuna, Meriam Campomanes, Bernadette P.

---

[1] *Rollo*, pp. 10-49.

[2] *Id*. at 51-62. Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Teresita Dy-Liacco Flores and Jane Aurora C. Lantion concurring.

[3] *Id*. at 64-65.

[4] Also referred to as Resolution No. 03-1239 in other parts of the *rollo*.

[5] See *rollo*, p. 311.

Quirante, Ma. Delora P. Flores, and Edgar Paran (collectively, "Respondents") were among those permanent employees terminated in relation to the subject appointments.

The Facts

The CA summarized the material antecedents as follows:

On November 7, 2000, Republic Act No. 8973 entitled "An Act creating the Province of Zamboanga Sibugay from the Province of Zamboanga del Sur and for other purposes" was passed. As a consequence thereof, the Internal Revenue Allotment (IRA) of the province of Zamboanga del Sur (province, for brevity) was reduced by thirty-six percent (36%). Because of such reduction, petitioner [Gov. Cerilles], sought the opinion of public respondent [CSC] on the possibility of reducing the workforce of the provincial government.

In response, public respondent issued on August 8, 2001 Opinion No. 07 series of 2001, the pertinent portions of which are as follows:

> "Please be advised also that in the event reorganization is carried out in that province, the same must be authorized by appropriate Sangguniang Panlalawigan (SP) resolution, so that necessary funds may be correspondingly released, among other purposes, to aid the provincial government in the implementation thereof.
>
> Should you have further queries on the matter, please feel free to coordinate with our Civil Service Commission Regional Office (CSCRO) No. IX, Cabantangan, Zamboanga City."

Subsequently on August 21, 2001, the Sangguniang Panlalawigan of Zamboanga del Sur passed Resolution No. 2K1-27 approving the new staffing pattern of the provincial government consisting only of 727 positions and Resolution No. 2K1-038 which authorized petitioner to undertake the reorganization of the provincial government and to implement the new staffing pattern.

Pursuant to said authority, petitioner appointed employees to the new positions in the provincial government. The private respondents were among those who were occupying permanent positions in the old plantilla and have allegedly been in the service for a long time but were not given placement preference and were instead terminated without valid cause and against their will. On various dates, private respondents filed their respective letters of appeal respecting their

termination with petitioner. However, no action was taken on the appeals made; hence, private respondents brought the matter to public respondent's Regional Office No. IX (Regional Office, for brevity). In the meantime, the province submitted its Report on Personnel Actions (ROPA) for January 1, 2002 to the Regional Office No. IX for attestation. x x x[6]

Ruling of the CSC Regional Office IX

Upon review of the ROPA submitted by the provincial government, the CSCRO, in a Letter dated June 3, 2002, found that the subject appointments violated Republic Act No. (RA) 6656[7] for allegedly failing to grant preference in appointment to employees previously occupying permanent positions in the old *plantilla*. As a result, the CSCRO invalidated a total of ninety-six (96) appointments made by Gov. Cerilles after the reorganization.[8]

The CSCRO likewise took cognizance of the appeals directly lodged before it by Respondents, allegedly due to Gov. Cerilles' failure to act thereon. Thus, on June 24, 2002, the CSCRO issued an Omnibus Order directing the reinstatement of Respondents to their former positions.[9] Dismayed, Gov. Cerilles sought reconsideration with the CSCRO through a Letter dated July 13, 2002.[10] Therein, Gov. Cerilles claimed that it was not within the prerogative of the CSCRO to revoke an appointment as the same was within her exclusive discretion.[11]

Thereafter, the CSC informed Gov. Cerilles that her Letter dated July 13, 2002 was treated as an appeal and was forwarded to it by the CSCRO.[12] Thus, in an Order dated October 22, 2002,

---

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

[7] AN ACT TO PROTECT THE SECURITY OF TENURE OF CIVIL SERVICE OFFICERS AND EMPLOYEES IN THE IMPLEMENTATION OF GOVERNMENT REORGANIZATION, June 10, 1988.

[8] See *rollo*, p. 53.

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

[10] *Id*. at 54.

[11] See *id*.

[12] *Id*. at 54-55.

Gov. Cerilles was required to comply with the requirements for perfecting an appeal pursuant to CSC Resolution No. 02-319 dated February 28, 2002.[13]

Ruling of the CSC

In its Resolution No. 030028 dated January 13, 2003, the CSC dismissed the appeal of Gov. Cerilles for her failure to comply with its Order dated October 22, 2002.[14] Aggrieved, Gov. Cerilles filed a motion for reconsideration of the said Resolution.

In its Resolution No. 031239 dated December 10, 2003, the CSC granted the motion for reconsideration and forthwith reinstated the appeal.[15] However, in the same resolution, the CSC dismissed the appeal just the same and upheld the CSCRO's invalidation of the subject appointments.[16]

Gov. Cerilles then filed a motion for reconsideration of Resolution No. 031239, which was eventually denied by the CSC in its Resolution No. 040995[17] dated September 7, 2004.[18]

Unfazed, Gov. Cerilles elevated the matter to the CA through a petition for *certiorari* under Rule 65 on the following grounds, *inter alia*: (i) that the CSC is without original jurisdiction over protests made by an aggrieved officer or employee during government reorganization, pursuant to RA 6656, and (ii) that the CSC committed grave abuse of discretion in affirming the invalidation of the subject appointments.[19]

---

[13] *Id*.

[14] *Id*. at 55.

[15] *Id*.

[16] *Id*.

[17] Also referred to as Resolution No. 04-0995 in other parts of the *rollo*.

[18] *Rollo*, p. 55.

[19] *Id*. at 19.

Ruling of the CA

In the CA Decision, the CA observed that Gov. Cerilles resorted to the wrong mode of review, the proper remedy being an appeal under Rule 43 of the Rules, which governs appeals from judgments, final orders, or resolutions of the CSC.[20] Nevertheless, the CA proceeded to resolve the petition and upheld the CSCRO's jurisdiction to entertain the appeals of Respondents. Notably, however, no discussion was made on the CSC's power to invalidate the subject appointments.

A Motion for Reconsideration[21] dated August 3, 2007 was filed by Gov. Cerilles, which was denied by the CA in its Resolution dated November 28, 2007.

Hence, this Petition.

On May 5, 2008, Respondents jointly filed their Comment dated May 3, 2008.[22] Likewise, on August 15, 2008, the CSC filed its Comment dated August 14, 2008.[23] On December 9, 2008, Gov. Cerilles accordingly filed her Reply.[24]

Issuance of the Temporary Restraining Order (TRO)

In the interim, Respondents filed a Motion for Execution dated January 31, 2008 with the CSC,[25] seeking the immediate execution of its Resolution No. 031239 pending appeal, citing Section 47(4),[26] Chapter 6, Subtitle A, Title I, Book V of the

---

[20] *Id.* at 56.

[21] *Id.* at 66-87.

[22] *Id.* at 99-114.

[23] *Id.* at 124-137.

[24] *Id.* at 160-183.

[25] *Id.* at 204.

[26] SEC. 47. Disciplinary Jurisdiction. – x x x

x x x x x x x x x

(4) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall

Administrative Code of 1987.[27] In its Resolution No. 080712[28] dated April 21, 2008, the CSC granted Respondents' motion as follows:

> **WHEREFORE**, the Motion for Execution of Judgment filed by Anita N. Jangad-Chua, *et al*. is hereby **GRANTED**. Accordingly, the Provincial Government of Zamboanga del Sur is hereby directed to reinstate Anita N. Jangad-Chua, Ma. Eden Saldariega-Tagayuna, Meriam A. Campomanes, Bernarda P. Quirante, Ma. Delora D. Flores and Edgar A. Paran to their respective former positions with payment of back salaries and other benefits due them without further delay.[29]

Alarmed, Gov. Cerilles filed a Motion for Issuance of a Temporary Restraining Order (TRO) dated February 24, 2009 with the Court.[30] In support thereof, Gov. Cerilles claimed that the execution of Resolution No. 031239 would be detrimental to the operations of the provincial government of Zamboanga del Sur and would render inutile a favorable ruling from the Court.[31]

In a Resolution[32] dated March 17, 2009, the Court granted the motion of Gov. Cerilles and issued a TRO directing CSC to cease and desist from executing the following issuances: (i) Resolution No. 031239 dated December 10, 2003, (ii) Resolution No. 040995 dated September 7, 2004, (iii) CSC Resolution No. 080712 dated April 21, 2008, and (iv) Resolution No. 090102[33] dated January 20, 2009.

---

be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal.

[27] See *rollo*, p. 205.

[28] *Id*. at 203-206. Also referred to as Resolution No. 08-0712 in other parts of the *rollo*.

[29] *Id*. at 206.

[30] *Id*. at 190-201.

[31] *Id*. at 187-188.

[32] *Id*. at 217-218.

[33] *Id*. at 208-212. Also referred to as Resolution No. 09-0102 in other parts of the *rollo*.

Issues

The Petition questions the CA Decision on the following grounds:

(i) Whether Gov. Cerilles correctly availed of the remedy of *certiorari* under Rule 65 of the Rules when she filed her petition before the CA questioning the invalidation of the subject appointments, there being no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law;[34]

(ii) Whether the CA misapplied Section 9 of Presidential Decree No. 807 (Powers and Functions of the CSC to Approve and Disapprove Appointments) in ruling that an aggrieved applicant for a position due to reorganization does not need to seek recourse first before the appointing authority (*i.e.*, Gov. Cerilles as Provincial Governor of Zamboanga del Sur);[35]

(iii) Whether the CA deliberately misapplied Section 7 of RA 6656 in favor of Respondents in order to evade discussion on the validity of the subject appointments;[36] and

(iv) Whether the CA misinterpreted the jurisdiction of CSCROs, as contained in Section 6[B1] of CSC Memorandum Circular No. 19-99.[37]

The Court's Ruling

The Petition is denied.

Preliminary issue: propriety of filing a Rule 65 petition for certiorari with the CA

In her Petition, Gov. Cerilles questions the CA Decision insofar as it considered her petition for *certiorari* an improper remedy — the proper remedy being a petition for review under Rule 43 of

---

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

[35] See *id*. at 28.

[36] *Id*.

[37] *Id*.

the Rules. Gov. Cerilles claims that Resolution No. 031239 and Resolution No. 040995 were non-appealable as the CSC rendered them in its "non-disciplinary" jurisdiction; thus, she insists that the correct remedy was a petition for *certiorari* under Rule 65.

The Court is not impressed.

The Rules and prevailing jurisprudence are settled on this matter. It is well-established that as a condition for the filing of a petition for *certiorari*, there must be no appeal, nor any plain, speedy, and adequate remedy available in the ordinary course of law.[38] In this case, the CA correctly observed that a Rule 43 petition for review was then an available mode of appeal from the above CSC resolutions. Rule 43, which specifically applies to resolutions issued by the CSC, is clear:

> SECTION 1. *Scope*. — **This Rule shall apply to** appeals from judgments or final orders of the Court of Tax Appeals and from **awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission**, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, x x x.
>
> x x x x x x x x x
>
> SEC. 5. *How appeal taken*. — **Appeal shall be taken by filing a verified petition for review** in seven (7) legible copies **with the Court of Appeals**, with proof of service of a copy thereof on the adverse party and on the court or agency *a quo*. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner. (Emphasis and underscoring supplied)

It bears reiterating that the extraordinary remedy of *certiorari* is a prerogative writ and never issues as a matter of right.[39] Given its extraordinary nature, the party availing thereof must strictly observe the rules laid down and non-observance thereof

---

[38] *Balindong v. Dacalos*, 484 Phil. 574, 580 (2004); RULES OF COURT, Rule 65, Sec. 1.

[39] *Balindong v. Dacalos*, *id*. at 579.

may not be brushed aside as mere technicality.[40] Hence, where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.[41]

Applying the foregoing, the Court thus finds Gov. Cerilles' failure to abide by the elementary requirements of the Rules inexcusable. That she repeatedly invoked "grave abuse of discretion" on the part of the CSC was of no moment; the records failed to demonstrate how an appeal to the CA via Rule 43 was not a plain, speedy, and adequate remedy as would allow a relaxation of the rules of procedure.

Non-observance of procedure under Sections 7 and 8 of RA 6656

Gov. Cerilles also faults the CA for upholding the CSCRO's jurisdiction over the appeals directly lodged before it by Respondents.[42] Gov. Cerilles anchors her claim on Sections 7 and 8 of RA 6656, which provide the appeal procedure for aggrieved applicants to new positions resulting from a reorganization:

> SEC. 7. A list of the personnel appointed to the authorized positions in the approved staffing pattern shall be made known to all the officers and employees of the department or agency. **Any of such officers and employees aggrieved by the appointments made may file an appeal with the appointing authority** who shall make a decision within thirty (30) days from the filing thereof.
>
> SEC. 8. An officer or employee who is still not satisfied with the decision of the appointing authority may further appeal within ten (10) days from receipt thereof to the Civil Service Commission which shall render a decision thereon within thirty (30) days and whose decision shall be final and executory. (Emphasis and underscoring supplied)

---

[40] *Garcia, Jr. v. Court of Appeals*, 570 Phil. 188, 193 (2008).

[41] See *Career Executive Service Board v. Civil Service Commission*, G.R. No. 197762, March 7, 2017, pp. 13-14.

[42] See *rollo*, p. 33.

On the basis of the cited provision, Gov. Cerilles claims that it was erroneous for the CSCRO to have taken cognizance of the appeals of Respondents as the same should have first been filed before her as the appointing authority.[43] Specifically, Gov. Cerilles posits that the foregoing provisions conferred "original jurisdiction" to the appointing authority over appeals of aggrieved officers and employees and only "appellate jurisdiction" to the CSCRO.[44] Thus, she claims that Respondents' failure to observe the proper procedure deprived the CSCRO of jurisdiction over their appeals.

The Court disagrees.

The records indicate that Respondents **did in fact** file letters of appeal with Gov. Cerilles on various dates after their separation.[45] Said appeals, however, were not acted upon despite the lapse of time, which prompted Respondents to instead seek relief before the CSCRO.[46] While Gov. Cerilles disputes this fact,[47] the Court, being a trier of law and not of facts, must necessarily rely on the factual findings of the CA.[48] In Rule 45 petitions, the Court cannot re-weigh evidence already duly considered by the lower courts. In this regard, it was held by the CA:

> Even assuming that petitioner correctly relied on Sections 7 and 8 of R.A. 6656, We still find that private respondents fully complied with the requirements of the said provisions.
>
> Contrary to petitioner's claim, private respondents indeed filed letters of appeal on various dates after their termination. Said appeals however, were unacted despite the lapse of time given the appointing authority to resolve the same which prompted private respondents to seek redress before public respondent's Regional Office. We, thus,

---

[43] See *id*. at 34.

[44] *Id*. at 20.

[45] *Id*. at 60.

[46] *Id*.

[47] *Id*. at 37.

[48] See *Medina v. Court of Appeals*, 693 Phil. 356, 366 (2012).

cannot give credence to petitioner's claim that no appeal was filed before her as the appointing authority. As what petitioner would have private respondents do, the latter indeed went through the motions of first attempting to ventilate their protest before the appointing authority. However, since the appointing authority failed to take any action on the appeal, private respondents elevated the same to the Regional Office and correctly did so. x x x[49]

While no decision on the appeals was ever rendered by Gov. Cerilles, it would be unjust to require Respondents to first await an issuance before elevating the matter to the CSC, given Gov. Cerilles' delay in resolving the same. In such case, an appointing authority could easily eliminate all opportunities of appeal by the aggrieved employees by mere inaction. It is well-settled that procedural rules must not be applied with unreasonable rigidity if substantial rights stand to be marginalized; here, no less than Respondents' means of livelihood are at stake.

Proceeding therefrom, the Court cannot therefore ascribe any fault to the CSCRO in resolving the appeals of Respondents due to Gov. Cerilles' refusal to act, especially since the CSC is, in any case, vested with jurisdiction to review the decision of the appointing authority.[50]

The foregoing issues resolved, the Court now confronts the principal issue in this case: whether the CSC, in affirming the CSCRO, erred in invalidating the appointments made by Gov. Cerilles. Otherwise stated, can the CSC revoke an appointment for violating the provisions of RA 6656?

RA 6656 vis-à-vis the Power of Appointment

RA 6656 was enacted to implement the State's policy of protecting the security of tenure of officers and employees in the civil service during the reorganization of government agencies.[51] The pertinent provisions of RA 6656 provide, thus:

---

[49] *Rollo*, p. 60.

[50] RA 6656, Sec. 8.

[51] RA 6656, Sec. 1.

SEC. 2. No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. **A valid cause for removal exists when, pursuant to a *bona fide* reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service**, or other lawful causes allowed by the Civil Service Law. **The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party**:

(a) Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned;

(b) Where an office is abolished and another performing substantially the same functions is created;

(c) Where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit;

(d) Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same functions as the original offices;

(e) Where the removal violates the order of separation provided in Section 3 hereof.

SEC. 3. In the separation of personnel pursuant to reorganization, the following order of removal shall be followed:

(a) Casual employees with less than five (5) years of government service;

(b) Casual employees with five (5) years or more of government service;

(c) Employees holding temporary appointments; and

(d) Employees holding permanent appointments: *Provided*, That those in the same category as enumerated above, who are least qualified in terms of performance and merit shall be laid off first, length of service notwithstanding.

SEC. 4. **Officers and employees holding permanent appointments shall be given preference for appointment to the new positions in the approved staffing pattern** comparable to their

former positions or in case there are not enough comparable positions, to positions next lower in rank.

No new employees shall be taken in until all permanent officers and employees have been appointed, including temporary and casual employees who possess the necessary qualification requirements, among which is the appropriate civil service eligibility, for permanent appointment to positions in the approved staffing pattern, in case there are still positions to be filled, unless such positions are policy-determining, primarily confidential or highly technical in nature. (Emphasis supplied)

The following may be derived from the cited provisions — **First**, an officer or employee may be validly removed from service pursuant to a *bona fide* reorganization; in such case, there is no violation of security of tenure and the aggrieved employee has no cause of action against the appointing authority. **Second**, if, on the other hand, the reorganization is done in bad faith, as when the enumerated circumstances in Section 2 are present, the aggrieved employee, having been removed *without* valid cause, may demand for his reinstatement or reappointment. **Third**, officers and employees holding permanent appointments in the old staffing pattern shall be given preference for appointment to the new positions in the approved staffing pattern, which shall be comparable to their former position or in case there are not enough comparable positions, to positions next lower in rank. **Lastly**, no new employees shall be taken in until all permanent officers and employees have been appointed unless such positions are policy-determining, primarily confidential, or highly technical in nature.

Bearing the foregoing in mind, the Court now discusses the matter of appointment.

Appointment, by its very nature, is a highly discretionary act. As an exercise of political discretion, the appointing authority is afforded a wide latitude in the selection of personnel in his department or agency and seldom questioned, the same being a matter of wisdom and personal preference.[52] In certain

---

[52] See *Lapinid v. Civil Service Commission*, 274 Phil. 381, 385 and 387 (1991).

occasions, however, the selection of the appointing authority is subject to review by respondent CSC as the central personnel agency of the Government. In this regard, while there appears to be a conflict between the two interests, *i.e.*, the discretion of the appointing authority and the reviewing authority of the CSC, this issue is hardly a novel one.

In countless occasions, the Court has ruled that the only function of the CSC is merely to ascertain whether the appointee possesses the minimum requirements under the law; if it is so, then the CSC has no choice but to attest to such appointment.[53] The Court recalls its ruling in *Lapinid v. Civil Service Commission*,[54] citing *Luego v. Civil Service Commission*,[55] wherein the CSC was faulted for revoking an appointment on the ground that another candidate scored a higher grade based on comparative evaluation sheets:

> We declare once again, and let us hope for the last time, that the Civil Service Commission has no power of appointment except over its own personnel. Neither does it have the authority to review the appointments made by other offices except only to ascertain if the appointee possesses the required qualifications. The determination of who among aspirants with the minimum statutory qualifications should be preferred belongs to the appointing authority and not the Civil Service Commission. It cannot disallow an appointment because it believes another person is better qualified and much less can it direct the appointment of its own choice.
>
> x x x x x x x x x

Commenting on the limits of the powers of the public respondent, *Luego* declared:

> It is understandable if one is likely to be misled by the language of Section 9(h) of Article V of the Civil Service Decree because it says the Commission has the power to "approve" and

---

[53] See *id*. at 387-388.

[54] *Supra* note 52.

[55] 227 Phil. 303, 308-309 (1986).

"disapprove" appointments. Thus, it is provided therein that the Commission shall have *inter alia* the power to:

> "9(h) *Approve all appointments, whether original or promotional, to positions in the civil service*, except those presidential appointees, members of the Armed Forces of the Philippines, police forces, firemen, and jailguards, and *disapprove those where the appointees do not possess appropriate eligibility or required qualifications.*" (Italics supplied)

However, a full reading of the provision, especially of the underscored parts, will make it clear that all the Commission is actually allowed to do is check whether or not the appointee possesses the appropriate civil service eligibility or the required qualifications. If he does, his appointment is approved; if not, it is disapproved. No other criterion is permitted by law to be employed by the Commission when it acts on – or as the Decree says, "approves" or "disapproves" – an appointment made by the proper authorities.

The Court believes it has stated the foregoing doctrine clearly enough, and often enough, for the Civil Service Commission not to understand them. The bench does; the bar does; and we see no reason why the Civil Service Commission does not. If it *will* not, then that is an entirely different matter and shall be treated accordingly.

We note with stern disapproval that the Civil Service Commission has once again *directed* the appointment of its own choice in the case at bar. We must therefore make the following injunctions which the Commission must note well and follow strictly.[56] (Italics in the original)

The foregoing doctrine remains good law.[57] However, in light of the circumstances unique to a government reorganization, such pronouncements must be reconciled with the provisions of RA 6656.

---

[56] *Supra* note 52, at 387-388.

[57] See *Guieb v. Civil Service Commission*, 299 Phil. 829, 836-839 (1994).

To be sure, this is not the first time that the Court has grappled with this issue. As early as *Gayatao v. Civil Service Commission*,[58] which is analogous to this case, the Court already ruled that in instances of reorganization, **there is no encroachment on the discretion of the appointing authority when the CSC revokes an appointment on the ground that the removal of the employee was done in bad faith**. **In such instance, the CSC is not actually directing the appointment of another but simply ordering the reinstatement of the illegally removed employee**:

> The focal issue raised for resolution in this petition is **whether respondent commission committed grave abuse of discretion in revoking the appointment of petitioner and ordering the appointment of private respondent in her place.**
>
> **Petitioner takes the position that public respondent has no authority to revoke her appointment on the ground that another person is more qualified, for that would constitute an encroachment on the discretion vested solely in the appointing authority**. In support of said contention, petitioner cites the case of *Central Bank of the Philippines, et al. vs. Civil Service Commission, et al.* x x x.
>
> x x x x x x x x x
>
> The doctrine laid down in the cited case finds no determinant application in the case at bar. **A reading of the questioned resolution of respondent commission readily shows that the revocation of the appointment of petitioner was based primarily on its finding that the said appointment was null and void by reason of the fact that it resulted in the demotion of private respondent without lawful cause in violation of the latter's security of tenure.** The advertence of the CSC to the fact that private respondent is better support to its stand that the removal of private respondent was unlawful and tainted with bad faith and that his reinstatement to his former position is imperative and justified.
>
> x x x x x x x x x
>
> **Clearly, therefore, in the said resolution the CSC is not actually directing the appointment of private respondent but simply**

[58] 285 Phil. 652 (1992).

ordering his reinstatement to the contested position being the first appointee thereto. Further, private respondent was already holding said position when he was unlawfully demoted. The CSC, after finding that the demotion was patently illegal, is merely restoring private respondent to his former position, just as it must restore other employees similarly affected to their positions before the reorganization.

It is within the power of public respondent to order the reinstatement of government employees who have been unlawfully dismissed. The CSC, as the central personnel agency, has the obligation to implement and safeguard the constitutional provisions on security of tenure and due process. In the present case, the issuance by the CSC of the questioned resolutions, for the reasons clearly explained therein, is undubitably (*sic*) in the performance of its constitutional task of protecting and strengthening the civil service.[59] (Emphasis and underscoring supplied)

The reorganization of the Province of Zamboanga del Sur was tainted with bad faith

Following the discussion above, the resolution of the Petition simply hinges on whether the reorganization of the Province of Zamboanga Del Sur was done in good faith. The Court rules in the negative.

In *Blaquera v. Civil Service Commission*,[60] citing *Dario v. Mison*,[61] the Court had the occasion to define good faith in the context of reorganization:

x x x Good faith, we ruled in *Dario vs. Mison* is a basic ingredient for the validity of any government reorganization. It is the golden thread that holds together the fabric of the reorganization. Without it, the cloth would disintegrate.

"*Reorganization is a recognized valid ground for separation of civil service employees, subject only to the condition that it be done in good faith.* No less than the Constitution

---

[59] *Id.* at 657-660.

[60] 297 Phil. 308 (1993).

[61] 257 Phil. 84 (1989).

itself in Section 16 of the Transitory Provisions, together with Sections 33 and 34 of Executive Order No. 81 and Section 9 of Republic Act No. 6656, support this conclusion with the declaration that all those not so appointed in the implementation of said reorganization shall be deemed separated from the service with the concomitant recognition of their entitlement to appropriate separation benefits and/or retirement plans of the reorganized government agency." x x x

A reorganization in good faith is one designed to trim the fat off the bureaucracy and institute economy and greater efficiency in its operation. It is not a mere tool of the spoils system to change the face of the bureaucracy and destroy the livelihood of hordes of career employees in the civil service so that the new-powers-that-be may put their own people in control of the machinery of government.[62] (Citation omitted)

Again, citing *Dario v. Mison*,[63] the Court in *Larin v. Executive Secretary*[64] (*Larin*) held:

As a general rule, a reorganization is carried out in "good faith" if it is for the purpose of economy or to make bureaucracy more efficient. In that event no dismissal or separation actually occurs because the position itself ceases to exist. And in that case the security of tenure would not be a Chinese wall. Be that as it may, if the abolition which is nothing else but a separation or removal, is done for political reason or purposely to defeat security of tenure, or otherwise not in good faith, no valid abolition takes place and whatever abolition is done is void *ab initio*. There is an invalid abolition as where there is merely a change of nomenclature of positions or where claims of economy are belied by the existence of ample funds.[65]

Good faith is always presumed. Thus, to successfully impugn the validity of a reorganization — and correspondingly demand for reinstatement or reappointment — the aggrieved officer or

---

[62] *Blaquera v. Civil Service Commission*, *supra* note 60, at 321.

[63] *Supra* note 61, at 130.

[64] 345 Phil. 962 (1997).

[65] *Id.* at 980-981.

employee has the burden to prove the existence of bad faith.[66] In *Cotiangco v. The Province of Biliran*,[67] which involved the reorganization of the Province of Biliran, the Court upheld the validity of the reorganization due to the failure of the aggrieved employees to adduce evidence showing bad faith, as provided in Section 2 of RA 6656.

On the other hand, in the case of *Pan v. Peña*,[68] (*Pan*) the Court found that the reorganization of the Municipality of Goa was tainted with bad faith based on its appreciation of circumstances indicative of an intent to circumvent the security of tenure of the employees. The Court therein upheld the invalidation of the subject appointments notwithstanding the claim that there was a reduction of *plantilla* positions in the new staffing pattern:

> In the case at bar, petitioner claims that there has been a drastic reduction of *plantilla* positions in the new staffing pattern in order to address the LGU's gaping budgetary deficit. Thus, he states that in the municipal treasurer's office and waterworks operations unit where respondents were previously assigned, only 11 new positions were created out of the previous 35 which had been abolished; and that the new staffing pattern had 98 positions only, as compared with the old which had 129.
>
> The CSC, however, highlighted the recreation of six (6) *casual* positions for clerk II and utility worker I, which positions were previously held by respondents Marivic, Cantor, Asor and Enciso. Petitioner inexplicably never disputed this finding nor proffered any proof that the new positions do not perform the same or substantially the same functions as those of the abolished. And nowhere in the records does it appear that these *recreated* positions were first offered to respondents.
>
> x x x x x x x x x
>
> While the CSC never found the new appointees to be unqualified, and never disapproved nor recalled their appointments as they presumably met all the minimum requirements therefor, there is nothing

---

[66] See *Cotiangco v. The Province of Biliran*, 675 Phil. 211, 219 (2011).

[67] *Id.* at 219-220.

[68] 598 Phil. 781 (2009).

contradictory in the CSC's course of action as it is limited only to the *non-discretionary* authority of determining whether the personnel appointed meet all the required conditions laid down by law.

Congruently, the CSC can very well order petitioner to reinstate respondents to their former positions (as these were never actually abolished) or to appoint them to comparable positions in the new staffing pattern.

In fine, the reorganization of the government of the Municipality of Goa was not entirely undertaken in the interest of efficiency and austerity but appears to have been marred by other considerations in order to circumvent the constitutional security of tenure of civil service employees like respondents.[69]

Applying the foregoing to the facts of this case, the Court finds that Respondents were able to prove bad faith in the reorganization of the Province of Zamboanga del Sur. The Court explains.

At the outset, it must be stressed that the existence or non-existence of bad faith is a factual inquiry.[70] Its determination necessarily requires a scrutiny of the evidence adduced in each individual case and only then can the circumstance of bad faith be inferred.[71] In this respect, the Petition is infirm for raising a question of fact, which is outside the scope of the Court's discretionary power of review in Rule 45 petitions.[72] While questions of fact have been entertained by the Court in justifiable circumstances, the Petition is bereft of any allegation to show that the case is within the allowable exceptions.

Be that as it may, after a judicious scrutiny of the records and the submissions of the parties, the Court finds no cogent reason to vacate the CA Decision, as well as the relevant rulings of the CSC and CSCRO.

---

[69] *Id.* at 791-793.

[70] See *Tabangao Shell Refinery Employees Association v. Pilipinas Shell Petroleum Corp.*, 731 Phil. 373, 393 (2014).

[71] See *id.*

[72] See *Miro v. Vda. de Erederos*, 721 Phil. 772, 785 (2013).

First, the sheer number of appointments found to be violative of RA 6656 is astounding. As initially observed by the CSCRO, no less than **ninety-six (96)** of the appointments made by Gov. Cerilles violated the rule on preference and non-hiring of new employees embodied in Sections 4 and 5 of the said law. While the relative scale of invalidated appointments does not conclusively rule out good faith, there is, at the very least, a strong indication that the reorganization was motivated not solely by the interest of economy and efficiency, but as a systematic means to circumvent the security of tenure of the ninety-six (96) employees affected.

Second, Respondents were replaced by either new employees or those holding lower positions in the old staffing pattern — circumstances that may be properly appreciated as evidence of bad faith pursuant to Section 2 and Section 4 of RA 6656. Significantly, Gov. Cerilles plainly admitted that new employees were indeed hired after the reorganization.[73]

On this matter, the Court's ruling in *Larin* is instructive. In that case, a new employee was appointed to the position of Assistant Commissioner of the Bureau of Internal Revenue, notwithstanding the fact that there were other officers holding permanent positions that were available for appointment. Thus, for violating Section 4 of RA 6656, the Court ordered the reinstatement of the petitioner, who was the previous occupant of the position of Assistant Commissioner prior to the reorganization:

> A reading of some of the provisions of the questioned E.O. No. 132 clearly leads us to an inescapable conclusion that there are circumstances considered as evidences of bad faith in the reorganization of the BIR.
>
> x x x x x x x x x
>
> x x x **it is perceivable that the non-reappointment of the petitioner as Assistant Commissioner violates Section 4 of R.A. 6656.** Under said provision, officers holding permanent appointments are given preference for appointment to the new positions in the

[73] See *rollo*, p. 301.

approved staffing pattern comparable to their former positions or in case there are not enough comparable positions to positions next lower in rank. It is undeniable that petitioner is a career executive officer who is holding a permanent position. Hence, he should have been given preference for appointment in the position of Assistant Commissioner. **As claimed by petitioner, Antonio Pangilinan who was one of those appointed as Assistant Commissioner, "is an outsider of sorts to the bureau, not having been an incumbent officer of the bureau at the time of the reorganization." We should not lose sight of the second paragraph of Section 4 of R.A. No. 6656 which explicitly states that no new employees shall be taken in until all permanent officers shall have been appointed for permanent position.**

IN VIEW OF THE FOREGOING, the petition is granted, and **petitioner is hereby reinstated to his position as Assistant Commissioner without loss of seniority rights and shall be entitled to full backwages** from the time of his separation from service until actual reinstatement unless, in the meanwhile, he would have reached the compulsory retirement age of sixty-five years in which case, he shall be deemed to have retired at such age and entitled thereafter to the corresponding retirement benefits.[74] (Emphasis and underscoring supplied)

Further, in the case of *Pan*, the Court once again found that the appointment of new employees despite the availability of permanent officers and employees indicated that there was no *bona fide* reorganization by the appointing authority:

The appointment of casuals to these *recreated* positions violates R.A. 6656, as Section 4 thereof instructs that:

> Sec. 4. Officers and employees holding **permanent** appointments shall be **given preference** for appointment to the new positions in the approved staffing pattern **comparable to** their former positions **or** in case there are not enough comparable positions, to **positions next lower in rank**.
>
> **No new employees shall be taken until all permanent officers and employees have been appointed**, including temporary and casual employees who possess the necessary

---

[74] *Larin v. Executive Secretary*, *supra* note 64, at 981-983.

> qualification requirement, among which is the appropriate civil service eligibility, for permanent appointment to positions in the approved staffing pattern, in case there are still positions to be filled, unless such positions are policy-determining, primarily confidential or highly technical in nature. x x x
>
> In the case of respondent Peña, petitioner claims that the position of waterworks supervisor had been abolished during the reorganization. Yet, petitioner appointed an officer-in-charge in 1999 for its waterworks operations even after a supposed new staffing pattern had been effected in 1998. Notably, this position of waterworks supervisor does not appear in the new staffing pattern of the LGU. Apparently, the Municipality of Goa never intended to do away with such position wholly and permanently as it appointed another person to act as officer-in-charge vested with similar functions.[75] (Emphasis and underscoring in the original)

Moreover, the Court notes that the positions of Respondents were not even abolished.[76] However, instead of giving life to the clear mandate of RA 6656 on preference, Gov. Cerilles terminated Respondents from the service and forthwith appointed other employees in their stead. Neither did Gov. Cerilles, at the very least, demote them to lesser positions if indeed there was a reduction in the number of positions corresponding to Respondents' previous positions. This is clear indication of bad faith, as the Court similarly found in *Dytiapco v. Civil Service Commission*[77]:

> Petitioner's dismissal was not for a valid cause, thereby violating his right to security of tenure. The reason given for his termination, that there is a "limited number of positions in the approved new staffing pattern" necessitating his separation on January 31, 1988, is simply not true. **There is no evidence that his position as senior newscaster has been abolished, rendered redundant or merged and/or divided or consolidated with other positions. According to petitioner, respondent Bureau of Broadcast had accepted**

---

[75] *Pan v. Peña*, *supra* note 68, at 792.

[76] *Rollo*, pp. 247-248, 254-A.

[77] 286 Phil. 174 (1992).

applicants to the position he vacated. He was conveniently eased out of the service which he served with distinction for thirteen (13) years to accommodate the proteges of the "new power brokers".

x x x x x x x x x

WHEREFORE, the petition for *certiorari* is given due course and the Resolutions of the CSC of June 28, 1989 and November 27, 1989 are hereby annulled and set aside. **Respondents Press Secretary and Director of the Bureau of Broadcasts are hereby ordered to reinstate petitioner Edgardo Dytiapco to the position he was holding immediately before his dismissal without loss of seniority with full pay for the period of his separation.** Petitioner is likewise ordered to return to respondent Bureau of Broadcast the separation pay and terminal leave benefits he received in the amount of ₱26,779.72 and ₱19,028.86 respectively. No costs.[78] (Emphasis supplied)

In view of the foregoing, the Court quotes with approval the following findings of the CSCRO in its Decision dated June 3, 2002:

"*Moreover,* ***in our post audit of the Report on Personnel Actions (ROPA) of the province relative to the implementation of its reorganization we invalidated one hundred (100) appointments***[79] ***mainly for violation of RA 6656 and because of other CSC Law and Rules. This leads us to the inevitable conclusion that the reorganization in the province was not done in good faith****. This Office quite understands the necessity of the province to retrench employees holding redundant positions as it can no longer sustain the payment of their salaries. But* ***we cannot understand the need to terminate qualified incumbents of retained positions and replace them with either new employees or those previously holding lower positions.*** *We do not question the power of the province as an autonomous local government unit (LGU) to reorganize nor the discretion of the appointing authority to appoint. However, such power is not absolute and does not give the LGU the blanket authority to remove permanent employees under the pretext of reorganization (CSC Resolution No. 94-4582 dated August 18, 1994, Dionisio F.*

---

[78] *Id*. at 179, 181.

[79] Consisting of ninety-six (96) appointments made by Gov. Cerilles and four (4) appointments made by then Vice-Governor Ariosa; *rollo*, p. 247.

Rhodora, et. al.). Reorganization as a guise for illegal removal of career civil service employees is violative of the latter's constitutional right to security of tenure (Yulo vs. CSC 219 SCRA 470). Reorganization must be done in good faith (Dytiapco vs. CSC, 211 SCRA 88)."

x x x x x x x x x

"***First, the appellants are all qualified for their respective positions. Second, they are all permanent employees. Third, their positions have not been abolished. And fourth, they were either replaced by those holding lower positions prior to reorganization or worse by new employees. In fine, a valid cause for removal does not exist in any of their cases***."[80] (Emphasis supplied; italics in the original)

The foregoing findings, as affirmed by the CSC, are entitled to great weight, being factual in nature. It is settled doctrine that the Court accords respect, if not finality, to factual findings of administrative agencies because of their special knowledge and expertise over matters falling under their jurisdiction.[81] No compelling reason is extant in the records to have this Court rule otherwise.

All told, the Court finds that the **totality** of the circumstances gathered from the records reasonably lead to the conclusion that the reorganization of the Province of Zamboanga del Sur was tainted with bad faith. For this reason, following the ruling in *Larin*, Respondents are entitled to no less than reinstatement to their former positions without loss of seniority rights and shall be entitled to full backwages from the time of their separation until actual reinstatement; or, in the alternative, in case they have already compulsorily retired during the pendency of this case, they shall be awarded the corresponding retirement benefits during the period for which they have been retired.

A final note. The Court is not unmindful of the plight of the incumbents who were appointed after the reorganization in place

---

[80] *Rollo*, pp. 247-248, 254-A.

[81] *Miro v. Vda. de Erederos*, *supra* note 72, at 784; see *Gannapao v. Civil Service Commission*, 665 Phil. 60, 77-78 (2011).

of Respondents. However, as a result of the illegal termination of Respondents, there was technically no vacancy to which the incumbents could have been appointed. As succinctly held in *Gayatao v. Civil Service Commission*[82]:

> The argument of petitioner that the questioned resolution of respondent CSC will have the effect of her dismissal without cause from government service, since she is already an appointee to the position which private respondent claims, is devoid of legal support and logical basis.
>
> In the first place, **petitioner cannot claim any right to the contested position. No vacancy having legally been created by the illegal dismissal, no appointment may be validly made to that position and the new appointee has no right whatsoever to that office.** She should be returned to where she came from or be given another equivalent item. **No person, no matter how qualified and eligible for a certain position, may be appointed to an office which is not yet vacant.** The incumbent must have been lawfully removed or his appointment validly terminated, since an appointment to an office which is not vacant is null and void *ab initio*.[83] (Emphasis supplied)

WHEREFORE, premises considered, the Petition is **DENIED** and the temporary restraining order issued on March 17, 2009 is deemed **LIFTED**. Resolution No. 031239 dated December 10, 2003 issued by respondent Civil Service Commission is hereby ordered executed without delay.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Jardeleza,*[**] and *Reyes, Jr., JJ.,* concur.

---

[82] *Supra* note 58.

[83] *Id.* at 662-663.

[**] Designated additional Member per Raffle dated July 19, 2017 vice Associate Justice Estela M. Perlas-Bernabe.

THIRD DIVISION

[G.R. No. 182307. June 6, 2018]

BELINA CANCIO and JEREMY PAMPOLINA, *petitioners, vs.* **PERFORMANCE FOREIGN EXCHANGE CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 OF THE RULES OF COURT; REQUIRED PLEADINGS AND DOCUMENTS; SUBSTANTIAL COMPLIANCE THEREWITH MAY BE ALLOWED.—** The failure to attach material portions of the record will not necessarily cause the outright dismissal of the petition. While Rule 45, Section 4 of the Rules of Court requires that the petition "be accompanied by ... such material portions of the record as would support the petition," this Court may still give due course if there is substantial compliance with the Rules x x x [, pursuant to] Rule 45, Section 7 x x x. In this instance, petitioners submitted the assailed Court of Appeals January 31, 2008 Decision in their Petition, which quoted substantial portions of the Regional Trial Court June 15, 2006 Decision; the Regional Trial Court's records; and the Court of Appeals' *rollo*. They likewise attached in their Reply a copy of the Complaint, the Balance Ledger for Dealings, and the Purchase Order Forms presented before the Regional Trial Court. These documents more than suffice to substantiate petitioners' claims.

2. **ID.; ID.; ID.; ID.; LIMITED TO REVIEW OF QUESTIONS OF LAW.—** This Court is not a trier of facts. Factual findings of the lower courts will not be disturbed by this Court if supported by substantial evidence. Thus, Rule 45 of the Rules of Court requires that a petition for review on certiorari only raise questions of law. The distinction between a question of fact and a question of law is settled. x x x Appeal is not a matter of right but of sound judicial discretion. While questions of fact are generally not entertained by this Court, there are of course, certain permissible exceptions x x x. A case falling under any of x x x [the] exceptions, however, does not

automatically require this Court's review. In *Pascual v. Burgos*, this Court explained that a party cannot merely claim that his or her case falls under any of the exceptions; he or she "must demonstrate and prove" that a review of the factual findings is necessary.

3. ID.; ID.; ID.; NEGLIGENCE IS A MIXED QUESTION OF LAW AND FACT.— This Court has previously stated that "[n]egligence, that is, a failure to comply with some duty of care owed by one to another, is a mixed question of law and fact." There is a question of law as to the duty of care owed by a defendant to a plaintiff. The existence of negligence, however, is determined by facts and evidence, which makes it a question of fact. The review of a finding of negligence involves a question of fact. It is evidentiary in nature. It requires an examination of the evidence presented by the parties to determine the basis of this negligence. This Court has likewise held that determination of the existence of a breach of contract is a question of fact. A petition for review filed under Rule 45 of the Rules of Court that assails the Court of Appeals' failure to find negligence or breach of contract based on the evidence presented is essentially raising questions of fact. This Court will uphold the findings of the Court of Appeals unless the case falls under certain exceptions, which must first be properly pleaded and substantiated. Otherwise, this Court must apply the general rule and deny the petition.

4. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; DAMAGES; BEFORE A CLAIMANT CAN BE ENTITLED TO DAMAGES, THE CLAIMANT SHOULD SATISFACTORILY SHOW THE EXISTENCE OF THE FACTUAL BASIS OF DAMAGES AND ITS CAUSAL CONNECTION TO DEFENDANT'S ACT.— Petitioners opened a joint account with respondent, through their broker, Hipol, to engage in foreign currency exchange trading. Respondent had a leverage system of trading, wherein clients may use its credit line to facilitate transactions. x x x Hipol, petitioners' agent, was not employed with respondent. He was categorized as an independent broker for commission. x x x When Hipol became petitioners' agent, he had committed only one (1) known prior infraction against a client of respondent. Respondent might have been construed this as an isolated incident that did not warrant heightened

scrutiny. Hipol's infraction committed against petitioners was his second known infraction. Respondent cancelled his accreditation when petitioners informed them of his unauthorized transactions. It would be different if Hipol committed a series of infractions and respondent continued to accredit him. In that instance, respondent would have been complicit to Hipol's wrongdoings. Respondent, not being Hipol's employer, had no power of discipline over him. It could only cancel his accreditation, which it did after a second incident was reported. This was the extent by which respondent was obligated to act on Hipol's infractions. Moreover, petitioners and respondent signed and agreed to absolve respondent from actions, representations, and warranties of their agent made on their behalf x x x. Petitioners conferred trading authority to Hipol. Respondent was not obligated to question whether Hipol exceeded that authority whenever he made purchase orders. Respondent was likewise not privy on how petitioners instructed Hipol to carry out their orders. It did not assign Hipol to be petitioners' agent. Hipol was the one who approached petitioners and offered to be their agent. Petitioners were highly educated and were "[a]lready knowledgeable in playing in this foreign exchange trading." They would have been aware of the extent of authority they granted to Hipol when they handed to him 10 pre-signed blank purchase order forms. x x x Before a claimant can be entitled to damages, "the claimant should satisfactorily show the existence of the factual basis of damages and its causal connection to defendant's acts." The acts of petitioners' agent, Hipol, were the direct cause of their injury. There is no reason to hold respondent liable for actual and moral damages. Since the basis for moral damages has not been established, there would likewise be no basis to recover exemplary damages and attorney's fees from respondent. If there was any fault, the fault remains with petitioners' agent and him alone.

APPEARANCES OF COUNSEL

Anselmo P. Sinjian III for petitioners.
Martinez Vergara Gonzalez & Serrano for respondent.

D E C I S I O N

LEONEN, *J.*:

When a party assails a lower court's appreciation of the evidence, that party raises a question of fact that cannot be entertained in a petition for review filed under Rule 45 of the Rules of Court.

This is a Petition for Review on Certiorari[1] assailing January 31, 2008 Decision[2] and March 31, 2008 Resolution[3] of the Court of Appeals, which overturned the Regional Trial Court July 15, 2006 Decision. The Regional Trial Court found Performance Foreign Exchange Corporation (Performance Forex) solidarity liable with broker Rolando Hipol (Hipol) for unauthorized trade transactions he made on Belina Cancio (Cancio) and Jeremy Pampolina's (Pampolina) joint trading account. The Court of Appeals, however, absolved Performance Forex from any liability.

Performance Forex is a corporation operating as a financial broker/agent between market participants in foreign exchange transactions.[4]

Foreign currency exchange trading or forex trading is the speculative trade of foreign currency for the sole purpose of gaining profit from the change in prices.[5] The forex market is a "global,

---

[1] *Rollo*, pp. 23-52.

[2] *Id.* at 54-75. The Decision, docketed as CA-G.R. CV No. 88439, was penned by Associate Justice Mariano C. Del Castillo (now Supreme Court Associate Justice) and concurred in by Associate Justices Arcangelita Romilla-Lontok and Romeo F. Barza of the Fourteenth Division, Court of Appeals, Manila.

[3] *Id.* at 77. The Resolution, docketed as CA-G.R. CV No. 88439, was penned by Associate Justice Mariano C. Del Castillo (now Supreme Court Associate Justice) and concurred in by Associate Justices Arcangelita Romilla-Lontok and Romeo F. Barza of the Former Fourteenth Division, Court of Appeals, Manila.

[4] *Id.* at 55.

[5] JAMES CHEN, *ESSENTIALS OF FOREIGN EXCHANGE TRADING, 2* (2009).

decentralized," and essentially "an over-the-counter (OTC) market where the different currency trading locations around the globe electronically form a unified, interconnected market entity."[6]

Unlike a stock exchange market where the opening and closing of trades rely on only one (1) or two (2) time zones, a forex market may have overlapping time zones. Foreign currency, due to its decentralized nature, may be traded in different financial markets.[7] For instance, trading currency using US dollars would not depend on the business or banking hours only of financial institutions in the United States.[8]

Traders are drawn to the forex market since the price of currency constantly fluctuates. The value of a foreign currency is determined by international capital flow or the "movement of money from one currency to another."[9] International capital flow is caused by a number of factors, among which are "a country's interest rates, inflation situation, [Gross Domestic Product] growth, employment, trade balance, and other barometers of economic health."[10]

Currencies are traded in pairs by speculating the value of one currency against another.[11] One currency, usually the US dollar,[12] is considered the "base currency" while the other currency is a "quote or counter currency."[13] If a trader speculates that the base currency will be stronger than the counter currency, the trader will sell the base currency to buy more counter currency. If the trader speculates that the base currency will be weaker than the counter currency, then the trader will sell the

---

[6] *Id*. at 7.

[7] *Id*.

[8] *Id*. at 9.

[9] *Id*. at 15.

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

[11] *Id*. at 22.

[12] *Id*. at 10.

[13] *Id*. at 22.

counter currency to buy more of the base currency.[14] For example, if a trader speculates that the US dollar will rise in value as against the Philippine peso, the trader will sell dollars to acquire more pesos. If the trader speculates that the dollar will weaken against the peso, the trader will sell pesos to acquire more dollars.

In a standard forex trade, a trader would "open a position" by buying or selling a certain amount of a particular currency based on its value against the US dollar. The trader would then hold on to this particular currency until its value appreciates or depreciates. Once the value changes, the trader then "closes position" by selling this currency at a higher price or buying it at a lower price; hence, earning a profit.[15] If the trader sells when the value depreciates or buys when the value appreciates, the trader suffers a loss. Losses, however, are only realized when the traders close their positions.[16]

The participants in a forex market are banks, hedge funds, investment firms, and individual retail traders.[17] Unlike banks, hedge funds, and investment firms that have significant amounts of capital to engage in trade, individual retail traders often make use of brokers, who "serve as an agent of the customer in the broader [foreign currency exchange] market, by seeking the best price in the market for a retail order and dealing on behalf of the retail customer."[18] Individual retail traders also rely on "leverage trading," where traders can open margin accounts with a financial broker or agent to make use of that broker or agent's credit line to engage in trade.[19]

---

[14] *Id*. at 22-23.

[15] See *rollo*, pp. 185 and 334.

[16] See THOMAS OBERLECHNER, *THE PSYCHOLOGY OF THE FOREIGN EXCHANGE MARKET*, 85 (2004).

[17] JAMES CHEN, *ESSENTIALS OF FOREIGN EXCHANGE TRADING*, 13-14 (2009).

[18] A. MORALY, *INTERNATIONAL ROBBERY OF U.S. WEALTH*, 132 (2011).

[19] *Rollo*, pp. 61-62.

A margin account is an account where the broker-dealer lends money to the trader to purchase currency, using the same purchased currency as collateral.[20] Returns will be proportional to the amount deposited.[21] Leverage is determined by the amount that the trader is required to deposit. If a trader has to deposit US$1,000.00 into a margin account to trade US$100,000.00 in currency, the margin account has a leverage of 100 to 1.[22] This system allows the trader to control more money in the market than what was originally deposited.[23]

Individual retail traders make use of leverage trading and margin accounts since price movements are usually miniscule. A "pip" is "the smallest unit of price movement in the exchange rate of a currency pair."[24] The goal of every trader in foreign currency exchange is to earn pips. To underscore how miniscule expected profits are, pips commonly refer to the price movement of the *fourth* decimal place of major currencies.[25] Miniscule price movements, thus, require large amounts of capital for them to have significant impact on the profits to be earned.

---

[20] See UNITED STATES SECURITIES AND EXCHANGE COMMISSION INVESTOR BULLETIN, Understanding Margin Accounts, <https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-bulletin-understanding-margin-accounts> (Last accessed June 1, 2018).

[21] See UNITED STATES SECURITIES AND EXCHANGE COMMISSION INVESTOR BULLETIN, Understanding Margin Accounts, <https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-bulletin-understanding-margin-accounts> (Last accessed June 1, 2018).

[22] See JAMES CHEN, *ESSENTIALS OF FOREIGN EXCHANGE TRADING*, 35-36 (2009).

[23] See JAMES CHEN, *ESSENTIALS OF FOREIGN EXCHANGE TRADING*, 35-36 (2009).

[24] See JAMES CHEN, *ESSENTIALS OF FOREIGN EXCHANGE TRADING*, 37 (2009).

[25] See JAMES CHEN, *ESSENTIALS OF FOREIGN EXCHANGE TRADING*, 37 (2009).

For example, the current Philippine peso equivalent of one (1) Japanese yen is ₱0.4830.[26] A pip would be a change from ₱0.4830 to 0.4831. A ₱0.0001 price movement in the purchase of one (1) Japanese yen may not exactly have a significant effect but when multiplied by a hundred, it will actually mean a ₱48.31 increase for every trader betting on the rise of the yen and a ₱48.31 decrease for those expecting a rise in peso prices. Leverage trading can substantially magnify profits. Considering, however, that leverage trading is essentially trade using borrowed money, leverage trading can magnify losses just as much. Forex trade is, thus, considered a lucrative but risky endeavor since every trade multiplies profit and loss by a much higher rate than what was originally invested.

Sometime in 2000, Cancio and Pampolina accepted Hipol's invitation to open a joint account with Performance Forex. Cancio and Pampolina deposited the required margin account deposit of US$10,000.00 for trading. The parties executed an application for the opening of a joint account,[27] with a trust/trading facilities agreement[28] between Performance Forex, and Cancio and Pampolina. They likewise entered into an agreement for appointment of an agent[29] between Hipol, and Cancio and Pampolina.[30] They agreed that Cancio and Pampolina would make use of Performance Forex's credit line to trade in the forex market while Hipol would act as their commission agent and would deal on their behalf in the forex market.

The trust/trading facilities agreement between Performance Forex, and Cancio and Pampolina provided:

---

[26] See BANGKO SENTRAL NG PILIPINAS FINANCIAL MARKET OPERATIONS SUB-SECTOR, *Reference Exchange Bulletin*, June 1, 2018, http://www.bsp.gov.ph/statistics/sdds/ExchRate.htm (Accessed June 6, 2018).

[27] *Rollo*, pp. 153-155, Denominated as "Application (Individual/Non-Incorporated Business)".

[28] *Id*. at 156-161.

[29] *Id*. at 162-164.

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

6. Orders
You hereby irrevocably authorize us to act upon any instructions, whether in writing, by cable, telex, facsimile or telephone given or purported to be given by you or your agent or representative which appear whether on their respective faces (in the case of writing, cable, telex or facsimile) or otherwise to be bonafide. We shall not be responsible and you shall indemnify us for any losses incurred as a result of acting upon such instructions should there in fact be any error commission ambiguities or other irregularities therein or therewith.

. . . . . .

Commission Agent

You acknowledge and agree that the commission agent (one Mr/Ms Ronald (sic) M. Hipol) who introduced you to us in connection with this Facility is your agent and we are in no way responsible for his actions or any warranties or representations he may have made (whether expressly on our behalf or not) and that pursuant to his having introduced you to us, we will (if you accept this Facility) pay him a commission based on your trading with us (details of which will be applied to you on request). Should you choose to also vest in him trading authority on your behalf please do so only after considering the matter carefully, for we shall not be responsible nor liable for any abuse of the authority you may confer on him. This will be regarded strictly as a private matter between you and him. You further acknowledge that for our own protection and commercial purpose you are aware of the terms of the trading agreement between the commission agent and ourselves where the commission agent is to trade for you.[31]

All parties agreed that the trading would only be executed by Cancio and Pampolina, or, upon instructions to their agent, Hipol. The trading orders to Hipol would be coursed through phone calls from Cancio and Pampolina.[32]

From March 9, 2000 to April 4, 2000, Cancio and Pampolina earned US$7,223.98. They stopped trading for more or less

---

[31] *Id*. at 156 and 161.

[32] *Id*. at 56.

two (2) weeks, after which, however, Cancio again instructed Hipol to execute trading currency orders. When she called to close her position, Hipol told her that he would talk to her personally.[33]

Cancio later found out that Hipol never executed her orders. Hipol confessed to her that he made unauthorized transactions using their joint account from April 5, 2000 to April 12, 2000. The unauthorized transactions resulted in the loss of all their money, leaving a negative balance of US$35.72 in their Statement of Account. Cancio later informed Pampolina about the problem.[34]

Pampolina met with two (2) Performance Forex officers, Dave Almarinez and Al Reyes, to complain about Hipol's unauthorized trading on their account and to confront them about his past unauthorized trades with Performance Forex's other client,[35] Justine Dela Rosa.[36] The officers apologized for Hipol's actions and promised to settle their account. However, they stayed quiet about Hipol's past unauthorized trading.[37]

Performance Forex offered US$5,000.00 to settle the matter but Cancio and Pampolina rejected this offer. Their demand letters to Hipol were also unheeded.[38] Thus, they filed a Complaint[39] for damages against Performance Forex and Hipol before the Regional Trial Court of Mandaluyong City.

Hipol was declared in default. Since the parties were unable to come to a settlement, trial commenced.[40]

---

[33] *Id*.

[34] *Id*. at 57.

[35] *Id*.

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

[37] *Id*. at 57.

[38] *Id*. at 58. *See also rollo*, pp. 299-301.

[39] *Id.* at 302-306.

[40] *Id*. at 59.

During trial, Performance Forex's General Manager for Sales and Marketing Jonathan Reyes Ocampo (Ocampo) testified that clients could trade through two (2) types of brokers. The first type is the independent broker, or one who is already experienced in trading and merely attends Performance Forex's orientation trainings to know its policies and regulations. The second type is an in-house broker or business relations officer, who is new to the business and has to be supervised by the sales and marketing managers. He stated that Hipol was an Investment Portfolio Manager, or an independent broker who not only provided information from financial experts but also executed orders on behalf of the clients.[41]

Performance Forex Senior Manager Gabriel Erazo (Erazo) added that in-house brokers usually cater to walk-in clients and are stationed in the company premises while independent brokers, like Hipol, seek clients and introduce them to the company.[42]

Ocampo likewise testified that clients must first sign a Purchase Order Form before Performance Forex could authorize an order transaction. Every transaction must have its own Purchase Order Form.[43] Erazo confirmed that dealings were still done manually at the time of the questioned transactions, and that clients or agents must submit an actual signed Purchase Order Form.[44]

Ocampo confirmed that they paid a "goodwill offer," i.e. the return of the broker's commission, to their client Justine Dela Rosa for Hipol's alleged unauthorized transactions. He also testified that Hipol's accreditation had to be cancelled after Pampolina complained against him to protect the reputation of the company.[45]

---

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

[42] *Id*. at 64-65.

[43] *Id*. at 63.

[44] *Id*. at 64-65.

[45] *Id*. at 64.

On July 15, 2006, the Regional Trial Court rendered its Decision[46] finding Performance Forex and Hipol solidarity liable to Cancio and Pampolina for damages.

According to the Regional Trial Court, Performance Forex should have disclosed to Cancio and Pampolina that Hipol made similar unauthorized trading activities in the past, which could have affected their consent to Hipol's appointment as their agent. It also noted that innocent third persons should not be prejudiced due to Performance Forex's failure to adopt the necessary measures to prevent unauthorized trading by its agents.[47] The dispositive portion of the Regional Trial Court July 15, 2006 Decision read:

> ACCORDINGLY, judgment is hereby rendered in favor of the plaintiffs and against the defendants PERFORMANCE FOREIGN EXCHANGE CORPORATION and ROLANDO HIPOL. Both defendants are jointly and severally liable to pay the plaintiffs the following:
>
> a. the amount of US$17,223.98 or its peso equivalent plus legal interest from the filing of the complaint until the whole obligation is fully paid.
>
> b. the amount of Php50,000.00 as attorney's fees; Php100,000.00 moral damages and Php100,000.00 exemplary damages.
>
> c. cost of suit
>
> SO ORDERED.[48]

Performance Forex appealed this Decision to the Court of Appeals, arguing that it had adequate safeguards concerning dealings with commission agents, and that it was Cancio and Pampolina who vested Hipol with "broad powers to conduct trading on their behalf."[49]

---

[46] The Decision is not attached to the *Rollo*.

[47] *Rollo*, pp. 65-66, as quoted in the CA Decision.

[48] *Id*. at 24.

[49] *Id*. at 67.

On January 31, 2008, the Court of Appeals rendered its Decision[50] granting the appeal.

According to the Court of Appeals, Performance Forex was a trading facility that acted only on whatever their clients or their representatives would order. It was not privy to anything that happened between its clients and their representatives.[51] It found that Cancio admitted to giving Hipol pre-signed authorizations to trade; hence, Performance Forex relied on these orders and on Hipol's designation as their agent to facilitate the trades from April 5, 2000 to April 9, 2000.[52]

The Court of Appeals likewise found that Performance Forex's non- disclosure of Hipol's prior unauthorized transactions with another client was irrelevant since he was an independent broker who was not employed with Performance Forex. Thus, Performance Forex had no legal duty to disclose any prior misconduct to its clients. It also noted that the trust/trading facilities agreement between Cancio and Pampolina, and Performance Forex contained a provision freeing itself from any liability from losses incurred by acting on the instructions of its clients or their authorized representatives. Thus, the Court of Appeals concluded that Cancio and Pampolina's action should only be against Hipol.[53] The dispositive portion of the Court of Appeals January 31, 2008 Decision read:

> WHEREFORE, the appeal is hereby GRANTED. Appellant Performance Foreign Exchange Corporation is hereby released from liability.
>
> SO ORDERED.[54]

Cancio and Pampolina moved for reconsideration but were denied by the Court of Appeals in its March 31, 2008

---

[50] *Id*. at 54-75.

[51] *Id*. at 68-69.

[52] *Id*. at 70.

[53] *Id*. at 72-74.

[54] *Id*. at 74-75.

Resolution.[55] Hence, this Petition[56] was filed before this Court.

Petitioners Cancio and Pampolina argue that bonafide transactions in respondent Performance Forex's facility depends on signed purchase order forms from clients. They allege that there were only 10 purchase order forms signed by petitioner Cancio and yet respondent executed 29 transactions on their account, in clear breach of its assurance that only bonafide transactions would be honored.[57] They likewise point out that respondent was aware of similar unauthorized transactions by Hipol in the past and even settled the complaint against him, but respondent neglected to inform petitioners about them, thus, failing to observe the degree of care, precaution, and vigilance for the protection of petitioners' interests.[58] They claim that in view of respondent's bad faith and breach of its contractual obligations, it is liable for actual damages, exemplary damages, and moral damages with attorney's fees.[59]

Respondent counters that it was unnecessary to examine other purchase order forms since "petitioners' cause of action against respondent is grounded on defendant Hipol's purported unauthorized trading transactions which occurred during the period 4 to 12 April 2000 **and no other**."[60] It likewise insists that it cannot be held liable for damages caused by Hipol considering that it is not Hipol's employer and that any losses suffered were due to "the very broad and vast powers"[61] that petitioners gave him to transact on their behalf. It also points

---

[55] *Id*. at 77.

[56] *Id*. at 23-52. Comment was filed on August 29, 2008 (*rollo*, pp. 84-104) while Reply was filed on November 10, 2008 (*rollo*, pp. 434-450). Parties were ordered to submit their respective memoranda (*rollo*, pp. 481-500 and 503-531) on January 28, 2009 (*rollo*, pp. 474-475).

[57] *Id*. at 507-518.

[58] *Id*. at 513-516.

[59] *Id*. at 528-529.

[60] *Id*. at 493.

[61] *Id*. at 494.

out that according to the trust/trading facilities agreement, petitioners agreed that respondent would not be responsible for any act, warranty, or representation made by their agent on their behalf; thus, it cannot be held liable for any damages claimed.[62]

Respondent asserts that the Petition should be dismissed outright since petitioners failed to attach the necessary documents to support their Petition. It also submits that the Petition raises questions of fact by asking this Court to examine the probative value of the evidence introduced before the Regional Trial Court and the Court of Appeals.[63]

Petitioners, on the other hand, counter that there was substantial compliance by their subsequent submission of the required documents.[64] They claim that they only raise questions of law since the facts have been settled. What they argue is merely the Court of Appeals' application of the law given the facts of the case.[65]

From the arguments of the parties, this Court is asked to resolve the issue of whether or not respondent Performance Forex Exchange Corporation should be held solidarity liable with petitioners Belina Cancio and Jeremy Pampolina's broker, Hipol, for damages due to the latter's unauthorized transactions in the foreign currency exchange trading market. Before this issue can be resolved, this Court must first pass upon the procedural issues of whether or not the Petition should be dismissed for petitioners' failure to attach necessary pleadings, and whether or not the Petition raises questions of fact.

I

The failure to attach material portions of the record will not necessarily cause the outright dismissal of the petition. While Rule 45, Section 4 of the Rules of Court requires that the petition "be

---

[62] *Id*. at 496-497.

[63] *Id*. at 487-491.

[64] *Id*. at 442-443.

[65] *Id*. at 440-441.

accompanied by ... such material portions of the record as would support the petition,"[66] this Court may still give due course if there is substantial compliance with the Rules.[67] Rule 45, Section 7 states:

> Section 7. Pleadings and documents that may be required; sanctions. — For purposes of determining whether the petition should be dismissed or denied pursuant to section 5 of this Rule, or where the petition is given due course under section 8 hereof, the Supreme Court may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate, and impose the corresponding sanctions in case of non-filing or unauthorized filing of such pleadings and documents or non-compliance with the conditions therefor.[68]

In *E.I. Dupont Nemours v. Francisco*,[69] this Court stated that a petition for review under Rule 45 may still be given due course if the petitioner later submits the required documents, thus:

---

[66] RULES OF COURT, Rule 45, Sec. 4 provides:

> Section 4. Contents of petition. — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42.

[67] See *F.A.T Kee Computer Systems v. Online Networks International*, 656 Phil. 403 (2011) [Per *J.* Leonardo-De Castro, First Division].

[68] RULES OF COURT, Rule 45, Sec. 7.

[69] G.R. No. 174379. August 31, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/174379.pdf> [Per *J.* Leonen, Second Division].

[A] petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits.[70]

In this instance, petitioners submitted the assailed Court of Appeals January 31, 2008 Decision in their Petition,[71] which quoted substantial portions of the Regional Trial Court June 15, 2006 Decision; the Regional Trial Court's records; and the Court of Appeals' *rollo*. They likewise attached in their Reply a copy of the Complaint,[72] the Balance Ledger for Dealings,[73] and the Purchase Order Forms[74] presented before the Regional Trial Court. These documents more than suffice to substantiate petitioners' claims.

II

This Court is not a trier of facts. Factual findings of the lower courts will not be disturbed by this Court if supported by substantial evidence.[75] Thus, Rule 45 of the Rules of Court requires that a petition for review on certiorari only raise questions of law.[76]

---

[70] *Id*. at 11 citing *Magsino v. De Ocampo*, 741 Phil. 394 (2014) [Per *J*. Bersamin, First Division].

[71] *Rollo*, pp. 54-75.

[72] *Id*. at 446-450.

[73] *Id*. at 452 and 454.

[74] *Id*. at 456-473.

[75] See *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> 10-11 [Per *J*. Leonen, Second Division] *citing Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541, 546 (1999) [Per *J*. Pardo, First Division]; *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002) [Per *J*. Pardo, First Division]; *Tabaco v. Court of Appeals*, 239 Phil. 485, 490 (1994) [Per *J*. Bellosillo, First Division]; *Padilla v. Court of Appeals*, 241 Phil. 776, 781 (1988) [Per *J*. Paras, Second Division]; and *Bank of the Philippine Islands v. Leobrera*, 461 Phil. 461, 469 (2003) [Per *J*. Ynares-Santiago, Special First Division].

[76] See RULES OF COURT, Rule 45, Sec. 1 provides:

The distinction between a question of fact and a question of law is settled. In *Century Iron Works v. Bañas*:[77]

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.

Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[78]

Appeal is not a matter of right but of sound judicial discretion.[79] While questions of fact are generally not entertained by this Court, there are, of course, certain permissible exceptions, summarized in *Medina v. Mayor Asistio, Jr.*:[80]

(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

---

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.

[77] 711 Phil. 576 (2013) [Per *J.* Brion, Second Division].

[78] *Id*. at 585-586 *citing Leoncio v. De Vera*, 569 Phil. 512 (2008) [Per *J.* Nachura, Third Division] and *Elenita S. Binay, in her capacity as Mayor of the City of Makati, Mario Rodriguez and Priscilla Ferrolino v. Emerita Odeña*, 551 Phil. 681 (2007) [Per *J.* Nachura, *En Banc*].

[79] RULES Of COURT, Rule 45, Sec. 6.

[80] 269 Phil. 225 (1990) [Per *J.* Bidin, Third Division].

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 petitioners' 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 ...[81] (Citations omitted)

A case falling under any of these exceptions, however, does not automatically require this Court's review. In *Pascual v. Burgos*,[82] this Court explained that a party cannot merely claim that his or her case falls under any of the exceptions; he or she "must demonstrate and prove"[83] that a review of the factual findings is necessary.

In this instance, petitioners do not plead that their case falls under any of the exceptions since their contention is that their Petition only raises questions of law. They claim that this Court "need not probe into the entirety of evidence on record, as the falsity or veracity of the facts, as stated in the assailed decision, [is] not in issue."[84]

Petitioners, however, contradict this when they submit that while "[t]here is no doubt as to the existence of the ... facts," the Court of Appeals' legal conclusions were "contradictory to its very findings" and that the case was "differently ruled, and correctly so, by the [Regional Trial Court]."[85] This argument,

---

[81] *Id*. at 232.

[82] 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].

[83] *Id*. at 12.

[84] *Rollo*, p. 441.

[85] *Id*.

otherwise stated, assails the Court of Appeals' *appreciation* of the evidence and not merely its application of the law. This is clear when petitioners argue that:

> 29. Despite finding only two (2) purchase order forms for the twelve (12) enumerated transactions, the [Court of Appeals] still found no badge of negligence or breach of contractual obligation on the part of respondent. This is very much contradictory to its very findings that all trading transactions must be accompanied by purchase order forms, being the obligation of respondent to secure the orders of petitioners.[86]

In *Pascual*, this Court stated that there is a question of fact "when the issue presented before this court is the correctness of the lower courts' appreciation of the evidence presented by the parties."[87] To determine whether a lower court erred in the appreciation of evidence, this Court must also examine the records to see if there was evidence that was overlooked or if certain pieces of evidence were given undue weight. Thus, petitioners cannot evade having raised questions of fact before this Court by simply arguing that the facts are not disputed.

This Court has previously stated that "[n]egligence, that is, a failure to comply with some duty of care owed by one to another, is a mixed question of law and fact."[88] There is a question of law as to the duty of care owed by a defendant to a plaintiff. The existence of negligence, however, is determined by facts and evidence, which makes it a question of fact.[89]

---

[86] *Id*.

[87] *Pascual v. Burgos*, G.R. No. 171722, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/171722.pdf> 11-12 [Per *J*. Leonen, Second Division].

[88] *Santos v. Rustia*, 90 Phil. 358, 360 (1951) [Per *J*. Feria, *En Banc*] *citing* Corpus Juris, Vol. 45, Sec. 852.

[89] *Id*.

The review of a finding of negligence involves a question of fact.[90] It is evidentiary in nature. It requires an examination of the evidence presented by the parties to determine the basis of this negligence.[91] This Court has likewise held that determination of the existence of a breach of contract is a question of fact.[92]

A petition for review filed under Rule 45 of the Rules of Court that assails the Court of Appeals' failure to find negligence or breach of contract based on the evidence presented is essentially raising questions of fact. This Court will uphold the findings of the Court of Appeals unless the case falls under certain exceptions, which must first be properly pleaded and substantiated. Otherwise, this Court must apply the general rule and deny the petition.

III

Even if this Court were to liberally review the factual findings of the Court of Appeals, the Petition would still be denied. A principal who gives broad and unbridled authorization to his or her agent cannot later hold third persons who relied on that authorization liable for damages that may arise from the agent's fraudulent acts.

Petitioners opened a joint account with respondent, through their broker, Hipol, to engage in foreign currency exchange trading. Respondent had a leverage system of trading,[93] wherein clients may use its credit line to facilitate transactions. This means that clients may actually trade more than what was actually in their accounts, signifying a higher degree of risk. The contract

---

[90] *Far Eastern Shipping Co. v. Court of Appeals*, 357 Phil. 703, 747 (1998) [Per *J.* Regalado, *En Banc*] citing *Davidson Steamship Company vs. United States*, 205 U.S. 186, 51 Law, Ed. 764 (1907).

[91] See *Cebu Shipyard and Engineering Works v. William Lines*, 366 Phil. 439 (1999) [Per *J.* Purisima, Third Division].

[92] See *Dueñas v. Guce-Africa*, 618 Phil. 10, 19 (2009) [Per *J.* Del Castillo, Second Division] *citing Omengan v. Philippine National Bank*, 541 Phil. 293 (2007) [Per *J.* Corona, First Division].

[93] *Rollo*, p. 61.

between petitioners and respondent provided that respondent was irrevocably authorized to follow bonafide instructions from petitioners or their broker:

> 6. Orders
> You hereby irrevocably authorize us to act upon any instructions, whether in writing, by cable, telex, facsimile or telephone given or purported to be given by you or your agent or representative which appear whether on their respective faces (in the case of writing, cable, telex or facsimile) or otherwise to be bonafide. We shall not be responsible and you shall indemnify us for any losses incurred as a result of acting upon such instructions should there in fact be any error commission ambiguities or other irregularities therein or therewith.[94]

According to respondent, for instructions to be considered "bonafide," there must be a signed purchase order form from the client:

> [Direct Examination]
> Q [B]ased on your testimony you said that every transaction is to be accompanied by a purchase order form which purchase order form is signed by the client?
>
> [Gabriel Erazo]
> A Yes, sir.
>
> Q By transaction[,] am I correct to say that this [is] either a buy or sell transaction?
>
> A Yes, sir.
>
> Q And whether it be for one (1) lot, two (2) lots, or three (3) lots, there should be a purchase order form?
>
> A Yes, sir.
>
> Q So without this purchase order form[,] no transaction can be entered into?
>
> A Yes, sir, because the [dealer] will not accept [an] order without [a] purchase order form.

---

[94] *Id*. at 156.

Q Just supposing[,] Mr. Witness[,] that a transaction was entered without a purchase order form, what happens to the transaction?

A Basically[,] there will be no transaction if there is no purchase order form because the dealer will ask for the purchase order form before they will execute the order, sir.

Q So no incident will there be a transaction entered without a purchase order form signed by the client?

A Yes, sir.[95]

Petitioner Cancio admitted to giving "[b]etween five (5) to ten (10)" pre-signed documentation"[96] to facilitate their transactions.[97] Indeed, 10 signed purchase order forms were presented as evidence dated March 15, 2000,[98] March 17, 2000,[99] March 20, 2000,[100] March 21, 2000,[101] March 24, 2000,[102] March 29, 2000,[103] March 31, 2000,[104] April 4, 2000,[105] April 5, 2000,[106] and April 9, 2000.[107]

Petitioners argue that there were 29 total transactions, as evidenced by the Balance Ledger for Dealings,[108] which means that 19 of the transactions were unauthorized. The Balance Ledger reads:

---

[95] *Id*. at 414-417.
[96] *Id*. at 246.
[97] *Id*. at 247.
[98] *Id*. at 189.
[99] *Id*.
[100] *Id*. at 192.
[101] *Id*. at 384.
[102] *Id*. at 389.
[103] *Id*.
[104] *Id*. at 391.
[105] *Id*. at 308.
[106] *Id*. at 307.
[107] *Id*. at 309.
[108] *Id*. at 452 and 454.

BOUGHT				SOLD					
UNIT	DATE	NO.	PRICE	DATE	NO.	PRICE	COMMISSION	PROFIT/LOSS	NEW BALANCE
						BALANCE BROUGHT FORWARD ->			0.00
	MARGIN IN								10,000.00
2	16/03/00	39)	1.6607		0)	1.6590			10,009.72
2	16/03/00	39)	1.6607	17/03/00	8)	1.6630(L)	-140.00	276.61	9,990.08
3		0)	106.75	17/03/00	33)	106.65			9,990.08
3	20/03/00	25	106.50(L)	17/03/00	33)	106.65	-210.00	422.54	10,202.62
1		0)	107.08	21/03/00	22)	107.00			10,185.26
1		0)	106.98	21/03/00	22)	107.00			10,167.90
1		0)	107.43	21/03/00	22)	107.00			10,115.82
2		0)	107.43	23/03/00	3)	107.55			10,115.82
1	24/03/00	40)	107.10(L)	21/03/00	22)	107.00	-70.00	-93.37	11,028.54
2	24/03/00	16)	106.90(L)	23/03/00	3)	107.55	-140.00	1,216.09	11,028.54
1	29/03/00	25)	105.77		0)	105.45			11,020.90
1	29/03/00	25)	105.77		0)	105.40			11,013.26
1	29/03/00	25)	105.77	31/03/00	5)	106.00(L)	-70.00	216.98	13,444.70
2	31/03/00	33)	104.80(L)	31/03/00	4)	105.60	-140.00	1,526.72	13,444.70
1	31/03/00	34)	104.80(L)	31/03/00	8)	106.05	-70.00	1,192.75	13,444.70
1	31/03/00	53)	102.50		0)	102.35			13,444.70
1	31/03/00	70)	103.03		0)	102.35			13,444.70
3		0)	102.45	31/03/00	54)	102.10			13,444.70
1	31/03/00	43)	103.00	03/04/00	0)	102.35			13,444.70
12							-840.00	4,758.32	
						BALANCE BROUGHT FORWARD ->			
1	31/03/00	43)	103.00	03/04/00	1)	104.00(L)	-70.00	961.54	13,444.70
1	31/03/00	70)	103.03	03/04/00	13)	104.70(L)	-70.00	1,595.03	17,298.98
1	31/03/00	53)	102.50	03/04/00	14)	104.70(L)	-70.00	2,101.24	17,298.98
2	03/04/00	12)	104.83	03/04/00	21)	104.62(L)	-140.00	-401.45	17,298.98
3		0)	104.90	31/03/00	54)	102.10			17,298.98
3		0)	105.00	31/03/00	54)	102.10			17,298.98
3	04/04/00	26)	105.75		0)	104.90			17,223.98
1	04/04/00	26)	105.75	05/04/00	31)	105.27(L)	-70.00	-455.97	17,223.98
3		0)	104.95	31/03/00	54)	102.10			16,630.65
2	04/04/00	26)	105.75		0)	104.85			16,630.65
2	04/04/00	26)	105.75	06/04/00	4)	104.77(L)	-140.00	-1,870.76	16,630.65
3		0)	104.80	31/03/00	54)	102.10			14,567.81
3		0)	105.50	31/03/00	54)	102.10			14,567.81
3	10/04/00	36)	106.90		0)	106.40			14,411.56
3		0)	106.50	31/03/00	54)	102.10			14,336.56
3		0)	107.07	31/03/00	54)	102.10			14,336.56
3	10/04/00	36)	106.90		0)	106.97			14,261.56
3	10/04/00	36)	106.90	12/04/00	22)	105.85(L)	-210.00	-2,975.91	14,261.56
3	12/04/00	21)	105.95(L)	31/03/00	54)	102.10	-210.00	-10,901.37	-35.72
14							-980.00	-11,947.65	-35.72

Petitioners' argument would have been correct if each transaction was counted for every buy and sell. During petitioner Cancio's cross-examination, respondent's counsel counted by date of transaction, thus, counting 27 transactions. Petitioner Cancio, however, clarified that they had a "buy and out" type of transaction. Each "open position" and "close position" would be considered as only one (1) transaction:[109]

Q Allow me to count the number of transactions here and see how far we could go in this kind of questioning. From March 9 to April 4, I counted twenty[-]seven (27) transactions. And out of these twenty-seven (27) transactions you said that you are responsible for five (5) of them?

A Those are not twenty[-seven] (27) transactions[,] Sir.

Q What are those?

A Because there is what we call "buy" and "out," Sir. So, the "buy and out" is considered as one (1) transaction only, Sir.

Q So, how many transactions are there on [these] orders?

A We made about ten (10)[,] Sir.[110]

According to respondent, each "buy and out" should be covered by one (1) purchase order form. The actual count then of the transactions, according to petitioners' own enumeration of the dealings,[111] should be:

TRANSACTION	DATE [OPEN NEW POSITION]	LOTS	PRICE	DATE [CLOSE POSITION]	LOTS	PRICE
1	March 16, 2000 [Buy]	2	1.6607	March 17, 2000 [Sell]	2	1.6630
2	March 17, 2000 [Sell]	3	106.65	March 20, 2000 [Buy]	3	106.50
3	March 21, 2000 [Sell]	1	107.00	March 24, 2000 [Buy]	1	107.10
4	March 23, 2000 [Sell]	2	107.55	March 24, 2000 [Buy]	2	106.90

[109] *Id*. at 229-230.

[110] *Id*.

[111] *Id*. at 512-513.

5	March 29, 2000 [Buy]	1	105.77	March 31, 2000 [Sell]	1	106.00
6	March 31, 2000 [Sell]	2	105.60	March 31, 2000 [Buy]	2	104.80
7	March 31, 2000 [Sell]	2	106.05	March 31, 2000 [Buy]	2	104.80
8	March 31, 2000 [Buy]	1	102.50	April 3, 2000 [Sell]	1	104.70
9	March 31, 2000 [Buy]	1	103.03	April 3, 2000 [Sell]	1	104.70
10	March 31, 2000 [Sell]	3	102.10	April 12, 2000 [Buy]	3	104.83
11	March 31, 2000 [Buy]	1	103.00	April 3, 2000 [Sell]	1	105.27
12	April 3, 2000 [Sell]	2	104.62	April 3, 2000 [Buy]	2	104.77
13	April 4, 2000 [Buy]	3	105.75	April 5, 2000 [Sell]	1	105.85
14				April 6, 2000 [Sell]	2	104.77
15	April 10, 2000 [Buy]	3	106.90	April 12, 2000 [Sell]	3	105.85

Thus, by petitioners' own count, there were 15 transactions, not 29 transactions.[112] According to the Balance Ledger, commission was deducted from petitioners' account 15 times. Thus, commission was deducted for every successful *transaction*, not for every time a "buy" or "sell" was made.

Interestingly, the eleventh and twelfth transactions occurred when petitioners were still actively trading. This means that they executed more instructions to Hipol than what was covered by the signed purchase order forms that he held, without complaint. Petitioner Pampolina even testified that they were constantly aware of the status of their account when they were trading:

> Q How did you get to know that you accumulated around $7,000.00 for your account?

---

[112] *Id*. at 69. The Court of Appeals likewise noted that petitioners' counsel "mistakenly counted" 29 transactions to include even those transactions that were authorized and not in issue.

> A Because every time that we execute orders[,] we take a position[,] and at the same time[,] we monitor also the rate of the position that we are taking and we also relieve orders to take profit. So, as long as we relieve orders to take profit[,] we know that we are making money.[113]

Petitioners would have been aware that respondent could execute instructions relayed by Hipol even without the required purchase order form. Otherwise, they would have stopped executing orders upon their tenth transaction. Even if this Court were to apply petitioners' argument that a "buy" and a "sell" is counted as one (1) transaction each, that would still mean that there were 23 transactions made when petitioners were actively trading. There would still be 13 orders that petitioners relayed to Hipol over and above the 10 pre-signed purchase order forms that he held.

Moreover, petitioners assail the alleged unauthorized transactions executed after April 4, 2000, when they allegedly stopped relaying instructions to Hipol. These alleged unauthorized transactions, they argue, breached respondent's contractual obligation to execute only bonafide instructions from petitioners. From the table above, these transactions would refer to the thirteenth, fourteenth, and fifteenth transactions.

Respondents, however, presented signed purchase order forms for the contested transactions occurring after April 4, 2000, namely, the purchase order forms dated April 4, 2000,[114] April 5, 2000,[115] and April 9, 2000.[116] If there was any breach committed by respondent, it occurred when petitioners actively traded and they would have been aware of this breach, not when they stopped trading.

Respondent likewise did not have the duty to disclose to petitioners any previous infractions committed by their agent.

---

[113] *Id*. at 262.

[114] *Id*. at 308.

[115] *Id*. at 307.

[116] *Id*. at 309.

Hipol, petitioners' agent, was not employed with respondent. He was categorized as an independent broker for commission. In *Behn, Meyer, and Co. v. Nolting*:[117]

> A broker is generally defined as one who is engaged, for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; the negotiator between other parties, never acting in his own name, but in the name of those who employed him; he is strictly a middleman and for some purposes the agent of both parties.[118]

When Hipol became petitioners' agent, he had committed only one (1) known prior infraction against a client of respondent. Respondent might have been construed this as an isolated incident that did not warrant heightened scrutiny. Hipol's infraction committed against petitioners was his second known infraction. Respondent cancelled his accreditation when petitioners informed them of his unauthorized transactions.

It would be different if Hipol committed a series of infractions and respondent continued to accredit him. In that instance, respondent would have been complicit to Hipol's wrongdoings. Respondent, not being Hipol's employer, had no power of discipline over him. It could only cancel his accreditation, which it did after a second incident was reported. This was the extent by which respondent was obligated to act on Hipol's infractions.

Moreover, petitioners and respondent signed and agreed to absolve respondent from actions, representations, and warranties of their agent made on their behalf, thus:

> Commission Agent
>
> You acknowledge and agree that the commission agent (one Mr/Ms Ronald (sic) M. Hipol) who introduced you to us in connection with this Facility is your agent and we are in no way responsible for his actions or any warranties or representations he may have made (whether expressly on our behalf or not) and that pursuant to his having introduced

---

[117] 35 Phil. 274 (1916) [Per *J.* Johnson, *En Banc*].

[118] *Id*. at 279 *citing* 19 Cyc., 186; *Henderson vs. The State*, 50 Ind., 234; and *Black's Law Dictionary*.

you to us, we will (if you accept this Facility) pay him a commission based on your trading with us (details of which will be applied to you on request). Should you choose to also vest in him trading authority on your behalf please do so only after considering the matter carefully, for we shall not be responsible nor liable for any abuse of the authority you may confer on him. This will be regarded strictly as a private matter between you and him. You further acknowledge that for our own protection and commercial purpose you are aware of the terms of the trading agreement between the commission agent and ourselves where the commission agent is to trade for you.[119]

Petitioners conferred trading authority to Hipol. Respondent was not obligated to question whether Hipol exceeded that authority whenever he made purchase orders. Respondent was likewise not privy on how petitioners instructed Hipol to carry out their orders. It did not assign Hipol to be petitioners' agent. Hipol was the one who approached petitioners and offered to be their agent. Petitioners were highly educated[120] and were "[a]lready knowledgeable in playing in this foreign exchange trading."[121] They would have been aware of the extent of authority they granted to Hipol when they handed to him 10 pre-signed blank purchase order forms. Under Article 1900 of the Civil Code:

Article 1900. So far as third persons are concerned, an act is deemed to have been performed within the scope of the agent's authority, if such act is within the terms of the power of attorney, as written, even if the agent has in fact exceeded the limits of his authority according to an understanding between the principal and the agent.

Before a claimant can be entitled to damages, "the claimant should satisfactorily show the existence of the factual basis of damages and its causal connection to defendant's acts."[122] The

---

[119] *Rollo*, p. 161.

[120] *Id.* at 199, Petitioner Cancio was a clinical psychologist. *Rollo*, p. 253, petitioner Pampolina was a bank employee.

[121] *Id.* at 55.

[122] *Kierulf v. Court of Appeals*, 336 Phil. 414, 431-432 (1997) [Per *J.* Panganiban, Third Division].

acts of petitioners' agent, Hipol, were the direct cause of their injury. There is no reason to hold respondent liable for actual and moral damages. Since the basis for moral damages has not been established, there would likewise be no basis to recover exemplary damages[123] and attorney's fees[124] from respondent. If there was any fault, the fault remains with petitioners' agent and him alone.

The State has already taken notice of the high risks involved in foreign exchange leverage trading. In the prior case of *Securities and Exchange Commission v. Performance Foreign Exchange Corporation*,[125] the Securities and Exchange Commission tried to issue a cease-and-desist order against respondent for trading foreign currency futures contracts without the proper license.

This Court invalidated the cease-and-desist order upon finding that it was improperly issued. It also took note that even the Securities and Exchange Commission was unsure of whether foreign currency exchange trading constituted futures commodity trading, and that it had to request the Bangko Sentral ng Pilipinas for its advice. The Bangko Sentral ng Pilipinas' reply read:

Dear Ms. Bautista,

This refers to your letter dated February 8, 2001 requesting for a definitive statement that the foreign currency leverage trading engage[d] in by private corporations, particularly, Performance Foreign

---

[123] CIVIL CODE, Art. 2234 provides:

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 ....

[124] CIVIL CODE, Art. 2208 provides:

Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded[.]

[125] 528 Phil. 169 (2006) [Per *J.* Sandoval-Gutierrez, Second Division].

Exchange Corporation (PFEC), is a financial derivatives transaction and that it can only be undertaken by banks or non-bank financial intermediaries performing quasi-banking functions and/or its subsidiaries/affiliates.

As indicated in your description of the transactions and the documents submitted, *the foreign currency leverage trading, subject of your query, is essentially similar in mechanics to currency future trading, particularly with respect to the margin requirements, standard contract size, and daily market-to-market of open position. However, it does not fall under the category of futures trading because it is not exchange-traded. Further, we can not classify it as being financial derivatives transactions as we consider the transaction as plain currency margin trading, which by its mechanics, involve the set-up of margin and non-delivery of the currencies involved*.

In view of the foregoing facts, the activities of the aforesaid corporation are not covered by [the Bangko Sentral ng Pilipinas'] guidelines on derivative licensing.

We hope we have satisfactorily clarified your concerns.

Very truly yours,
(Sgd.)
AMANDO M. TETANGCO, JR.[126] (Emphasis supplied)

Nonetheless, the Securities and Exchange Commission persisted in regulating entities involved in foreign exchange leverage trading, issuing the following Advisory:

SEC ADVISORY

20 October 2016

FOREIGN EXCHANGE TRADING

The advisory is prompted by the complaints of retail investors who lost their moneys to forex trading.

The public is advised that TRADING OF COMMODITIES FUTURES CONTRACTS IN THE PHILIPPINES (including Foreign Exchange Trading as consistently held by the Commission) and the pertinent RULES ARE STILL SUSPENDED pursuant to Paragraph

---

[126] *Id*. at 176-177.

4 of Rule II of the Amended Rules and Regulations implementing the Securities Regulation Code.

Based on the reports, huge amount of money has been invested (usually in US dollars) in forex trading corporations where investors opened margin accounts to enable them to trade in foreign currency. The so-called "experts" of the forex trading corporations execute foreign trade positions in behalf of the investors on the representation that investors shall gain profit as in the stock market.

It has to be reiterated that under Section 11 of the Securities Regulation Code "no person shall offer, sell or enter into commodity futures contract except in accordance with rules and regulations and orders of the Commission may prescribe in the public interest".

The investors should also take the cue from the ruling laid down in *Onapal v. Court of Appeals* (G.R. No. 90707, February 3, 1993) where the Supreme Court stated in this wise: "xxx The payments made under said contract were payments of difference in prices arising out of the rise or fall in the market price above or below the contract price thus making it purely gambling and declared null and void by law."

The public is encouraged to report to the Commission entities operating Foreign Exchange Trading and those acting as agents of these operators.[127]

Considering, however, that the legality of foreign exchange leverage trading is not in issue in this case, this Court will not delve further into the current regulations affecting it. It has been concluded that foreign exchange leverage trading is known to be risky and may lead to substantial losses for investors. Petitioners, who were experienced in this kind of trading, should have been more careful in the conduct of their affairs.

Currency trading adds no new good or service into the market that would be of use to real persons. Instead, it has the tendency to alter the price of real goods and services to the detriment of those who manufacture, labor, and consume products. It may

---

[127] SECURITIES AND EXCHANGE COMMISSION, *Advisory on Foreign Exchange Trading*, October 20, 2016 <http://www.sec.gov.ph/sec-advisory-foreign-exchange-trading/> (last accessed June 1, 2018).

alter the real value of goods and services on the basis of a rumor or anything else that will cause a herd of speculative traders to move one way or the other. Put in another way, those who participate in it must be charged with knowledge that getting rich in this way is accompanied with great risk. Given its real effects on the real economy and on real people, it will be unfair for this Court to provide greater warranties to the parties in currency trading. They should bear their own risks perhaps to learn that their capital is better invested more responsibly and for the greater good of society.

Be that as it may, to arrive at these conclusions, this Court has to extensively review the evidence submitted by the parties. If, as petitioners claim, the Petition only raised pure questions of law, there would have been no need to re-examine the evidence. As it stands, the Petition must be denied.

WHEREFORE, the Petition is **DENIED**. The January 31, 2008 Decision and March 31, 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 88439 are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 187186. June 6, 2018]

ALICIA C. GALINDEZ, *petitioner, vs.* **SALVACION FIRMALAN; THE HON. OFFICE OF THE PRESIDENT, THROUGH THE HON. OFFICE OF THE EXECUTIVE SECRETARY; and THE REGIONAL EXECUTIVE DIRECTOR, DENR-REGION IV,** *respondents.*

SYLLABUS

1. CIVIL LAW; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); SALE OF PUBLIC LAND; PUBLIC LANDS SUITABLE FOR AGRICULTURAL PURPOSES MAY BE DISPOSED OF BY SALE TO PERSONS ELIGIBLE TO PURCHASE AGRICULTURAL AND DISPOSABLE LANDS.— Commonwealth Act No. 141, or the Public Land Act, enumerates the ways in which the State may dispose of agricultural lands x x x. When it comes to the sale of public land, the Public Land Act provides that the following persons are eligible to purchase agricultural and disposable land:1) Filipino citizen of lawful age; 2) Filipino citizen not of lawful age but is the head of a family; 3) A corporation or association organized and constituted under the Philippine laws with at least 60% of its capital stock or interest in its capital belonging wholly to Filipino citizens; and 4) Corporations organized and constituted under Philippine laws who are allowed by their charters to purchase tracts of public agricultural and disposable land.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEALS FROM QUASI-JUDICIAL AGENCIES TO THE COURT OF APPEALS; FINDINGS OF FACT OF A QUASI-JUDICIAL AGENCY, WHEN SUPPORTED BY SUBTANTIAL EVIDENCE SHALL BE BINDING ON THE COURT OF APPEALS.— The Public Land Act x x x provides that the Director of Lands, under the immediate control of the Secretary of Agriculture and Commerce, now the Department of Environment and Natural Resources Secretary, has executive control over the survey, classification, lease, concession, disposition, and management of lands under the public domain. In pursuance of its functions, the Director of Lands is empowered to put in place such rules and regulations, which would best carry out the provisions of the Public Land Act. The Public Land Act also states that the decisions of the Director of Lands "as to questions of fact shall be conclusive when approved by the Secretary of Agriculture and Commerce." This respect accorded to the factual findings of an administrative body is echoed in Rule 43, Section 10 of the Rules of Civil Procedure x x x. [T]his Court has consistently accorded respect and even finality to the findings of fact of administrative bodies, in

recognition of their expertise and technical knowledge over matters falling within their jurisdiction. Moreover, Rule 43, Section 10 of the Rules of Civil Procedure provides that findings of fact of a quasi-judicial agency, when supported by substantial evidence, shall be binding on the Court of Appeals. Consequently, the Court of Appeals did not err in upholding the findings of fact of the Department of Environment and Natural Resources and of the Office of the President.

3. CIVIL LAW; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); SALE OF PUBLIC LAND; MISCELLANEOUS SALES APPLICATION; AN APPLICANT IS NOT PROHIBITED TO PREMATURELY ENTER OR OCCUPY THE LOT APPLIED FOR; CASE AT BAR.— There is nothing in the miscellaneous sales application which forbade the applicant from entering into or occupying the lot being applied for. Instead, what the miscellaneous sales application provides is an acknowledgment from the applicant that he or she has no right over the lot while the application is still pending and while the lease contract has not yet been executed x x x. The miscellaneous sales application warns the applicant that submission of a false statement or false affidavit in support of an application may cause the cancellation of the application, forfeiture of all amounts paid and prohibition from applying for any public land. However, there is no similar warning or an equally dire consequence for applicants who prematurely enter or occupy the lot applied for. At most, it is merely implied that applicants bear the risk of introducing improvements to a lot that has not yet been awarded to them since the application may be denied or the lot may be awarded to some other applicant.

APPEARANCES OF COUNSEL

Franklin Delano Sacmar for petitioner.
Office of the Solicitor General for public respondents.
Paciano Fallar, Jr. for respondent.

D E C I S I O N

LEONEN, *J.*:

Findings of fact by the Director of Lands shall be conclusive when approved by the Department of Environment and Natural Resources Secretary and supported by substantial evidence.

This resolves the Petition for Review on Certiorari[1] filed by Alicia C. Galindez (Alicia) assailing the Court of Appeals November 27, 2008 Decision[2] and March 13, 2009 Resolution[3] in CA-G.R. SP No. 95114, which upheld the Office of the President's January 31, 2006 Decision[4] in O.P. Case No. 05-D-118.

On May 16, 1949, Salvacion Firmalan (Firmalan) filed an application with the Bureau of Lands for a 150-m² parcel of land in Barrio Capaclan, Romblon, Romblon. Her application was docketed as Miscellaneous Sales Application (MSA) No. V-7861.[5]

The District Land Office reported that the vacant lot which Firmalan applied for was suited for residential purposes and recommended the approval of her application.[6]

On February 23, 1950, the Chief of the Public Land Division directed the District Land Office to re-appraise the lot covered

---

[1] *Rollo,* pp. 11-35.

[2] *Id*. at 37-46. The Decision was penned by Associate Justice Sixto C. Marella, Jr. and concurred in by Associate Justices Amelita G. Tolentino and Japar B. Dimaampao of the Thirteenth Division, Court of Appeals, Manila.

[3] *Id*. at 48-49. The Resolution was penned by Associate Justice Sixto C. Marella, Jr. and concurred in by Associate Justices Amelita G. Tolentino and Japar B. Dimaampao of the Former Thirteenth Division, Court of Appeals, Manila.

[4] *Id*. at 73-83. The Decision was penned by Undersecretary Enrique D. Perez.

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

[6] *Id*. at 74.

by Firmalan's application. Records showed that no action was taken on the order for reappraisal of Firmalan's application.[7]

On April 25, 1967, or almost 18 years after filing her first application, Firmalan filed another application. Her second application was for Lot No. 915 Cad-311-D in Romblon Cadastre and was docketed as MSA No. (V-6) 23. Lot No. 915 had an area of 325 m² and included the 150-m² lot subject of Firmalan's first application.[8]

The Acting District Land Officer recommended the approval of Firmalan's second application.[9]

Alicia filed a protest to Firmalan's second application. She claimed that from November 1951, she and her family had been in constant possession of a portion of the 325-m² lot covered by Firmalan's second application. She also claimed that she had built a house and planted coconut trees on the lot which Firmalan applied for.[10]

Alicia stated that on February 20, 1964, she filed an application over the lot occupied by her family and that her application was docketed as MSA No. (V-6) 44.[11]

On June 23, 1968, the Acting District Land Officer requested that all actions on Firmalan's second application be held in abeyance due to the protest filed against it.[12] The Director of Lands then ordered the Regional Land Director to conduct a formal investigation on the matter.[13]

On July 11, 1978, Land Inspector Mabini Fabreo (Inspector Fabreo) reported to the Director of Lands that after conducting

---

[7] *Id*.

[8] *Id*. at 38 and 74.

[9] *Id*. at 74.

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Id*. at 38.

an ocular inspection and investigation, he discovered that the lot covered by Firmalan's second application was occupied by Firmalan and Felipe Gaa, Sr. (Gaa), with the lot equally divided between them. Inspector Fabreo recommended that the area occupied by Gaa be excluded from Firmalan's application.[14]

On March 20, 1981, Inspector Fabreo submitted a second report[15] where he corrected his earlier statement that Firmalan occupied the lot covered by her second application. He clarified that when he made his ocular inspection, it was Elmer Galindez (Elmer), son of Alicia,[16] he saw occupying the lot beside Gaa, not Firmalan.[17]

On May 5, 1982, Firmalan filed a complaint for forcible entry against Elmer. This was docketed as Civil Case No. 110 before the Municipal Trial Court of Romblon, Romblon.[18]

On February 1, 1984, the Municipal Trial Court[19] dismissed the complaint and declared that it was only the Bureau of Lands that could determine who between Firmalan and Elmer had the better right over the disputed lot:

> On the decisional rules and jurisprudence of our Supreme Court already cited, this Court is legally powerless really to determine as to who is entitled or as to who has the right to occupy the lot in question – this, according to It, is committed to the Bureau of Lands.
>
> FOR ALL THE FOREGOING, this Court hereby orders this case DISMISSED. Let a copy of this decision be also furnished the Bureau of Lands with the suggestion that the applications of the parties be determined as soon as possible. Without pronouncement as to costs.
>
> IT IS SO ORDERED.[20] (Emphasis in the original)

---

[14] *Id*. at 75.

[15] *Id*. at 92.

[16] *Id*. at 90.

[17] *Id*. at 92.

[18] *Id*. at 93.

[19] *Id*. at 93-95. The Decision was penned by Judge Jeoffrey N. Fabic.

[20] *Id*. at 95.

On March 11, 1985, after receiving testimonies and documentary evidence from the parties, Supervising Land Examiner Dionico F. Gabay (Examiner Gabay) of the Bureau of Lands submitted a report[21] where he wrote that there was no dispute as regards the area occupied by Gaa.[22] Nonetheless, Examiner Gabay opined that between Firmalan and Alicia, Firmalan had the superior right over the lot in question because she was the rightful applicant, while Alicia obtained possession of the lot through trickery and willful defiance of the law.[23]

Examiner Gabay then recommended that the portion occupied by Gaa be segregated from the area subject of the conflicting claims between Firmalan and Elmer, and for Firmalan's claims and that of Alicia, through Elmer, to be resolved.[24] His report was elevated to the Department of Environment and Natural Resources.[25]

On August 27, 1990,[26] the Department of Environment and Natural Resources Regional Executive Director (the Regional Executive Director) concluded that Firmalan filed her miscellaneous sales application over the disputed portion of Lot No. 915 earlier than Alicia. The Regional Executive Director upheld Firmalan's right to acquire the portion of Lot No. 915, reasoning out that Firmalan's first application on May 16, 1949 was given due course even if records showed that no subsequent actions were taken. On the other hand, Alicia was informed that the lot which she was applying for was already covered by a subsisting application. The Regional Executive Director emphasized that a claim of actual ownership, no matter how long an occupant has possessed a public land, will never ripen

---

[21] *Id*. at 85-91.

[22] *Id*. at 90.

[23] *Id*. at 90-91.

[24] *Id*. at 91.

[25] *Id*. at 39.

[26] *Id*. at 73.

into ownership since public land can only be acquired under the provisions of the Public Land Act.[27]

Alicia moved for the reconsideration of the Regional Executive Director's August 27, 1990 Order, but her motion was denied in the subsequent Regional Executive Director's November 15, 1991 Order.[28]

Alicia then appealed her case before the Department of Environment and Natural Resources, but on June 29, 1998,[29] the Department of Environment and Natural Resources Secretary affirmed the Regional Executive Director's Orders.

The dispositive portion of the Department of Environment and Natural Resources June 29, 1998 Decision read:

> WHEREFORE, Miscellaneous Lease Application No. (IV-A-9) 35 of Alicia Galindez is hereby, as it is ordered REJECTED and whatever amount paid on account thereof is forfeited in favor of the Government. Alicia Galindez and/or Elmer Galindez is/are hereby ordered to vacate the premises. The Miscellaneous Lease Application No. V-1612 of Felipe Gaa, Sr. is ordered REINSTATED and given due course. The Miscellaneous Sales Application No. . . . V-7861 of Salvacion Firmalan is ordered REJECTED and her other Miscellaneous Sales Application No. (V-6) 23 is ordered amended to cover the other half-portion of Lot 915 and is hereby given due course. Both applications, the M.L.A. V-1612 of Felipe Gaa, Sr. and M.S.A. No. (V-6) 23 of Salvacion Firmalan are subject to the road-right-of-way as suggested by the Department of Public Works and Highways.[30]

Alicia moved for the reconsideration of this Decision, but on March 28, 2005,[31] the Department of Environment and Natural Resources Secretary denied her motion.

---

[27] *Id*. at 40.

[28] *Id*. at 40 and 73.

[29] *Id*. at 73. The Decision was docketed as DENR Case No. 7340.

[30] *Id*.

[31] *Id*. at 40-41.

On April 19, 2005,[32] Alicia appealed the Department of Environment and Natural Resources' decisions before the Office of the President.

On January 31, 2006, the Office of the President denied the appeal and affirmed the Department of Environment and Natural Resources' decisions.[33]

The Office of the President brushed aside Alicia's claim that she was denied due process. It noted that she was represented by counsel during the proceedings and that she was able to present her evidence during the hearings.[34]

The Office of the President then upheld the findings of fact of the Department of Environment and Natural Resources and of its field officers that Firmalan filed her application over Lot No. 915 ahead of Alicia.[35] The *fallo* of the Office of the President's Decision read:

> **WHEREFORE,** in view of all the foregoing, the instant appeal is hereby **DENIED**. Accordingly, the appealed Decisions of the Department of Environment and Natural Resources are hereby **AFFIRMED**.[36] (Emphasis in the original)

Alicia moved for the reconsideration of the Office of the President's January 31, 2006 Decision, but on June 1, 2006,[37] the Office of the President denied her motion for reconsideration.

Alicia filed an appeal[38] before the Court of Appeals.

---

[32] *Id*. at 73.

[33] *Id*. at 73-83.

[34] *Id*. at 82.

[35] *Id*. at 83.

[36] *Id*.

[37] *Id*. at 84. The Resolution was penned by Undersecretary Enrique D. Perez.

[38] *Id*. at 52-72.

On November 27, 2008, the Court of Appeals[39] denied her appeal and upheld the decision of the Office of the President.

The Court of Appeals found that Firmalan filed her application over Lot No. 915 ahead of Alicia. It held that Firmalan's failure to occupy the lot should not be taken against her because she did so in compliance with the terms of the miscellaneous sales application.[40]

The Court of Appeals indicated that Alicia's lengthy possession of the disputed lot could not be taken in her favor and could not vest her with preferential status on her application because it violated the terms of the miscellaneous sales application.[41]

The *fallo* of the Court of Appeals November 27, 2008 Decision read:

WHEREFORE, the petition is denied and the decision of the Office of the President is affirmed.

SO ORDERED.[42] (Emphasis in the original)

Alicia moved for the reconsideration of this decision, but her motion was denied in the Court of Appeals March 13, 2009 Resolution.[43]

On May 4, 2009, Alicia filed a Petition for Review on Certiorari before this Court.[44]

Petitioner Alicia does not deny that respondent Firmalan filed a miscellaneous sales application over a portion of Lot No. 915 on May 16, 1949, but she insists that the application was treated as if it was never filed because the lot had not yet been

---

[39] *Id*. at 37-46.

[40] *Id*. at 43.

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

[42] *Id*. at 45.

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

[44] *Id*. at 11-35.

surveyed or appraised, and the order for its appraisal was not complied with.[45]

Petitioner asserts that her family has freely and openly occupied the lot as early as November 1, 1950 and has declared it for taxation purposes in 1956. Furthermore, on February 20, 1964, as the true occupants of the lot, petitioner even filed a miscellaneous sales application over a portion of Lot No. 915 with the Bureau of Lands.[46]

Petitioner also maintains that respondent's daughter admitted that respondent and her family entered the disputed lot and fenced it after her mother filed an application, thereby violating the terms of the miscellaneous sales application.[47]

Petitioner concedes to also violating the miscellaneous sales application when she and her family entered the lot before their application was approved. Nonetheless, she contends that between respondent, who admitted occupying the lot at one time, and herself, who possessed the same continuously for more than 50 years, her application should have been given preference over that of respondent's.[48]

Petitioner likewise draws attention to her long years of continued and uninterrupted stay over the disputed lot and states that as its actual occupant, she should have been given preferential status, as mandated by the Public Land Act.[49]

Petitioner accuses respondent of applying for as many lots as she could, regardless of whether there were actual occupants on the lots being applied for and of having "unlawful support from some elements in the Bureau of Lands and the [Department

---

[45] *Id*. at 15.

[46] *Id*. at 16.

[47] *Id*. at 24.

[48] *Id*. at 24-25.

[49] *Id*. at 27.

of Environment and Natural Resources]."[50] Hence, their support led to the approval of her applications.[51]

In her Comment,[52] respondent stresses that the Department of Environment and Natural Resources, the Office of the President, and the Court of Appeals made unanimous factual findings that she adhered to the terms of her miscellaneous sales application. She points out that the administrative bodies and the Court of Appeals all ruled that petitioner acted in bad faith when she occupied the disputed lot; hence, her possession of the lot will not ripen into ownership.[53]

In her Reply,[54] petitioner underscores that the conclusion contained in the Bureau of Lands Report submitted by Examiner Gabay—that respondent never entered into or possessed the lot—contradicts the testimony of respondent's own daughter. She avers that the testimony of respondent's daughter was mentioned in Examiner Gabay's report, yet he still concluded that respondent never occupied the disputed lot, showing his undeniable bias in Firmalan's favor.[55]

Petitioner repeats that as the long-time occupant of the lot, she has a preferential status over it.[56]

The sole issue for this Court's resolution is whether or not petitioner Alicia Galindez's application should have been given preference over respondent Salvacion Firmalan's application, in light of the former's long-time possession of the disputed lot.

The Petition must fail.

---

[50] *Id*. at 28.

[51] *Id*.

[52] *Id*. at 135-139.

[53] *Id*. at 137-138.

[54] *Id*. at 142-152.

[55] *Id*. at 145-146.

[56] *Id*. at 149.

I

Commonwealth Act No. 141, or the Public Land Act, enumerates the ways in which the State may dispose of agricultural lands:

Section 11. Public lands suitable for agricultural purposes can be disposed of only as follows, and not otherwise:

(1) For homestead settlement;

(2) By sale;

(3) By lease;

(4) By confirmation of imperfect or incomplete titles:

(a) By judicial legalization;

(b) By administrative legalization (free patent).

When it comes to the sale of public land, the Public Land Act provides that the following persons are eligible to purchase agricultural and disposable land:

1) Filipino citizen of lawful age;

2) Filipino citizen not of lawful age but is the head of a family;

3) A corporation or association organized and constituted under the Philippine laws with at least 60% of its capital stock or interest in its capital belonging wholly to Filipino citizens; and

4) Corporations organized and constituted under Philippine laws who are allowed by their charters to purchase tracts of public agricultural and disposable land.[57]

---

[57] Com. Act No. 141 (1936), Sec. 22 provides:

Section 22. Any citizen of lawful age of the Philippines, and any such citizen not of lawful age who is a head of a family, and any corporation or association of which at least sixty *per centum* of the capital stock or of any interest in said capital stock belongs wholly to citizens of the Philippines, and which is organized and constituted under the laws of the Philippines,

The Public Land Act further provides that the Director of Lands, under the immediate control of the Secretary of Agriculture and Commerce, now the Department of Environment and Natural Resources Secretary, has executive control over the survey, classification, lease, concession, disposition, and management of lands under the public domain.[58] In pursuance of its functions, the Director of Lands is empowered to put in place such rules and regulations, which would best carry out the provisions of the Public Land Act.[59]

The Public Land Act also states that the decisions of the Director of Lands "as to questions of fact shall be conclusive when approved by the Secretary of Agriculture and Commerce."[60] This respect accorded to the factual findings of an administrative

---

and corporate bodies organized in the Philippines authorized under their charters to do so, may purchase any tract of public agricultural land disposable under this Act, not to exceed one hundred and forty-four hectares in the case of an individual and one thousand and twenty-four hectares in that of a corporation or association, by proceeding as prescribed in this chapter: Provided, That partnerships shall be entitled to purchase not to exceed one hundred and forty-four hectares for each member thereof, but the total area so purchased shall in no case exceed the one thousand and twenty-four hectares authorized in this section for associations and corporations.

[58] Com. Act No. 141 (1936), Secs. 3 and 4 provide:

Section 3. The Secretary of Agriculture and Commerce shall be the executive officer charged with carrying out the provisions of this Act through the Director of Lands, who shall act under his immediate control.

Section 4. Subject to said control, the Director of Lands shall have direct executive control of the survey, classification, lease, sale or any other form of concession or disposition and management of the lands of the public domain, and his decisions as to questions of fact shall be conclusive when approved by the Secretary of Agriculture and Commerce.

[59] Com. Act No. 141 (1936), Sec. 5 provides:

Section 5. The Director of Lands, with the approval of the Secretary of Agriculture and Commerce, shall prepare and issue such forms, instructions, rules, and regulations consistent with this Act, as may be necessary and proper to carry into effect the provisions thereof and for the conduct of proceedings arising under such provisions.

[60] Com. Act No. 141 (1936), Sec. 4.

body is echoed in Rule 43, Section 10 of the Rules of Civil Procedure, which provides:

> Section 10. Due course. — If upon the filing of the comment or such other pleadings or documents as may be required or allowed by the Court of Appeals or upon the expiration of the period for the filing thereof, and on the basis of the petition or the records the Court of Appeals finds *prima facie* that the court or agency concerned has committed errors of fact or law that would warrant reversal or modification of the award, judgment, final order or resolution sought to be reviewed, it may give due course to the petition; otherwise, it shall dismiss the same. *The findings of fact of the court or agency concerned, when supported by substantial evidence, shall be binding on the Court of Appeals.* (Emphasis supplied)

II

Petitioner faults the Court of Appeals for upholding the ruling of the Office of the President when it supposedly showed bias and was unsubstantiated by evidence.

Petitioner fails to convince.

Bureau of Lands Examiner Gabay, after an ocular inspection of Lot No. 915 and a formal hearing between the parties, who were then represented by counsels and were given the opportunity to present their evidence,[61] concluded that there was no conflicting claim as to the portion of the lot occupied by Gaa. The conflict was limited to the northern side of Lot No. 915, or the portion occupied by petitioner.[62] Examiner Gabay then opined that between petitioner and respondent, respondent was the rightful applicant over the disputed lot:

> The conflict between Salvacion Firmalan and Alicia Galindez thru her son Elmer Galindez is a . . . case of an applicant as Salvacion Firmalan, who did no[t] exercise actual occupation or possession of the lot in question because of her sincere compliance and faithful obedience of the conditions set forth by the Public Land Law, providing among others, that, "Unless and until your application is approved,

---

[61] *Rollo,* pp. 86-90.

[62] *Id.* at 90.

you are not authorized to enter upon the land and introduced (sic) valuable improvements thereon as any improvements that you may introduced (sic) will be at your own risk."

And here comes another claimant, thru trickery and scheme and willful defiance of such provisions of the law introduces his own improvements at his own risk and who succeeded in actually exercising occupation of the land in question despite the vehement objection and protest of the applicant, as it is shown from the letter-protests of Salvacion Firmalan addressed to the Provincial Commander, Ministry of Public Works & Highways and to the Ministry of Natural Resources, requesting for assistance regarding the alleged entry and construction of a house on the lot in question by certain P.C. Sgt. Elmer Galindez.

It is also worthy (sic) mentioning that on May 7, 1968, Atty. Sydicious Panoy, the Actg. [District Land Officer] of this Office had wrote (sic) a letter to the father of Elmer Galindez, a certain Adriatico Galindez, informing him of his liability under the provisions of RA 947, providing among others as follows: Sec. 1. "It shall be unlawful for any person, corporation or association to enter or occupy through force, intimidation, threat, strategy or stealth any public agricultural land including such public land as are granted to private individual[s] under the provis[i]ons of the Public Land Act. . . ."[63]

The Bureau of Lands Report was elevated to the Regional Executive Director who found that respondent filed two (2) applications for the same lot in 1949 and 1967, and paid the required guaranty fees for both applications. Respondent's applications were both acknowledged and recommended for approval by the District Land Officer.[64]

As for petitioner, the Regional Executive Director pointed out that the records belied her assertion that she filed a miscellaneous sales application on February 20, 1964. Petitioner was advised to file an application, which she did on July 16, 1970. However, she was informed that the lot she was applying for was already covered by respondent's application and that even if her application was converted into a miscellaneous lease

---

[63] *Id.* at 90-91.

[64] *Id.* at 78.

application, it would still conflict with respondent's miscellaneous sales application.[65]

The Regional Executive Director then concluded that petitioner never occupied the disputed lot continuously, as she claimed, because in 1971, petitioner sold to Margie Royo the house that her husband built in 1951. Thus, petitioner vacated the premises. The house was then sold to Florentino Mendez who, thereafter, sold it to Toribio Firmalan, respondent's husband.[66]

Sometime in 1982, Elmer built a house on the disputed lot.[67] The Regional Executive Director held that this was made in bad faith, since possession of the lot had, by then, passed on to respondent. The construction of the house also violated the terms of petitioner's application.[68]

The Regional Executive Director confirmed that respondent had a better right than petitioner over the disputed lot because respondent filed her miscellaneous sales application ahead of petitioner and complied with the rules and regulations governing her application.[69]

On appeal, the Department of Environment and Natural Resources Secretary affirmed the Regional Executive Director's Orders and denied petitioner's motion for reconsideration.[70]

The Office of the President likewise upheld the findings of fact of the Department of Environment and Natural Resources officers, which, it emphasized, were arrived at after conducting "ocular inspections, investigations and hearings on the subject land."[71] The Office of the President stated:

---

[65] *Id*.

[66] *Id*. at 78 and 86-87.

[67] *Id*. at 87.

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

[69] *Id*. at 80.

[70] *Id*. at 40-41.

[71] *Id*. at 82.

At any rate, the findings of fact of the DENR and its field offices, admittedly an administrative agency which have acquired expertise because [of] their jurisdiction is confined to specific matters like the processing, inspections and/or investigation of public land sale applications, are generally accorded respect, if not finality. . . .

It must be borne in mind that this Office is persuaded strongly by the principle that findings of fact of administrative bodies charged with specific field[s] of expertise are afforded great weight in the absence of substantial showing that such findings are patently erroneous. Considering therefore that the findings of facts by the DENR as well as the justifications made thereon are given weight and respect, and absent any error of abuse of discretion, this Office finds the same to be in order.[72]

In *Solid Homes v. Payawal,*[73] this Court explained that administrative agencies are considered specialists in the fields assigned to them; hence, they can resolve problems in their respective fields "with more expertise and dispatch than can be expected from the legislature or the courts of justice."[74] Thus, this Court has consistently accorded respect and even finality to the findings of fact of administrative bodies, in recognition of their expertise and technical knowledge over matters falling within their jurisdiction.[75]

Moreover, Rule 43, Section 10 of the Rules of Civil Procedure provides that findings of fact of a quasi-judicial agency, when supported by substantial evidence, shall be binding on the Court of Appeals. Consequently, the Court of Appeals did not err in upholding the findings of fact of the Department of Environment and Natural Resources and of the Office of the President.

---

[72] *Id*. at 83.

[73] 257 Phil. 914 (1989) [Per *J*. Cruz, First Division].

[74] *Id*. at 921.

[75] *JMM Promotions and Management v. Court of Appeals*, 439 Phil. 1, 10-11 (2002) [Per *J*. Corona, Third Division]; *Spouses Calvo v. Spouses Vergara*, 423 Phil. 939, 947 (2001) [Per *J*. Quisumbing, Second Division]; *Alvarez v. PICOP Resources, Inc.*, 538 Phil. 348, 397 (2006) [Per *J*. Chico-Nazario, First Division].

Petitioner likewise faults the Court of Appeals for ruling in respondent's favor despite admission from respondent's daughter that respondent occupied and fenced in the lot after filing her first application in 1949, thereby contradicting the Department of Environment and Natural Resources' finding that respondent never entered or introduced improvements on the lot she applied for.[76]

Petitioner further claims that since she and respondent both did not abide with the undertakings in their respective applications, her application should be given preference as she was the first to occupy the lot and has continuously done so with her family.[77]

Again, petitioner fails to convince.

There is nothing in the miscellaneous sales application which forbade the applicant from entering into or occupying the lot being applied for. Instead, what the miscellaneous sales application provides is an acknowledgment from the applicant that he or she has no right over the lot while the application is still pending and while the lease contract has not yet been executed:

> 6. *I understand that this application conveyed no right to me to enter upon, occupy, cultivate, to make clearing on the land until the same has been finally approved and a lease contract executed*, and that any lease applicant who shall willfully and knowingly submit false statements or execute false affidavit in connection with the foregoing application shall be deemed guilty of perjury and punished by a fine of not more than two thousand pesos and . . . by imprisonment for not more than five years, in addition there, his application shall be cancelled and all amount paid on account thereof forfeited to the Government, and they shall not be entitled to apply for any public land in the Philippines.[78] (Emphasis supplied)

---

[76] *Rollo,* pp. 23-24.

[77] *Id*. at 25.

[78] *Id*. at 43.

The miscellaneous sales application warns the applicant that submission of a false statement or false affidavit in support of an application may cause the cancellation of the application, forfeiture of all amounts paid, and prohibition from applying for any public land. However, there is no similar warning or an equally dire consequence for applicants who prematurely enter or occupy the lot applied for. At most, it is merely implied that applicants bear the risk of introducing improvements to a lot that has not yet been awarded to them since the application may be denied or the lot may be awarded to some other applicant.

As it is, the facts are not disputed that respondent filed her application for a portion of Lot No. 915 on May 16, 1949. Meanwhile, petitioner only built a house on that same portion of Lot No. 915 on November 1, 1950 and filed her own application on February 20, 1964.[79] Clearly, the Bureau of Lands did not err in favorably endorsing respondent's applications:

> Based on the foregoing factual backdrop, the [Regional Executive Director] pointed out that Firmalan filed her Miscellaneous Sales Application (MSA No. 7861) on May 16, 1949 and paid the corresponding Guaranty Fee in the amount of P5.00 under Postal Money Order No. 1064-8820 dated May 18, 1949; that on February 23, 1950, the former Chief of the Public Lands Division (Vicente Tordesillas), Bureau of Lands, Manila, directed the District Land Officer in Bacolod City, to reappraise the land covered by the said application, and referred on June 26, 1950 to the Provincial Land Officer in Capiz, Capiz for compliance. According to the [Regional Executive Director], *this is a clear indication that the said application of Firmalan was given due recognition;* however, records do not show that subsequent actions were taken thereon.
>
> Moreover the [Regional Executive Director] noted that on April 25, 1967, Firmalan again filed a Miscellaneous Sales Application (MSA No. (V-6) 23) covering Lot 915, Cad-311-D, Romblon Cadastre with an area of 325 square meters which included the area first applied for by her; that the investigation of the lot was conducted and a report was submitted by the Public Land Inspector (Alexander M. Diola), and attested to by the Municipal Treasurer of Romblon, Casareo

[79] *Id*. at 16.

Mangao; that another report of appraisal was submitted on August 22, 1967 by the same Land Inspector and also attested to by the same Municipal Treasurer; and *that the said report of appraisal was favorably endorsed to the Director of Lands by then Acting District Land Officer in Odiongan, Romblon, Sudicious F. Panoy, per 1st Indorsement dated November 18, 1967.*[80] (Emphasis supplied)

In *Castillo v. Rodriguez*,[81] this Court affirmed the ruling of the Director of Lands and of the Department of Environment and Natural Resources Secretary upholding Elias L. Casals' miscellaneous sales application over that of Andres Castillo, because the facts showed that the former filed his application ahead of the latter:

As a matter of fact, the very numbers and dates of the contestants' miscellaneous sales applications conclusively show that Elias L. Casals filed his application way ahead of the petitioner. The former filed his M.S.A. No. 16888 on June 4, 1952 while the latter's application, M.S.A. No. 19124, was filed only on May 19, 1953. Neither has Elias L. Casals been shown by the petitioner or the records to be suffering from any legal disqualification to be awarded the lot in dispute. Consequently, and conformably with settled jurisprudence, We shall not disturb the decisions of the Director of Lands and the Secretary of Agriculture and Natural Resources on the matter.[82] (Emphasis supplied)

WHEREFORE, premises considered, the Petition is **DISMISSED.** The Court of Appeals November 27, 2008 Decision and March 13, 2009 Resolution in CA-G.R. SP No. 95114 are **AFFIRMED.**

SO ORDERED.

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

---

[80] *Id.* at 76.

[81] 121 Phil. 1107 (1965) [Per *J.* Regala, *En Banc*].

[82] *Id.* at 1111-1112.

THIRD DIVISION

[G.R. No. 190324. June 6, 2018]

PHILIPPINE PORTS AUTHORITY, *petitioner, vs.* **THE CITY OF DAVAO, SANGGUNIANG PANGLUNGSOD NG DAVAO CITY, CITY MAYOR OF DAVAO CITY, CITY TREASURER OF DAVAO CITY, CITY ASSESSOR OF DAVAO CITY, and CENTRAL BOARD OF ASSESSMENT APPEALS (CBAA),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; COURT OF TAX APPEALS; HAS EXCLUSIVE APPELLATE JURISDICTION OVER DECISIONS OF THE CENTRAL BOARD OF ASSESSMENT APPEALS IN THE EXERCISE OF ITS APPELLATE JURISDICTION OVER REAL PROPERTY TAX ASSESSMENT.— In real property tax cases such as this, the remedy of a taxpayer depends on the stage in which the local government unit is enforcing its authority to impose real property taxes. Moreover, as jurisdiction is conferred by law, reference must be made to the law when determining which court has jurisdiction over a case, in relation to its factual and procedural antecedents. x x x Section 7, paragraph (a)(5) of Republic Act No. 1125, as amended by Republic Act No. 9282, provides that the Court of Tax Appeals has exclusive appellate jurisdiction over: x x x "(5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals[.]" The Central Board of Assessment Appeals April 7, 2005 Decision assailed by petitioner before the Court of Appeals was rendered in the exercise of its appellate jurisdiction over the real property tax assessment of its properties. Clearly, this falls within the above-cited provision. Indeed, there is no dispute that this Central Board of Assessment Appeals decision constitutes one of the cases covered by the Court of Tax Appeals' exclusive jurisdiction.

2. ID.; CIVIL PROCEDURE; JURISDICTION; ONCE A COURT ACQUIRES JURISDICTION OVER A CASE, IT ALSO HAS THE POWER TO ISSUE ALL AUXILIARY WRITS NECESSARY TO MAINTAIN AND EXERCISE ITS JURISDICTION, TO THE EXCLUSION OF ALL OTHER COURTS.— Urgency does not remove the Central Board of Assessment Appeals decision from the exclusive appellate jurisdiction of the Court of Tax Appeals. This is particularly true since, as properly recognized by the Court of Appeals, petitioner could have, and should have, applied for injunctive relief with the Court of Tax Appeals, which has the power to issue the preliminary injunction prayed for. x x x In this case, the Court of Tax Appeals had jurisdiction over petitioner's appeal to resolve the question of whether or not it was liable for real property tax. To recall, the real property tax liability was the very reason for the acts which petitioner wanted to have enjoined. It was, thus, the Court of Tax Appeals, and not the Court of Appeals, that had the power to preserve the subject of the appeal, to give effect to its final determination, and, when necessary, to control auxiliary and incidental matters and to prohibit or restrain acts which might interfere with its exercise of jurisdiction over petitioner's appeal. Thus, respondents' acts carried out pursuant to the imposition of the real property tax were also within the jurisdiction of the Court of Tax Appeals. x x x Once a court acquires jurisdiction over a case, it also has the power to issue all auxiliary writs necessary to maintain and exercise its jurisdiction, to the exclusion of all other courts. Thus, once the Court of Tax Appeals acquired jurisdiction over petitioner's appeal, the Court of Appeals would have been precluded from taking cognizance of the case.

3. ID.; ID.; FORUM SHOPPING; A PARTY IS GUILTY THEREOF WHEN IT INSTITUTES A CASE WHILE ANOTHER CASE IS PENDING, WHERE THERE IS AN IDENTITY OF PARTIES AND AN IDENTITY OF RIGHTS ASSERTED AND RELIEF PRAYED FOR SUCH THAT JUDGMENT IN ONE CASE AMOUNTS TO *RES JUDICATA* IN THE OTHER.— The rule against forum shopping is violated when a party institutes more than one action based on the same cause to increase its chances of obtaining a favorable outcome. Thus, when a party institutes a case while another case is pending, where there is an identity of parties and an identity of rights asserted and relief prayed for such

that judgment in one case amounts to *res judicata* in the other, it is guilty of forum shopping. To reverse a court determination that a party has violated the rule against forum shopping, this party must show that one or more of the requirements for forum shopping does not exist.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Office of the City Legal Officer, Davao City for respondent.

D E C I S I O N

LEONEN, *J.*:

When a tax case is pending on appeal with the Court of Tax Appeals, the Court of Tax Appeals has the exclusive jurisdiction to enjoin the levy of taxes and the auction of a taxpayer's properties in relation to that case.

This is a Petition for Review on Certiorari,[1] assailing the Court of Appeals December 15, 2008 Decision[2] and September 11, 2009 Resolution[3] in CA-G.R. SP No. 00735-MIN, dismissing the Philippine Ports Authority's Petition for Prohibition.

The Philippine Ports Authority was created under Presidential Decree No. 857, as amended. It was mandated "to implement an integral program for the planning, development, financing, and operation of ports in the Philippines" and was "empowered to administer properties of any kind under its jurisdiction."[4]

---

[1] *Rollo,* pp. 13-36.

[2] *Id*. at 37-43. The Decision was penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Romulo V. Borja and Elihu A. Ybañez of the Twenty-First Division, Court of Appeals, Cagayan de Oro City.

[3] *Id*. at 44-45. The Resolution was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Romulo V. Borja and Ruben C. Ayson of the Special Former Twenty-First Division, Court of Appeals, Cagayan de Oro City.

[4] *Id*. at 38.

On June 17, 2004, the Philippine Ports Authority received a letter from the City Assessor of Davao for the assessment and collection of real property taxes against its administered properties located at Sasa Port. It appealed the assessment via registered mail to the Local Board of Assessment Appeals through the Office of the City Treasurer of Davao on August 2, 2004. The Office of the City Treasurer of Davao received the appeal on August 11, 2004, and forwarded it to the Chairman of the Local Board of Assessment Appeals, who received it on September 6, 2004. While the case was pending, the City of Davao posted a notice of sale of delinquent real properties,[5] including the three (3) properties subject of this case, namely, 1) the quay covered by Tax Declaration No. E-04-09-063842; 2) the parcel of land with Tax Declaration No. E-04-09-092572; and 3) the administrative building under Tax Declaration No. E-04-09-090803.[6]

The Local Board of Assessment Appeals dismissed the Philippine Ports Authority's appeal for having been filed out of time, and for its lack of jurisdiction on the latter's tax exemption in its January 25, 2005 Order.[7] The Philippine Ports Authority appealed[8] before the Central Board of Assessment Appeals, but this appeal was denied in the Central Board of Assessment Appeals April 7, 2005 Decision.[9] Thus, it filed an appeal with the Court of Tax Appeals. [10]

The Philippine Ports Authority claimed that it did not receive any warrant of levy for the three (3) properties which were sold to respondent City of Davao, or any notice that they were

---

[5] *Id*.

[6] *Id*. at 21.

[7] *Id*. at 38.

[8] *Id*. at 75-89.

[9] *Id*. at 113-124. The Decision, docketed as CBAA Case No. M-20, was signed by Chairman Cesar S. Gutierrez and Members Angel P. Palomares and Rafael O. Cortes of the Central Board of Assessment Appeals, Manila.

[10] *Id*. at 39.

going to be auctioned. It was informed that it had one (1) year from the date of registration of the sale within which to redeem the properties by paying the taxes, penalties, and incidental expenses, plus interest at the rate of 2% per month on the purchase price.[11]

Thus, it filed a petition for certiorari with the Court of Appeals, arguing that the City of Davao's taxation of its properties and their subsequent auction and sale to satisfy the alleged tax liabilities were without or in excess of its jurisdiction and contrary to law. It argued that it had no other speedy and adequate remedy except to file a petition for certiorari with the Court of Appeals.[12]

While the petition was pending with the Court of Appeals, the Court of Tax Appeals promulgated a Decision[13] dated July 30, 2007, granting the Philippine Ports Authority's appeal, resolving in its favor the issue of its liability for the real estate tax of Sasa Port and its buildings. The dispositive portion of this Decision read:

WHEREFORE, premises considered, the present Petition for Review is hereby **GRANTED**. Accordingly, the Decision dated April 7, 2005 of the Central Board of Assessment Appeals in CBAA Case No. M-20 and the Order dated January 25, 2005 of the LBAA in LBAA Case No. 01-04 dismissing the appeal are hereby **SET ASIDE**. We declare the Sasa Port, Davao City and its buildings **EXEMPT** from the real estate tax imposed by Davao City. We declare **VOID** all the real estate tax assessments issued by Davao City on the Sasa Port and its buildings.

SO ORDERED.[14] (Emphasis in the original)

---

[11] *Id*. at 21.

[12] *Id*. at 22.

[13] *Id*. at 209-236. The Decision, docketed as C.T.A. EB Case No. 183, was penned by Associate Justice Olga Palanca-Enriquez and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castaneda, Jr., Lovell R. Bautista, Erlinda P. Uy, and Caesar A. Casanova of the *En Banc*, Court of Tax Appeals, Quezon City.

[14] *Id*. at 235.

Additionally, while the petition was pending with the Court of Appeals, the Court of Tax Appeals issued an Entry of Judgment stating that its July 30, 2007 Decision became final and executory on February 13, 2008, considering that no appeal to the Supreme Court had been taken.[15]

Thereafter, the Court of Appeals dismissed the petition in its December 15, 2008 Decision.[16] It held that the Court of Tax Appeals had exclusive jurisdiction to determine the matter[17] and said that the Philippine Ports Authority "should have applied for the issuance of writ of injunction or prohibition before the Court of Tax Appeals."[18] It further found the petition dismissible on the ground that the Philippine Ports Authority committed forum shopping, as the petition raised the same facts and issues as in its appeal before the Court of Tax Appeals.[19]

Petitioner filed a motion for reconsideration, which the Court of Appeals denied in its September 11, 2009 Resolution,[20] which read, in part:

> This Court **GRANTS** the Motion For Extension Of Time To file Comment and **NOTES** the Comment subsequently filed within the extended period prayed for, and **DENIES** petitioner's Motion for Reconsideration from the Decision dated December 15, 2008, dismissing the petition for prohibition and upholding the authority of the City Government of Davao in taxing, auctioning and selling petitioner's properties to satisfy the latter's real property tax liabilities.
>
> . . . .
>
> **WHEREFORE**, the instant Motion for Reconsideration is hereby **DENIED**.

---

[15] *Id*. at 254.

[16] *Id*. at 37-43.

[17] *Id*. at 40.

[18] *Id*. at 41.

[19] *Id*. at 42.

[20] *Id*. at 44-45.

SO ORDERED.[21] (Emphasis in the original)

Thus, the Philippine Ports Authority filed its Petition for Review[22] under Rule 45 of the Rules of Court before this Court against the City of Davao, Sangguniang Panglungsod ng Davao City, City Mayor of Davao City, City Treasurer of Davao City, City Assessor of Davao City, and Central Board of Assessment Appeals (collectively, respondents), assailing the Court of Appeals December 15, 2008 Decision and September 11, 2009 Resolution. Respondents filed their Comment[23] to which petitioner filed its Reply.[24]

Petitioner argues that it did not commit forum shopping, asserting that the only element of forum shopping present as between the appeals filed before the Court of Tax Appeals and the Court of Appeals is identity of parties.[25] Its arguments regarding the jurisdiction of the Court of Appeals are inscrutable but appear to maintain that the Court of Appeals has jurisdiction on the basis of urgency. It also avers that the Court of Appeals erred when it "ruled, declared and upheld the authority" of respondent City of Davao to tax, auction, and sell its properties.[26] It points out that the Supreme Court has held that as a government instrumentality, its properties cannot be taxed by local government.[27]

Respondents insist that forum shopping exists, considering that the elements of *litis pendentia* were present when the case was filed with the Court of Appeals.[28] On the question of the

---

[21] *Id*. at 45.

[22] *Id*. at 13-36.

[23] *Id*. at 200-208.

[24] *Id*. at 246-253.

[25] *Id*. at 24-25.

[26] *Id*. at 24.

[27] *Id*. at 28.

[28] *Id*. at 201.

propriety of the imposition of tax on petitioner's properties, respondents claim that there was an error in the Court of Tax Appeals July 30, 2007 Decision. Thus, while they maintain that this case is not the proper case to rectify the error of the Court of Tax Appeals, they ask that this Court lay down a jurisprudential pronouncement on the real property tax treatment of petitioner's properties.[29]

The issues for resolution by this Court are:

First, whether or not the Court of Appeals had jurisdiction to issue the injunctive relief prayed for by petitioner Philippine Ports Authority; and

Second, whether or not the petition before the Court of Appeals was properly dismissed for forum shopping.

This Court denies the Petition.

I

In real property tax cases such as this, the remedy of a taxpayer depends on the stage in which the local government unit is enforcing its authority to impose real property taxes.[30] Moreover, as jurisdiction is conferred by law,[31] reference must be made to the law when determining which court has jurisdiction over a case, in relation to its factual and procedural antecedents.

Petitioner has failed to cite any law supporting its contention that the Court of Appeals has jurisdiction over this case. On the other hand, Section 7, paragraph (a)(5) of Republic Act No. 1125,[32] as amended by Republic Act No. 9282,[33] provides

---

[29] *Id*. at 206.

[30] See *City of Lapu-Lapu v. Phil. Economic Zone Authority*, 748 Phil. 473 (2014) [Per *J*. Leonen, Second Division].

[31] See *Commissioner of Internal Revenue v. Villa,* 130 Phil. 3-7 (1968) [Per *J*. J.P. Bengzon, *En Banc*].

[32] An Act Creating the Court of Tax Appeals (1954).

[33] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction

that the Court of Tax Appeals has exclusive appellate jurisdiction over:

> Section 7. Jurisdiction. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> . . . .
>
> (5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals[.]

The Central Board of Assessment Appeals April 7, 2005 Decision assailed by petitioner before the Court of Appeals was rendered in the exercise of its appellate jurisdiction over the real property tax assessment of its properties. Clearly, this falls within the above-cited provision. Indeed, there is no dispute that this Central Board of Assessment Appeals decision constitutes one of the cases covered by the Court of Tax Appeals' exclusive jurisdiction.

Despite the clear wording of the law placing this case within the exclusive appellate jurisdiction of the Court of Tax Appeals, petitioner insists that the Court of Appeals could have issued the relief prayed for despite the provisions of Republic Act No. 9282, considering its urgent need for injunctive relief.[34]

Petitioner's contention has no legal basis whatsoever and must be rejected. Urgency does not remove the Central Board of Assessment Appeals decision from the exclusive appellate jurisdiction of the Court of Tax Appeals. This is particularly true since, as properly recognized by the Court of Appeals, petitioner could have, and should have, applied for injunctive

---

and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes (2004).

[34] *Rollo*, pp. 25-26.

relief with the Court of Tax Appeals, which has the power to issue the preliminary injunction prayed for.[35]

In *City of Manila v. Grecia-Cuerdo,*[36] this Court expressly recognized the Court of Tax Appeals' power to determine whether or not there has been grave abuse of discretion in cases falling within its exclusive appellate jurisdiction and its power to issue writs of certiorari:

> On the strength of the above constitutional provisions, it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of *certiorari* in these cases.
>
> Indeed, in order for any appellate court, to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of *certiorari.* In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total.
>
> Consistent with the above pronouncement, this Court has held as early as the case of *J.M. Tuason & Co., Inc. v. Jaramillo, et al.* that "if a case may be appealed to a particular court or judicial tribunal or body, then said court or judicial tribunal or body has jurisdiction to issue the extraordinary writ of *certiorari,* in aid of its appellate jurisdiction." This principle was affirmed in *De Jesus v. Court of* where the Court stated that "a court may issue a writ of *certiorari* in aid of its appellate jurisdiction if said court has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court." The rulings in J.M. Tuason and De Jesus were reiterated in the more recent cases of *Galang, Jr. v. Geronimo* and *Bulilis v. Nuez.*

---

[35] *Id.* at 41.

[36] 726 Phil. 9 (2014) [Per *J.* Peralta, *En Banc*].

Furthermore, Section 6, Rule 135 of the present Rules of Court provides that when by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer.

If this Court were to sustain petitioners' contention that jurisdiction over their *certiorari* petition lies with the CA, this Court would be confirming the exercise by two judicial bodies, the CA and the CTA, of jurisdiction over basically the same subject matter — precisely the split-jurisdiction situation which is anathema to the orderly administration of justice. The Court cannot accept that such was the legislative motive, especially considering that the law expressly confers on the CTA, the tribunal with the specialized competence over tax and tariff matters, the role of judicial review over local tax cases without mention of any other court that may exercise such power. Thus, the Court agrees with the ruling of the CA that since appellate jurisdiction over private respondents' complaint for tax refund is vested in the CTA, it follows that a petition for *certiorari* seeking nullification of an interlocutory order issued in the said case should, likewise, be filed with the same court. To rule otherwise would lead to an absurd situation where one court decides an appeal in the main case while another court rules on an incident in the very same case.

Stated differently, it would be somewhat incongruent with the pronounced judicial abhorrence to split jurisdiction to conclude that the intention of the law is to divide the authority over a local tax case filed with the RTC by giving to the CA or this Court jurisdiction to issue a writ of *certiorari* against interlocutory orders of the RTC but giving to the CTA the jurisdiction over the appeal from the decision of the trial court in the same case. It is more in consonance with logic and legal soundness to conclude that the grant of appellate jurisdiction to the CTA over tax cases filed in and decided by the RTC carries with it the power to issue a writ of *certiorari* when necessary in aid of such appellate jurisdiction. The supervisory power or jurisdiction of the CTA to issue a writ of *certiorari* in aid of its appellate jurisdiction should co-exist with, and be a complement to, its appellate jurisdiction to review, by appeal, the final orders and decisions of the RTC, in order to have complete supervision over the acts of the latter.

A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the

final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.

Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.[37] (Citations omitted)

In this case, the Court of Tax Appeals had jurisdiction over petitioner's appeal to resolve the question of whether or not it was liable for real property tax. To recall, the real property tax liability was the very reason for the acts which petitioner wanted to have enjoined. It was, thus, the Court of Tax Appeals, and not the Court of Appeals, that had the power to preserve the subject of the appeal, to give effect to its final determination, and, when necessary, to control auxiliary and incidental matters and to prohibit or restrain acts which might interfere with its exercise of jurisdiction over petitioner's appeal. Thus, respondents' acts carried out pursuant to the imposition of the real property tax were also within the jurisdiction of the Court of Tax Appeals.

Even if the law had vested the Court of Appeals with jurisdiction to issue injunctive relief in real property tax cases such as this, the Court of Appeals was still correct in dismissing the petition before it. Once a court acquires jurisdiction over a case, it also has the power to issue all auxiliary writs necessary to maintain and exercise its jurisdiction, to the exclusion of all

---

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

other courts.[38] Thus, once the Court of Tax Appeals acquired jurisdiction over petitioner's appeal, the Court of Appeals would have been precluded from taking cognizance of the case.

II

The rule against forum shopping is violated when a party institutes more than one action based on the same cause to increase its chances of obtaining a favorable outcome. Thus, when a party institutes a case while another case is pending, where there is an identity of parties and an identity of rights asserted and relief prayed for such that judgment in one case amounts to *res judicata* in the other, it is guilty of forum shopping.[39]

To reverse a court determination that a party has violated the rule against forum shopping, this party must show that one or more of the requirements for forum shopping does not exist. To this end, petitioner attempts to differentiate the petition filed with the Court of Appeals from the appeal filed with the Court of Tax Appeals. It argues that the right asserted before the Court of Appeals is its right to peacefully possess its ports, free from the threat of losing the properties due to tax liabilities, whereas the right asserted before the Court of Tax Appeals is its right to be exempt from real property tax, as a government instrumentality. Petitioner further argues that the reliefs sought from the two (2) tribunals were not the same—it sought a final relief from payment of real property taxes on its ports from the Court of Tax Appeals; on the other hand, it sought a temporary and immediate relief from respondents' acts from the Court of Appeals, while the issue of taxability was still pending with the Court of Tax Appeals.[40]

---

[38] *Madriñan v. Madriñan* , 554 Phil. 363, 370 (2007) [Per Justice Corona, First Division].

[39] See *Dy v. Yu*, 763 Phil. 491 (2015) [Per *J*. Perlas-Bernabe, First Division].

[40] *Rollo*, pp. 25-26.

However, even assuming without conceding that the arguments laid down by petitioner could support its claim that it did not forum shop, this Court cannot accept that it was what was argued before the Court of Tax Appeals and Court of Appeals, respectively, without reading the text itself. Whether or not the rights asserted and reliefs prayed for in the two (2) petitions were different would best be determined from a reading of the appeal and petition themselves.

Unfortunately for petitioner, it submitted only its own arguments. Neither its petition before the Court of Appeals nor its appeal before the Court of Tax Appeals was attached to the petition filed with this Court. Without any of these texts, this Court is in no position to determine that the elements of forum shopping are absent here.

Thus, this Court affirms the Court of Appeals' finding that the rule against forum shopping was violated when petitioner filed its Petition for Certiorari despite its pending appeal before the Court of Tax Appeals.[41]

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The Court of Appeals December 15, 2008 Decision and September 11, 2009 Resolution in CA-G.R. SP No. 00735-MIN are hereby **AFFIRMED**.

SO ORDERED.

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

---

[41] *Id*. at 40-42.

THIRD DIVISION

[G.R. No. 191622. June 6, 2018]

ILUMINADA BATAC, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEW OF QUESTIONS OF LAW.— [O]nly questions of law may be raised in a petition for review on certiorari. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. If the issue invites a review of the evidence presented, such as the one posed by Batac, the question posed is one of fact. While the Court has admitted exceptions to this rule, it does not appear that any of those exceptions was alleged, substantiated, and proven by Batac. Thus, the factual findings of the courts *a quo* is binding upon this Court.

2. ID.; EVIDENCE; ALIBI; POSITIVE IDENTIFICATION DESTROYS THE DEFENSE OF ALIBI AND RENDERS IT IMPOTENT, ESPECIALLY WHERE SUCH IDENTIFICATION IS CREDIBLE AND CATEGORICAL.— Both the RTC and the CA correctly gave credence to Frias' testimony that Batac, together with Erlinda, personally met with him at his store and represented to him that the checks were funded. This was corroborated by his sister Ivy Luna Frias (*Ivy*) x x x. To controvert Frias' positive identification, Batac merely offered the defense of denial, as in fact in her petition she merely insists that it was Erlinda, not she, who committed the crime, without laying any basis for such conclusion. The Court has held that "positive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical." There is no reason to doubt the credibility of the identification made by Frias, as corroborated by Ivy.

3. CRIMINAL LAW; REVISED PENAL CODE; ESTAFA UNDER ARTICLE 315, PARAGRAPH 2(d); ELEMENTS.—

Jurisprudence has consistently held that x x x estafa [under Article 315, paragraph 2(d) of the RPC] consists of the following elements: (1) the offender has postdated or issued a check in payment of an obligation contracted at the time of the postdating or issuance; (2) at the time of postdating or issuance of said check, the offender has no funds in the bank or the funds deposited are not sufficient to cover the amount of the check; and (3) the payee has been defrauded.

4. ID.; ID.; ID.; IT IS NOT THE NON-PAYMENT OF A DEBT WHICH IS MADE PUNISHABLE, BUT THE CRIMINAL FRAUD OR DECEIT IN THE ISSUANCE OF A CHECK.— [I]n x x x estafa [under Article 315, paragraph 2(d) of the RPC], it is not the nonpayment of a debt which is made punishable, but the criminal fraud or deceit in the issuance of a check. Deceit has been defined as "the false representation of a matter of fact, whether by words or conduct by false or misleading allegations or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury." In *People v. Reyes*, the Court ruled that for estafa under the above provision to prosper, the issuance of the check must have been the inducement for the other party to part with his money or property x x x.

5. ID.; ID.; ID.; SEPARATE AND DISTINCT FROM BATAS PAMBANSA BLG. 22 BECAUSE, WHILE SOURCED FROM THE SAME ACT, THEY PERTAIN TO DIFFERENT CAUSES OF ACTION.— There is thus no merit to Batac's contention that, at most, she can only be held liable for violation of B.P. Blg. 22. While sourced from the same act, i.e., the issuance of a check subsequently dishonored, estafa and violation of B.P. Blg. 22 are separate and distinct from each other because they pertain to different causes of action. The Court has held that, among other differences, damage and deceit are essential elements for estafa under Article 315 2(d) of the RPC, but are not so for violation under B.P. Blg. 22, which punishes the mere issuance of a bouncing check x x x.

6. ID.; ID.; ESTAFA; IMPOSABLE PENALTY.— The penalty imposed by the CA x x x must be modified in view of the amendments embodied in R.A. No. 10951, to wit: "Section 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818,

is hereby further amended to read as follows: Art. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by: x x x 3rd. **The penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum period, if such amount is over Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000)**." x x x Considering that the amount involved in the subject transaction is ₱103,500.00, the proper imposable penalty is *arresto mayor* in its maximum period to *prision correccional* in its minimum period. This has a range of 4 months and 1 day to 2 years and 4 months, with a minimum period of 4 months and 1 day to 1 year, a medium period of 1 year and 1 day to 1 year and 8 months, and a maximum period of 1 year, 8 months and 1 day to 2 years and 4 months.

APPEARANCES OF COUNSEL

Nestor P. Pinlac for petitioner.
Office of the Solicitor General for respondent.

R E S O L U T I O N

MARTIRES, *J.*:

Before this Court is a petition for review under Rule 45 of the Rules of Court, filed by petitioner Iluminada Batac *(Batac)* assailing the Decision[1] of the Court of Appeals *(CA)* dated 6 November 2009 in CA-G.R. CR No. 29462.

The CA affirmed the decision of the Regional Trial Court *(RTC)* in Criminal Case No. SCC-3026, finding Batac guilty beyond reasonable doubt of Estafa defined under Article 315, paragraph 2(d) of the Revised Penal Code *(RPC)*, as amended by Republic Act *(R.A.)* No. 4885, committed against private complainant Roger L. Frias *(Frias)*.

---

[1] *Rollo*, pp. 56-72; penned by Associate Justice Jane Aurora C. Lantion, and concurred in by Associate Justices Mario L. Guarina III and Mariflor P. Punzalan Castillo.

Batac was charged as follows:

That sometime on November 8, 1998, in the public market, municipality of Malasiqui, [P]rovince of Pangasinan, Philippine[s], and within the jurisdiction of this Honorable Court, the above-named accused, knowing fully well that she had no funds in the bank to cover the amount of the checks, by means of false pretenses and deceit and with intent to defraud, did then and there willfully, unlawfully and feloniously make, issue and deliver to [Frias] several post-dated checks, to wit:

Check No.	Drawee Bank	Amount	Date
0050275	Prime Bank, Calasiao	₱8,000.00	Nov. 18, 1998
0050278	-do-	8,500.00	-do-
0050263	-do-	8,000.00	-do-
0050265	-do-	7,500.00	-do-
0050277	-do-	8,000.00	-do-
0050262	-do-	8,000.00	-do-
0050260	-do-	8,500.00	Nov. 16, 1998
0050266	-do-	8,500.00	-do-
0050267	-do-	8,500.00	-do-
0050256	-do-	7,000.00	Nov. 12, 1998
0050257	-do-	5,000.00	-do-
0050255	-do-	8,000.00	-do-
0050258	-do-	5,000.00	Nov. 10, 1998
0050259	-do-	5,000.00	-do-
		₱103,500	

in the amount of ₱103,500.00 and [Frias] accepted the said checks in a rediscounting manner after being convinced that [Batac] had sufficient funds in the bank and when said checks were presented for encashment with the drawee bank on their respective due dates, all checks were returned unpaid for reasons of "ACCOUNT CLOSED", and despite repeated demands made upon her, accused failed and refused and still fails and refuses to make good her checks, to the damage and prejudice of [Frias] in the total amount ₱103,500.00.

Contrary to Article 315, par. 2(d) of the Revised Penal Code.[2]

---

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

When arraigned, Batac pleaded not guilty, and trial thereafter ensued.

THE FACTS

Frias recounted that on 8 November 1998, Batac and one Erlinda Cabardo *(Erlinda)* went to his store, located inside the public market of the Municipality of Malasiqui, Pangasinan, to have her checks rediscounted. When Batac assured Frias that the checks were hers and were duly funded, he was persuaded to buy a total of fourteen (14) checks at a rediscounted rate of five percent *(5%)* of the total aggregate amount. Batac thereafter affixed her signature on the face of the checks in the presence of Frias.

Upon the due dates stated on the checks, Frias attempted to deposit the checks to his bank accounts. However, the drawee bank – Prime Bank, Calasiao Branch, Poblacion West, Calasiao, Pangasinan – refused payment for the reason "Account Closed" and thus returned the checks to Frias. Frias then proceeded to Batac's house to demand from her payment of the equivalent amount of the said checks, giving her five (5) days within which to complete payment. Batac failed to do so, prompting Frias to file the present case for estafa.

On the other hand, Batac maintains that it was Erlinda who issued and delivered the checks to Frias for rediscounting; and that she had never met nor transacted business with Frias. According to Batac, further raising doubt on Frias' assertions is the fact that the proceeds being claimed still amounts to ₱103,500.00, the aggregate amount of the checks involved, when there should have been a rediscounting fee of 5%; thus casting doubt on whether there was a rediscounting transaction at all. Consequently, Batac asserts, there is reasonable doubt that she committed estafa. Furthermore, Batac claims that if she has any criminal liability at all, it would only be for violation of Batas Pambansa Blg. 22 *(B.P. Blg. 22)*, or the Bouncing Checks Law, instead of estafa.

After trial, the RTC found Batac guilty beyond reasonable doubt of the crime of estafa. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, Iluminada Batac is hereby found guilty beyond reasonable doubt as principal for estafa, defined under Article 315 2(d) of the Revised Penal Code, and she is hereby sentenced to an indeterminate penalty of imprisonment of 2 years, 10 months and 21 days of arresto mayor as minimum and 12 years of prision mayor as maximum.
>
> Iluminada Batac is ordered to reimburse private complainant Roger Frias the amount of PhP103,500.00 with interest computed from the date of this decision.[3]

On appeal, the CA affirmed Batac's conviction. According to the CA, the prosecution was able to establish all the elements of estafa under Article 315, paragraph 2(d) of the RPC. The CA ruled that it was Batac's representations that the checks were funded which induced Frias to buy them at a rediscounted rate, to his damage and prejudice; and that Batac's knowledge of the insufficiency of funds was clearly established by her express admission. The CA, however, modified the penalty imposed.

The dispositive portion of the CA decision reads:

> **WHEREFORE**, premises considered, the assailed Decision of the First Judicial Region, Regional Trial Court, Branch 56, San Carlos City, Pangasinan, in Criminal Case No. SCC-3026 is **AFFIRMED** with **MODIFICATION**. Accused-appellant Iluminada Batac is sentenced to an indeterminate penalty of imprisonment of 4 years and 2 months of *prision correccional* as minimum to 14 years, 8 months and 21 days of *reclusion temporal* as maximum.
>
> By way of restitution, Iluminada Batac is **ORDERED** to **PAY** the offended party, Roger L. Frias, the amount of one hundred three thousand five hundred [pesos] (Php103,500.00) plus six (6%) percent interest per annum, counting from the filing of this case, i.e., 25 March 1999 up to the time [o]ur Decision becomes final and executory.

---

[3] *Id.* at 26.

Thereafter, the amount due shall further earn interest at twelve (12%) percent per annum, until the obligation is satisfied. No pronouncement as to Costs.[4]

THE COURT'S RULING

The Court finds no merit in the present petition.

At the outset, in contending that she should not be criminally liable for estafa because it was Erlinda, and not Batac, who issued and delivered the subject checks as well as defrauded Frias, Batac raised a factual issue.

It must be noted that only questions of law may be raised in a petition for review on certiorari. The resolution of the issue must rest solely on what the law provides on the given set of circumstances.[5] If the issue invites a review of the evidence presented, such as the one posed by Batac, the question posed is one of fact.[6] While the Court has admitted exceptions to this rule,[7] it does not appear that any of those exceptions was alleged,

---

[4] *Id*. at 71-72.

[5] *Century Iron Works, Inc. v. Bañas*, 711 Phil. 576, 585-586 (2013).

[6] *Id*. at 586.

[7] *Pascual v. Burgos*, 776 Phil. 167, 182-183 (2016), where the Court, citing *Medina v. Mayor Asistio Jr.*, 269 Phil. 225, 232 (1990) reiterated the exceptions, *viz*:

(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;

substantiated, and proven by Batac. Thus, the factual findings of the courts *a quo* is binding upon this Court.[8]

Both the RTC and the CA correctly gave credence to Frias' testimony that Batac, together with Erlinda, personally met with him at his store and represented to him that the checks were funded. This was corroborated by his sister Ivy Luna Frias *(Ivy)*, who testified that she was present during the transaction in question and that the exchange between Batac and Frias, as narrated by the latter, was consistent with Ivy's recollection.[9]

To controvert Frias' positive identification, Batac merely offered the defense of denial, as in fact in her petition she merely insists that it was Erlinda, not she, who committed the crime, without laying any basis for such conclusion. The Court has held that "positive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical."[10] There is no reason to doubt the credibility of the identification made by Frias, as corroborated by Ivy.

Moreover, the finding by the RTC of such fact, especially since it has been affirmed by the CA, is binding upon this Court.

The identity of Batac as a party to the subject transaction having been established, the issue now is whether Batac's guilt for the crime of estafa under Article 315, paragraph 2(d) of the RPC has been proven beyond reasonable doubt, as provided as follows:

---

(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.

[8] *Id*. at 182.

[9] TSN, 19 January 2001, pp. 3-8.

[10] *People v. Anticamara*, 666 Phil. 484, 508 (2011).

2. By means of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

x x x x x x x x x

d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act.

Jurisprudence has consistently held that such estafa consists of the following elements: (1) the offender has postdated or issued a check in payment of an obligation contracted at the time of the postdating or issuance; (2) at the time of postdating or issuance of said check, the offender has no funds in the bank or the funds deposited are not sufficient to cover the amount of the check; and (3) the payee has been defrauded.[11]

It has been settled in jurisprudence that in the above-defined form of estafa, it is not the nonpayment of a debt which is made punishable, but the criminal fraud or deceit in the issuance of a check.[12] Deceit has been defined as "the false representation of a matter of fact, whether by words or conduct by false or misleading allegations or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury."[13]

In *People v. Reyes*,[14] the Court ruled that for estafa under the above provision to prosper, the issuance of the check must

---

[11] *Lopez v. People*, 578 Phil. 486, 491-492.

[12] *Id*. at 492.

[13] *Id*.

[14] 298 Phil. 661 (1993).

have been the inducement for the other party to part with his money or property, *viz*:

> To constitute estafa under this provision, the act of postdating or issuing a check in payment of an obligation must be the efficient cause of the defraudation; as such, it should be either prior to or simultaneous with the act of fraud. **The offender must be able to obtain money or property from the offended party because of the issuance of the check, whether postdated or not.** It must be shown that the person to whom the check was delivered would not have parted with his money or property were it not for the issuance of the check by the other party. Stated otherwise, **the check should have been issued as an inducement for the surrender by the party deceived of his money or property and not in payment of a pre-existing obligation**.[15] (emphasis and underlining supplied)

The prosecution sufficiently demonstrated Batac's deceit when it established that the latter induced Frias into buying the checks at a rediscounted rate by representing to him that she had enough funds in her account to cover them. In an effort to support her misrepresentation and further persuade Frias to believe her, Batac conveyed to him that she was a school teacher,[16] presumably as a guarantee of her good reputation. Batac also signed the postdated checks in Frias' presence,[17] presumably as a measure of good faith and an assurance that the signature therein was genuine. All these induced Frias to part with his money.

Further highlighting Batac's deceit was her knowledge, at the time she issued the subject checks, that she had no sufficient funds in her account to cover the amount involved. During trial, she expressly admitted that at the time she issued them, she only had a little over one thousand pesos in her account.[18] Moreover, when informed by Frias of the dishonor of the checks, Batac failed to pay the amounts thereon within the 5-day grace

---

[15] *Id*. at 669.

[16] TSN, 8 February 2000, pp. 13-20; TSN, 19 January 2001, pp. 3-8.

[17] *Id*.

[18] TSN, 1 December 2001, pp. 34-35.

period given to her by Frias, prompting him to file the instant case.[19]

There is thus no merit to Batac's contention that, at most, she can only be held liable for violation of B.P. Blg. 22. While sourced from the same act, i.e., the issuance of a check subsequently dishonored, estafa and violation of B.P. Blg. 22 are separate and distinct from each other because they pertain to different causes of action.[20] The Court has held that, among other differences, damage and deceit are essential elements for estafa under Article 315 2(d) of the RPC, but are not so for violation under B.P. Blg. 22, which punishes the mere issuance of a bouncing check, to wit:

> What petitioner failed to mention in his argument is the fact that deceit and damage are essential elements in Article 315 (2-d) [of the] Revised Penal Code, but are not required in Batas Pambansa Bilang 22. Under the latter law, mere issuance of a check that is dishonored gives rise to the presumption of knowledge on the part of the drawer that he issued the same without sufficient funds and hence punishable which is not so under the Penal Code. **Other differences between the two also include the following: (1) a drawer of a dishonored check may be convicted under Batas Pambansa Bilang 22 even if he had issued the same for a preexisting obligation, while under Article 315 (2-d) of the Revised Penal Code, such circumstance negates criminal liability; (2) specific and different penalties are imposed in each of the two offenses; (3) estafa is essentially a crime against property, while violation of Batas Pambansa Bilang 22 is principally a crime against public interest as it does injury to the entire banking system; (4) violations of Article 315 of the Revised Penal Code are mala in se, while those of Batas Pambansa Bilang 22 are mala prohibita**.[21] (emphasis and underlining supplied)

Batac attempts to punch holes in Frias' testimony by pointing out that the proceeds being claimed by the latter amounts to

---

[19] TSN, 8 February 2000, pp. 19-20.

[20] *Rimando v. Aldaba*, 745 Phil. 358, 364 (2014).

[21] *Id*.

₱103,500.00, the aggregate amount of the checks involved, when there should have been a rediscounting fee of 5%, casting doubt that there was a rediscounting transaction at all. No cloud of suspicion could be gathered from this fact alone. Frias has been defrauded of the aggregate amount of the checks she had issued, as this was the amount Frias expected to secure from the transaction: precisely, he was induced to buy the subject checks by the guarantee that he would obtain the amounts stated therein on the dates so stated, but at a price lower than the aggregate amounts on the date of the subject transaction with Batac. The aggregate amount therein is the subject of Batac's deceit and the amount of which Frias was defrauded.

As previously discussed, Batac's deceit and the damage to Frias in the subject transaction have been duly proven by the former's own admissions and the clear, credible, and positive testimonies of the prosecution witnesses, to which Batac offered no sufficient refutation but a mere denial. Accordingly, her conviction for estafa must be upheld.

The penalty imposed by the CA, however, must be modified in view of the amendments embodied in R.A. No. 10951, to wit:

> Section 85**.** Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:
>
> > Art. 315. *Swindling (estafa).*— Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
> >
> > > 1st. The penalty of *prisión correccional* in its maximum period to *prisión mayor* in its minimum period, if the amount of the fraud is over Two million four hundred thousand pesos (₱2,400,000) but does not exceed Four million four hundred thousand pesos (₱4,400,000), and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional Two million pesos (₱2,000,000); but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in

> connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prisión mayor* or *reclusion temporal*, as the case may be.
>
> 2nd. The penalty of *prisión correccional* in its minimum and medium periods, if the amount of the fraud is over One million two hundred thousand pesos (₱1,200,000) but does not exceed Two million four hundred thousand pesos (₱2,400,000).
>
> 3rd. **The penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum period, if such amount is over Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000)**. (emphasis and underlining supplied)
>
> 4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed Forty thousand pesos (₱40,000): *Provided*, That in the four cases mentioned, the fraud be committed by any of the following means:
>
> x x x x x x x x x

Considering that the amount involved in the subject transaction is ₱103,500.00, the proper imposable penalty is *arresto mayor* in its maximum period to *prision correccional* in its minimum period. This has a range of 4 months and 1 day to 2 years and 4 months, with a minimum period of 4 months and 1 day to 1 year, a medium period of 1 year and 1 day to 1 year and 8 months, and a maximum period of 1 year, 8 months and 1 day to 2 years and 4 months.

Applying the Indeterminate Sentence Law *(ISL)*, the minimum term, which is left to the sound discretion of the court,[22] should be within the range of the penalty next lower than the aforementioned penalty, which is left to the sound discretion of the court.[23] The penalty next lower is *arresto mayor* in its minimum and medium periods, with a range of 1 month and 1

---

[22] *Vasquez v. People*, 566 Phil. 507, 513 (2008).

[23] Indeterminate Sentence Law, Section 1.

day to 4 months. The Court now fixes the minimum at 4 months. On the other hand, the maximum term is that which, in view of the attending circumstances, could be properly imposed under the RPC rules.[24] Under Article 64 of the RPC, the penalty prescribed shall be imposed in its medium period when there are neither aggravating nor mitigating circumstances. Since none of these circumstances are attendant in the case at bar, the maximum term is the medium period of *arresto mayor* maximum to *prision correccional* minimum, at 1 year and 1 day to 1 year and 8 months.

In line with current policy,[25] the Court also modifies the rate of interest imposed by the CA. Such interest shall be imposed at the legal rate of six percent (6%) per annum on the monetary award, from the date of finality of this Decision until fully paid.

WHEREFORE, the 6 November 2009 Decision of the Court of Appeals in CA-G.R. CR No. 29462 is **MODIFIED** with respect to the penalty imposed on petitioner Iluminada Batac. The indeterminate sentence imposed on petitioner Iluminada Batac is hereby reduced to 4 months of *arresto mayor*, as minimum, and 1 year and 8 months of *prision correccional*, as maximum. The monetary award shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Resolution until fully paid.

In all other respects, the Decision of the Court of Appeals is **AFFIRMED.**

SO ORDERED.

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

---

[24] *Id*.

[25] *People v. Jugueta*, 783 Phil. 806, 854 (2016) citing *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

THIRD DIVISION

[G.R. No. 199625. June 6, 2018]

JEROME R. CANLAS, *petitioner, vs.* **GONZALO BENJAMIN A. BONGOLAN, ELMER NONNATUS A. CADANO, MELINDA M. ADRIANO, RAFAEL P. DELOS SANTOS, CORAZON G. CORPUZ, DANILO C. JAVIER, and JIMMY B. SARONA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; THE POWER OF THE OMBUDSMAN TO ACT ON AN ADMINISTRATIVE COMPLAINT BY A PERSON WITHOUT ANY PERSONAL INTEREST IN THE CASE IS DISCRETIONARY.— The Ombudsman was given the power to evaluate an administrative complaint even though the complainant does not have a personal interest in the case. Under Article XI, Section 12 of the 1987 Constitution, the Ombudsman has the power to act on any complaint against those in public service x x x. In line with this constitutional mandate, Section 15(1) of Republic Act No. 6770 states [that] x x x no matter the identity of the complainant, the Ombudsman may act on the matter. Moreover, it may, on its own, inquire into illegal acts of public officials, which may be discovered from any source. For administrative complaints, x x x [h]owever, if the "the complainant has no sufficient personal interest in the subject matter of the grievance," the Ombudsman may choose *not* to investigate the administrative act complained of. x x x Section 20 of Republic Act No. 6770 uses the word "may" which signifies that it is permissive and not imperative. The power of the Ombudsman to act on an administrative complaint by a person without any personal interest in the case is, thus, discretionary. x x x Thus, the Ombudsman may prosecute or investigate the complaint with or without the complainant's personal interest in the outcome of the case. x x x The Ombudsman's power stems from its role as the "protector of the people," constitutionally vested with a duty to enforce laws against graft

and corrupt practices committed by public officials and employees.

2. ID.; ID.; ID.; THE FILING OF CASES TO THE OMBUDSMAN AGAINST PUBLIC OFFICERS BY ANY COMPLAINANT IS ALLOWED TO UPHOLD THE PRINCIPLE THAT PUBLIC OFFICE IS A PUBLIC TRUST.— The State interest being upheld here is the principle that public office is a public trust. Public officers and employees are given duties and powers pertinent to sovereignty, which they hold in trust for, and exercise in behalf of, the public. Thus, they are expected to uphold public interests. As such, they are held to higher standards not usually required of ordinary citizens to keep the faith of the people in the State. That is why in case of administrative offenses, it is the character of the public officers or employees that is looked into. The objective is not so much as to penalize an erring officer or employee, but to improve public service and preserve the trust and confidence of the people in our government. Thus, the law allows the filing of cases to the Ombudsman against public officers by any complainant. The Ombudsman is a tool to maintain this faith. However, this particular State interest must also be balanced with two (2) other State interests, which arise after the filing of a case against a public officer or employee: (i) the State interest in affording due process to all persons; and (ii) the State interest in assuring efficiency of government functions, particularly through the protection of its officers from harassment.

3. ID.; ID.; ID.; FINALITY AND EXECUTION OF DECISION; THE OMBUDSMAN'S DECISION MAY NOT BE APPEALED IF IT DISMISSES THE COMPLAINT OR IMPOSES THE PENALTY OF PUBLIC CENSURE OR REPRIMAND, SUSPENSION OF NOT MORE THAN ONE MONTH, OR A FINE EQUIVALENT TO ONE MONTH SALARY.— While public office is a public trust, public officers must not be exposed to continued and persistent lawsuits that can derail their ability to discharge their duties once it has been found that there is no substantial evidence of their guilt. The effective administration of the State's policies is of paramount importance, which should not be hampered by time-consuming, baseless, and repetitive suits. Thus, if there is a clear finding, supported by substantial evidence, that the public officer is

not guilty of the charges, this finding must be given great weight and must be respected. Therefore, not all may appeal to question a decision of the Ombudsman. In administrative cases filed under the Civil Service Law, an allowed appeal may only be brought by the party adversely affected by the decision. x x x Thus, the Ombudsman's decision may not be appealed if it dismisses the complaint or imposes the penalty of public censure or reprimand, suspension of not more than one (1) month, or a fine equivalent to one (1)-month salary. Otherwise, it may be appealed to the Court of Appeals under the requirements and conditions set forth in Rule 43 of the Rules of Court. x x x In the case at bar, the Office of the Ombudsman's October 12, 2010 Decision exonerated respondents. Thus, Canlas has no right to appeal this Decision. He has no other recourse. "The right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law. There must then be a law expressly granting such right." x x x [I]n determining whether the Office of the Ombudsman's October 12, 2010 Decision is appealable, the deciding factor is the *penalty imposed by the Ombudsman in the decision itself*. It is not determined by the penalty imposed for the offense as provided under the law. Thus, even if grave misconduct is punishable by dismissal under the rules, it is the decision that determines whether it is appealable or unappealable to the higher courts. If the Ombudsman finds that respondents are not guilty and imposes no penalty, the decision is unappealable.

4. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; PARTIES IN INTEREST; A REAL PARTY IN INTEREST IS ONE WHO IS ENTITLED TO THE RELIEF PRAYED FOR, OR ONE WHO WILL BENEFIT OR BE INJURED BY THE RESULTS OF THE SUIT.— Considering there is no law allowing Canlas to appeal, he has no right to appeal. This absence of a right to appeal affects Canlas' legal standing in this case. He is not a party entitled to the relief prayed for, or one who will benefit or be injured by the results of the suit. *Locus standi* is "a right of appearance in a court of justice . . . on a given question." In civil, criminal, and administrative cases, standing is governed by Rule 3, Section 2 of the Rules of Court x x x. Standing depends

on a party's right to the relief prayed for. This party must be entitled to the relief before he or she may file a suit. The party affected by the judgment in the suit or entitled to the relief prayed for must pursue the action.

5. ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; QUESTIONS OF FACT CANNOT BE RAISED THEREIN.— Canlas is raising a question of fact, which is not proper in a Rule 45 Petition. Only questions of law may be raised in a petition for review under Rule 45. Questions of fact will not be entertained by this Court, as it is not its function to analyze and weigh evidence all over again. x x x Canlas is bringing into issue the correct fair market value of the properties, which is a question of fact. It requires the examination and the weighing of evidence to determine the value of the properties. Such a question cannot be raised in a Petition for Review on Certiorari under Rule 45. This Court has laid down exceptions to this rule x x x. However, for this Court to take cognizance of Canlas' Petition, he must prove, not merely assert, that any of x x x [the] exceptions is present in this case. He has the burden to show that a re-examination of facts is needed. Absent this proof, this Court will not entertain factual issues.

6. ID.; ID.; ID.; WHEN THE OMBUDSMAN'S FINDINGS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE AND AFFIRMED BY THE COURT OF APPEALS, THE SUPREME COURT NEED NOT REVIEW OR REEVALUATE THE EVIDENCE.— [T]he Ombudsman's factual findings are binding and conclusive when supported by substantial evidence x x x [, pursuant to] Republic Act No. 6770 x x x. The Ombudsman's factual findings are accorded great weight and respect. x x x This rule applies even more so when the findings are affirmed by the Court of Appeals. x x x Thus, if the Ombudsman's findings are supported by substantial evidence and affirmed by the Court of Appeals, this Court need not review or reevaluate the evidence.

7. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; CORPORATIONS; BOARD OF DIRECTORS; EXERCISES ALL THE CORPORATION'S POWERS, CONDUCTS ALL ITS BUSINESS, AND CONTROLS ALL ITS PROPERTIES.— Home Guaranty is

governed by its Board of Directors, which directs, controls, and manages its activities. The decisions of the Board of Directors are arrived at by a majority vote of its members. x x x It is even the Board of Directors that approves the standard terms and conditions in a Contract of Guaranty to be executed by Home Guaranty x x x. Thus, it was the Board of Directors that had the power to decide whether the properties were to be sold and at what price. As a government-owned and -controlled corporation, Home Guaranty is also governed by Republic Act No. 10149. Under Section 30 of Republic Act No. 10149, the Corporation Code applies suppletorily to government-owned and -controlled corporations x x x. Section 23 of the Corporation Code necessarily applies. It provides that the Board of Directors of a corporation exercises all the corporation's powers, conducts all its business, and controls all its properties. Thus, it is Home Guaranty's Board of Directors that is primarily responsible for the sale.

8. **ID.; ID.; ID.; ID.; SEPARATE JURIDICAL PERSONALITY; CANNOT BE INVOKED WHEN USED TO DEFEAT PUBLIC CONVENIENCE, JUSTIFY WRONG, PROTECT FRAUD, OR DEFEND A CRIME.—** Officers who supervise and manage the corporation's affairs, such that they are responsible for the commission of the offense, cannot escape criminal or administrative liability by invoking the separate and distinct personality of the corporation. The party who will be meted the penalty is the public officer or employee who is guilty of the administrative offense. This is consistent with the principle that when the separate juridical personality of a corporation is used "to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons."

9. **CRIMINAL LAW; VIOLATION OF REPUBLIC ACT NO. 3019, SECTION 3; CORRUPT PRACTICES OF PUBLIC OFFICERS; WHETHER OR NOT A PERSON IS A DIRECTOR OR AN OFFICER OF A CORPORATION, SO LONG AS HE IS THE PARTY RESPONSIBLE FOR THE OFFENSE, HE IS THE PARTY OUGHT TO BE CHARGED.—** [I]n Republic Act No. 3019, it is clear that the party that is penalized is the *public officer* who commits any of the corrupt practices enumerated under Section 3. A "public

officer" includes "elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government." In this particular case, the offense charged is against *public officers* who, on behalf of the government, allegedly entered into a contract or transaction manifestly and grossly disadvantageous to the government. Thus, it does not distinguish whether the public officer is a director or a mere employee. x x x Clearly, whether or not a person is a director or an officer of a corporation, so long as he or she is the party responsible for the offense, he or she is the party that ought to be charged.

10. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; GRAVE MISCONDUCT; CHARACTERIZED BY THE ELEMENT OF CORRUPTION AND A CLEAR INTENT TO FLAGRANTLY DISREGARD AN ESTABLISHED RULE OR VIOLATE THE LAW.— "Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." To be considered grave misconduct, the transgression must have been committed in bad faith. Malice is a necessary element in the offense of grave misconduct. x x x It is the element of corruption and a clear intent to flagrantly disregard an established rule or violate the law that characterizes grave misconduct. If there are no ill or selfish motives, the act cannot qualify as grave misconduct. These elements must be proven by substantial evidence.

11. CRIMINAL LAW; VIOLATION OF REPUBLIC ACT NO. 3019, SECTION 3; CORRUPT PRACTICES OF PUBLIC OFFICERS; TO BE FOUND GUILTY THEREOF, THE LAW REQUIRES THAT THE CONTRACT MUST BE GROSSLY AND MANIFESTLY DISADVANTAGEOUS TO THE GOVERNMENT OR THAT IT BE ENTERED INTO WITH MALICE.— This Court x x x rules that respondents cannot be held liable under Section 3(g) of Republic Act No. 3019 x x x. In *Froilan v. Sandiganbayan*, this Court enumerated the elements of the offense as follows: "(a) that the accused is a public officer; (b) that he [or she] entered into a contract or transaction on behalf of the government; and (c) that such contract

or transaction is grossly and manifestly disadvantageous to the government." In the case at bar, respondents held a public bidding twice before it agreed to the bid price of Wong. The price falls within the amount that it is authorized to sell. They also sought the clearance of the Office of the Government Corporate Counsel before pushing through with the sale. Their acts show that they exercised due diligence and sound business judgment before executing the sale. There is likewise no showing that they violated any rule or process in granting the sale of the properties to Wong. And although it is not an element to the offense, the sale does not seem to be tainted with any partiality, bad faith, or negligence. The law requires that the contract must be grossly and manifestly disadvantageous to the government or that it be entered into with malice. It does not find guilt on the mere entering of a contract by mistake. Thus, it cannot be said that the contract was grossly disadvantageous to the government.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas Law Office for petitioner.

Elmer Nonnatus Adan Cadano for himself & Melinda M. Adriano, *et al.*

Kapunan Imperial Panaguiton & Bongolan for Gonzalo Benjamin Bongolan.

Danilo C. Javier for himself & Rafael P. Delos Santos.

D E C I S I O N

LEONEN, *J.*:

The exoneration of public officers by the Ombudsman in a charge alleging grave misconduct and a violation of Republic Act No. 3019, Section 3(g) is generally unappealable. Furthermore, any appeal to the Supreme Court from such a case cannot be initiated by one who does not stand to be benefited or injured by the results of the suit.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, assailing the Court of Appeals August 11,

[1] *Rollo*, pp. 8-28.

2011 Decision[2] and November 29, 2011 Resolution[3] in CA-G.R. SP No. 119352. The assailed Decision affirmed the Office of the Ombudsman's October 12, 2010 Decision,[4] which dismissed the administrative complaint[5] for grave misconduct and violation of Section 3(g) of Republic Act No. 3019 filed by Jerome R. Canlas (Canlas). The assailed Resolution denied[6] Canlas' Motion for Reconsideration.[7]

On March 19, 1993, the National Housing Authority and R-II Builders, Inc. (R-II) executed a Joint Venture Agreement to implement the Smokey Mountain Development and Reclamation Project (the Project), with the former as government implementing agency and the latter as developer.[8]

The Project sought to convert the former Smokey Mountain Dumpsite into habitable housing with commercial and industrial development and to reclaim the property adjacent to Smokey Mountain as its enabling component.[9] The Manila Harbour

---

[2] *Id.* at 30-54. The Decision was penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Rebecca De Guia-Salvador and Sesinando E. Villon of the Fifth Division, Court of Appeals, Manila.

[3] *Id*. at 56-58. The Resolution was penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Rebecca De Guia-Salvador and Sesinando E. Villon of the Former Fifth Division, Court of Appeals, Manila.

[4] *Id*. at 91-113. The Decision, docketed as OMB-C-A-09-0634-K, was signed by Graft Investigation & Prosecution Officer II Francisca A. Maullon-Serfino, reviewed by GIPO III, Acting Director, PIAB-C Aleu A. Amante, recommended for approval by Acting Assistant Ombudsman, PAMO Mary Susan S. Guillermo, and approved by Ombudsman Ma. Merceditas N. Gutierrez.

[5] *Id*. at 129-134.

[6] *Id*. at 58.

[7] *Id*. at 60-71.

[8] *Id*. at 34.

[9] *Id*. at 35.

Centre Port Terminal, Inc. (Harbour Centre) is covered by the Project.[10]

Aside from being the developer, R-II was also responsible for sourcing the funding for the Project's Phase 1 through securitization, or the issuance of secured instruments backed by assets. To support the Project's securitization and to make the security instruments more appealing to investors, National Housing Authority and R-II engaged Home Guaranty Corporation (Home Guaranty) to act as guarantor.[11]

Home Guaranty is a government-owned and -controlled corporation duly organized and existing by virtue of Republic Act No. 8763. It is mandated to guarantee payment of "all forms of mortgages, loans and other forms of credit facilities and receivables arising from financial contracts exclusively for residential purposes and the necessary support facilities."[12] Republic Act No. 8763 provides that Home Guaranty is governed by its Board of Directors, which directs, controls and manages its activities.[13]

On September 26, 1994, National Housing Authority, R-II, Home Guaranty, and the Philippine National Bank entered into the Smokey Mountain Asset Pool Formation Trust Agreement (Trust Agreement),[14] which provided for the mechanics to implement the Joint Venture Agreement. The Trust Agreement was amended many times until June 9, 2000.[15]

In the Trust Agreement, the parties agreed to employ the "asset-backed securitization method" to finance the Project.[16]

---

[10] *Id*. at 31.

[11] *Id*. at 35.

[12] Rep. Act No. 8763, Chap. II, Sec. 5(b).

[13] Rep. Act No. 8763, Sec. 8.

[14] *Rollo*, pp. 235-262. Re-stated Smokey Mountain Asset Pool Formation Trust Agreement.

[15] *Id.* at 35.

[16] *Id*.

Under this method, Philippine National Bank, as the trustee of the asset pool, would issue to investors Regular Smokey Mountain Asset Pool Participation Certificates (Participation Certificates). These Participation Certificates were subject to government redemption and interest, and were guaranteed by Home Guaranty.[17] The assets in the asset pool were used as securities for the Participation Certificates.[18]

On the same day they executed the Trust Agreement, the parties also executed a Contract of Guaranty.[19] Under the Contract of Guaranty, the trustee of the asset pool was authorized to execute a Deed of Assignment and Conveyance of the entire asset pool in favor of Home Guaranty should the latter be called to pay the total outstanding value of the matured Participation Certificates.[20]

On October 24, 2002, the Participation Certificates matured. At this point, Planters Development Bank (Planters Bank) had become the trustee.[21]

Because of the asset pool's inability to pay for the Participation Certificates, Planters Bank called on Home Guaranty's guaranty.[22]

On February 6, 2003, Home Guaranty's Board of Directors approved the call. R-II did not object to it.[23]

Thus, on July 30, 2004,[24] Planters Bank transferred the entire asset pool properties to Home Guaranty through a Deed of Assignment and Conveyance.[25]

---

[17] *Id*.

[18] *Id.* at 34; *rollo*, p. 836, Cadano, Adriano, Corpuz, and Sarona's Memorandum.

[19] *Id*. at 263-268.

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

[21] *Id*. at 36.

[22] *Id*.

[23] *Id*.

[24] *Id*.

[25] *Id*. at 271–273.

To recover its exposure, Home Guaranty published a Notice of Sale[26] on July 21, 2006 in the Philippine Daily Inquirer, seeking to sell the properties in the asset pool.[27]

In response to this Notice of Sale, Alfred Wong King Wai (Wong) proposed to purchase two (2) lots in the asset pool located in Manila Harbour Centre, covered by Transfer Certificate of Title (TCT) Nos. 233421 and 233422 with a combined area of 28,926 square meters.[28]

Wong offered to pay ₱14,000.00 per square meter. However, this price was reduced to ₱13,300.00 per square meter because Home Guaranty allowed a 5% cash discount as an incentive for spot cash purchases.[29]

Home Guaranty's Board of Directors deferred action on Wong's proposal. It again published another Notice of Sale on October 22, 2006.[30] However, no one else came forward with a proposal. [31]

Home Guaranty referred Wong's proposal for review to the Office of the Government Corporate Counsel, which gave a favorable opinion.[32]

Thus, on July 21, 2008, Home Guaranty sold[33] the lots to Wong for ₱384,715,800.00, or ₱13,300.00 per square meter.[34] Wong

---

[26] *Id*. at 274.

[27] *Id*. at 36.

[28] *Id*. at 31 and 36.

[29] *Id*. at 36-37; *rollo*, p. 334, Office Order No. 066, Series of 2004, or its Revised Disposition Guidelines. *See rollo*, pp. 661-662 where the Office of the Ombudsman's October 12, 2010 Resolution found that 5% discount was given by Home Guaranty for spot cash transactions but this could reach up to 15%.

[30] *Id*. at 275.

[31] *Id*. at 37.

[32] *Id*.

[33] *Id*. at 135-138.

[34] *Id*. at 661-662.

designated La Paz Milling Corporation (La Paz) as his agent.[35] TCT Nos. 283618 and 283619 were issued in place of TCT Nos. 233421 and 233422, respectively.[36]

On October 16, 2009, Canlas filed a Complaint-Affidavit[37] before the Office of the Ombudsman against Home Guaranty's officers, namely, President Gonzalo Benjamin A. Bongolan (Bongolan), Executive Vice President Elmer Nonnatus A. Cadano (Cadano), Vice President of Guaranty Melinda M. Adriano (Adriano), Vice President of Asset Management Rafael P. Delos Santos (Delos Santos), Vice President of Corporate Services Corazon G. Corpuz (Corpuz), Vice President of Legal Danilo C. Javier (Javier), and Vice President of Management Services Jimmy B. Sarona (Sarona) (collectively Home Guaranty Officers).[38]

Canlas claimed that the Home Guaranty Officers were guilty of grave misconduct and of entering into a contract grossly disadvantageous to the government under Section 3(g) of Republic Act No. 3019.[39] He alleged that the lots were sold below their actual or appraised fair market value,[40] and that the government suffered damages in the amount ranging from ₱121,489,200.00 to ₱309,508,200.00.[41]

Canlas compared the purchase price of the sold lots to the prices of other properties in the same area.[42] He alleged that in 1999, Philippine National Bank sold an adjoining ₱20,000-square-meter lot for ₱440,000,000.00, or for ₱22,000.00 per square

---

[35] *Id*. at 31 and 37.

[36] *Id*. at 926-929.

[37] *Id*. at 129-134.

[38] *Id*. at 65, Complaint-Affidavit.

[39] *Id*. at 33 and 133.

[40] *Id*. at 32 and 132.

[41] *Id*. at 33 and 132.

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

meter. Based on this, the sold lots allegedly should have been worth at least ₱636,372,000.00 as of January 1999.[43]

Canlas also cited that in 2001, National Housing Authority sold an adjoining ₱15,000-square-meter lot for ₱262,500,000.00, or for ₱17,500.00 per square meter.[44] Based on this, Canlas asserted that the sold lots should have been worth at least ₱506,205,000.00 as of August 2001.[45]

Canlas emphasized that in 2009, Planters Bank offered to sell three (3) adjacent lots for ₱20,000.00 per square meter.[46]

Moreover, Canlas presented an Appraisal Report[47] dated July 2008 prepared by EValue Philippines, Inc. (EValue), which concluded that four (4) adjoining lots inside Harbour Centre had a fair market value of ₱24,000.00 per square meter.[48] Based on this, he asserted that the sold lots should have been worth at least ₱694,224,000.00.[49]

Canlas claimed that these prices were substantially higher than the purchase price of ₱384,715,800.00. [50]

In determining responsibility, Canlas asserted that the Home Guaranty Officers should be particularly liable. Bongolan allegedly "arranged, facilitated, authorized, and approved the execution of the [D]eed of [S]ale."[51] Javier and Delos Santos signed the Deed of Sale for and in behalf of Home Guaranty. The rest of the Home Guaranty Officers facilitated the execution.[52]

---

[43] *Id*. at 32.

[44] *Id*.

[45] *Id*.

[46] *Id*.

[47] *Id*. at 164-197.

[48] *Id*. at 32-33. The CA Decision referred to EValue as EValue Plus, Inc. instead of EValue Philippines, Inc.

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

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

[51] *Id*. at 31.

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

On the other hand, the Home Guaranty Officers, in their respective counter-affidavits, argued that Home Guaranty acted within its mandate to guaranty loans and investment projects related to housing.[53] They explained that when Home Guaranty acquired the asset backing or collateral of the loan, it disposed of it to recover its payment, replenish its funds, and maintain its financial stability.[54]

The Home Guaranty Officers contended that the disposition of these properties was covered by Home Guaranty's Office Order No. 66,[55] or the Revised Disposition Guidelines (Disposition Guidelines).[56] They argued that they followed the Disposition Guidelines when they published the Notice of Sale twice.[57] They also sought the favorable opinion of the Office of the Government Corporate Counsel before executing the sale.[58]

They asserted that the sale was not grossly disadvantageous to the government because the purchase price exceeded the latest zonal valuation of the property, which was ₱9,750.00 per square meter.[59] The purchase price also allegedly exceeded its Minimum Disposition Value under the Effective Return Method and the Severity of Loss Method, which was the benchmark used by Home Guaranty under the Disposition Guidelines.[60]

Corpuz, Sarona, and Adriano also compared the sale price to other sales in the Manila Harbour Centre area and argued that the purchase price was at par with or was even higher than other sales. Other sales allegedly sold properties for ₱6,072.44

---

[53] *Id.* at 33.

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

[55] *Id.* at 332-342.

[56] *Id.* at 99.

[57] *Id.* at 100.

[58] *Id.*

[59] *Id.* at 101-103.

[60] *Id.*

per square meter in 2002, ₱6,000.00 per square meter in 2004, and ₱8,000.00 per square meter in 2007. They pointed out that the property sold at ₱8,000.00 per square meter was bought for a price of ₱16,450.00 per square meter in 1997. They insisted that the offer to sell at ₱20,000.00 per square meter cited by Canlas was merely an asking price which was still subject to negotiations. They further claimed that the Appraisal Report by EValue was not sufficient basis for the purchase price because it was based on asking prices, interviews, or consensus which were unsubstantiated opinions, unsupported by documents.[61]

Corpuz, Sarona, and Adriano further pointed out that Canlas was an officer of R-II and Harbour Centre, which had been filing unfounded cases against Home Guaranty to prevent it from recovering its exposure.[62]

Javier and Delos Santos argued that Home Guaranty was fortunate enough to have sold the properties despite lack of interested buyers, Harbour Centre's illegal stocking of iron and coal piles in the area, and R-II's failure to deliver road concreting and complete electrical facilities. They also showed that Harbour Centre offered to purchase the property for only ₱12,000.00 per square meter.[63]

For their individual defenses, Bongolan argued that he was not a signatory to the sale.[64] Cadano argued that he did not participate in the sale because he only joined Home Guaranty on September 1, 2008, which was after the sale's execution on July 21, 2008.[65] Corpuz, Sarona, and Adriano asserted that the sale was a corporate act and that they had no authority to bind Home Guaranty.[66] Javier and Delos Santos contended that although they signed the Deed of Sale, they did so pursuant to

---

[61] *Id*. at 103-105.

[62] *Id*. at 105-106.

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

[64] *Id*. at 100.

[65] *Id*. at 102.

[66] *Id*. at 103.

Home Guaranty's Board of Directors' Resolution No. 55-2006, which authorized them to sign the document in case of the absence of Home Guaranty's President.[67]

In the Office of the Ombudsman's October 12, 2010 Decision,[68] the complaint was dismissed for lack of proof that the questioned transaction was disadvantageous to the government. It found that the Home Guaranty Officers were not directly responsible for the sale, as it was the Board of Directors that was liable.[69] It noted that there was no evidence showing that any other offer was made for the purchase of the properties.[70] Thus, the fair market value of the adjacent properties alleged by Canlas was merely speculative.[71]

Canlas elevated the matter to the Court of Appeals[72] after the Office of the Ombudsman denied his Motion for Reconsideration[73] in its December 29, 2010 Order.[74]

In its August 11, 2011 Decision,[75] the Court of Appeals affirmed the finding of the Office of the Ombudsman and dismissed the appeal.

The Court of Appeals found that it was Home Guaranty's Board of Directors, which approved the sale. Thus, the Home Guaranty Officers were duty bound to implement and execute this action. It also ruled that Home Guaranty was a juridical entity with a legal personality separate and distinct from those acting on its behalf.[76]

---

[67] *Id*. at 107.
[68] *Id*. at 91-113.
[69] *Id*. at 110.
[70] *Id*. at 112.
[71] *Id*. at 111.
[72] *Id*. at 73-90.
[73] *Id*. at 120-128.
[74] *Id*. at 114-119.
[75] *Id*. at 30-54.
[76] *Id*. at 42-43.

The Court of Appeals also noted that two (2) notices of sale were published. Only Wong made an offer after the first notice. No similar offer was made after the second notice. Home Guaranty then referred the matter to the Office of the Government Corporate Counsel and only after the latter allowed the sale to Wong did Home Guaranty approve the proposal.[77]

It also noted that the latest zonal value of the lots was only ₱9,750.00 per square meter, and were worth ₱11,668.49 per square meter using the Net Effective Return Method and ₱5,273.76 using the Severity of Loss Method.[78]

It also ruled that there was no evidence showing that Home Guaranty was impelled by bad faith when it agreed to the proposed purchase price.[79] Likewise, it held that "[c]ourts cannot interfere with executive or legislative discretion exercised within constitutional limits."[80]

It also found that Canlas was a stranger to the contract and had no right to dictate the parameters under which the contracting parties may determine price.[81]

Thus, the Court of Appeals denied Canlas' appeal and thereafter, his Motion for Reconsideration[82] in its November 29, 2011 Resolution.[83]

Canlas then filed this Petition before this Court on February 8, 2012.[84]

---

[77] *Id*. at 47.

[78] *Id*. at 47.

[79] *Id*. at 48.

[80] *Id*. at 52.

[81] *Id*. at 53.

[82] *Id*. at 60-71.

[83] *Id*. at 56-58.

[84] *Id*. at 8.

Canlas reiterates his claim that the purchase price of ₱384,715,800.00 was significantly below the properties' fair market value, which allegedly amounted to around ₱506,205,000.00 to ₱694,224,000.00. He again uses as basis the purchase prices in the years 1999 and 2001 of adjacent properties, the current sale offers, and the independent appraisal of EValue.[85]

Canlas insists that the contract was grossly disadvantageous to the government considering that the government suffered damages in at least ₱121,489,200.00 to ₱309,508,200.00.[86] He argues that the Bureau of Internal Revenue's zonal valuation is not the proper basis to determine the properties' fair market value.[87]

He further argues that respondents' lack of bad faith, malice, or profit is immaterial to prove a violation under Section 3(g) of Republic Act No. 3019.[88]

Canlas further insists that respondents are guilty of misconduct as they admitted to directly participating in the implementation and execution of the sale on behalf of Home Guaranty, despite knowing that it was grossly disadvantageous to the government.[89]

Canlas further claims that although a corporation has a separate and distinct personality from its stockholders, directors, and officers, those who participated in the commission of the corporation's crime may be held liable for the crime.[90]

Respondents filed their Comments.[91]

---

[85] *Id*. at 11-13.

[86] *Id*. at 17.

[87] *Id*. at 18.

[88] *Id*. at 20.

[89] *Id*. at 22-23.

[90] *Id*. at 24.

[91] *Id*. at 604-625. Adriano, Cadano, Corpuz, and Sarona's Comment/Opposition; *rollo*, pp. 626-652, Bongolan's Comment; *rollo*, pp. 684-725, Javier and Santos' Comment.

They question the standing of Canlas to file the Petition.[92] They emphasize that the decision of the Ombudsman is unappealable as exoneration is included under Section 27 of Republic Act No. 6770 and Rule III, Section 7 of Administrative Order No. 07, as amended by Administrative Order No. 17-03.[93]

They further argue that the purchase price was reasonable and the contract was not grossly disadvantageous to the government.[94] They insist that the government did not suffer any loss in the sale of the properties.[95]

The also allege that the sale was within the powers of Home Guaranty and that it was necessary to maintain its financial stability.[96] They aver that since Home Guaranty had the authority to sell the properties to recover its guaranty exposure, it had the discretion to determine whether or not the proposed purchase price was fair and reasonable.[97] It follows then that courts cannot interfere with the discretion of other branches of government exercised within constitutional limits.[98]

Respondents further assert that the sale enjoys the presumption of regularity and that Canlas failed to rebut this presumption.[99] They point out that the acts of the Board of Directors are presumed regular as the directors were appointed by the President of the Philippines, and they act as the latter's alter ego.[100]

---

[92] *Id*. at 869-870.

[93] *Id*. at 866-868.

[94] *Id*. at 817, Bongolan's Memorandum; *rollo*, p. 830, Cadano, Adriano, Corpuz, and Sarona's Memorandum; *rollo*, p. 877, Javier and Delos Santos' Memorandum.

[95] *Id*. at 818, Bongolan's Memorandum.

[96] *Id*. at 881, Javier and Delos Santos' Memorandum; *rollo*, pp. 836-837, Cadano, Adriano, Corpuz, and Sarona's Memorandum.

[97] *Id*. at 832, Cadano, Adriano, Corpuz, and Sarona's Memorandum.

[98] *Id*. at 833-834, Cadano, Adriano, Corpuz, and Sarona's Memorandum.

[99] *Id*. at 833, Cadano, Adriano, Corpuz, and Sarona's Memorandum; *rollo*, p. 872, Javier and Delos Santos' Memorandum.

[100] *Id*. at 872, Javier and Delos Santos' Memorandum.

In any case, the sale was an act of Home Guaranty's Board of Directors.[101] Respondents merely implemented and acted in accordance with a lawful directive of the Board of Directors.[102]

Furthermore, they assert that the procedure they followed in selling the properties was in accordance with Home Guaranty's mandate, function, and the requirements of due diligence.[103]

They also insist that they cannot be held liable for gross misconduct as Canlas failed to prove their bad faith.[104]

They further claim that the suit is a harassment suit at the instance of R-II, which has been filing cases to protect its interest in the asset pool and in the sold properties.[105]

Canlas filed a Consolidated Reply.[106]

Thereafter, the parties submitted their respective Memoranda.[107]

For resolution are the following issues:

First, whether or not Jerome R. Canlas has the legal standing to file the administrative case;

---

[101] *Id*. at 817, Bongolan's Memorandum.

[102] *Id*. at 821, Bongolan's Memorandum; *rollo*, pp. 837-838, Cadano, Adriano, Corpuz, and Sarona's Memorandum; *rollo*, pp. 873-874, Javier and Delos Santos' Memorandum.

[103] *Id*. at 820, Bongolan's Memorandum; *rollo*, p. 835, Cadano, Adriano, Corpuz, and Sarona's Memorandum; *rollo*, p. 885, Javier and Delos Santos' Memorandum.

[104] *Id*. at 832, Cadano, Adriano, Corpuz, and Sarona's Memorandum; *rollo*, p. 821, Bongolan's Memorandum; *rollo*, p. 876, Javier and Delos Santos' Memorandum.

[105] *Id*. at 822, Bongolan's Memorandum; *rollo*, p. 843, Cadano, Adriano, Corpuz, and Sarona's Memorandum; *rollo*, p. 886, Javier and Delos Santos' Memorandum.

[106] *Id*. at 782-793, Canlas' Consolidated Reply.

[107] *Id*. at 802-825, Bongolan's Memorandum; *rollo,* pp. 826-848, Cadano, Adriano, Corpuz, and Sarona's Memorandum; *rollo,* pp. 849-889, Javier and Delos Santos' Memorandum; *rollo,* pp. 949-869, Canlas' Memorandum.

Second, whether or not the Office of the Ombudsman's October 12, 2010 Decision dismissing the complaint is appealable;

Third, whether or not the purchase price for the sale is unreasonable;

Fourth, whether or not the Home Guaranty Corporation Officers are the proper parties charged with the offense;

Fifth, whether or not the Home Guaranty Corporation Officers can be administratively liable for grave misconduct; and

Finally, whether or not the contract of sale is grossly disadvantageous to the government.

I

Respondents Javier and Delos Santos argue that Canlas does not have the standing to pursue the case as he does not stand to be adversely affected by the Office of the Ombudsman's October 12, 2010 Decision. Canlas is allegedly not a party to the sale and is just a mere witness to an alleged offense against the government. They insist that only the involved government agency has the standing to appeal the Ombudsman's decision.[108]

They further emphasize that while Canlas belatedly admitted that he is an officer of R-II and Harbour Centre, these two (2) corporations are not parties to the proceedings, and Canlas did not present any authority from these corporations to file the complaint. Moreover, these corporations are barred by *res judicata* from questioning the sale as an indirect contempt proceeding, in which the sale was already questioned and in which the properties' restoration in the asset pool had been prayed for, had already been ruled upon.[109]

They also assert that the companies wherein Canlas is an officer did not participate in the public sale. Thus, they cannot collaterally attack it.[110]

---

[108] *Id*. at 869.

[109] *Id*. at 870.

[110] *Id*. at 873.

On the other hand, Canlas argues that he has legal standing to file the Petition.[111] He admits that he is R-II's Vice President for Legal, and Harbour Centre's Corporate Secretary. Both corporations are holders of subordinated Participation Certificates and are the administrators or property managers of Harbour Centre pursuant to the Trust Agreement. Thus, they both have an interest in the Smokey Mountain Asset Pool and are allegedly injured by the illegal sale. Canlas insists that he stands to be benefited or injured by the judgment in this case.[112]

Canlas does not have the standing to appeal this case.

The Ombudsman was given the power to evaluate an administrative complaint even though the complainant does not have a personal interest in the case.[113]

Under Article XI, Section 12 of the 1987 Constitution, the Ombudsman has the power to act on any complaint against those in public service:

> Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

In line with this constitutional mandate, Section 15(1) of Republic Act No. 6770 states:

> Section 15. *Powers, Functions and Duties.* — The Office of the Ombudsman shall have the following powers, functions and duties:
>
> (1) Investigate and prosecute **on its own or on complaint by any person**, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal,

---

[111] *Id.* at 956-957.

[112] *Id.* at 957.

[113] *Bueno v. Office of the Ombudsman*, 743 Phil. 313, 330 (2014) [Per *J.* Villarama, Jr., Third Division]; See also *Baltazar v. Mariano*, 539 Phil. 131, 140 (2006) [Per *J.* Velasco, Third Division].

> unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the *Sandiganbayan* and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases[.] (Emphasis supplied)

Thus, no matter the identity of the complainant, the Ombudsman may act on the matter. Moreover, it may, on its own, inquire into illegal acts of public officials, which may be discovered from any source.[114]

For administrative complaints, the following are the cases which the Ombudsman is bound to act on:

> Section 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.[115]

However, if the "the complainant has no sufficient personal interest in the subject matter of the grievance," the Ombudsman may choose *not* to investigate the administrative act complained of.[116] Section 20 of Republic Act No. 6770 provides:

---

[114] *Id*. at 326-327.

[115] Rep. Act No. 6770, Sec. 19.

[116] *Bueno v. Office of the Ombudsman*, 743 Phil. 313, 330 (2014) [Per *J.* Villarama, Jr., Third Division].

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 (1) year from the occurrence of the act or omission complained of. (Emphasis supplied)

Section 20 of Republic Act No. 6770 uses the word "may" which signifies that it is permissive and not imperative. The power of the Ombudsman to act on an administrative complaint by a person without any personal interest in the case is, thus, discretionary.[117]

In *Bueno v. Office of the Ombudsman*:[118]

Petitioners are mistaken in asserting that Section 20 (4) is a bar to the Ombudsman's investigation into their acts or omissions in the case of Ranchez based on the supposed lack of personal interest on the part of private respondents who are the complainants in OMB-C-A-0065-B.

In *Office of the Ombudsman v. Court of Appeals,* the Court noted that Section 20 of RA 6770 has been clarified by Administrative Order No. 17 (AO 17), which amended Administrative Order No. 07 (AO 07), otherwise known as the Rules of Procedure of the Office of the Ombudsman. Section 4, Rule III of the amended Rules of Procedure of the Office of the Ombudsman, reads:

---

[117] *Id*. at 331.

[118] 743 Phil. 313 (2014) [Per *J.* Villarama, Jr., Third Division].

> Section 4. Evaluation. — Upon receipt of the **complaint**, the same shall be evaluated to determine whether the same **may be**:
>
> **a) dismissed outright for <u>any grounds stated under Section 20</u> of Republic Act No. 6770, provided, however, that <u>the dismissal thereof is not mandatory and shall be discretionary</u> 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 in the original; underscoring supplied.)

Thus, even if the ground raised is the supposed lack of sufficient personal interest of complainants in the subject matter of the grievance under Section 20 (4), the dismissal on that ground is not mandatory and is discretionary on the part of the Ombudsman or Deputy Ombudsman evaluating the administrative complaint.[119] (Citations omitted)

Thus, the Ombudsman may prosecute or investigate the complaint with or without the complainant's personal interest in the outcome of the case.

There is clearly no question on the legal standing of private respondents to file the administrative complaint against petitioners before the Ombudsman. Indeed, the Office of the Ombudsman is mandated to "investigate and prosecute on its own or **on complaint by any person**, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal,

---

[119] *Id*. at 325-326.

unjust, improper or inefficient." The Ombudsman can act on anonymous complaints and *motu proprio* inquire into alleged improper official acts or omissions from whatever source, *e.g.*, a newspaper. Thus, any complainant may be entertained by the Ombudsman for the latter to initiate an inquiry and investigation for alleged irregularities.[120] (Emphasis in the original, citation omitted)

The Ombudsman's power stems from its role as the "protector of the people," constitutionally vested with a duty to enforce laws against graft and corrupt practices committed by public officials and employees. In *Uy v. Sandiganbayan*:[121]

In September 1989, Congress passed RA 6770 providing for the functional and structural organization of the Office of the Ombudsman. As in the previous laws on the Ombudsman, RA 6770 gave the present Ombudsman not only the duty to receive and relay the people's grievances, but also the duty to investigate and prosecute for and in their behalf, civil, criminal and administrative offenses committed by government officers and employees as embodied in Sections 15 and 11 of the law.

Clearly, the Philippine Ombudsman departs from the classical Ombudsman model whose function is merely to receive and process the people's complaints against corrupt and abusive government personnel. The Philippine Ombudsman, as protector of the people, is armed with the power to prosecute erring public officers and employees, giving him an active role in the enforcement of laws on anti-graft and corrupt practices and such other offenses that may be committed by such officers and employees. The legislature has vested him with broad powers to enable him to implement his own actions.[122]

The State interest being upheld here is the principle that public office is a public trust.[123] Public officers and employees are

---

[120] *Id*. at 327.

[121] 407 Phil. 154 (2001) [Per *J*. Puno, *En Banc*].

[122] *Id*. at 172.

[123] CONST., Art. XI, Sec. 1 provides:

Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

given duties and powers pertinent to sovereignty, which they hold in trust for, and exercise in behalf of, the public.[124] Thus, they are expected to uphold public interests. As such, they are held to higher standards not usually required of ordinary citizens to keep the faith of the people in the State.

That is why in case of administrative offenses, it is the character of the public officers or employees that is looked into. The objective is not so much as to penalize an erring officer or employee, but to improve public service and preserve the trust and confidence of the people in our government.[125]

Thus, the law allows the filing of cases to the Ombudsman against public officers by any complainant. The Ombudsman is a tool to maintain this faith.

However, this particular State interest must also be balanced with two (2) other State interests, which arise after the filing of a case against a public officer or employee: (i) the State interest in affording due process to all persons; and (ii) the State interest in assuring efficiency of government functions, particularly through the protection of its officers from harassment.

While public office is a public trust, public officers must not be exposed to continued and persistent lawsuits that can derail their ability to discharge their duties once it has been found that there is no substantial evidence of their guilt. The effective administration of the State's policies is of paramount importance, which should not be hampered by time-consuming, baseless, and repetitive suits. Thus, if there is a clear finding, supported by substantial evidence, that the public officer is not guilty of the charges, this finding must be given great weight and must be respected.

---

[124] *Torredes v. Villamor,* 586 Phil. 424, 431 (2008) [Per *J*. Nachura, Third Division].

[125] *Office of the Ombudsman v. De Sahagun,* 584 Phil.119, 126 (2008) [Per *J*. Austria-Martinez, Third Division].

Therefore, not all may appeal to question a decision of the Ombudsman.[126]

In administrative cases filed under the Civil Service Law, an allowed appeal may only be brought by the party adversely affected by the decision.[127]

For administrative cases filed with the Ombudsman, Rule III of Administrative Order No. 07, as amended, states:[128]

> Section 7. *Finality and Execution of Decision. — Where the respondent is absolved of the charge*, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, *the decision shall be final, executory and unappealable*. In all other cases, the decision may be *appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court*, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.
>
> An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive

---

[126] *Baltazar v. Mariano,* 539 Phil. 131, 140 (2006) [Per *J.* Velasco, Third Division].

[127] Pres. Decree No. 807, Secs. 37 and 39 state:

> Section 37. *Disciplinary Jurisdiction*. — (a) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from Office. . . .
>
> . . . . . .
>
> Section 39. *Appeals*. — (a) Appeals, where allowable, **shall be made by the party adversely affected by the decision** within fifteen days from receipt of the decision unless a petition for reconsideration is seasonably filed, which petition shall be filed within fifteen days. . . . (Emphasis supplied)

See also Office of the Ombudsman v. Gutierrez, G.R. No. 189100, June 21, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/189100.pdf> [Per *J.* Velasco, Third Division].

[128] OMB Adm. Order No. 17-03 (2003).

suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer. (Emphasis supplied)

Thus, the Ombudsman's decision may not be appealed if it dismisses the complaint or imposes the penalty of public censure or reprimand, suspension of not more than one (1) month, or a fine equivalent to one (1)-month salary. Otherwise, it may be appealed to the Court of Appeals under the requirements and conditions set forth in Rule 43 of the Rules of Court.

In *Cobarde-Gamallo v. Escandor*,[129] this Court identified two (2) types of decisions by the Ombudsman in administrative cases—appealable and unappealable:

It can be gleaned from the afore-quoted provision that the OMB's decisions in administrative cases may either be unappealable or appealable. The unappealable decisions are final and executory, to wit: (1) respondent is absolved of the charge; (2) the penalty imposed is public censure or reprimand; (3) suspension of not more than one month; and (4) a fine equivalent to one month's salary. The appealable decisions, on the other hand, are those falling outside the aforesaid enumeration, and may be appealed to the CA under Rule 43 of the Rules of Court, within 15 days from receipt of the written notice of the decision or order denying the motion for reconsideration. . . .[130] (Citation omitted)

---

[129] *Cobarde-Gamallo v. Escandor,* G.R. Nos. 184464 & 184469, June 21, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/184464.pdf> [Per *J.* Velasco, Jr., Third Division]

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

In *Dagan v. Office of the Ombudsman*,[131] this Court further elucidated that when the Ombudsman has exonerated the defendant, its decision is unappealable.

Section 27 of Republic Act No. 6770 or otherwise known as "The Ombudsman Act of 1989," provides:

. . . . . .

The above-quoted provision logically implies that where the respondent is absolved of the charge, the decision shall be final and unappealable. Although the provision does not mention absolution, it can be inferred that since decisions imposing light penalties are final and unappealable, with greater reason should decisions absolving the respondent of the charge be final and unappealable.

This inference is validated by Section 7, Rule III of Administrative Order No. 07, series of 1990 (otherwise known as the Rules of Procedure of the Office of the Ombudsman), to wit:

. . . . . .

It was thus clarified that there are two instances where a decision, resolution or order of the Ombudsman arising from an administrative case becomes final and unappealable: (1) where the respondent is absolved of the charge; and (2) in case of conviction, where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one[-]month salary.

In the instant case, the respondents were absolved of the charges against them by the Office of the Ombudsman. Such decision is final and unappealable.[132] (Citations omitted)

Reyes, Jr. v. Belisario[133] explained that a complainant loses his or her right to appeal once respondent becomes absolved:

The clear import of Section 7, Rule III of the Ombudsman Rules is to *deny the complainant in an administrative complaint the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge, as in this case.* The complainant, therefore,

---

[131] 721 Phil. 400 (2013) [Per *J*. Perez, *En Banc*].

[132] *Id*. at 409-411.

[133] 612 Phil. 936 (2009) [Per *J*. Brion, Second Division].

is not entitled to any corrective recourse, whether by motion for reconsideration in the Office of the Ombudsman, or by appeal to the courts, to effect a reversal of the exoneration. Only the respondent is granted the right to appeal but only in case he is found liable and the penalty imposed is higher than public censure, reprimand, one-month suspension or a fine equivalent to one[-]month salary.[134] (Emphasis supplied)

In the case at bar, the Office of the Ombudsman's October 12, 2010 Decision exonerated respondents. Thus, Canlas has no right to appeal this Decision. He has no other recourse. "The right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law. There must then be a law expressly granting such right."[135]

Considering there is no law allowing Canlas to appeal, he has no right to appeal.

This absence of a right to appeal affects Canlas' legal standing in this case. He is not a party entitled to the relief prayed for, or one who will benefit or be injured by the results of the suit.

Locus standi is "a right of appearance in a court of justice . . . on a given question."[136] In civil, criminal, and administrative cases, standing is governed by Rule 3, Section 2 of the Rules of Court, which states:

Section 2. *Parties in interest*. — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

---

[134] *Id*. at 954.

[135] *Macalalag v. Ombudsman,* 468 Phil. 918, 924 (2004) [Per *J*. Vitug, Third Division].

[136] *Baltazar v. Mariano,* 539 Phil. 131, 139 (2006) [Per. *J*. Velasco, Third Division].

Standing depends on a party's right to the relief prayed for. This party must be entitled to the relief before he or she may file a suit. The party affected by the judgment in the suit or entitled to the relief prayed for must pursue the action.[137]

In *Baltazar v. Mariano,*[138] this Court ruled that a party who files a criminal case before the Ombudsman but has no interest in it has no standing to pursue a petition before this Court:

> In the case at bar which involves a criminal proceeding stemming from a civil (agrarian) case, it is clear that petitioner is not a real party in interest. Except being the complainant, the records show that petitioner is a stranger to the agrarian case. . . .
>
> Petitioner asserts that he is duly authorized by Faustino Mercado to institute the suit and presented a Special Power of Attorney (SPA) from Faustino Mercado. However, such SPA is unavailing for petitioner. For one, petitioner's principal, Faustino Mercado, is an agent himself and as such cannot further delegate his agency to another. Otherwise put, an agent cannot delegate to another the same agency. . . . For another, a re-delegation of the agency would be detrimental to the principal as the second agent has no privity of contract with the former. In the instant case, petitioner has no privity of contract with Paciencia Regala, owner of the fishpond and principal of Faustino Mercado.
>
> . . . . . .
>
> Clearly, petitioner is neither a real party in interest with regard to the agrarian case, nor is he a real party in interest in the criminal proceedings conducted by the Ombudsman as elevated to the Sandiganbayan. He is not a party who will be benefited or injured by the results of both cases.
>
> . . . . . .
>
> Petitioner only surfaced in November 1994 as complainant before the Ombudsman. Aside from that, not being an agent of the parties in the agrarian case, he has no *locus standi* to pursue this petition.

---

[137] *Id.* at 140-141.

[138] 539 Phil. 131 (2006) [Per. *J.* Velasco, Third Division].

He cannot be likened to an injured private complainant in a criminal complaint who has direct interest in the outcome of the criminal case.

More so, we note that the petition is not pursued as a public suit with petitioner asserting a "public right" in assailing an allegedly illegal official action, and doing so as a representative of the general public. He is pursuing the instant case as an agent of an ineffective agency.

. . . . . .

Even if we consider the instant petition as a public suit, where we may consider petitioner suing as a "stranger," or in the category of a "citizen," or "taxpayer," still petitioner has not adequately shown that he is entitled to seek judicial protection. In other words, petitioner has not made out a sufficient interest in the vindication of the public order and the securing of relief as a "citizen" or "taxpayer"; more so when there is no showing that he was injured by the dismissal of the criminal complaint before the Sandiganbayan.[139]

In the case at bar, Canlas filed the administrative case in his personal capacity. His Complaint-Affidavit stated:

I, JEROME R. CANLAS, of legal age, married, and with address at R-II Bldg., 136 Malakas St., Diliman, Quezon City, after having been sworn in accordance with law, hereby depose and state:[140]

There is no showing that Canlas filed the instant case as an authorized representative of R-II or Harbour Centre, or that he was authorized by these two (2) entities to file the instant case. He only admitted that he was connected to these two (2) entities in his Consolidated Reply dated September 28, 2012[141] and in his Memorandum dated May 30, 2013,[142] after respondents had pointed out this circumstance.

---

[139] *Id*. at 141-143.

[140] *Rollo*, p. 129.

[141] *Id*. at 784.

[142] *Id*. at 957.

In his personal capacity, there is no showing that he stands to be benefited or injured by the finding of guilt of respondents. He is not a party to the Trust Agreement or the Contract of Guaranty. Neither did he allege that he invested in the Project nor was he a holder of any Participation Certificate. He did not claim to own any of the properties in the asset pool, or to have any claim in the properties covered by the contract of sale between Home Guaranty and Wong.

Thus, Canlas has no standing to file the instant appeal.

II

Assuming Canlas has the legal standing to question the ruling of the Ombudsman, he may only do so if the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Generally, a decision by the Ombudsman absolving respondents is unappealable. However, if it is shown that the Ombudsman acted with grave abuse of discretion, then the complainant may file a Rule 65 Petition with the proper court. In *Dagan v. Office of the Ombudsman*:[143]

> However, petitioner is not left without any remedy. In *Republic v. Francisco*, we ruled that decisions of administrative or quasi-administrative agencies which are declared by law final and unappealable are subject to judicial review if they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law. When such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings. *Thus, the decision of the Ombudsman may be reviewed, modified or reversed via petition for certiorari under Rule 65 of the Rules of Court, on a finding that it had no jurisdiction over the complaint, or of grave abuse of discretion amounting to excess or lack of jurisdiction.*
>
> . . . . . .
>
> Basic is the rule that the findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when, as in this

[143] 721 Phil. 400 (2013) [Per *J*. Perez, *En Banc*].

case, they are affirmed by the Court of Appeals. It is only when there is grave abuse of discretion by the Ombudsman that a review of factual findings may aptly be made. In reviewing administrative decisions, it is beyond the province of this Court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. It is not the function of this Court to analyze and weigh the parties' evidence all over again except when there is serious ground to believe that a possible miscarriage of justice would thereby result.

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner — which 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 — in order to exceptionally warrant judicial intervention.[144] (Citations omitted)

It is incumbent upon Canlas to prove that the Ombudsman gravely abused her discretion such that she acted whimsically, arbitrarily, or grossly as to amount to a refusal to perform her duty.

However, Canlas did not argue that the Ombudsman committed grave abuse of discretion in the case at bar. What Canlas contends is that the Office of the Ombudsman's October 12, 2010 Decision is still appealable because respondents are being accused of an offense penalized with dismissal from service.[145]

---

[144] *Id*. at 411-414.

[145] *Rollo*, p. 955. Section 46 of the Revised Uniform Rules on Administrative Cases in the Civil Service, CSC Resolution No. 1101502 states:

Section 46. *Classification of Offenses.* — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following grave offenses shall be punishable by dismissal from the service:

. . . . . .

3. Grave Misconduct[.]

However, in determining whether the Office of the Ombudsman's October 12, 2010 Decision is appealable, the deciding factor is the *penalty imposed by the Ombudsman in the decision itself.* It is not determined by the penalty imposed for the offense as provided under the law.

Thus, even if grave misconduct is punishable by dismissal under the rules, it is the decision that determines whether it is appealable or unappealable to the higher courts. If the Ombudsman finds that respondents are not guilty and imposes no penalty, the decision is unappealable.

Respondents were absolved by the Ombudsman from Canlas' administrative charges. Thus, this finding is unappealable.

III

Canlas maintains that the selling price of the properties was way below their actual fair market value based on 1999 and 2001 purchase prices, current sale offers, and independent appraisals of adjoining properties.[146] He claims that the fair market value of the lots amounted from ₱506,2015,000.00 to ₱694,224,000.00. However, the properties were priced only at ₱384,715,800.00.[147]

He insists that the government suffered damages amounting to the difference between the market value of the property and the purchase price. Thus, the damages caused to the government ranged from ₱121,489,200.00 to ₱309,508,200.00.[148]

Canlas argues that the Bureau of Internal Revenue zonal valuation cannot be the basis to determine the properties' fair market value. The Bureau of Internal Revenue zonal valuations are allegedly computed for taxation purposes and are only an indication of a property's fair market value, not the fair market value itself. It is also usually lower than the properties' current fair market value and is used as the government's standard for

---

[146] *Rollo*, p. 952.

[147] *Id.* at 952-954 and 958.

[148] *Id.*

the purchase of properties, but not for their sale. He asserts that there is no law that provides that the Bureau of Internal Revenue zonal valuation ought to be used as a standard for its sale. He insists that other factors must be considered in determining the fair market value, such as cost of acquisition, value of similar properties, location, size, and shape of the properties.[149]

Canlas asserts that respondents' allegation that the prices of properties in the area have gone down is self-serving and lacks credibility.[150]

On the other hand, respondents argue that the purchase price is reasonable.[151] They insist that the government did not suffer any loss in the sale of the properties.[152]

They assert that the purchase price of ₱13,300.00 per square meter is way above the properties' Bureau of Internal Revenue zonal valuation of ₱9,750.00.[153]

Respondent Bongolan avers that under the National Internal Revenue Code, the Bureau of Internal Revenue zonal valuation is the government's standard to determine the reasonableness of the price of the properties or their fair market value. It is the benchmark to determine just compensation when the government acquires private property for infrastructure projects.[154]

They also compare the purchase price to other standards. Bolongan alleges that the price of ₱13,300.00 per square meter is higher than the Minimum Disposition Value of the properties, as computed using the two (2) formulas provided under Home Guaranty's Disposition Guidelines. Under the Net Effective Return Method formula, the minimum disposition value of the

---

[149] *Id*. at 959.

[150] *Id*. at 960.

[151] *Id*. at 817, 830, and 877.

[152] *Id*. at 818.

[153] *Id*. at 818 and 877.

[154] *Id*. at 818.

properties amounts only to ₱11,668.49 per square meter. Under the Severity of Loss Method formula, it amounts only to ₱5,273.76 per square meter.[155]

The purchase price also allegedly exceeds the book value of the properties, which amounts to ₱10,971.29 per square meter.[156] It is also higher than the market value determined by the City Assessor of the City of Manila.[157]

Respondents illustrate that the purchase price is higher or at least equal to the 2006 and 2009 purchase price of other lots located in the vicinity.[158]

Respondents argue that Canlas failed to substantiate his charges. They maintain that Canlas compared the purchase price to the properties' purchase price in 1999-2001, a different time period.[159] They also hold that the appraisal of the properties' market value by EValue was based on mere offers to sell and price listings.[160] They likewise emphasize that even Harbour Centre offered to buy the properties for only ₱12,000.00 per square meter.[161]

They claim that there was a downward trend in the value of the properties in the area, in light of the 1997 Asian financial crisis.[162]

The properties also allegedly had no other interested buyers and Home Guaranty was lucky enough to have sold them.[163]

---

[155] *Id*.

[156] *Id*. *citing* OXFORD DICTIONARY OF BUSINESS 63 (2nd ed. 1996), Bongolan defined book value as "the value of an asset as recorded in the books of account of an organization." It is the "historical cost of the asset reduced by amounts written off for depreciation."

[157] *Id*. at 877.

[158] *Id*. at 819, 832, and 878.

[159] *Id*. at 832 and 879-880.

[160] *Id*. at 879-880.

[161] *Id*. at 833 and 878.

[162] *Id*. at 878.

[163] *Id*. at 877.

Respondents Javier and Delos Santos also aver that the properties' price was affected because Harbour Centre was illegally occupying the properties by stocking the area with iron and coal piles. Furthermore, the sold properties had incomplete road concreting and electrical facilities, and flooding due to poor drainage systems because R-II failed to deliver these basic utilities.[164] They further state that the assets are encumbered with insufficient documentation, and are under litigation or are troubled with illegal occupants, unpaid contractors and landowners, and other third party claims.[165]

Respondents Javier and Delos Santos invoke that Home Guaranty had to sell the properties as soon as possible as it had a cash position of only ₱379,000,000.00 but was already obliged to pay for ₱12,650,000,000.00 of guaranty claims in June 2001. They claim that the slump in the real estate industry and a decline of the shelter industry's revenue before 2001 caused it to dispose of its assets at a slow rate from 1999 to 2006.[166] They assert that the national government's equity infusion is still insufficient to maintain Home Guaranty's liquidity and the viability of its operations.[167]

In its August 11, 2011 Decision, the Court of Appeals ruled in favor of respondents. It found that the purchase price of ₱13,300.00 was reasonable considering that the Bureau of Internal Revenue zonal value of the lots is only ₱9,750.00 per square meter, and are worth ₱11,668.49 per square meter using the Net Effective Return Method and ₱5,273.76 using the Severity of Loss Method. It also ruled that there is no law prohibiting the parties from using the Bureau of Internal Revenue zonal value as its reference for the purchase price. It found that there was no fixed standard in determining fair market value, and Home Guaranty, as the seller, had the discretion to determine what it deemed as a reasonable price under the circumstances.[168]

---

[164] *Id*. at 878-879.

[165] *Id*. at 882.

[166] *Id*.

[167] *Id*. at 883.

[168] *Id*. at 47-48.

This Court affirms the ruling of the Court of Appeals.

III.A

First, Canlas is raising a question of fact, which is not proper in a Rule 45 Petition. Only questions of law may be raised in a petition for review under Rule 45. Questions of fact will not be entertained by this Court, as it is not its function to analyze and weigh evidence all over again.[169] In *Pascual v. Burgos*:[170]

> Review of appeals filed before this court is "not a matter of right, but of sound judicial discretion[.]" This court's action is discretionary. Petitions filed "will be granted only when there are special and important reasons[.]" . . .
>
> 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.
>
> . . . . . .
>
> A question of fact requires this court to review the truthfulness or falsity of the allegations of the parties. This review includes assessment of the "probative value of the evidence presented." There is also a question of fact when the issue presented before this court is the correctness of the lower courts' appreciation of the evidence presented by the parties.[171] (Citations omitted)

In this case, Canlas is bringing into issue the correct fair market value of the properties, which is a question of fact. It requires the examination and the weighing of evidence to determine the value of the properties. Such a question cannot be raised in a Petition for Review on Certiorari under Rule 45.

---

[169] *Miro v. Vda. de Erederos*, 721 Phil. 772, 785-787 (2013) [Per *J.* Brion, Second Division].

[170] 776 Phil. 167 (2016) [Per *J.* Leonen, Second Division].

[171] *Id.* at 181-183.

This Court has laid down exceptions to this rule as follows:

> (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.[172] (Citation omitted)

However, for this Court to take cognizance of Canlas' Petition, he must prove, not merely assert, that any of these exceptions is present in this case. He has the burden to show that a re-examination of facts is needed.[173] Absent this proof, this Court will not entertain factual issues.

III.B

Second, the Ombudsman's factual findings are binding and conclusive when supported by substantial evidence. Under Republic Act No. 6770:

> Section 27. *Effectivity and Finality of Decisions*. — . . .
>
> *Findings of fact by the Officer of the Ombudsman when supported by substantial evidence are conclusive.* Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable. . . . (Emphasis supplied)

---

[172] *Id*. at 182-183.

[173] *Id*.

The Ombudsman's factual findings are accorded great weight and respect.[174] In *Ombudsman-Mindanao v. Ibrahim*: [175]

> The general rule is that the findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence. The factual findings of the Office of the Ombudsman are generally accorded with great weight and respect, if not finality by the courts, due to its special knowledge and expertise on matters within its jurisdiction.[176] (Citations omitted)

This rule applies even more so when the findings are affirmed by the Court of Appeals. In *Office of the Ombudsman v. Espina*:[177]

> [A]s a general rule, factual findings of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, *especially when affirmed by the CA*. In this case, except as to the legal conclusion on what administrative offense was committed by Espina, the Ombudsman and the CA both found that Espina signed the IRFs even if there were actually no tires delivered to the PNP and no repair and refurbishment works performed on the LAVs. Accordingly, these findings of fact are conclusive and binding and shall no longer be delved into, and this Court shall confine itself to the determination of the proper administrative offense chargeable against Espina and the appropriate penalty therefor.[178] (Emphasis supplied, citation omitted)

Thus, if the Ombudsman's findings are supported by substantial evidence and affirmed by the Court of Appeals, this Court need not review or reevaluate the evidence.

---

[174] *Ombudsman-Mindanao v. Ibrahim*, G.R. No. 211290, June 1, 2016, 792 SCRA 94, 108 [Per *J*. Carpio, Second Division].

[175] G.R. No. 211290, June 1, 2016, 792 SCRA 94 [Per *J*. Carpio, Second Division].

[176] *Id*. at 108.

[177] G.R. No. 213500, March 15, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/213500.pdf> [*Per Curiam*, First Division].

[178] *Id*. at 5-6.

In this case, Canlas failed to show that the Ombudsman's findings, which were affirmed categorically by the Court of Appeals, were not supported by substantial evidence.

The Ombudsman found that the properties were sold for a price higher than the Bureau of Internal Revenue zonal valuation and the minimal disposition values of the properties using the formulas for the Net Effective Return Method and the Severity of Loss Method as provided for under the Disposition Guidelines.[179] This finding was affirmed by the Court of Appeals.[180]

The Ombudsman noted Canlas' contention that the adjacent properties were sold at higher prices a few years before the subject sale. However, she did not find it persuasive as it did not show that the properties had the same features in terms of size, shape, frontage, and configuration.[181] She also found that Canlas failed to present evidence that the properties could have been sold at a higher price considering that no other offer was made after being advertised for sale twice.[182]

Canlas failed to present any evidence to overturn these findings. Thus, this Court affirms the Court of Appeals.

III.C

It must further be noted that Home Guaranty is authorized to dispose of the sold properties. The functions and powers of Home Guaranty are created in light of the State's policy of strengthening and supporting housing production and finance, and making decent housing available and affordable nationwide.[183]

---

[179] *Rollo*, pp. 110-111.

[180] *Id.* at 47.

[181] *Id.* at 111.

[182] *Id.* at 112.

[183] Rep. Act No. 8763, Sec. 2 provides:

Section 2. Declaration of Policy. — It is hereby declared the policy of the State to undertake, in cooperation with the private sector, a continuing nationwide housing program which will make available at affordable cost decent housing.

As part of its corporate powers and functions, Home Guaranty is given the power:

> Section 5. Corporate Powers and Functions.
>
> . . . .
>
> (b) To guaranty the payment in favor of any natural or juridical person, of any and all forms of mortgages, loans and other forms of credit facilities and receivables arising from financial contracts exclusively for residential purposes and the necessary support facilities thereto;
>
> . . . .
>
> (i) To acquire, purchase, own, hold, manage, administer, operate, develop, lease, pledge, mortgage, exchange, sell, transfer or otherwise dispose of, in any manner permitted by law, real and personal property with every kind and description, monies and funds, or any interests therein as may be necessary to carry out the purposes and objectives of the Corporation; and
>
> (j) To do any and all acts and things and to exercise all powers which may be necessary or convenient to the accomplishment or furtherance of its purposes and objectives, or which a natural person can do and exercise and which may now be or hereafter be authorized by law.[184]

Moreover, Home Guaranty has the prerogative to manage its declining cash flow through the disposition of its assets at the soonest and most profitable times given the circumstances. Courts cannot second-guess purely business decisions when the dilemma is clearly proven.

Thus, Home Guaranty was authorized to acquire the sold properties and to dispose of them in accordance with what was necessary for it to fulfill its purpose and objectives.

In recognition of the role of housing as catalyst of economic growth and development, it is hereby declared a state policy to strengthen, promote and support the component activities of housing production and finance.

[184] Rep. Act No. 8763, Sec. 5.

IV

In executing the sale, Canlas seeks to hold respondents guilty of the charged offenses.[185]

He argues that respondents, except Cadano, have admitted that they participated in the contract of sale's execution, showing that there was grave misconduct and a willful intent to violate Section 3(g) of Republic Act No. 3019.[186]

Bongolan allegedly admitted that he executed the Board of Directors' policies as Home Guaranty's President. Javier and Delos Santos admitted to signing the contract. The others admitted that they were part of the Executive Committee that recommended the contract to the Board of Directors and the President for approval.[187]

Canlas points out that obedience to an officer's superiors only extends to orders which are lawful or are for a lawful purpose. Officers cannot evade liability if they committed an unlawful act on the order of their superiors.[188]

Canlas also asserts that respondents cannot be exempted from criminal or administrative liability even if Home Guaranty has a separate and distinct personality from its stockholders, directors, and officers. Officers and agents who participated in the criminal act or an administrative offense of a corporation are liable.[189]

Respondents, on the other hand, argue that it is the Board of Directors that is responsible for the sale.

---

[185] *Rollo*, p. 962. Canlas claims that this is shown by "a) the Deeds of Absolute Sale dated 11 January 1999 and 28 August 2001; b) Letter of Planters Bank to Mr. Romero dated 21 May 2009; c) Appraisal Report dated July 2008; as well as the admissions of respondents in their respective counter-affidavits[.]"

[186] *Id*.

[187] *Id*.

[188] *Id*. at 963.

[189] *Id*. at 964.

They argue that the power to approve the sale and to manage Home Guaranty is with the Board of Directors.[190] It was the Board of Directors that decided to sell the properties[191] and fix the price. [192]

Moreover, Canlas allegedly failed to prove their participation by clear and convincing evidence.[193] Bongolan argues that Canlas failed to prove his specific participation in the sale. He did not sign the document. He merely executed policies and directives of the Board of Directors, and did not participate in its approval.[194] He points out that he could not have approved the contract by himself.[195]

Respondents Cadano, Adriano, Corpuz, and Sarona assert that they did not participate in the contract's execution despite their membership in the Executive Committee. They were not part of the Board of Directors or were in a position to bind Home Guaranty, and they did not sign the document.[196] Cadano was not even appointed until September 1, 2008, more than a month after the execution of the contract on July 21, 2008.[197]

Respondents Javier and Delos Santos admit that they signed the Deed of Absolute Sale. However, they argue that they signed it pursuant to a resolution and office order issued by its Board of Directors, designating them as signatories, in case of the absence of Home Guaranty's President. They did not sign it as an exercise of their own discretion. They did it as part of their duties based on valid instructions.[198]

---

[190] *Id*. at 817.

[191] *Id*. at 837-838.

[192] *Id*. at 874.

[193] *Id*. at 816 and 840.

[194] *Id*. at 816.

[195] *Id*. at 817.

[196] *Id*. at 837-838.

[197] *Id*. at 102.

[198] *Id*. at 873-875.

This Court rules that respondents are not solely responsible for the sale.

Home Guaranty is governed by its Board of Directors, which directs, controls, and manages its activities. The decisions of the Board of Directors are arrived at by a majority vote of its members.[199]

Under Home Guaranty's Charter, the Board of Directors has the power to:[200]

> Section 9. Powers, Functions and Duties of the Board of Directors. — The Board shall have the following powers, functions and duties:
>
> . . . . . .
>
> (b) To direct the management, operations and administration of the Corporation;
>
> (c) To authorize such expenditures by the Corporation as are in the interest of the effective administration and operations of the Corporation;
>
> (d) To formulate, revise or adjust periodically all policies, plans and projects, and to promulgate the necessary rules and regulations and manuals of procedures for the effective implementation of the provisions of this Act, in any event to conform to the prevailing economic and financial conditions: *Provided*, That anything contained herein to the contrary notwithstanding, all such policies, rules and regulations, manuals of procedures, on ceilings and limitations shall be subject to the concurrence of the Monetary Board of the *Bangko Sentral ng Pilipinas*;
>
> . . . . . .
>
> (f) To exercise such other powers as may be necessary and proper for the effective enforcement of this Act and to accomplish the purposes for which the Corporation was organized; and to do and perform

---

[199] Rep. Act No. 8763, Sec. 8.

[200] Rep. Act No. 8763, Sec. 9. Powers, Functions and Duties of the Board of Directors. Rules and Regulations Implementing Republic Act No. 8763, IRR of RA 8763, October 13, 2000, Article 11.

any and all acts and deeds as are necessary and incidental to the attainment of the purposes of the Corporation.

It is even the Board of Directors that approves the standard terms and conditions in a Contract of Guaranty to be executed by Home Guaranty:

> Article 50. *Execution of Contract of Guaranty.* — The Contract of Guaranty shall be executed subject to the standard terms and conditions as approved by the Board of Directors of the Corporation.[201]

Thus, it was the Board of Directors that had the power to decide whether the properties were to be sold and at what price.

As a government-owned and -controlled corporation, Home Guaranty is also governed by Republic Act No. 10149.[202] Under Section 30 of Republic Act No. 10149, the Corporation Code applies suppletorily to government-owned and -controlled corporations:

> Section 30. *Suppletory Application of The Corporation Code and Charters of the GOCCs.* — The provisions of "The Corporation Code of the Philippines" and the provisions of the charters of the relevant GOCC, insofar as they are not inconsistent with the provisions of this Act, shall apply suppletorily to GOCCs.

Section 23 of the Corporation Code necessarily applies. It provides that the Board of Directors of a corporation exercises all the corporation's powers, conducts all its business, and controls all its properties.

Thus, it is Home Guaranty's Board of Directors that is primarily responsible for the sale.

Nonetheless, Canlas is correct that a corporation's officers cannot hide behind the separate personality of the corporation, or that of its directors and stockholders, to avoid liability for offenses they participated in.[203]

---

[201] IRR of Rep. Act No. 8763 (2000).

[202] Also known as GOCC Governance Act of 2011.

[203] *Rollo*, p. 840.

Officers who supervise and manage the corporation's affairs, such that they are responsible for the commission of the offense, cannot escape criminal or administrative liability by invoking the separate and distinct personality of the corporation. The party who will be meted the penalty is the public officer or employee who is guilty of the administrative offense.

This is consistent with the principle that when the separate juridical personality of a corporation is used "to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons."[204]

Thus, in Republic Act No. 3019, it is clear that the party that is penalized is the *public officer* who commits any of the corrupt practices enumerated under Section 3. A "public officer" includes "elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government."[205] In this particular case, the offense charged is against *public officers* who, on behalf of the government, allegedly entered into a contract or transaction manifestly and grossly disadvantageous to the government.[206] Thus, it does not distinguish whether the public officer is a director or a mere employee.

---

[204] *Granada v. People,* G.R. Nos. 184092, 186084, 186272, 186488 & 186570, February 22, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/184092.pdf> 25 [Per *J.* Leonen, Second Division].

[205] Rep. Act No. 3019, Sec. 2(b).

[206] Rep. Act No. 3019, Sec. 3 provides:

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

. . . . . .

(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.

In *Dans, Jr. v. People*,[207] Imelda Marcos and Jose P. Dans, Jr., who were then Minister of Human Settlements and Transportation and Communications Minister, respectively, were charged and found guilty of violation of Section 3(g) of Republic Act No. 3019. They were found to have signed disadvantageous contracts on behalf of both the Light Rail Transit Authority, as its *ex-oficio* Chairman and *ex-oficio* Vice-Chairman, and the Philippine General Hospital Foundation, Inc., as its Chairman and Director of the Board of Trustees.

In *Office of the Ombudsman v. De Guzman,*[208] it was the acting Postmaster General who was found guilty of gross neglect of duty for executing a contract with a corporation without securing the approval of the Board of Directors, and without ensuring that the Philippine Postal Corporation's procurement of services would be done through the proper procedures and at the most advantageous price.

Clearly, whether or not a person is a director or an officer of a corporation, so long as he or she is the party responsible for the offense, he or she is the party that ought to be charged.

Thus, while the Board of Directors is primarily responsible for the sale, respondents may still be held liable for offenses if they knowingly entered into, facilitated, or participated in their execution and ensured their implementation.

V

Nonetheless, this Court rules that respondents cannot be held liable for grave misconduct.

"Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[209] To be considered grave

---

[207] 349 Phil. 434 (1998) [Per *J.* Romero, Third Division].

[208] *Office of the Ombudsman v. De Guzman,* G.R. No. 197886, October 4, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/184092.pdf> [Per *J.* Leonen, Third Division].

[209] *Office of the Ombudsman v. Faller,* G.R. No. 215994, June 6, 2016, 792 SCRA 361, 371 [Per *J.* Perlas-Bernabe, First Division].

misconduct, the transgression must have been committed in bad faith. Malice is a necessary element in the offense of grave misconduct.[210]

In *Office of the Ombudsman v. Espina*:[211]

> Misconduct generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. It is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.
>
> There are two (2) types of misconduct, namely: grave misconduct and simple misconduct. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest. Without any of these elements, the transgression of an established rule is properly characterized as simple misconduct only.[212] (Citations omitted)

It is the element of corruption and a clear intent to flagrantly disregard an established rule or violate the law that characterizes grave misconduct.[213] If there are no ill or selfish motives, the act cannot qualify as grave misconduct.[214]

These elements must be proven by substantial evidence.[215]

---

[210] *Id*.

[211] G.R. No. 213500, March 15, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/213500.pdf> [*Per Curiam*, First Division].

[212] *Id*. at 6.

[213] *Landrito v. Civil Service Commission*, 295 Phil. 638, 642 (1993) [Per *J*. Quiason, *En Banc*].

[214] *Faeldonea v. Civil Service Commission*, 435 Phil. 410, 415-416 (2002) [Per *J*. Kapunan, *En Banc*].

[215] *Office of the Ombudsman v. Faller,* G.R. No. 215994, June 6, 2016, 792 SCRA 361, 371 [Per *J*. Perlas-Bernabe, First Division].

Canlas failed to prove respondents' misconduct, let alone their bad faith.[216]

Canlas did not allege or substantiate any claim that respondents granted any favor to or relaxed any regulation for any person deliberately. He did not present any evidence that respondents committed any unlawful act intentionally, or any act with gross negligence. There is no showing that the sale was for their personal gain or for any pecuniary advantage, or that they entered into the sale to prejudice Home Guaranty.[217]

Considering that the sale was not tainted with bad faith, respondents cannot be held liable for grave misconduct.

VI

This Court likewise rules that respondents cannot be held liable under Section 3(g) of Republic Act No. 3019, which states:

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

In *Froilan v. Sandiganbayan,*[218] this Court enumerated the elements of the offense as follows:

> (a) that the accused is a public officer;
>
> (b) that he [or she] entered into a contract or transaction on behalf of the government; and

---

[216] *Rollo*, pp. 821, 832, and 875.

[217] *Id*. at 875.

[218] 385 Phil. 32 (2000) [Per *J*. Ynares-Santiago, First Division].

(c) that such contract or transaction is grossly and manifestly disadvantageous to the government.[219]

In the case at bar, respondents held a public bidding twice before it agreed to the bid price of Wong. The price falls within the amount that it is authorized to sell. They also sought the clearance of the Office of the Government Corporate Counsel before pushing through with the sale. Their acts show that they exercised due diligence and sound business judgment before executing the sale. There is likewise no showing that they violated any rule or process in granting the sale of the properties to Wong. And although it is not an element to the offense, the sale does not seem to be tainted with any partiality, bad faith, or negligence.

The law requires that the contract must be grossly and manifestly disadvantageous to the government or that it be entered into with malice. It does not find guilt on the mere entering of a contract by mistake.

Thus, it cannot be said that the contract was grossly disadvantageous to the government.

WHEREFORE, the petition is **DENIED**. The Court of Appeals August 11, 2011 Decision and November 29, 2011 Resolution in CA-G.R. SP No. 119352 are **AFFIRMED.**

SO ORDERED.

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

---

[219] *Id*. at 44.

FIRST DIVISION

[G.R. No. 200223. June 6, 2018]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **LAKAMBINI C. JABSON, PARALUMAN C. JABSON, MAGPURI C. JABSON, MANUEL C. JABSON III, EDGARDO C. JABSON, RENATO C. JABSON, NOEL C. JABSON, and NESTOR C. JABSON, represented by LAKAMBINI C. JABSON, Attorney-in-Fact,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— We address respondents Jabson's argument that, as this Court is not a trier of facts, We are bound by the trial and appellate courts' factual findings, when supported by clear and convincing evidence. Thus, only questions of law may be raised in a petition for review on *certiorari*. It is settled that a question of law arises when there is doubt or difference 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 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. The present petition does not require an examination of the probative value or truthfulness of the evidence presented. It merely raises the question whether or not the Court of Appeals correctly applied the law and jurisprudence when in granting respondents Jabson's application for registration of title to the subject property. Thus, the pivotal question herein is whether or not the grant of respondents Jabson's application for registration of title to the subject property was proper under the law and current jurisprudence.

2. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529; APPLICATIONS FOR REGISTRATION

OF TITLE; ANY APPLICANT FOR REGISTRATION OF TITLE TO LAND DERIVED THROUGH A PUBLIC GRANT MUST SUFFICIENTLY ESTABLISH THE SUBJECT LAND'S ALIENABLE AND DISPOSABLE NATURE, THE PREDECESSORS' ADVERSE POSSESSION THEREOF, AND THE RECKONING DATE FROM WHICH SUCH ADVERSE POSSESSION WAS UNDER A *BONA FIDE* CLAIM OF OWNERSHIP.— The general rule prevailing over claims of land is the Regalian Doctrine, which, as enshrined in the 1987 Constitution, declares that the State owns all lands of the public domain. In other words, land that has not been acquired from the government, either by purchase, grant, or any other mode recognized by law, belongs to the State as part of the public domain. In turn, The Public Land Act governs the classification and disposition of lands of the public domain, except for timber and mineral lands. The law also entitles possessors of public lands to judicial confirmation of their imperfect titles x x x. [This] is echoed in Section 14 of Presidential Decree No. 1529 x x x. [A]ny applicant for registration of title to land derived through a public grant must sufficiently establish three things: (a) the subject land's alienable and disposable nature; (b) his or her predecessors' adverse possession thereof, and (c) the reckoning date from which such adverse possession was under a *bona fide* claim of ownership, that is, since June 12, 1945 or earlier.

3. **ID.; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); CLASSIFICATION OF LANDS OF PUBLIC DOMAIN; ALIENABLE AND DISPOSABLE NATURE OF LANDS; THE APPLICANT FOR REGISTRATION OF LAND MUST CLEARLY ESTABLISH THE EXISTENCE OF A POSITIVE ACT OF THE GOVERNMENT TO PROVE THE ALIENABLE AND DISPOSABLE NATURE OF THE SUBJECT LAND.—** That land has been removed from the scope of the Regalian Doctrine and reclassified as part of the public domain's alienable and disposable portion cannot be assumed or implied. The prevailing rule is that the applicant must clearly establish the existence of a positive act of the government, such as a *presidential proclamation* or an *executive order*; an *administrative action; investigation reports of Bureau of Lands investigators*; and a *legislative act* or a *statute* to prove the alienable and disposable nature of the subject

land. x x x [A] certification alone is not sufficient in proving the subject land's alienable and disposable nature. We have already ruled that a PENRO and/or CENRO certification must be accompanied by a copy of the original classification, certified as a true copy by the legal custodian of the official records, which: (a) released the subject land of the public domain as alienable and disposable, and (b) was approved by the DENR Secretary.

4. ID.; ID.; ID.; THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SECRETARY RETAINS THE SOLE AUTHORITY TO APPROVE LAND CLASSIFICATION AND RELEASE LANDS AS ALIENABLE AND DISPOSABLE.— The Public Land Act vested the **President** the authority to classify lands of the public domain into alienable and disposable. Subsequently, the Revised Forestry Code of the Philippines also empowered the DENR Secretary to determine and approve land classification as well as declare the same as alienable and disposable. In turn, **DENR Administrative Order (DENR AO) No. 20** dated May 30, 1988 authorized the Provincial Environment and Natural Resources Offices (PENRO) and CENRO to issue certifications as to the status of land classifications, as part of their efforts to decentralize selected functions and authorities of the offices within the DENR. Note, however, that within the department, the DENR Secretary retains the sole authority to approve land classification and release lands as alienable and disposable. In other words, while the PENRO and CENRO are authorized to issue certifications as to the status of land classification, only the DENR Secretary is empowered to declare that a certain parcel of land forms part of the alienable and disposable portion of the public domain.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Siguion Reyna Montecillo & Ongsiako for respondents.

D E C I S I O N

LEONARDO-DE CASTRO,[*] *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, seeking to reverse and set aside the Amended Decision[1] dated November 4, 2010 and Resolution[2] dated December 26, 2011 of the Court of Appeals in CA-G.R. CV No. 82986 entitled, "*Lakambini C. Jabson, Paraluman C. Jabson, Magpuri C. Jabson, Manuel C. Jabson III, Edgardo C. Jabson, Renato Jabson, Noel C. Jabson, and Nestor C. Jabson, represented by Lakambini C. Jabson, Attorney-in- Fact.*" The Court of Appeals affirmed the Decision[3] dated October 28, 2003 of the Regional Trial Court (RTC), Branch 161, Pasig City in LRC Case No. N-11402 entitled, "*Re: Application for Registration of Title Lakambini C. Jabson, et al., Applicants, Represented by: Lakambini C. Jabson, Attorney-in-Fact.*"[4]

Factual Antecedents

On February 17, 1999, siblings Lakambini, Paraluman, Tala, and Magpuri together with Manuel III, Edgardo, Renato, Noel, and Nestor representing their father, Manuel, Jr., all surnamed Jabson (respondents Jabson), filed for the second time an Application for Registration of Title[5] (Application) before the Regional Trial Court (RTC), Branch 161, Pasig City docketed as LRC Case No. N-11402. Their first attempt to have the subject properties registered in their names was denied by then Court of First Instance in 1978

---

[*] Acting Chairperson, Per Special Order No. 2559 dated May 11, 2018.

[1] *Rollo*, pp. 43-50; penned by Associate Justice Magdangal M. de Leon with Associate Justices Fernanda Lampas Peralta and Ramon R. Garcia concurring.

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

[3] *Id.* at 76-81; penned by Judge Alicia P. Mariño-Co.

[4] Rolando T. Reyes, Oppositor; Leonida H. Jabson, Leonardo B. Suque, Reggie S. Reyes, and Lourdes B. Sisik, Oppositors; and Republic of the Philippines, Oppositor.

[5] Records, pp. 30-38.

"for failure of the applicants to comply with the recommendation of the then Land Registration Commission to include in their application the complete names and postal addresses of all the lessees occupying the lands sought to be registered."[6]

The RTC narrated the facts leading to the application's filing, *viz.*:

> There are two parcels of land being applied for registration—one is located at Barrio San Jose, Pasig City, and the other is situated in Barangay Bagong Katipunan, Pasig City. Both used to form part of seven parcels of land owned and possessed by the Jabson family as early as 1909. Each and every applicant herein claims undivided share and participation as follows: Lakambini C. Jabson—1/5; Paraluman Jabson—1/5; Magpuri Jabson—1/5 & Tala J. Olega—1/5; Manuel III, Edgardo, Renata, Noel & Nestor Jabson as legal heirs of their father Manuel Jabson, Jr. —1/5.
>
> Sometime in 1978, applicants had already applied for registration of the same parcels of land. However, said previous application docketed as LRC No. 9572 was dismissed by the CFI of Rizal, Branch 11, as per Order dated 29 December 1978 for failure of the applicants to comply with the recommendation of the then Land Registration Commission to include in their application the complete names and postal addresses of all the lessees occupying the lands sought to be registered.
>
> The first parcel of land (or the San Jose property) consists of Lots 1, 2 and 3 with a total area of 1,344 square meters and is covered by verified survey plan PSU-233559. x x x
>
> The second parcel of land (or the Bagong Katipunan property) sought to be registered consists of Lots 26346 and 26347, with a total area of 3,024 square meters and is covered by verified survey plan AP-00-000399.[7] x x x (Citations omitted.)

Respondents Jabson acquired the San Jose and Bagong Katipunan properties via inheritance and purchase from their predecessors-in-interest. At the time of filing, it is not disputed that Lakambini, Paraluman, and Magpuri have already built their

---

[6] *Rollo*, p. 77.

[7] *Id.* at 77-78.

residences on the San Jose property, with remaining portions of the land occupied by third parties either thru lease or applicants' mere acquiescence. As to the Bagong Katipunan property, respondents Jabson alleged that they have leased portions of it to various third parties who have been paying rentals thereon.[8]

Decision of the RTC

In its Decision dated October 28, 2003, the RTC ruled in favor of respondents Jabson, *viz.*:

> WHEREFORE, the verified application for registration of title of the subject lots filed by the applicants Lakambini, Paraluman, Magpuri, Manuel III, Edgardo, Renato, Noel and Nestor, all surnamed Jabson, and Tala J. Olega is hereby GRANTED.
>
> Upon this decision becoming final, let the corresponding decree of registration be issued to herein applicants.[9]

The RTC found that respondents Jabson acquired the properties from their predecessors-in-interest who, in turn, have possessed the same since time immemorial. Upon acquisition, respondents Jabson possessed the parcels of land for more than 30 years in an open, continuous, exclusive, and notorious manner, and in the concept of an owner. Moreover, their title was never disputed by other persons occupying the land. Thus, the RTC ruled that respondents Jabson satisfactorily proved and established their rights over the subject properties, in compliance with Section 14(1) and (2) of Presidential Decree No. 1529.

Aggrieved, petitioner Republic of the Philippines (Republic) elevated the case to the Court of Appeals.

The Ruling of the Court of Appeals

On January 30, 2009, the appellate court rendered a Decision[10] (Original Decision) in petitioner Republic's favor, to wit:

---

[8] *Id*. at 108.

[9] *Id*. at 81.

[10] *Id*. at 100-111; penned by Associate Justice Edgardo P. Cruz with Associate Justices Magdangal M. de Leon and Ramon R. Garcia concurring.

WHEREFORE, the appealed decision of the Regional Trial Court of Pasig City (Branch 161) is REVERSED and SET ASIDE and the instant application for registration and confirmation of title DISMISSED WITHOUT PREJUDICE.[11]

The Court of Appeals held that in land registration cases, the applicant has the burden of showing that he is the real and absolute owner in fee simple of the land applied for.[12] Thus, to have his imperfect title confirmed, the applicant must present evidence to prove that his possession has been adverse, continuous, open, public, peaceful, and in the concept of an owner[13] since June 12, 1945 or earlier. However, the appellate court noted that the rule on confirmation of an imperfect title grounded on adverse possession does not apply unless and until the subject land has been released in an official proclamation to that effect so that it may form part of the disposable lands of the public domain. To this end, the applicant must secure a certification from the Government that the land applied for is in fact alienable and disposable.[14]

It found that respondents Jabson did not present any evidence showing that the San Jose property had already been classified as alienable and disposable land of the public domain. A plain photocopy of a purported Community Environment and Natural Resources Office (CENRO) Certification dated May 14, 1998, which tended to show that the Bagong Katipunan property is "within the alienable and disposable zone," was submitted to the trial court.[15] However, the Court of Appeals noted that no party identified, testified to, nor offered the certification in evidence. Thus, the Court of Appeals held that it cannot be

---

[11] *Id*. at 110.

[12] *Id*. at 104 citing *Republic v. Lee*, 274 Phil. 284, 290 (1991).

[13] *Id*. at 105 citing *The Director, Lands Management Bureau v. Court of Appeals*, 381 Phil. 761, 769-770 (2000).

[14] *Id*. at 108 citing *Zarate v. Director of Lands*, 478 Phil. 421, 434-435 (2004).

[15] Records, p. 85, Annex "H-2" of the *Oposisyon ng Pagpapatitulo ng Lupa*.

admitted in evidence. Moreover, even if respondents Jabson offered in evidence a subdivision plan with a notation that the Bagong Katipunan property "is alienable and disposable" as certified by the Bureau of Forest Development, the Court of Appeals ruled that such plan does not constitute proof that the property is indeed alienable and disposable.[16]

Subsequently, respondents Jabson moved for the reconsideration of the aforequoted Decision. And finding merit in their motion, the appellate court issued its assailed Amended Decision dated November 4, 2010, *viz.*:

> WHEREFORE, the instant motion for reconsideration is hereby GRANTED. This Court's Decision dated January 30, 2009 is RECALLED and SET ASIDE, and a new one entered affirming the Decision dated October 28, 2003 of the Regional Trial Court, Branch 161, Pasig City in LRC Case No. N-11402.[17]

The Court of Appeals found that respondents Jabson sufficiently established that: (a) they have had open, continuous, exclusive, and notorious possession of the subject properties; and (b) such properties formed part of the alienable and disposable lands of the public domain.

Previously, the appellate court did not give weight to the CENRO Certification dated May 14, 1998 as it was not offered in evidence. However, relying on the principle of substantial justice,[18] it admitted the Department of Environment and Natural Resources (DENR) Certification[19] dated February 19, 2009 submitted by respondents Jabson, which reads:

> This is to certify that the tract of land as shown and described at the reverse side of this Advance Plan (Ap-00-000399) of Lots 26346 and 26347, Mcad-579, Pasig Multi-Purpose Cadastre **situated at Brgy.**

---

[16] *Rollo*, p. 109 citing *Republic v. Barandiaran*, 563 Phil. 1030, 1035 (2007).

[17] *Id.* at 14.

[18] *Id.* at 46 citing *Llanes v. Republic*, 592 Phil. 623, 633 (2008).

[19] *Id.* at 131.

Bagong Katipunan, Pasig City containing an area of 3,024 square meters as surveyed by Geodetic Engineer Juanito A. Ilad for Manuel Jabson, Jr., et al., **was verified to be within the Alienable and Disposable Land**, under Project No. 21 of Pasig City per L.C. Map No. 639, approved on March 11, 1927.

This certification is issued upon the request of Lakambini C. Jabson for whatever legal purpose it may serve as contained in her letter dated February 18, 2009. (Emphasis supplied.)

The Court of Appeals pointed out that based on *Llanes v. Republic*,[20] in the interest of substantial justice and to resolve a material issue in a land registration case, the court is allowed to admit a CENRO Certification in evidence despite its belated submission and lack of formal offer.

Further, the appellate court ruled that respondents Jabson sufficiently established their adverse possession of the subject properties through the following: (a) by exercising specific acts of ownership such as constructing residential houses on the subject properties and leasing the same to third parties, and (b) as admitted by petitioner Republic, by possessing and occupying the San Jose property since 1944.

Petitioner Republic's subsequent motion for reconsideration[21] was denied in a Resolution dated December 26, 2011.

Hence, the present petition.

The Issue

Petitioner Republic comes before this Court raising a single issue:

THE COURT OF APPEALS GRAVELY ERRED IN REVERSING ITS EARLIER DECISION AND SUSTAINING THE JUDGMENT OF THE LOWER COURT CONSIDERING THAT RESPONDENTS FAILED TO ESTABLISH ALL THE REQUIREMENTS UNDER

---

[20] *Supra* note 18 at 633-634.

[21] In Court of Appeals Resolution dated December 26, 2011, *rollo*, pp. 51-52.

THE LAW TO WARRANT THE REGISTRATION IN THEIR FAVOR OF THE LOTS IN QUESTION.[22]

Petitioner Republic insists that respondents Jabson failed to establish with clear and convincing evidence that they have complied with all the requirements under the law to register their title over the subject properties.[23]

Specifically, petitioner Republic maintains that respondents Jabson failed to present any document showing that the subject properties are alienable and disposable. It argues that the appellate court erred in admitting the DENR Certification dated February 19, 2009 on two grounds – *first*, respondents Jabson did not show that Carlita P. Castañeda, DENR Senior Forest Management Specialist, the signatory in the certification, was authorized to issue such a document; and *second*, as held in *Republic v. Castro*,[24] a document that has not been identified and presented during the proceedings in the trial court cannot be submitted for the first time on appeal. Citing *Republic v. T.A.N. Properties, Inc.*,[25] petitioner Republic asserts that respondents Jabson should establish that the DENR Secretary had approved the subject properties' classification as alienable and disposable parts of the public domain. Further, respondents Jabson also failed to show the manner by which their predecessors-in-interest acquired the subject properties. They did not present proof showing their predecessors' basis for claiming ownership or any act that would establish the nature of their predecessors' possession or ownership.[26]

For their part, respondents Jabson insist that they have proven through clear and convincing evidence the subject properties' alienable and disposable nature, the manner and length of time of their predecessors-in- interest's possession, as well as their

---

[22] *Rollo*, p. 27.

[23] *Id*. at 36.

[24] 594 Phil. 124, 137 (2008).

[25] 578 Phil. 441 (2008).

[26] *Rollo*, pp. 32-35.

acts of ownership over the subject properties.[27] Thus, inasmuch as the Court of Appeals' factual findings are supported by these evidence, such findings are binding on this Court.

The Ruling of the Court

The petition is meritorious.

At the onset, We address respondents Jabson's argument that, as this Court is not a trier of facts, We are bound by the trial and appellate courts' factual findings, when supported by clear and convincing evidence. Thus, only questions of law may be raised in a petition for review on *certiorari*.

It is settled that a question of law arises when there is doubt or difference 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 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.[28]

The present petition does not require an examination of the probative value or truthfulness of the evidence presented. It merely raises the question whether or not the Court of Appeals correctly applied the law and jurisprudence when in granting respondents Jabson's application for registration of title to the subject property.[29] Thus, the pivotal question herein is whether or not the grant of respondents Jabson's application for registration of title to the subject property was proper under the law and current jurisprudence.

The general rule prevailing over claims of land is the Regalian Doctrine, which, as enshrined in the 1987 Constitution, declares that the State owns all lands of the public domain.[30] In other words, land that has not been acquired from the government,

---

[27] *Id*. at 146-162.

[28] *Gaerlan v. Republic*, 729 Phil. 418, 429-430 (2014) citing *Republic v. Medida*, 692 Phil. 454, 461 (2012).

[29] *Republic v. Jaralve*, 698 Phil. 86, 104 (2012).

[30] 1987 CONSTITUTION, Article XII, Section 2.

either by purchase, grant, or any other mode recognized by law, belongs to the State as part of the public domain.[31]

In turn, The Public Land Act[32] governs the classification and disposition of lands of the public domain, except for timber and mineral lands.[33] The law also entitles possessors of public lands to judicial confirmation of their imperfect titles, *viz.*:

> Sec. 48. The following described Citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:
>
> x x x x x x x x x
>
> (b) Those who by themselves or through their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a bona fide claim of acquisition or ownership, since June 12, 1945, except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.[34]

The above-cited provision is echoed in Section 14 of Presidential Decree No. 1529, *viz.*:

> SECTION 14. Who may apply. — The following persons may file in the proper Court of First Instance an application for registration

---

[31] *Republic v. Jaralve*, *supra* note 29 at 105.

[32] The Public Land Act, Commonwealth Act No. 141, November 7, 1936.

[33] *Republic v. Jaralve*, *supra* note 29 at 105.

[34] As amended by Presidential Decree No. 1073 entitled "Extending the Period of Filing Applications for Administrative Legalization (Free Patent) and Judicial Confirmation of Imperfect and Incomplete Titles to Alienable and Disposable Lands in the Public Domain Under Chapter VII and Chapter VIII of Commonwealth Act No. 141, as amended, for Eleven (11) Years Commencing January 1, 1977."

of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

It is clear from the above-cited provisions that any applicant for registration of title to land derived through a public grant must sufficiently establish three things: (a) the subject land's alienable and disposable nature; (b) his or her predecessors' adverse possession thereof, and (c) the reckoning date from which such adverse possession was under a *bona fide* claim of ownership, that is, since June 12, 1945 or earlier.[35]

That land has been removed from the scope of the Regalian Doctrine and reclassified as part of the public domain's alienable and disposable portion cannot be assumed or implied. The prevailing rule is that the applicant must clearly establish the existence of a positive act of the government, such as a *presidential proclamation* or an *executive order*; an *administrative action; investigation reports of Bureau of Lands investigators*; and a *legislative act* or a *statute* to prove the alienable and disposable nature of the subject land.[36]

In the present case, the Court of Appeals ruled that the DENR Certification dated February 19, 2009 was sufficient evidence to establish the subject properties' alienable and disposable character.

We disagree.

We cannot give probative value to the DENR Certification dated February 19, 2009 as submitted by respondents Jabson.

---

[35] See *Republic v. Roasa*, 752 Phil. 439, 446 (2015); *Republic v. Jaralve*, *supra* note 29 at 106-107.

[36] *Fortuna v. Republic*, 728 Phil. 373, 382-383 (2014).

First, respondents Jabson's belated submission of a supposed vital document tending to prove the subject properties' alienability is fatal to their cause.

The general rule is that an applicant must formally offer evidence supporting his application before the trial court to duly prove the documents' genuineness and due execution.[37] As an exception to this rule, in *Llanes v. Republic* as cited by the Court of Appeals, the Court admitted in evidence a corrected CENRO certification not formally offered in the trial court and only presented on appeal. However, *Llanes* is not on all fours with the present petition. There are special circumstances justifying the Court's ruling in *Llanes* that are not present in the case at bar.

When the proceedings in *Llanes* reached the appeal stage, the applicants therein had already presented two certifications before the trial court to support their claim that the subject property therein had already been classified as alienable and disposable. However, the two certifications bore different dates as to when the subject land was classified. To clarify the matter, on appeal, the applicants therein submitted a *corrected* certification confirming the true date of classification. Thus, the Court held:

> If the Court strictly applies the aforequoted provision of law, it would simply pronounce that the Court of Appeals could not have admitted the corrected CENRO Certification because it was not formally offered as evidence before the MCTC during the trial stage. **Nevertheless, since the determination of the true date when the subject property became alienable and disposable is material to the resolution of this case, it behooves this Court, in the interest of substantial justice, fairness, and equity, to consider the corrected CENRO Certification even though it was only presented during the appeal to the Court of Appeals.** Since rules of procedure are mere tools designed to facilitate the attainment of justice, it is well recognized that the Court is empowered to suspend its rules or to

---

[37] *Gaerlan v. Republic*, *supra* note 28 at 439 citing *Republic v. Gomez*, 682 Phil. 631, 640 (2012).

exempt a particular case from the application of a general rule, when the rigid application thereof tends to frustrate rather than promote the ends of justice.

Moreover, the Spouses Llanes should not be made to suffer the grave consequences, which include the possibility of losing their right to their property, arising from the mistake of CENRO, a government agency. CENRO itself admitted its blunder and willingly issued a corrected Certification. Very conspicuously, no other objection to the corrected CENRO Certification was raised except as to its late presentation; its issuance and authenticity were not challenged or placed in doubt.[38] (Emphasis supplied, citation omitted.)

From the foregoing, what was belatedly filed in *Llanes* was merely a *corrected* or *amended* certification, the unedited version of which had been earlier presented in the trial court as evidence of the alienable and disposable nature of the land. And the correction or amendment pertained merely to the statement of the reckoning date of adverse possession.

Unlike in *Llanes*, however, respondents Jabson failed to present during trial any evidence establishing the subject properties' alienable and disposable nature. Admittedly, found in the trial court's records was Oppositor Leonida Jabson's ***Oposisyon sa Pagpapatitulo ng Lupa*** dated July 2, 1998, and attached thereto was an alleged **CENRO Certification dated May 14, 1998** issued by Atty. Juanito A. Viernes, a CENR Officer, stating that the subject Bagong Katipunan property is, "[w]ithin the Alienable and Disposable Zone per Project No. 21 and Land Classification Map No. 639."[39] But such document is of no consequence as it was: (a) merely a plain photocopy; (b) not formally offered during trial; and (c) only formed part of the trial court's record not at the instance of respondents Jabson, but due to Oppositor Leonida's submission.

The DENR Certification dated February 19, 2009 was submitted for the first time by respondents Jabson in their Motion

---

[38] *Llanes v. Republic*, *supra* note 18 at 633-634.

[39] Records, p. 85.

for Reconsideration of the Court of Appeals' *original* Decision dated January 30, 2009. This document also cannot be given probative value — it was not presented and identified during trial, much less formally offered in evidence. That it was procured as an afterthought is a given. A cursory reading of the document will reveal that the document was dated *after* respondents Jabson had already lost their appeal on January 30, 2009. This fact underscores that it was *submitted* to "cure" what the original Decision identified as a "defect" in the case.

Second, as correctly pointed out by petitioner Republic, Carlito P. Castañeda, a *DENR Sr. Forest Management Specialist*, was not authorized to issue certifications as to land classification, much less order for the release of lands of the public domain as alienable and disposable.[40]

The Public Land Act[41] vested the **President** the authority to classify lands of the public domain into alienable and disposable. Subsequently, the Revised Forestry Code of the Philippines[42] also empowered the DENR Secretary to determine and approve land classification as well as declare the same as alienable and disposable.[43]

In turn, **DENR Administrative Order (DENR AO) No. 20**[44] dated May 30, 1988 authorized the Provincial Environment and

---

[40] *Republic v. TA.N. Properties, Inc.*, *supra* note 25.

[41] Section 6 of The Public Land Act provides, "The President, upon the recommendation of the Secretary of Agriculture and Commerce, shall from time to time classify the lands of the public domain into — (a) Alienable or disposable, (b) Timber, and (c) Mineral lands, and may at any time and in a like manner transfer such lands from one class to another, for the purposes of their administration and disposition."

[42] Presidential Decree No. 705, May 19, 1975, as cited in *Fortuna v. Republic*, *supra* note 36.

[43] *Fortuna v. Republic, id*., citing Section 13 of Presidential Decree No. 705 or the Revised Forestry Code of the Philippines, approved on May 19, 1975.

[44] Subject: Delineation of Regulatory Functions And Authorities. Available on: http://policy.denr.gov.ph/1988/DENR_DAO 1988-20.pdf. Last accessed: May 18, 2018.

Natural Resources Offices (PENRO)[45] and CENRO[46] to issue certifications as to the status of land classifications, as part of their efforts to decentralize selected functions and authorities of the offices within the DENR. Note, however, that within the department, the DENR Secretary retains the sole authority to approve land classification and release lands as alienable and disposable.[47]

In other words, while the PENRO and CENRO are authorized to issue certifications as to the status of land classification, only the DENR Secretary is empowered to declare that a certain parcel of land forms part of the alienable and disposable portion of the public domain.

Third, a certification alone is not sufficient in proving the subject land's alienable and disposable nature. We have already ruled that a PENRO and/or CENRO certification must be accompanied by a copy of the original classification, certified as a true copy by the legal custodian of the official records, which: (a) released the subject land of the public domain as alienable and disposable, and (b) was approved by the DENR Secretary.[48]

Fourth, even assuming *arguendo* that the DENR Certification dated February 19, 2009 does not suffer the aforementioned shortcomings, the same only served to prove the land classification of one of the subject properties — Bagong Katipunan. To recall, respondents Jabson filed their application in relation to two properties, *viz.*: San Jose and Bagong Katipunan properties. However, the DENR Certification dated February 19, 2009 covers the Bagong Katipunan property only.

To this day, respondents Jabson have not established the alienable and disposable nature of the San Jose property.

---

[45] DENR AO No. 20, Part F.

[46] *Id*., Part G.

[47] *Id*., Part A.

[48] *Republic v. T.A.N. Properties, Inc.*, *supra* note 25.

All told, from the foregoing, it is clear that respondents Jabson did not overcome the presumption that the parcels of land sought to be registered still formed part of the public domain. Thus, there was absolutely no basis for the Court of Appeals to approve respondents Jabson's application pertaining to the Bagong Katipunan property, and much less the San Jose property.

WHEREFORE, the petition is hereby **GRANTED**. The Amended Decision dated November 4, 2010 and Resolution dated December 26, 2011 of the Court of Appeals in CA-G.R. CV No. 82986, are **REVERSED** and **SET ASIDE**. Respondents Jabson's application for registration and issuance of title to: (a) Lots 1, 2, and 3 as per PSU-233559, Barrio San Jose, Pasig City, and (b) Lots 26346 and 26347 as per AP-00-000399, Barangay Bagong Katipunan, Pasig City, in LRC Case No. N-11402 filed with the Regional Trial Court, Branch 161, Pasig City is **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED.

Bersamin,[**] *del Castillo*, and *Gesmundo, JJ.*, concur.

Tijam, J., on official leave.

SECOND DIVISION

[G.R. No. 202113. June 6, 2018]

RICKY B. TULABING, *petitioner, vs.* **MST MARINE SERVICES (PHILS.), INC., TSM INTERNATIONAL LTD., and/or CAPT. ALFONSO R. DEL CASTILLO,** *respondents.*

[G.R. No. 202120. June 6, 2018]

MST MARINE SERVICES (PHILS.), INC., TSM INTERNATIONAL LTD., and/or CAPT. ALFONSO R. DEL CASTILLO, *petitioners, vs.* **RICKY B. TULABING,** *respondent.*

[**] Per Raffle dated February 26, 2018.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; DISABILITY BENEFITS; PERMANENT DISABILITY, DEFINED; TOTAL DISABILITY, DEFINED.— [A] disability may be temporary or permanent, it may be partial or total. Permanent disability is defined as the inability of a worker to perform his job for more than 120 days (or 240 days, as the case may be), regardless of whether or not he loses the use of any part of his body. Total disability, meanwhile, means the disablement of an employee to earn wages in same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do.

2. ID.; ID.; ID.; PERMANENT AND TOTAL DISABILITY; THE COMPANY-DESIGNATED PHYSICIAN MUST ISSUE A DEFINITE ASSESSMENT OF THE SEAFARER'S FITNESS TO WORK OR PERMANENT DISABILITY WITHIN THE PERIOD OF 120 DAYS, BUT SHOULD HE FAIL TO DO SO AND THERE IS SUFFICIENT JUSTIFICATION FOR THE DELAY, THE 120-DAY PERIOD SHALL BE EXTENDED TO 240 DAYS.— Article 192(c)(1) of the Labor Code expressly provides that temporary total disability shall be deemed permanent and total if it lasts continuously for more than 120 days *except as otherwise provided in the Rules.* In the recent case of *TSM Shipping Phils., Inc., and/or DAMPSKIBSSELSKABET NORDEN A/S and/or Capt. Castillo v. Louie Patiño,* the Court clarified that the "Rule" referred to in this Labor Code provision is Section 2, Rule X of the Amended Rules on Employees' Compensation Implementing Title II, Book IV of the Labor Code x x x. Thus, by correlating and harmonizing the provisions of Article 192(c)(1) of the Labor Code and Section 2, Rule X of the Amended Rules on Employees' Compensation, the prevailing rule as it now stands is that the 120-day initial period may be extended for the purpose of determining the seafarer's grade of disability. In recently decided cases involving claims for disability benefits, the Court ruled that the company-designated physician must arrive at and issue a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 days. If the company-designated physician fails

to give his assessment within the 120-day period but there is sufficient justification for the delay (e.g. the seafarer's condition required further medical treatment or on-going rehabilitation), the 120-day period shall be extended to 240 days. If the company-designated physician still fails to give a final assessment within the extended period and the seafarer's medical condition remains unresolved after the lapse of said period, the seafarer's disability shall be deemed permanent and total.

3. ID.; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA-STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; WHEN THERE IS CONFLICTING ASSESSMENTS BETWEEN THE COMPANY-DESIGNATED PHYSICIAN AND THE SEAFARER'S PERSONAL PHYSICIAN, THE SAME SHALL BE SETTLED BY REFERRING THE MATTER TO A NEUTRAL THIRD-PARTY PHYSICIAN, WHOSE ASSESSMENT SHALL BE FINAL AND BINDING.— The only instance when the assessment of a company-designated physician may be challenged is when the seafarer likewise consulted with his personal physician who issued a different assessment. The conflicting assessments shall be settled by referring the matter to a neutral third-party physician, whose assessment shall be final and binding [, pursuant to] x x x Section 20(B)(3) of the 2000 POEA-Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-board Ocean-going Ships (SEC) x x x.

4. ID.; ID.; ID.; ID.; THE ENTITLEMENT OF AN OVERSEAS SEAFARER TO DISABILITY BENEFITS IS GOVERNED BY LAW, THE EMPLOYMENT CONTRACT, AND THE MEDICAL FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN.— In the case of *Crew and Ship Management International, Inc. v. Soria,* the Court explained that the employment of seafarers, including claims for death and disability benefits, is governed by the contracts they sign every time they are hired or rehired, and as long as the stipulations therein are not contrary to law, morals, public order or public policy, they have the force of law between the parties. There is no question that Tulabing's disability was due to an injury he sustained while engaged in the performance of his work as MST's employee. Under the provisions of the parties' NIS-CBA, the maximum disability compensation that may be paid to an

employee is US$70,000.00. Award of this maximum amount, however, presupposes a disability grading of "1" or permanent and total disability. In the case at bench, the company-designated physician gave Tulabing a final and definite assessment of Grade 10 disability only. Although the Court has always been vigilant in ensuring that the rights of seafarers are protected, it is likewise keen in upholding labor laws. The entitlement of an overseas seafarer to disability benefits is governed by (1) the law, (2) the employment contract, and (3) the medical findings of the company-designated physician.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for MST Marine Services (Phils.), Inc., *et al.*

Linsangan Linsangan & Linsangan for Ricky Tulabing.

D E C I S I O N

REYES, JR., *J.*:

Consolidated in this case are the petitions for review on *certiorari* under Rule 45 of the Rules of Court filed: (1) by Ricky B. Tulabing (Tulabing) against MST Marine Services (Phils.), Inc. (MST), TSM International Ltd. (TSM), and/or Capt. Alfonso R. Del Castillo (MST, et al.) in G.R. No. 202113; and (2) MST, et al. against Tulabing in G.R. No. 202120. The petitions seek to assail the Decision[1] dated September 12, 2011 and Resolution[2] dated May 23, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 117319.

The Antecedent Facts

MST is a Philippine-registered manning agency engaged in the recruitment of seafarers for its foreign principal, TSM, a Norwegian shipping company.[3]

---

[1] *Rollo* (G.R. No. 202113), pp. 30-44.

[2] *Id.* at 45-46.

[3] *Rollo* (G.R. No. 202120), p. 72.

Tulabing is a seafarer formerly under the employ of TSM. His employment was covered by the Norwegian International Ship Register collective bargaining agreement (NIS-CBA), between the Norwegian Shipowners' Association (NSA), on the one hand, and the Associate Marine Officers' and Seamen's Union of the Philippines (AMOSUP) and the Norwegian Seafarer's Union (NSU), on the other.[4]

On August 23, 2007, MST, in behalf of TSM, employed Tulabing as GP2 Wiper for the vessel M/T Champion. Covered by a Philippine Overseas Employment Administration (POEA)-approved Contract of Employment, Tulabing's employment was for a period of nine months with a basic monthly salary of US$454.00.[5]

On September 13, 2007, Tulabing embarked on his voyage on board M/T Champion and commenced the performance of his duties pursuant to his Contract.[6]

Sometime in January 2008, while engaged in the performance of his duties, he felt a sudden crack on his back which was followed by a severe pain and numbness of the left side of his body. He was referred to a physician in Brazil for medical evaluation and was given medicine. Initially, the medicine accorded Tulabing some relief from the pain but eventually his condition aggravated and radiated to his left shoulder and upper extremities.[7]

Subsequently, Tulabing complained of chest pain, hence, he was referred by the vessel master to Dr. J.J. Voorsluis (Dr. Voorsluis) of the Medical Centre for Seamen in Amsterdam, Netherlands for medical examination. Dr. Voorsluis diagnosed him of cervical neuralgia and prescribed him oral medication therefor. He was declared unfit to work for four days with the

---

[4] *Id*.

[5] *Id*.

[6] *Id*

[7] *Id*.

recommendation that should his medical condition fail to improve, he should be repatriated back to the Philippines.[8] On June 13, 2008, Tulabing was repatriated back to the Philippines.[9]

On June 17, 2008, Tulabing reported to Dr. Nicomedes Cruz (Dr. Cruz), the company-designated physician for medical evaluation. Dr. Cruz confirmed Dr. Voorsluis' diagnosis of Tulabing's cervical neuralgia and noted the persistence of his upper back pain which continued to radiate to his left shoulder and upper left extremities. Dr. Cruz issued a Medical Report, ordering an x-ray of Tulabing's cervical spine and his refenal to an orthopedic surgeon for specialized examination, and directing him to return for further evaluation.[10]

On June 26, 2008, Dr. Cruz, following the orthopedic surgeon's evaluation of Tulabing's condition, issued a second Medical Report with the following diagnosis and directives, *viz.*:

> The patient was seen by our orthopedic surgeon and noted the result of the cervical spine x-ray-
>
> Cervical spondylosis C4C5 and C5C6 and Reversal of cervical lordosis. He recommends MRI of the cervical spine and advised referral to rehabilitation medicine for physical therapy.
>
> DIAGNOSIS:
> Cervical spondylosis C4C5 and C5C6
> Reversal of cervical lordosis
>
> MEDICATION:
> Moxen
> Trevoca
>
> Advised to come back on July 03, 2008[11]

---

[8] *Id*. at 72-73.

[9] *Id*. at 73.

[10] *Id*.

[11] *Id*.

The result of Tulabing's Magnetic Resonance Imaging (MRI) indicated the following findings, *viz.*

MULTI-LEVEL DISC DESSICATION WITH MILD REVERSAL OF THE NORMAL LORDOSIS

BROAD-BASED DISCS PROTRUSIONS FROM C3-C4 CUADAD TO C5-C6 CAUSING MINIMAL THECAL SAC INDENTATION AND BILATERAL NEURAL FORMINAL COMPROMISE.[12]

Tulabing underwent physical rehabilitation from October to December of 2008 under the medical attention of specialist Dr. Reynaldo Matias (Dr. Matias). Dr. Matias, who regularly submitted to Dr. Cruz his evaluations of Tulabing's condition, suggested that on the basis thereof Dr. Cruz give Tulabing a disability grading.[13]

On November 14, 2008, Dr. Cruz assessed Tulabing's condition as Grade 10 disability, *viz.:*[14]

> Disability grading under the POEA schedule of disabilities is grade 10 - moderate stiffness or two thirds (2/3) loss of motion of the neck.

Tulabing, however, did not agree. He demanded from MST the payment of maximum disability compensation in the amount of US$70,000.00 pursuant to Article 12 of the NIS-CBA which provides:[15]

> ARTICLE 12
>
> If a seafarer due to no fault of his own, suffers an occupational injury or an occupational disease while serving on board or while traveling to or from the vessel or Company's business or due to marine peril, and as a result his ability to work is permanently reduced. partially or totally, the Company shall pay him disability compensation which including the amounts stipulated by the POEA's rules and regulations shall be maximum:

---

[12] *Id*. at 74.

[13] *Id*.

[14] *Id*.

[15] *Id*.

Radio Officers Chief Stewards, Electricians Electro Technician	USD$90,000.00
Ratings	USD$70,000.00

MST denied Tulabing's claim and instead offered him compensation in the amount of US$14,105.00. Tulabing refused the offer, insisting that his disability was permanent and total, hence, his entitlement to full compensation. In an attempt at an amicable settlement, the parties initially submitted the dispute to the AMOSUP pursuant to the grievance procedure specified in the NIS-CBA but no settlement was obtained thereat.[16]

On July 20, 2009, Tulabing filed with the National Labor Relations Commission (NLRC) a complaint against MST for payment of permanent total disability benefits of US$70,000.00 pursuant to the NIS-CBA, reimbursement of medical expenses, and payment of moral and exemplary damages as well as attorney's fees. Tulabing claimed that his disability was of such nature that no amount of medication or therapy can restore him to his former physical condition and enable him to resume his customary work and that based on the medical findings, the severity of his disability rendered remote and uncertain the possibility of his future employment for overseas work.[17]

MST denied liability on the ground that under the provisions of his employment contract and the NIS-CBA, a seafarer is only entitled to claim maximum disability compensation of US$70,000.00 if the company-designated physician declares him to be suffering from Grade 1 disability. They likewise denied liability for damages and attorney's fees, contending good faith and full compliance with their contractual obligations, *viz.:* (1) that Tulabing received full monetary provision for his medical expenses prior and subsequent to his repatriation; and (2) that Tulabing was offered a just disability settlement in the amount

---

[16] *Id*. at 75.

[17] *Id*.

of US$14,105.00 as sanctioned by the POEA-SEC and the NIS-CBA.[18]

On December 29, 2009, Labor Arbiter (LA) Catalino R. Laderas rendered a Decision[19] in favor of MST, ordering the latter to pay Tulabing the amount of US$14,105.00 and attorney's fees equivalent to 10% of the amount adjudged.

Unsatisfied with the LA's award of disability compensation, Tulabing appealed to the NLRC, asserting his entitlement to the full permanent total disability compensation of $70,000.00.[20]

During the pendency of his appeal, Tulabing consulted orthopedic surgeon Dr. Alan Leonardo Raymundo (Dr. Raymundo) of the Philippine Orthopedic Institute, Makati City. In a Medical Report dated June 15, 2010, Dr. Raymundo diagnosed Tulabing of cervical neuropraxia and declared him unfit for resumption of duty, *viz.:*

> On physical examination, the patient can ambulate well without any support. Manual motor testing shows a 4/5 muscle power involving the area of the deltoids as well as all the muscle compartments of the upper and lower extremities on the left side. He has sensory deficits affecting the left side of the face and the entire left side of the body as well as the upper and lower extremities on the left. There is hypereflexia of the deep tendon reflexes. There is also noted atrophy of all the muscles on the left upper and left lower extremities.
>
> DIAGNOSIS: CERVICAL NEUROPRAXIA
>
> RECOMMENDATIONS:
>
> With the present condition of the patient he is not fit to return to his previous work duty.[21]

---

[18] *Id*. at 76.

[19] *Id*.

[20] *Id*. at 77.

[21] *Id*. at 77-78.

On August 16, 2010, the NLRC rendered its Decision, setting aside the LA's decision, *viz.*:

> **WHEREFORE,** premises considered, the Decision dated 29 December 2009 is hereby SET ASIDE and a NEW ONE entered declaring the disability of [Tulabing] to be permanent total thereby ordering respondents jointly and severally liable to pay [Tulabing) the amount of SEVENTY THOUSAND ($70,000.00) US DOLLARS or its peso equivalent at the time of actual payment representing his disability benefits, plus 10% attorney's fees.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[22]

On September 21, 2010, MST moved for reconsideration but the same was denied by the NLRC. Undeterred, MST filed a petition for *certiorari* in the CA imputing grave abuse of discretion on the NLRC in awarding full disability benefits and attorney's fees to Tulabing.

On September 12, 2011, the CA rendered a Decision[23] affirming the earlier decision of the NLRC but modified the award of attorney's fees, *viz.:*

> **WHEREFORE,** the petition for *certiorari* is **PARTLY GRANTED.** The August 16, 2010 Decision of public respondent NLRC is **AFFIRMED with MODIFICATION,** reducing the award of attorney's fees to US$1,000.00.
>
> **SO ORDERED**.[24]

Both parties filed their respective motions for reconsideration but the same were denied by the CA in its Resolution[25] dated May 23, 2012.

Hence, these consolidated petitions.

---

[22] *Id*. at 78.

[23] *Id*. at 71-85.

[24] *Id*. at 84.

[25] *Id*. at 113.

The Issues[26]

Tulabing seeks partial reversion of the assailed CA decision, specifically as to the amount of attorney's fees. He posits that the CA erred when it ruled that he is entitled only to US$1,000.00 attorney's fees instead of the US$7,000.00 previously awarded by the NLRC.

On the other hand, MST, et al. put forth the following grounds:

1. The CA committed serious reversible error of law in refusing to give weight and credence to the final assessment of the company-designated physician that Tulabing's disability is grade 10, in complete disregard of the ruling of the Court in *Magsaysay Maritime Corp., et al. v. NLRC (2nd Division), et al.*[27] and *Vergara v. Hammonia Maritime Services, Inc.*[28]

2. The CA committed serious reversible error of law in granting permanent disability benefits on the ground that Tulabing was unable to perform work for more than 120 days, in complete disregard of the ruling of the Court in *Magsaysay Maritime*[29] that this period is subject to the right of the employer to declare within 120 to 240 days the seafarer's final disability.

3. The CA committed serious reversible error for faulting MST, et al. in not re-deploying Tulabing, notwithstanding the employer's exercise of management prerogative as recognized in the case of *Rural Bank of Cantilan v. Julve.*[30]

4. The CA committed serious reversible error of law in awarding attorney's fees notwithstanding the lack of

---

[26] *Id*. at 45-47; *rollo* (G.R. No. 202113), p. 22.

[27] 630 Phil. 352 (2010).

[28] 588 Phil. 895 (2008).

[29] *Supra* note 27.

[30] 545 Phil. 619 (2007).

factual, legal and equitable bases as required in the case of *Briones v. Macabagdal.*[31]

Ruling of the Court

The petition of MST, et al. is impressed with merit.

The pivotal issue that must be resolved in MST, et al.'s petition for review is whether or not Tulabing is entitled to the award of *full* disability benefits of US$70,000.00, as previously held by the NLRC and affirmed by the CA. The issue raised by Tulabing in his petition, as to the amount of attorney's fees awarded, shall be discussed after the Court has ruled on the main issue.

In a long line of cases,[32] the Court has repeatedly ruled that a disability may be temporary or permanent, it may be partial or total. Permanent disability is defined as the inability of a worker to perform his job for more than 120 days (or 240 days, as the case may be), regardless of whether or not he loses the use of any part of his body. Total disability, meanwhile, means the disablement of an employee to earn wages in same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do.

Article 192(c)(1)[33] of the Labor Code expressly provides that temporary total disability shall be deemed permanent and total if it lasts continuously for more than 120 days *except as otherwise provided in the Rules.* In the recent case of *TSM Shipping Phils., Inc., and/or DAMPSKIBSSELSKABET NORDEN A/S and/or*

---

[31] 640 Phil. 343 (2010).

[32] *Olidana v. Jebsens Maritime, Inc.,* 772 Phil. 234 (2015); *Hanseatic Shipping Philippines Inc., et al. v. Ballon,* 769 Phil. 567 (2015); *Maersk Filipinos Crewing, lnc./Maersk Services Ltd., et al. Mesina,* 710 Phil. 531 (2013).

[33] (c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

Capt. Castillo v. Louie Patiño,[34] the Court clarified that the "Rule" referred to in this Labor Code provision is Section 2, Rule X of the Amended Rules on Employees' Compensation Implementing Title II, Book IV of the Labor Code, which states:

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

Thus, by correlating and harmonizing the provisions of Article 192(c)(1) of the Labor Code and Section 2, Rule X of the Amended Rules on Employees' Compensation, the prevailing rule as it now stands is that the 120-day initial period may be extended for the purpose of determining the seafarer's grade of disability. In recently decided cases[35] involving claims for disability benefits, the Court ruled that the company-designated physician must arrive at and issue a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 days. If the company-designated physician fails to give his assessment within the 120-day period but there is sufficient justification for the delay (e.g. the seafarer's condition required further medical treatment or on-going rehabilitation), the 120-day period shall be extended to 240 days. If the company-designated physician still fails to give a final assessment within the extended period and the seafarer's medical condition remains

---

[34] G.R. No. 210289, March 20, 2017.

[35] *Paulino M. Aldaba v. Career Philippines Ship-Management, Inc., Columbia Shipmanagement Ltd., and/or Verlou Carmelino,* G.R. No. 218242, June 21, 2017; *Elburg Shipmanagement Phils., Inc., et al. v. Quiogue, Jr.,* 765 Phil. 341, 355 (2015); *Kestrel Shipping Co., Inc., et al. v. Munar,* 702 Phil. 717, 732-733 (2013).

unresolved after the lapse of said period, the seafarer's disability shall be deemed permanent and total.

A perusal of the records reveals that from the period of June 17, 2008 up until the time the company-designated physician gave a final disability grading, Tulabing never consulted with another physician. Stated otherwise, the only assessment or grading that existed at that time was the grading given by Dr. Cruz, the company-designated physician. Since the disability grading was given by Dr. Cruz on November 14, 2008, or only 150 days after Tulabing's first medical evaluation from repatriation, it was well within the 240-day period.

Dr. Cruz's *second medical report* issued on June 26, 2008 which referred Tulabing to undergo physical rehabilitation, justified the extension of the 120-day period to an additional 31 days. That he was not able to give a disability grading during the 120-day period notwithstanding the fact that evaluations were made, only bolsters the conclusion that he was thorough in his assessment. It was not mere unjustified delay on his part since he referred Tulabing to undergo physical rehabilitation under the care of Dr. Matias who in turn submitted reports to him for further evaluation. That being said, it is not for this Court to question the evaluation and recommendations made by Dr. Cruz especially when it involves matters clearly falling within his field of expertise. Being the company-designated physician who observed, studied and evaluated Tulabing's medical condition from the time the latter was repatriated back to the Philippines up until the time he was undergoing physical rehabilitation, Dr. Cruz's assessment stands in the absence of evidence to the contrary.

The only instance when the assessment of a company-designated physician may be challenged is when the seafarer likewise consulted with his personal physician who issued a different assessment. The conflicting assessments shall be settled by referring the matter to a neutral third-party physician, whose assessment shall be final and binding. Section 20(B)(3) of the 2000 POEA-Standard Terms and Conditions Governing the

Overseas Employment of Filipino Seafarers On-board Ocean-going Ships (SEC)[36] provides:

SECTION 20. COMPENSATION AND BENEFITS

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

3. Upon sign-off from the vessel for medical treatment the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work, or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working 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.

It bears emphasizing that Tulabing only sought a *second* opinion and consulted Dr. Raymundo when the LA decided against his claim of full disability benefits. In fact, his appeal was already pending with the NLRC when such consultation was made. This move on Tulabing's part appears to be nothing but a mere afterthought given the length of time that has already passed since Dr. Cruz's final assessment. Dr. Raymundo issued

[36] Note that there is already a 2010 POEA-SEC. The present case, however, is still governed by the 2000 POEA-SEC as the employment contract was entered into before 2010.

the Medical Report only on June 15, 2010 or almost two years (728 days) from the date of Tulabing's first medical evaluation after his repatriation to the Philippines. Moreover, even if the Court were to consider the irrationally late assessment issued by Dr. Raymundo, the assessment of Dr. Cruz must still prevail for failure of the parties to refer the matter to a third-party physician, as required by the Rules[37] and jurisprudence.

In the case of *Crew and Ship Management International, Inc. v. Soria,*[38] the Court explained that the employment of seafarers, including claims for death and disability benefits, is governed by the contracts they sign every time they are hired or rehired, and as long as the stipulations therein are not contrary to law, morals, public order or public policy, they have the force of law between the parties.[39]

There is no question that Tulabing's disability was due to an injury he sustained while engaged in the performance of his work as MST's employee. Under the provisions of the parties' NIS-CBA, the maximum disability compensation that may be paid to an employee is US$70,000.00. Award of this maximum amount, however, presupposes a disability grading of "1" or permanent and total disability. In the case at bench, the company-designated physician gave Tulabing a final and definite assessment of Grade 10 disability only.

Although the Court has always been vigilant in ensuring that the rights of seafarers are protected, it is likewise keen in upholding labor laws. The entitlement of an overseas seafarer to disability benefits is governed by (1) the law, (2) the employment contract, and (3) the medical findings of the company-designated physician.

In sum, the Court holds that the appellate court clearly erred when it awarded full disability benefits of US$70,000.00 to

---

[37] Section 20(B)(3) of the 2000 POEA-SEC.

[38] 700 Phil. 598 (2012).

[39] *Id*. at 609.

Tulabing, in clear disregard of labor laws and settled jurisprudence on the matter.

Anent the issue raised by Tulabing, he avers that the CA erred when it modified the amount of attorney's fees previously awarded by the NLRC. The NLRC awarded him attorney's fees equivalent to 10% of US$70,000.00. The CA thereafter reduced it to US$1,000.00. Considering that Tulabing was forced to litigate and incur expenses to protect his right and interest, the Court finds it proper and reasonable to award him attorney's fees equivalent to 10% of the monetary award or US$1,410.50.

WHEREFORE, premises considered, the Decision dated September 12, 2011 of the Court of Appeals in CA-G.R. SP No. 117319 is hereby **REVERSED and SET ASIDE.**The Decision dated December 29, 2009 of the Labor Arbiter is **REINSTATED.**

MST Marine Services (Phils.), Inc., TSM International Ltd. and/or Capt. Alfonso R. Del Castillo are ordered to pay, *jointly and severally,* Ricky B. Tulabing his disability compensation in the amount of US$14,105.00 plus attorney's fees equivalent to ten percent (10%) of the judgment award.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 204307. June 6, 2018]

ORIENT HOPE AGENCIES, INC. and/or ZEO MARINE CORPORATION, *petitioners, vs.* **MICHAEL E. JARA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL IN LABOR CASES; CONFINED TO DETERMINING THE LEGAL CORRECTNESS OF THE CA DECISION ON A RULE 65 PETITION FILED BEFORE IT.— This Court's review in this Rule 45 Petition is confined to determining the legal correctness of the Court of Appeals August 15, 2012 Decision on a Rule 65 petition filed before it. Accordingly, this Court resolves whether or not the Court of Appeals properly found grave abuse of discretion on the part of the National Labor Relations Commission when it ruled that respondent is entitled only to a Grade 11 disability compensation.

2. LABOR AND SOCIAL LEGISLATION; OVERSEAS EMPLOYMENT; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); IN CLAIMS FOR A SEAFARER'S DISABILITY BENEFITS, THE POEA-SEC IS DEEMED INCORPORATED IN THE SEAFARER'S EMPLOYMENT CONTRACT.— [I]n claims for a seafarer's disability benefits, POEA-SEC is deemed incorporated in the seafarer's employment contract and must be read in light of the relevant provisions on disability of the Labor Code and its implementing rules. In this case, the 2000 version of the POEA-SEC applies since respondent was hired in December 2005 and he filed his complaint in 2008. The 120-day period mandated in Section 20(B) of the POEA-SEC, within which a company-designated physician should declare a seafarer's fitness for sea duty or degree of disability, should accordingly be harmonized with Article 198 [192](c)(1) of the Labor Code, in relation with Book IV, Title II, Rule X of the Implementing Rules of the Labor Code, or the Amended Rules on Employee Compensation. Book IV, Title II, Article 198 [192](c)(1) of the Labor Code.

3. ID.; ID.; ID.; ID.; IT IS THE PRIMARY RESPONSIBILITY OF A COMPANY-DESIGNATED PHYSICIAN TO DETERMINE THE DISABILITY GRADING OR FITNESS TO WORK OF SEAFARERS; THE ASSESSMENT MUST BE COMPLETE AND DEFINITE.— The POEA-SEC clearly provides the primary responsibility of a company-designated physician to determine the disability grading or fitness to work of seafarers. To be conclusive, however, company-designated physicians' medical assessments or reports must be complete and definite to give the proper disability benefits to seafarers. As explained by this Court: A **final and definite disability assessment** is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered. In *Monana v. MEC Global Shipmanagement and Manning Corp.,* this Court further stressed the overriding consideration that there must be sufficient basis to support the assessment.

4. ID.; ID.; COMPENSABILITY OF SEAFARER'S DISABILITY; SUBJECT TO THE PERIODS PRESCRIBED IN THE LAW; A PARTIAL AND PERMANENT DISABILITY COULD BECOME TOTAL AND PERMANENT WHEN A COMPANY-DESIGNATED PHYSICIAN FAILS TO ARRIVE AT A DEFINITE ASSESSMENT WITHIN THE 120-OR 240-DAY PERIODS.— [W]hile the assessment of a company-designated physician *vis-à-vis* the schedule of disabilities under the POEA-SEC is the basis for compensability of a seafarer's disability, it is still subject to the periods prescribed in the law. x x x Accordingly, in *Carcedo v. Maine Marine Philippines, Inc.,* this Court declared that a partial and permanent disability could, by legal contemplation, become total and permanent when a company-designated physician fails to arrive at a definite assessment within the 120- or 240-day periods prescribed under Article 198 [192](c)(1) of the Labor Code and the Amended Rules on Employee Compensation, implementing Book IV, Title II of the Labor Code. x x x It is well to point out that in disability compensation, "it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity." Total disability refers to an

employee's inability to perform his or her usual work. It does not require total paralysis or complete helplessness. Permanent disability, on the other hand, is a worker's inability to perform his or her job for more than 120 days, or 240 days if the seafarer required further medical attention justifying the extension of the temporary total disability period, regardless of whether or not he loses the use of any part of his body. x x x The facts of this case show respondent's inability to perform his customary sea duties and the company-designated physician's failure to declare his fitness or unfitness to work, despite the lapse of 240 days. This entitles respondent, under the law, to permanent and total disability compensation. In this regard, non-compliance with the third-doctor-referral provision as provided in the POEA-SEC will not prejudice respondent's claim. The third-doctor rule does not apply when there is no valid final and definitive assessment from a company-designated physician.

5. CIVIL LAW; DAMAGES; ATTORNEY'S FEES PROPER AS RESPONDENT WAS COMPELLED TO LITIGATE; MORAL DAMAGES AND EXEMPLARY DAMAGES PROPER CONSIDERING THE BLITHE MANNER IN WHICH PETITIONERS DEALT WITH RESPONDENT'S CONDITION.— Since respondent was compelled to litigate due to petitioners' denial of his valid claims, the award for attorney's fees was proper. x x x Considering the blithe manner in which petitioners dealt with respondent's condition and the rulings in *Sharp Sea* and *Magsaysay Maritime*, the amount of ₱100,000.00 as moral damages would be commensurate to the anxiety and inconvenience suffered by respondent. Exemplary damages of ₱100,000.00 is also granted by way of example or correction for the public good. x x x Respondent was injured and forced to go home because the ship he was on sunk. He waited for more than 240 days to get an assessment that he deserved. Moral and exemplary damages are due him for his travails.

APPEARANCES OF COUNSEL

Del Rosario and Del Rosario Law Offices for petitioners.

Linsangan Linsangan & Linsangan Law Offices for respondent.

D E C I S I O N

LEONEN, *J.*:

Failure of the company-designated physician to render a final and definitive assessment of a seafarer's condition within the 240-day extended period transforms the seafarer's temporary and total disability to permanent and total disability.

This Petition for Review on Certiorari[1] seeks to annul the Court of Appeals August 15, 2012 Decision[2] and November 6, 2012 Resolution[3] in CA-G.R. SP No. 113214. The Court of Appeals reversed the National Labor Relations Commission September 30, 2009 Decision[4] and granted Michael E. Jara (Jara) permanent and total disability benefits of US$60,000.00 and 10% attorney's fees. It also denied Orient Hope Agencies, Inc. (Orient Hope) and/or Zeo Marine Corporation's (Zeo Marine) Motion for Reconsideration.

Jara was hired by Orient Hope, on behalf of its foreign principal, Zeo Marine, as engine cadet[5] on board M/V Orchid Sun.[6] The employment contract was for a duration of 10 months with a basic monthly salary of US$230.00.[7]

---

[1] *Rollo*, pp. 3-37.

[2] *Id*. at 39-48. The Decision was penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Angelita A. Gacutan of the Special Fourth Division, Court of Appeals, Manila.

[3] *Id*. at 63-64. The Resolution was penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Rodil V. Zalameda of the Special Former Special Fourth Division, Court of Appeals, Manila.

[4] *Id*. at 90-96. The Decision, docketed as NLRC LAC No. 01-000006-09, was penned by Commissioner Isabel G. Panganiban-Ortiguerra and concurred in by Presiding Commissioner Benedicto R. Palacol and Commissioner Nieves Vivar-De Castro of the Sixth Division, National Labor Relations Commission, Quezon City.

[5] *Id*. at 84; Labor Arbiter's Decision dated August 29, 2008.

[6] *Id*. at 40.

[7] *Id*. at 84.

On its way to Oman, M/V Orchid Sun sank off Muscat on July 12, 2007, during which Jara sustained leg injuries.[8] He was treated at Khoula Hospital in Oman and thereafter repatriated and admitted on August 3, 2007 at the Metropolitan Hospital in Manila.[9]

Jara was diagnosed to have suffered from "fracture, shaft of left ulna and left fibula."[10] On August 28, 2007 and January 9, 2008, he underwent knee operations.[11] He did not return to the company-designated doctor after his check up on March 17, 2008.[12]

Meanwhile, on March 6, 2008,[13] Jara filed a complaint with the Labor Arbiter, insisting that he was entitled to total permanent disability benefits amounting to US$60,000.00.[14]

On May 29, 2008, Assistant Medical Coordinator Dr. Mylene Cruz- Balbon of the Marine Medical Services of Metropolitan Medical Center issued a letter, which Medical Coordinator Dr. Robert D. Lim noted and which read:

> This is with regards to your query regarding the case of Wiper Michael E. Jara who was initially seen and admitted here at Metropolitan Medical Center on August 3, 2007 and was diagnosed to have Fracture, Shaft of Left Ulna and Left Fibula; S/P Open Reduction and Internal Fixation, Left Ulna; S/P Arthroscopic Release, Debridement, Synovectomy, Adhesiolysis, Lateral Complex Reconstruction, Fibular Collateral Ligament Advancement and Partial Lateral Meniscectomy, Left Knee on August 28, 2007; S/P Anterior Cruciate Ligament Reconstruction, Left Knee using bone patellar tendon graft with interference screw fixation on January 9, 2008.
>
> Patient was last seen at the clinic on March 17, 2008.

---

[8] *Id*. at 40-41.

[9] *Id*. at 41.

[10] *Id*. at 87.

[11] *Id*. at 46.

[12] *Id*. at 54.

[13] *Id*.

[14] *Id*. at 42.

Patient still has complaints of left knee pain especially upon doing left knee flexion.

Based on his last follow-up, his suggested disability grading is Grade 11 – stretching leg or ligaments of a knee resulting in instability of the joint.[15]

In his August 29, 2008 Decision,[16] Labor Arbiter Daniel J. Cajilig found Jara entitled to compensation equivalent to Grade 11 disability.[17] He solely relied on the assessment of the company-designated physician. He found no evidence or other medical report on record to dispute the company- designated physician's determination and to support Jara's claim.[18] The dispositive portion of this Decision read:

WHEREFORE, judgment is hereby rendered ordering respondents jointly and severally to pay complainant the amount of US$7,465.00 or its Philippine Peso equivalent at the time of payment representing his disability benefits plus 10% thereof as and by way of attorney's fee.

Other claims are hereby denied for lack of merit.

SO ORDERED.[19]

The National Labor Relations Commission affirmed[20] the Labor Arbiter's award.[21] It rejected Jara's unsubstantiated allegation that he was permanently and fully disabled.[22] It found no evidence, such as a credible assessment from another doctor,

---

[15] *Id*. at 82.

[16] *Id*. at 84-88. The Decision was docketed as NLRC-NCR-CASE-No. 03-03618-2008.

[17] *Id*. at 87.

[18] *Id*.

[19] *Id*. at 88.

[20] *Id*. at 90-96.

[21] *Id*. at 95.

[22] *Id*. at 94.

to overturn the company-designated physician's finding that indeed Jara was suffering from a Grade 11 disability.[23]

Jara filed a Motion for Reconsideration, but it was denied by the National Labor Relations Commission in its December 10, 2009 Resolution.[24]

Insisting that he was entitled to permanent disability compensation, Jara elevated the matter to the Court of Appeals through a Petition for Certiorari under Rule 65.[25]

In its August 15, 2012 Decision, the Court of Appeals held that Jara was "entitled to permanent disability benefits because the assessment of the company-designated physician that he was suffering from a grade '11' disability was issued after nine (9) months or more than 120 days from the time he was medically repatriated."[26] Citing *Valenzona v. Fair Shipping Corporation, et al*.[27] and *Fil-Star Maritime Corporation, et al. v. Rosete*,[28] the Court of Appeals held that Jara's disability was permanent and total considering that "he was unable to return to his job . . . for more than one hundred twenty days already."[29] Given Jara's knee injury, the Court of Appeals ruled that it would be nearly impossible for Jara to go back to sea duties.[30]

This Decision disposed as follows:

WHEREFORE, the petition is GRANTED. The September 30, 2009 *decision* of the NLRC and its December 10, 2009 *resolution* are REVERSED and SET ASIDE. The respondents are held jointly and severally liable to pay the petitioner permanent and total disability

---

[23] *Id*.

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

[25] *Id*. at 39.

[26] *Id*. at 43.

[27] 675 Phil. 713 (2011) [Per *J*. Del Castillo, First Division].

[28] 677 Phil. 262 (2011) [Per *J*. Mendoza, Third Division].

[29] *Rollo*, p. 45.

[30] *Id*. at 47.

benefits of US$60,000.00 and attorney's fees of ten percent (10%) of the total monetary award, both at its peso equivalent at the time of actual payment.

SO ORDERED.[31]

Orient Hope and/or Zeo Marine filed a Motion for Reconsideration,[32] citing the cases of *Vergara v. Hammonia Maritime Services*,[33] *Magsaysay Maritime Corp. v. Lobusta*,[34] and *Santiago v. Pacbasin Shipmanagement, Inc.*,[35] where it was clarified that the medical treatment period of 120 days may be extended up to a maximum of 240 days. As such, they argued that a temporary total disability only becomes permanent when a company-designated physician, within the 240-day period, declares it to be so, or when after the lapse of this period, he or she fails to make a declaration of the seafarer's fitness to work or a degree of disability.[36]

The Court of Appeals maintained its ruling, stating:

> Following the argument of [Orient Hope and/or Zeo Marine], [Jara] is still entitled to permanent disability benefits because the assessment of the company-designated physician was issued on May 29, 2008, after nine (9) months or more than 240 days from the time he was medically repatriated on August 3, 2007.[37]

On November 28, 2012, Orient Hope and/or Zeo Marine filed their Petition for Review on Certiorari before this Court.[38]

Petitioners contend that based on prevailing jurisprudence, the 120-day period within which a company-designated physician

---

[31] *Id*. at 47-48.

[32] *Id*. at 49-61.

[33] 588 Phil. 895 (2008) [Per *J*. Brion, Second Division].

[34] 680 Phil. 137 (2012) [Per *J*. Villarama Jr., First Division].

[35] 686 Phil. 255 (2012) [Per *J*. Mendoza, Third Division].

[36] *Rollo*, p. 50.

[37] *Id*. at 63-64, Resolution dated November 6, 2012.

[38] *Id*. at 3.

must give an assessment or declare a seafarer fit to work is extendible to 240 days.[39] Where the 240-day period has lapsed without any such declaration from a company-designated doctor, a presumption then arises which may entitle the seafarer to permanent and total disability compensation.[40] However, petitioners argue that this presumption is not applicable to respondent's case in light of the Grade 11 disability assessment made by their company-designated physician.[41] Petitioners add that since respondent abandoned his treatment, the disability assessment issued by their company-designated physician on May 29, 2008 must be deemed to have been given on March 17, 2008, the last day respondent was seen by their company-designated physician.[42] Petitioners submit that their company-designated physician's findings must be respected absent any showing of fraud or arbitrariness in arriving at those findings,[43] more importantly, where "no competent evidence [was] adduced by [r]espondent showing that he [was] permanently and totally disabled."[44]

Petitioners further argue that pursuant to Section 20(B) of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), there must be resort to a third physician to settle any conflict in the findings of the company-designated physician.[45] Since respondent did not comply with this procedure, then it is the company-designated physician's determination that must prevail.[46] Thus, the Court of Appeals was not justified in disregarding the findings of the company-designated physician and in awarding respondent the

---

[39] *Id*. at 11 & 14.

[40] *Id*. at 17.

[41] *Id*. at 15-17.

[42] *Id*. at 16.

[43] *Id*. at 18.

[44] *Id*. at 22.

[45] *Id*. at 21.

[46] *Id*. at 22.

sum of US$60,000.00 equivalent to a permanent and total disability.[47]

Finally, petitioners aver that respondent's complaint should be dismissed for lack of cause of action.[48] For one, respondent was given a disability grading before the expiration of the 240-day period.[49] Moreover, when respondent filed his complaint, he had not yet consulted with his own physician.[50] In fact, "the medical report upon which he anchors his claim for compensation corresponding to a Grade '1' disability was issued way after he had filed his complaint, i.e. on 11 February 2010, when the case was already with the Honorable Court of Appeals."[51]

In his Comment,[52] respondent counters that the assessment of the company-designated physician was issued only after nine (9) months or more than 120 days from his medical repatriation.[53] Furthermore, having an injured and fragile knee would make it impossible for him to meet the demands of a seafaring job.[54] Hence, the Court of Appeals did not err in granting him permanent and total disability benefits.[55]

Respondent further prays for moral damages of ₱300,000.00 for the "terrible depression and anxiety"[56] that he has suffered because of this case. Additionally, he prays for exemplary damages of ₱200,000.00, due to the "despicable and inhumane acts of the petitioners."[57]

---

[47] *Id*.

[48] *Id*. at 25.

[49] *Id*.

[50] *Id*.

[51] *Id*. at 23.

[52] *Id*. at 102-110.

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

[54] *Id*. at 107.

[55] *Id*. at 103 and 107.

[56] *Id*. at 108.

[57] *Id*.

Petitioners filed their Reply,[58] arguing that the Labor Arbiter's factual findings that respondent never presented evidence to support his claim for total and permanent disability benefits, as affirmed by the National Labor Relations Commission, are binding and entitled to great respect.[59]

They aver that the Medical Report dated February 11, 2010[60] of respondent's physician was issued almost three (3) years after the sinking of the vessel. It was also "based only on one instance of physical examination,"[61] and was introduced as new evidence only in a petition for certiorari with the Court of Appeals.[62] Allowing this report would run counter to the mandatory procedure laid down in the POEA-SEC of getting a third doctor's opinion in case of conflict between the findings of a company-designated physician and the seafarer's physician of choice.[63] Hence, the report should not be considered as valid to support respondent's claim.[64]

They maintain that the disability grade given by the company-designated physician is entitled to great weight.[65]

Finally, they point out that "[respondent's] failure to comply with his treatment schedule . . . bars his claim for disability benefits."[66]

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

First, whether or not respondent Michael E. Jara is entitled to permanent and total disability compensation considering that there was a Grade 11 disability grading given by the company-designated physician; and

---

[58] *Id*. at 143-157.

[59] *Id*. at 144-145.

[60] *Id*. at 146.

[61] *Id*.

[62] *Id*. at 147-148.

[63] *Id*. at 146.

[64] *Id*. at 149.

[65] *Id*.

[66] *Id*. at 152.

Second, whether or not respondent Michael E. Jara is entitled to damages and attorney's fees.

This Court denies the Petition and affirms with modification the Court of Appeals August 15, 2012 Decision by awarding moral and exemplary damages, considering the circumstances in this case.

I

This Court's review in this Rule 45 Petition is confined to determining the legal correctness of the Court of Appeals August 15, 2012 Decision on a Rule 65 petition filed before it.[67] Accordingly, this Court resolves whether or not the Court of Appeals properly found grave abuse of discretion on the part of the National Labor Relations Commission when it ruled that respondent is entitled only to a Grade 11 disability compensation.

This Court finds that the Court of Appeals properly found that the National Labor Relations Commission gravely abused its discretion when it overlooked the company-designated physician's failure to issue a final and definitive medical assessment within the 240-day extended period, which under the law and jurisprudence transforms respondent's disability to permanent and total.

Jurisprudence[68] teaches that in claims for a seafarer's disability benefits, POEA-SEC[69] is deemed incorporated in the seafarer's

---

[67] *Dayo v. Status Maritime Corp.*, 751 Phil. 778 (2015) [Per *J.* Leonen, Second Division]; *Racelis v. United Philippine Lines, Inc.*, 746 Phil. 758 (2014) [Per *J.* Perlas-Bernabe, First Division] *citing Montoya v. Transmed Manila Corporation*, 613 Phil. 696 (2009) [Per *J.* Brion, Second Division]; *Philman Marine Agency, Inc. v. Cabanban*, 715 Phil. 454 (2013) [Per *J.* Brion, Second Division].

[68] *Marlow Navigation Philippines, Inc. v. Osias*, 773 Phil. 428 (2015) [Per *J.* Mendoza, Second Division]; *Dalusong v. Eagle Clarc Shipping Phils., Inc.*, 742 Phil. 377 (2014) [Per *J.* Carpio, Second Division]; *Vergara v. Hammonia Maritime Services, Inc.*, 588 Phil. 895 (2008) [Per *J.* Brion, Second Division].

[69] POEA Dep. O. No. 4, Series of 2000 or the Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board

employment contract and must be read in light of the relevant provisions on disability of the Labor Code and its implementing rules. In this case, the 2000 version of the POEA-SEC applies since respondent was hired in December 2005 and he filed his complaint in 2008.

The 120-day period mandated in Section 20(B)[70] of the POEA-SEC, within which a company-designated physician should declare a seafarer's fitness for sea duty or degree of disability, should accordingly be harmonized with Article 198 [192](c)(1) of the Labor Code, in relation with Book IV, Title II, Rule X

Ocean-Going Vessels (May 31, 2000) applies since respondent was hired in 2005.

[70] Section 20. COMPENSATION AND BENEFITS. —

. . . . . .

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

. . . . . .

2. . . . .

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. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.**

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphasis supplied)

of the Implementing Rules of the Labor Code, or the Amended Rules on Employee Compensation. Book IV, Title II, Article 198 [192](c)(1) of the Labor Code, as amended, reads:

> Article 198. [192] Permanent total disability. — . . .
>
> . . . . . .
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules[.]

Meanwhile, Rule X, Section 2 of the Implementing Rules of the Labor Code, reads:

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

This Court discussed the interplay of these provisions in *Vergara v. Hammonia Maritime Services, Inc.*:[71]

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine

---

[71] 588 Phil. 895 (2008) [Per *J*. Brion, Second Division].

laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.[72] (Emphasis in the original, citations omitted)

Petitioners aptly argue that starting with *Vergara*, the prevailing rule is that a seafarer's mere inability to perform his or her usual work after 120 days does not automatically lead to entitlement to permanent and total disability benefits because the 120-day period for treatment and medical evaluation by a company-designated physician may be extended to a maximum of 240 days.[73]

Subsequent cases,[74] nonetheless, emphasized that there must be a sufficient justification to extend the medical treatment from 120 days to 240 days. In other words, the 240-day extended period remains to be an exception, and as such, must be clearly shown to be warranted under the circumstances of the case before it can be applied.

For instance, in *Marlow Navigation Philippines, Inc. v. Osias*,[75] this Court found the medical report of a company-designated physician to have been properly issued within the 240-day

---

[72] *Id*. at 912.

[73] *Rollo*, pp. 11-14.

[74] *Talaroc v. Arpaphil Shipping Corp*., G.R. No. 223731, August 30, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/223731.pdf > [Per *J*. Perlas- Bernabe, Second Division]; *Career Philippines Ship Management, Inc. v. Acub*, G.R. No. 215595, April 26, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/april2017/215595.pdf > [Per *J*. Peralta, Second Division]; *Marlow Navigation Philippines, Inc. v. Osias*, 773 Phil. 428 (2015) [Per *J*. Mendoza, Second Division]; *Hanseatic Shipping Philippines, Inc. v. Ballon*, 769 Phil. 567 (2015) [Per *J.* Velasco, Second Division]; *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr*., 765 Phil. 341, (2015) [Per *J*. Mendoza, Second Division].

[75] 773 Phil. 428 (2015) [Per *J*. Mendoza, Second Division].

extended period because the seafarer was uncooperative, resulting in the extended period of treatment.

In the case at bench, *the sufficient justification to apply the 240-day extended period would be the uncooperativeness of Osias*. Based on the evidence presented, it is clear that he did not fully comply with the prescribed medical therapy. In his medical report, dated March 31, 2010, Dr. Arago, as company-designated physician, required Osias to undergo 10 sessions of physical therapy every Monday, Tuesday and Thursday, starting on April 5, 2010. After four (4) sessions, however, Osias failed to appear for the continuation of his physical therapy without any prior notice for his sudden non-attendance. It was only on May 14, 2010, or after more than a month, that Osias returned to see Dr. Arago after coming back from La Union. Osias neither denied nor attempted to justify his abrupt absence. His disregard of the doctor's orders was duly noted by Dr. Arago in his medical report, dated May 14, 2010.

The manifest non-compliance of Osias with the prescribed therapy by the company-designated physician demonstrates that he was uncooperative with the treatment. Osias utterly disregarded the limited amount of time the company-designated physician had to finalize his medical assessment by ignoring the scheduled therapy sessions. The LA correctly ruled that, by going to La Union, Osias capriciously and wittingly dispensed with the treatment of the company-designated physician. Likewise, the NLRC observed that it would be unfair to award disability benefits to Osias due to the lapse of 120-day period because the extended period of the treatment was attributable to him.[76] (Emphasis supplied)

However, in *Aldaba v. Career Philippines, Inc.*,[77] this Court deemed the disability of a seafarer to be permanent and total despite the Grade 8 disability rating given by a company-designated physician because the assessment was issued only on the 163rd day of the seafarer's medical treatment without any justifiable reason.

---

[76] *Id*. at 444-445.

[77] G.R. No. 218842, June 21, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/218242.pdf > [Per *J*. Peralta, Second Division].

Talaroc v. Arpaphil Shipping Corp.[78] stressed that for a company-designated physician to avail of the extended 240-day period, he or she must perform some complete and definite medical assessment to show that the illness still requires medical attendance beyond the 120 days, but not to exceed 240 days. In such case, the temporary total disability period is extended to a maximum of 240 days. Without sufficient justification for the extension of the treatment period, a seafarer's disability shall be conclusively presumed to be permanent and total. This Court summarized the following guidelines to be observed when a seafarer claims permanent and total disability benefits:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[79]

---

[78] G.R. No. 223731, August 30, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/223731.pdf > [Per *J.* Perlas-Bernabe, Second Division]. *See also Olidana v. Jebsens Maritime, Inc.*, G.R. No. 215313, October 21, 2015 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/october2015/l15313.pdf > [Per *J.* Mendoza, Second Division] and *Sunit v. OSM Maritime Services, Inc.*, G.R. No. 223035, February 27, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/223035.pdf > [Per *J.* Velasco, Jr., Third Division].

[79] *Id.* at 9.

In this case, the company-designated physician did not issue a medical assessment within the 120-day period. Nonetheless, the surgical procedure performed on respondent on January 9, 2008, or 159 days from his repatriation, shows that his condition required further medical treatment, justifying the extension of the 120-day period to 240 days. Thus, this Court deems the temporary total disability period to be accordingly extended up to a maximum of 240 days.

Petitioners contend that the Court of Appeals erred in applying the 240-day presumptive rule and awarding respondent permanent and total disability benefits despite the Grade 11 disability rating issued by the company-designated physician. Invoking the ruling in *Santiago v. Pacbasin Shipmanagement, Inc.*,[80] petitioners contend that the 240-day presumptive disability rule operates only in default of a declaration of a seafarer's fitness or disability assessment from a company-designated physician.[81]

Petitioners further insist that respondent's complaint should have been dismissed for lack of cause of action because the 240-day period had yet to lapse when the complaint was filed.[82]

This Court is not persuaded.

In *Island Overseas Transport Corporation v. Beja*,[83] this Court clarified that:

> [I]f the maritime compensation complaint was filed *prior to October 6, 2008, the rule on the 120-day period*, during which the disability assessment should have been made in accordance with *Crystal Shipping, Inc. v. Natividad*, that is, the doctrine then prevailing before

---

[80] 686 Phil. 255 (2012) [Per *J*. Mendoza, Third Division].

[81] *Rollo*, pp. 13-14.

[82] *Id*. at 23-26.

[83] 774 Phil. 332 (2015) [Per *J*. Del Castillo, Second Division], which in turn cited *Kestrel Shipping Co. v. Munar*, 702 Phil. 717 (2013) [Per *J*. Reyes, First Division], *Montierro v. Rickmers Marine Agency Phils., Inc*., G.R. No. 210634, January 14, 2015 [Per *C.J*. Sereno, First Division] and *Eyana v. Philippine Transmarine Carriers, Inc*., 752 Phil. 232 (2015) [Per *J*. Reyes, Third Division].

the promulgation of *Vergara* on October 6, 2008, stands; if, on the other hand, the complaint was filed from October 6, 2008 onwards, the 240-day rule applies.[84] (Emphasis supplied, citations omitted)

When respondent filed his Complaint on March 6, 2008, or after more than 120 days had lapsed, the company-designated physician had not yet determined his disability and respondent had not yet fully recovered. Applying the above ruling in *Island Overseas Transport Corporation*, respondent is deemed to have already acquired a cause of action for permanent and total disability benefits.

This Court, nonetheless, will tackle the timeliness and appropriateness of the disability rating issued by the company-designated physician.

The case of *Santiago* cited by petitioners is not *apropos*. There, a seafarer underwent several tests and treatment two (2) days after his repatriation on March 17, 2005. On August 13, 2005, or on the 148th day, clearly within the 240-day period, a company-designated physician declared that he was suffering from a Grade 12 disability only, not a permanent total one. This Court ruled that the seafarer's condition could not be considered a permanent total disability. It also held that "a temporary total disability only becomes permanent when the company-designated physician, within the 240[-]day period, declares it to be so, or when after the lapse of the same, he fails to make such declaration."[85]

In contrast, this case has no medical or progress report that was ever made by the company-designated physician other than that issued on May 29, 2008, or 300 days from respondent's repatriation on August 3, 2007.

Respondent was last seen by the company-designated physician on March 17, 2008, or on the 227th day from his repatriation. At this point, the company-designated physician

---

[84] *Id*. at 351.

[85] *Santiago v. Pacbasin Shipmanagement, Inc*., 686 Phil. 255, 267 (2012) [Per *J*. Mendoza, Third Division].

is nearing the end of the extended period of 240 days, 13 days to be exact, within which to give respondent's final disability assessment, yet none was given. Petitioners, however, would put the blame on respondent for not returning to the doctor for further consultation and treatment.[86] There is no showing, though, in the records that the physician required him to return within a specified period.

Respondent could not be faulted for not returning to the company- designated physician who failed to assess him of rightful disability grading *after treatment of more than seven (7) months*. The company-designated physician should have at least issued a medical report containing an evaluation of respondent's condition on March 17, 2008. This is reasonably expected given the proximity of respondent's last check up to the expiration of the 240-day period.

Instead, the company-designated physician issued an assessment only on May 29, 2008, simply stating that "[b]ased on his last follow-up, his suggested disability grading is Grade 11 – stretching leg or ligaments of a knee resulting in instability of the joint."[87] Furthermore, other than this succinct statement, the report is devoid of any explanation to back up the findings of the company-designated physician or of any detail of the progress of respondent's treatment, and the approximate period needed for him to fully recover.

The POEA-SEC clearly provides the primary responsibility of a company-designated physician to determine the disability grading or fitness to work of seafarers.[88] To be conclusive, however, company-designated physicians' medical assessments

---

[86] *Rollo*, p. 16.

[87] *Id*. at 82.

[88] *OSG Ship Management Manila, Inc. v. Monje*, G.R. No. 214059, October 11, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/october2017/214059.pdf > [Per *J*. Reyes, Jr., Second Division]; *Magsaysay Maritime Corp. v. Velasquez*, 591 Phil. 839-853 (2008) [Per *J*. Leonardo De Castro, First Division).

or reports must be complete[89] and definite[90] to give the proper disability benefits to seafarers. As explained by this Court:

> A **final and definite disability assessment** is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.[91] (Emphasis in the original)

In *Monana v. MEC Global Shipmanagement and Manning Corp.*,[92] this Court further stressed the overriding consideration that there must be sufficient basis to support the assessment:

> Regardless of who the doctor is and his or her relation to the parties, the overriding consideration by both the Labor Arbiter and the National Labor Relations Commission should be that *the medical conclusions are based on (a) the symptoms and findings collated with medically acceptable diagnostic tools and methods, (b) reasonable professional inferences anchored on prevailing scientific findings expected to be known to the physician given his or her level of expertise, and (c) the submitted medical findings or synopsis, supported by plain English annotations* that will allow the Labor Arbiter and the National Labor Relations Commission to make the proper evaluation.[93] (Emphasis supplied)

Thus, this Court has previously disregarded the findings of company-designated physicians for being incomplete,[94]

---

[89] *Olidana v. Jebsens Maritime, Inc.*, G.R. No. 215313, October 21, 2015 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/october2015/215313.pdf > [Per J. Mendoza, Second Division].

[90] *Sunit v. OSM Maritime Services, Inc.*, G.R. No. 223035, February 27, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/223035.pdf > [Per J. Velasco, Jr., Third Division].

[91] *Id.* at 10.

[92] 746 Phil. 736 (2014) [Per J. Leonen, Second Division].

[93] *Id.* at 752-753.

[94] *Hanseatic Shipping Philippines, Inc. v. Ballon*, 769 Phil. 567 (2015) [Per J. Velasco, Second Division].

doubtful,[95] clearly biased in favor of an employer,[96] or for lack of finality.[97]

In *Maersk Filipinas Crewing, Inc. v. Mesina*,[98] this Court found the opinion of a seafarer's physician to be more reliable than that of a company- designated physician:

> After a circumspect evaluation of the conflicting medical certifications of Drs. Alegre and Fugoso, the Court finds that serious doubts pervade in the former. While both doctors gave a brief description of psoriasis, it was only Dr. Fugoso who categorically stated a factor that triggered the activity of the respondent's disease — stress, drug or alcohol intake, etc. *Dr. Alegre immediately concluded that it is not work-related on the basis merely of the absence of psoriasis in the schedule of compensable diseases in Sections 32 and 32-A of the POEA-SEC. Dr. Alegre failed to consider the varied factors the respondent could have been exposed to while on board the vessel. At best, his certification was merely concerned with the examination of the respondent for purposes of diagnosis and treatment and not with the determination of his fitness to resume his work as a seafarer* in stark contrast with the certification issued by Dr. Fugoso which categorically declared the respondent as "disabled." *The certification of Dr. Alegre is, thus, inconclusive for purposes of determining the compensability of psoriasis under the POEA-SEC*. Moreover, Dr. Alegre's specialization is General Surgery while Dr. Fugoso is a dermatologist, or one with specialized knowledge and expertise in skin conditions and diseases like psoriasis. Based on these observations,

---

[95] *Olidana v. Jebsens Maritime, Inc.*, G.R. No. 215313, October 21, 2015 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/october2015/215313.pdf > [Per *J*. Mendoza, Second Division].

[96] *Seagull and Maritime Corp. v. Dee*, 548 Phil. 660-672 (2007) [Per *J*. Corona, First Division].

[97] *Tamin v. Magsaysay Maritime Corp*., G.R. No. 220608, August 31, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/220608.pdf > [Per *J*. Velasco, Third Division]; *Island Overseas Transport Corp. v. Beja*, 774 Phil. 332 (2015) [Per *J*. Del Castillo, Second Division]; *Belchem Phils., Inc. v. Zafra*, *Jr.*, 759 Phil. 514 (2015) [Per *J*. Mendoza, Second Division]; S*ealanes Marine Services, Inc. v. Dela Torre*, 754 Phil. 380 (2015) [Per *J*. Reyes, Third Division].

[98] 710 Phil. 531 (2013) [Per *J*. Reyes, First Division].

it is the Court's considered view that Dr. Fugoso's certification deserves greater weight.[99] (Emphasis supplied, citation omitted)

In *HFS Philippines, Inc., et al. v. Pilar*,[100] this Court upheld the findings of a seafarer's personal physician because it was supported by his medical records. This Court also noted that the company-designated physician downgraded the seafarer's illness:

> The company-designated physician declared respondent as having suffered a major depression but was already cured and therefore fit to work. On the other hand, the independent physicians stated that respondent's major depression persisted and constituted a disability. More importantly, while the former totally ignored the diagnosis of the Japanese doctor that respondent was also suffering from gastric ulcer, the latter addressed this. The independent physicians thus found that respondent was suffering from chronic gastritis and declared him unfit for work.[101]

In *Island Overseas Transport Corp. v. Beja*,[102] a seafarer suffered a knee injury while on board a vessel. Upon repatriation on November 22, 2007, he was referred to a company-designated physician who recommended a knee operation. Roughly a month after the knee operation, or on May 26, 2008, the company-designated physician rendered Grades 10 and 13 partial disability grading of his medical condition. This Court considered this assessment as tentative because the seafarer continued his physical therapy sessions, which even went beyond 240 days. It further noted that the company-designated physician "did not even explain how he arrived at the partial permanent disability assessment"[103] or provided any justification for his conclusion that the seafarer was suffering from Grades 10 and 13 disability.[104]

---

[99] *Id*. at 546-547.

[100] 603 Phil. 309 (2009) [Per *J*. Corona, First Division].

[101] *Id*. at 320.

[102] 774 Phil. 332 (2015) [Per *J*. Del Castillo, Second Division].

[103] *Id*. at 348.

[104] *Id*.

Furthermore, while the assessment of a company-designated physician *vis à vis* the schedule of disabilities under the POEA-SEC is the basis for compensability of a seafarer's disability, it is still subject to the periods prescribed in the law.[105] Otherwise, the fate of the seafarer would completely rest in the hands of the company-designated physician, without redress, should the latter fail or refuse to give a disability rating.[106]

Accordingly, in *Carcedo v. Maine Marine Philippines, Inc.*,[107] this Court declared that a partial and permanent disability could, by legal contemplation, become total and permanent when a company-designated physician fails to arrive at a definite assessment within the 120- or 240-day periods prescribed under Article 198 [192](c)(1) of the Labor Code and the Amended Rules on Employee Compensation, implementing Book IV, Title II of the Labor Code. Thus:

The Court in *Kestrel Shipping Co., Inc. v. Munar*[108] held that the declaration by the company-designated physician is an obligation, the abdication of which transforms the temporary total disability to permanent total disability, regardless of the disability grade, *viz.*:

> Indeed, under Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled. In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the

---

[105] *Carcedo v. Maine Marine Philippines, Inc.,* 758 Phil. 166 (2015) [Per *J.* Carpio, Second Division].

[106] *Id*.

[107] 758 Phil. 166 (2015) [Per *J*. Carpio, Second Division].

[108] 702 Phil. 717 (2013) [Per *J*. Reyes, First Division].

> Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code. That while the seafarer is partially injured or disabled, he is not precluded from earning doing the same work he had before his injury or disability or that he is accustomed or trained to do. Otherwise, if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled.
>
> *Moreover, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.*[109] (Emphasis supplied)

Aside from the belated assessment of respondent's injury, the medical report dated May 29, 2008 did not contain any definitive declaration as to the seafarer's fitness to work. On the contrary, the report stated that as of his last check up on March 17, 2008, respondent was still complaining of left knee pain especially upon doing left knee flexion. Under the circumstances of this case, it would be improbable to expect that by March 30, 2008, or the last day of the 240-day period, respondent would have fully recovered from his injury or regained his pre-injury capacity as to be able to go back to his sea duty.

In *Fil-Pride Shipping Company, Inc. v. Balasta*,[110] this Court awarded permanent and total disability benefits to a seafarer despite the premature filing of his complaint before the lapse of the 240-day period. This Court held that by that time, it was already evident that the seafarer would be unable to return to his work given his delicate post-operative condition and a definitive assessment by a company-designated physician was, under the circumstances, unnecessary.

Concededly, the period September 18, 2005 to April 19, 2006 is less than the statutory 240-day — or 8-month — period. Nonetheless,

---

[109] *Id*. at 730-731.

[110] 728 Phil. 297 (2014) [Per *J*. Del Castillo, Second Division].

it is impossible to expect that by May 19, 2006, or on the last day of the statutory 240-day period, respondent would be declared fit to work when just recently — or on February 24, 2006 — he underwent coronary artery bypass graft surgery; by then, respondent would not have sufficiently recovered. In other words, it became evident as early as April 19, 2006 that respondent was permanently and totally disabled, unfit to return to work as seafarer and earn therefrom, given his delicate post-operative condition; a definitive assessment by Dr. Cruz before May 19, 2006 was unnecessary. Respondent would to all intents and purposes still be unfit for sea-duty. Even then, with Dr. Cruz's failure to issue a definite assessment of respondent's condition on May 19, 2006, or the last day of the statutory 240-day period, respondent was thus deemed totally and permanently disabled pursuant to Article 192 (c) (1) of the Labor Code and Rule X, Section 2 of the AREC.[111]

It is well to point out that in disability compensation, "it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity."[112] Total disability refers to an employee's inability to perform his or her usual work. It does not require total paralysis or complete helplessness.[113] Permanent disability, on the other hand, is a worker's inability to perform his or her job for more than 120 days, or 240 days if the seafarer required further medical attention justifying the extension of the temporary total disability period, regardless of whether or not he loses the use of any part of his body.[114]

---

[111] *Id*. at 313.

[112] *Remigio v. National Labor Relations Commission*, 521 Phil. 330, 347 (2006) [Per *J*. Puno, Second Division) citing *Philippine Transmarine Carriers v. NLRC*, 405 Phil. 487 (2001) [Per *J*. Quisumbing, Second Division].

[113] *Fil-Star Maritime Corp. v. Rosete*, 677 Phil. 262 (2011) [Per *J*. Mendoza, Third Division].

[114] *Sunit v. OSM Maritime Services, Inc*., G.R. No. 223035, February 27, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/223035.pdf > [Per *J*. Velasco, Third Division). See also *Fair Shipping Corp. v. Medel*, 693 Phil. 516 (2012) [Per *J*. Leonardo-De Castro, First Division].

In *Belchem Philippines, Inc. v. Zafra, Jr.*,[115] this Court held that:

> [P]ermanent partial disability presupposes a seafarer's fitness to resume sea duties before the end of the 120/240-day medical treatment period despite the injuries sustained. The premise is that such partial injuries did not disable a seafarer to earn wages in the same kind of work or similar nature for which he was trained.[116]

The facts of this case show respondent's inability to perform his customary sea duties and the company-designated physician's failure to declare his fitness or unfitness to work, despite the lapse of 240 days. This entitles respondent, under the law, to permanent and total disability compensation.

In this regard, non-compliance with the third-doctor-referral provision as provided in the POEA-SEC will not prejudice respondent's claim. The third-doctor rule does not apply when there is no valid final and definitive assessment from a company-designated physician.[117]

In *Kestrel Shipping Co., Inc. v. Munar*:[118]

> In addition, that it was by operation of law that brought forth the conclusive presumption that Munar is totally and permanently disabled, there is no legal compulsion for him to observe the procedure prescribed under Section 20-B (3) of the POEA-SEC. *A seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods. Alternatively put, absent a certification from the company-designated physician, the seafarer had nothing to contest and the law steps in to conclusively characterize his disability as total and permanent*. (Emphasis supplied)[119]

---

[115] 759 Phil. 514 (2015) [Per *J.* Mendoza, Second Division].

[116] *Id*. at 526.

[117] *Carcedo v. Maine Marine Philippines, Inc*., 758 Phil. 566 (2015) [Per *J.* Carpio, Second Division].

[118] 702 Phil. 717 (2013) [Per *J.* Reyes, First Division].

[119] *Id*. at 737-738.

Without a valid final and definitive assessment from the company-designated physician, respondent's temporary and total disability, by operation of law, became permanent and total.

Thus, the Court of Appeals did not err in reversing and setting aside the National Labor Relations Commission's decision and granting respondent permanent and total disability benefits.

The standard provisions in the 2000 POEA-SEC is a regulatory attempt to balance the constitutional protection to labor with the need for shipping and manning agencies to have an efficient basis for the resolution of claims against them. Hence, the 120- and 240-day periods within which a company-designated physician should make a full, complete, and definitive assessment are accommodations for them. Generally, between companies and an ordinary Filipino seafarer, it is the former that has the better capability to comply with the requirements for determining disabilities of a claimant. Certainly, the period given to them is more than sufficient and it would be the height of inequity for this Court to grant them more at the expense of the seafarer.

II

This Court finds no ground to disturb the uniform findings of the Labor Arbiter, National Labor Relations Commission, and the Court of Appeals in awarding attorney's fees. Since respondent was compelled to litigate due to petitioners' denial of his valid claims, the award for attorney's fees was proper.[120]

On damages, the Labor Arbiter denied respondent's claims for lack of sufficient basis. The National Labor Relations Commission affirmed the findings of the Labor Arbiter. The Court of Appeals, likewise, did not award moral and exemplary damages.

---

[120] *Tamin v. Magsaysay Maritime Corp*., G.R. No. 220608, August 31, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/220608.pdf > [Per *J.* Velasco, Third Division]; *Quitoriano v. Jebsens Maritime, Inc*., 624 Phil. 523-532 (2010) [Per *J*. Carpio Morales, First Division].

Respondent contends that he suffered depression and anxiety because of this case. He also claims exemplary damages for the inhumane treatment he received from petitioners.

In *Sharpe Sea Personnel, Inc. v. Mabunay, Jr.,*[121] this Court affirmed the award of moral and exemplary damages because of an employer's bad faith in belatedly releasing and submitting the disability rating.

By not timely releasing Dr. Cruz's interim disability grading, petitioners revealed their intention to leave respondent in the dark regarding his future as a seafarer and forced him to seek diagnosis from private physicians. Petitioners' bad faith was further exacerbated when they tried to invalidate the findings of respondent's private physicians, for his supposed failure to move for the appointment of a third-party physician as required by the POEA-SEC, despite their own deliberate concealment of their physician's interim diagnosis from respondent and the labor tribunals. Thus, this Court concurs with the Court of Appeals when it stated:

> We also grant petitioner's prayer for moral and exemplary damages. Private respondents acted in bad faith when they belatedly submitted petitioner's Grade 8 disability rating only via their motion for reconsideration before the NLRC. By withholding such disability rating from petitioner, the latter was compelled to seek out opinion from his private doctors thereby causing him mental anguish, serious anxiety, and wounded feelings, thus, entitling him to moral damages of ₱50,000.00. Too, by way of example or correction for the public good, exemplary damages of ₱50,000.00 is awarded.[122]

In *Magsaysay Maritime Corp. v. Chin, Jr.*,[123] Oscar D. Chin, Jr. (Chin), a seafarer, was found by a company-designated physician to have a moderate rigidity of tract a year after his operation. When he claimed for disability compensation, his

---

[121] G.R. No. 206113, November 6, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/november2017/206113.pdf > [Per *J*. Leonen, Third Division].

[122] *Id*. at 16.

[123] 731 Phil. 608 (2014) [Per *J*. Abad, Third Division].

employer offered US$30,000.00, which Chin accepted. Chin then executed a Release and Quitclaim in favor of Magsaysay Maritime Corporation. Subsequently, Chin filed a complaint for underpayment of disability benefits and damages. The labor tribunals dismissed his complaint. The Court of Appeals ruled that Chin was entitled to permanent and total disability benefit of US$60,000.00 and remanded the case to the Labor Arbiter for determination of Chin's other monetary claims.

The Labor Arbiter awarded Chin ₱200,000.00 as moral damages and ₱75,000.00 as exemplary damages, among others. This Court sustained the awards of damages, but reduced the amounts for being excessive. The amount of ₱30,000.00 as moral damages was deemed commensurate to the anxiety and inconvenience Chin suffered. Furthermore, the award of ₱25,000.00 as exemplary damages was considered "sufficient to discourage petitioner Magsaysay from entering into iniquitous agreements with its employees that violate their right to collect the amounts to which they are entitled under the law."[124]

In this case, respondent's travails started when, due to no fault of his, petitioners' ship sunk. Respondent did not receive any disability rating from the company-designated physician despite the lapse of more than seven (7) months of treatment. He demanded disability benefits from petitioners, considering that he had not yet fully recovered from his knee injury, but his demands were unheeded.[125] The uncertainty of his medical condition caused his anxiety about his future as a seafarer.

Indeed, petitioners only submitted the medical report with the Grade 11 disability rating when they filed their Position Paper[126] dated May 27, 2008 with the Labor Arbiter and, accordingly, expressed their willingness to pay disability benefits equivalent only to Grade 11 disability. This reveals petitioners' disregard of respondent's unfortunate plight. Petitioners' bad

---

[124] *Id*. at 614.

[125] *Rollo*, pp. 47 & 86.

[126] *Id*. at 66-80.

faith is further evident when they tried to invalidate respondent's complaint for his supposed failure to move for the appointment of a third-party physician as required by the POEA-SEC, when they knew that no prognosis whatsoever was issued by the company-designated physician other than the medical report dated May 29, 2008.

Considering the blithe manner in which petitioners dealt with respondent's condition and the rulings in *Sharp Sea and Magsaysay Maritime*, the amount of ₱100,000.00 as moral damages would be commensurate to the anxiety and inconvenience suffered by respondent. Exemplary damages of ₱100,000.00 is also granted by way of example or correction for the public good.

This Court notes the sacrifice that many of our seafarers have to contend with just to earn decent wages so their families could live a dignified existence. Their absence often imprints into their families' psyche. There will be many significant moments when their families will need the seafarers' presence but which will not be possible because they will be devoting their time with companies represented by petitioners.

Respondent was injured and forced to go home because the ship he was on sunk. He waited for more than 240 days to get an assessment that he deserved. Moral and exemplary damages are due him for his travails.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals August 15, 2012 Decision and November 6, 2012 Resolution in CA-G.R. SP No. 113214 are **AFFIRMED with MODIFICATION**. Petitioners Orient Hope Agencies, Inc. and/or Zeo Marine Corporation are ordered to pay respondent Michael E. Jara US$60,000.00 as permanent and total disability benefits, P100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and attorney's fees equivalent to ten percent (10%) of the total of these amounts.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 205953. June 6, 2018]

DIONELLA A. GOPIO, doing business under the name and style**, JOB ASIA MANAGEMENT SERVICES,** *petitioner, vs.* **SALVADOR B. BAUTISTA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (RA 8042); A FILIPINO EMPLOYED ABROAD IS ENTITLED TO SECURITY OF TENURE.— Republic Act (R.A.) No. 8042, (the Migrant Workers and Overseas Filipinos Act of 1995) echoes the provision in the 1987 Constitution on protection of labor. x x x Accordingly, regulatory provisions may be read all throughout R.A. No. 8042 that carry out the policy of the State to protect and promote the rights of Filipino migrant workers. Employment agreements are verily more than contractual in nature in the Philippines. The Philippine Constitution and laws guarantee special protection to workers here and abroad. Thus, even if a Filipino is employed abroad, he or she is entitled to security of tenure, among other constitutional rights. x x x To emphasize, overseas workers, regardless of their classification, are entitled to security of tenure, at least for the period agreed upon in their contracts. This means that they cannot be dismissed before the end of their contract terms without due process. The law recognizes the right of an employer to dismiss employees in warranted cases, but it frowns upon the arbitrary and whimsical exercise of that right when employees are not accorded due process. If they were illegally dismissed, the workers' right to security of tenure is violated. x x x Indeed, while our Civil Code recognizes that parties may stipulate in their contracts such terms and conditions as they may deem convenient, these terms and conditions must not be contrary to law, morals, good customs, public order or policy. x x x Time and again, we have held that a contract of employment is imbued with public interest. The parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting

with each other. Also, while a contract is the law between the parties, the provisions of positive law that regulate such contracts are deemed included and shall limit and govern the relations between the parties.

2. **ID.; TERMINATION EMPLOYMENT; ILLEGAL DISMISSAL; EMPLOYER MUST PROVE THAT THE DISMISSAL IS FOR A JUST AND VALID CAUSE.—** In termination disputes or illegal dismissal cases, it has been established by Philippine law and jurisprudence that the employer has the burden of proving that the dismissal is for just and valid causes; and failure to do so would necessarily mean that the dismissal was not justified and is, therefore, illegal. Taking into account the character of the charges and the penalty meted to an employee, the employer is bound to adduce clear, accurate, consistent, and convincing evidence to prove that the dismissal is valid and legal. This is consistent with the principle of security of tenure as guaranteed by the Constitution and reinforced by Article 292(b) of the Labor Code of the Philippines.

3. **ID.; ID.; ID.; DUE PROCESS REQUIREMENT.—** The due process requirement is not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern since it constitutes a safeguard of the highest order in response to man's innate sense of justice. To meet the requirements of due process, the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected, *i.e.*: (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice after due hearing which informs the employee of the employer's decision to dismiss him.

4. **ID.; MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (RA 8042); PROPER INDEMNITY IN ILLEGAL DISMISSAL CASES.—** Section 10 of R.A. No. 8042 provides that in case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full reimbursement of his placement fee with interest of 12% *per annum*, plus his salaries for the unexpired portion of his employment contract or for three months for every year of the unexpired term, whichever is less. x x x We also uphold the Labor Arbiter's

award of moral and exemplary damages to Bautista on the ground that his dismissal was without just and authorized cause, in complete disregard of his right to due process of law, and done in bad faith, in addition to being anti-Filipino and capricious. Likewise, we find the award of attorney's fees proper. It is settled that when an action is instituted for the recovery of wages, or when employees are forced to litigate and consequently incur expenses to protect their rights and interests, the grant of attorney's fees is legally justifiable.

5. ID.; ID.; ID.; RECRUITMENT AGENCY JOINTLY AND SEVERALLY LIABLE WITH THE FOREIGN EMPLOYER.— Petitioner's argument that she should not be held jointly and severally liable with Shorncliffe for the payment of monetary awards to Bautista x x x has no merit. In the first place, such joint and solidary liability is required prior to the issuance of a license to petitioner to operate a recruitment agency. x x x Consistent with the law and the POEA Rules, petitioner's joint and several liability is incorporated in Bautista's employment contract with Shorncliffe, x x x We have held that the burden devolves not only upon the foreign-based employer but also on the employment or recruitment agency to adduce evidence to convincingly show that the worker's employment was validly and legally terminated. This is because the latter is not only an agent of the former, but is also solidarily liable with the foreign principal for any claims or liabilities arising from the dismissal of the worker. R.A. No. 8042 is a police power measure intended to regulate the recruitment and deployment of OFWs. It aims to curb, if not eliminate, the injustices and abuses suffered by numerous OFWs seeking to work abroad. x x x The local agency that is held to answer for the overseas worker's money claims, however, is not left without remedy. The law does not preclude it from going after the foreign employer for reimbursement of whatever payment it has made to the employee to answer for the money claims against the foreign employer.

APPEARANCES OF COUNSEL

A.J.Y. Arreza & Associates for petitioner.
Randolph L. Fajardo for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] seeking the reversal of the August 31, 2012 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 116450 which annulled the Decision[3] and Resolution[4] issued by the National Labor Relations Commission (NLRC) and reinstated the Decision[5] rendered by the Labor Arbiter, and the February 22, 2013 CA Resolution[6] denying petitioner's motion for reconsideration of the assailed Decision.

On September 26, 2008, respondent Salvador A. Bautista (Bautista) was hired as a Project Manager for Shorncliffe (PNG) Limited (Shorncliffe) in Papua New Guinea through Job Asia Management Services (Job Asia), a single proprietorship owned by petitioner Dionella A. Gopio (Gopio), which is engaged in the business of recruitment, processing, and deployment of land--based manpower for overseas work. Bautista's contract stated that his employment shall be valid and effective for 31 months with a net monthly salary of ₱40,000.00. On October 4, 2008, he arrived at his workplace in Papua New Guinea.[7]

On July 6, 2009, or just nine months after his deployment in Papua New Guinea, Bautista was served a notice of termination effective July 10, 2009 on the alleged grounds of unsatisfactory performance and failure to meet the standards of the company. He was paid his salary for the period July 1 to 10, 2009, annual

---

[1] *Rollo*, pp. 23-42.

[2] *Id.* at 8-21. Penned by Associate Justice Romeo F. Barza, with Associate Justices Noel G. Tijam (now a Member of this Court) and Ramon A. Cruz concurring.

[3] *Id.* at 70-77.

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

[5] *Id.* at 59-69.

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

[7] *Id.* at 44.

leave credits, and one-month pay net of taxes. Thereafter, he was repatriated on July 11, 2009.[8]

On July 27, 2009, Bautista lodged a complaint with the arbitration branch of the NLRC against Job Asia, Gopio, and Shorncliffe for illegal dismissal and monetary claims. He claimed that he was terminated without just cause since there had been no job evaluation conducted prior to Shorncliffe's decision to dismiss him from employment. As a result, he is entitled to the payment of his salaries for the unexpired portion of his contract, or for 22 months. He alleged that while his contract contained an understated monthly income of ₱40,000.00, he was actually being paid the amount of ₱115,850.00 a month. Other than salaries, Bautista also claimed unrealized employment benefits, nine days sick leave pay, four weeks recreation leave pay, moral and exemplary damages, as well as attorney's fees.[9]

Job Asia, Gopio, and Shorncliffe, for their part, argued that Bautista's employment was terminated because he failed to meet Shorncliffe's standards. To buttress their claim, they submitted in evidence the work performance evaluation report on Bautista which listed the following observations:

1. He is not capable of performing the duties of a Project Manager.
2. He was unable to control or direct his workforce, equipment and materials.
3. He is incompetent in the handling of his daily tasks.
4. [He] failed to provide any monthly reports both verbal and written on the progress of his projects as a company requirement.
5. He has never submitted any monthly progress claims as a company requirement.
6. He demonstrated that he was technically incompetent and hides himself when there is a problem.

---

[8] *Id.*

[9] *Rollo*, pp. 44-45.

7. He was not capable of running project site meetings with the management and his staff.

8. He is a lazy person, incompetent in his decision making and has poor communication skills.

9. He was unable to pass his knowledge to young PNG Engineers, in fact they were teaching him instead.[10]

On January 7, 2010, the Labor Arbiter rendered his Decision finding Bautista to have been illegally dismissed as the dismissal was not proven to be for a just cause and Shorncliffe failed to observe due process. The Labor Arbiter held that the work performance evaluation allegedly showing Bautista's inefficiency and shortcomings in the performance of his job was made only on August 22, 2009, or more than one month after Bautista's dismissal. Thus, the findings therein are mere conclusions of fact, at best self-serving and merits no consideration.[11] Moreover, Shorncliffe failed to observe due process by not giving Bautista the twin notices required by law. The latter was not notified of the intention to dismiss him or the acts or omissions complained of. Neither was he notified of the decision to dismiss him and given an opportunity to answer and rebut the charges against him in between notices.[12]

The Labor Arbiter also rejected the argument that Bautista's employment was terminated on the basis of Article 4.3 of the employment contract by giving him one-month salary in lieu of one month's written notice.[13] The said provision states:

> 4.3 The Employer or Employee may terminate this contract on other grounds. The Employer should give one month's written notice of his intention to terminate or in lieu thereof pay the Employee a sum equivalent to one month's salary.

---

[10] *Id.* at 45-46.

[11] *Id.* at 64.

[12] *Id.* at 63, citing *MGG Services, Inc. v. NLRC*, G.R. No. 114313, July 29, 1996, 259 SCRA 664.

[13] *Id.* at 64-66.

> The Employee may likewise terminate this Contract by giving three months' notice to the Employer.[14]

The Labor Arbiter held that the stipulation providing for payment of one-month salary in lieu of serving one month's notice of the employer's intention to terminate Bautista's employment is contrary to our laws which uphold the sanctity of workers' security of tenure. It also considered the employment contract as a contract of adhesion which cannot militate against the rights of Bautista.[15] He thus ordered Job Asia, Gopio, and Shorncliffe to jointly and severally pay Bautista his salaries for the unexpired portion of his contract of employment in the amount of ₱2,548,700.00,[16] moral and exemplary damages in the amount of ₱300,000.00, and attorney's fees at ₱254,870.00.[17]

Undaunted, Job Asia, Gopio, and Shorncliffe filed an appeal with the NLRC. On May 17, 2010, the NLRC issued its Decision setting aside the Decision of the Labor Arbiter and dismissing the complaint for illegal dismissal and monetary claims for lack of merit. Nevertheless, it ordered that Bautista be indemnified nominal damages in the amount of ₱40,000.00.[18]

The NLRC held that the parties were bound by the terms and conditions of the employment contract that bore the stamp of approval of the Philippine Overseas Employment Administration (POEA). Consequently, it found that Bautista's contract was pre-terminated in accordance with Article 4.3 thereof. Contrary to the Labor Arbiter's finding, the NLRC upheld the reports of Shorncliffe's officers pertaining to his unsatisfactory performance and incompetence, and thus declared Bautista's employment to have been terminated for a just cause. It, however, held that Bautista was not afforded due process,

---

[14] *Id.* at 101.

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

[16] ₱115,850.00 x 22 months, *id.* at 68.

[17] *Id.* at 69.

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

for which he should be awarded indemnity pegged at the rate of his basic salary for one month as stated in his employment contract, or ₱40,000.00. The NLRC found no bad faith or malice on the part of Job Asia, Gopio, or Shorncliffe that would have been the basis for an award of moral and exemplary damages and attorney's fees.[19]

Bautista filed a motion for reconsideration of the NLRC Decision, but it was denied through a Resolution dated July 30, 2010. Hence, he filed a petition for *certiorari* with the CA.

On August 31, 2012, the CA rendered its Decision annulling and setting aside the NLRC Decision and reinstating that of the Labor Arbiter. It held that Article 4.3 of the employment contract violates the provisions of the Labor Code on security of tenure since it gives the employer the option to do away with the notice requirement as long as he grants one-month salary to the employee in lieu thereof. The provision deprives the employee of due process and violates his right to be apprised of the grounds for his termination without giving him an opportunity to defend himself and refute the charges against him. Moreover, the term "other grounds" is all-encompassing and makes the employee susceptible to arbitrary dismissal.[20]

The CA also held that Job Asia, Gopio, and Shorncliffe failed to substantiate their claim that Bautista was discharged for just cause. Their claim that the latter was dismissed for performing below standards was not backed by any proof. Further, Bautista was notified of his termination only four days prior to the intended date of dismissal without evidence of an assessment of his performance and the results thereof. Neither was he served a notice of any wrongdoing prior to the service of the notice of his termination. The CA noted that the declarations of Anthony B. Ponnampalam and Paul Thompson, officers of Shorncliffe, were executed on October 31, 2009 and October 1, 2009, respectively, or more than two months after the termination of

---

[19] *Id.* at 74-76.

[20] *Id.* at 16.

Bautista's employment on July 10, 2009. Further, the evaluation report made by Robert Aup, another Shorncliffe official, was made only on August 22, 2009, and hence obviously an afterthought. Thus, there being no sufficient cause to terminate Bautista's employment, his dismissal is illegal. The CA thus upheld the Labor Arbiter's Decision and additionally awarded Bautista full reimbursement of his placement fee with interest of 12% *per annum*.[21]

Thus, this petition where the Court is called upon to ultimately resolve two issues that have been beleaguering the parties for more than eight years, to wit: whether or not Bautista was illegally dismissed from employment, and whether or not he is entitled to his monetary claims.

We uphold with modification the Decision of the CA.

I.

In 1995, Republic Act (R.A.) No. 8042, otherwise known as an "An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and for Other Purposes" was passed. More popularly known as the Migrant Workers and Overseas Filipinos Act of 1995, this law echoes the provision in the 1987 Constitution[22] on protection of labor. Thus, Section 2(b) thereof under "Declaration of Policies," states:

(b) The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality

---

[21] *Id.* at 17-19.

[22] CONSTITUTION, Art. XIII, Sec. 3 states:

The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. x x x

of employment opportunities for all. Towards this end, the State shall provide adequate and timely social, economic and legal services to Filipino migrant workers.

Moreover, Section 2(c) thereof provides:

(c) x x x The existence of the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizens shall not, at any time, be compromised or violated. x x x

Accordingly, regulatory provisions may be read all throughout R.A. No. 8042 that carry out the policy of the State to protect and promote the rights of Filipino migrant workers. Employment agreements are verily more than contractual in nature in the Philippines. The Philippine Constitution and laws guarantee special protection to workers here and abroad.[23] Thus, even if a Filipino is employed abroad, he or she is entitled to security of tenure, among other constitutional rights.[24]

In termination disputes or illegal dismissal cases, it has been established by Philippine law and jurisprudence that the employer has the burden of proving that the dismissal is for just and valid causes; and failure to do so would necessarily mean that the dismissal was not justified and is, therefore, illegal.[25] Taking into account the character of the charges and the penalty meted to an employee, the employer is bound to adduce clear, accurate, consistent, and convincing evidence to prove that the dismissal is valid and legal.[26] This is consistent with the principle of security of tenure as guaranteed by the Constitution and reinforced by

---

[23] *Sameer Overseas Placement Agency, Inc. v. Cabiles*, G.R. No. 170139, August 5, 2014, 732 SCRA 22, 42-44.

[24] *Dagasdas v. Grand Placement and General Services Corporation*, G.R. No. 205727, January 18, 2017, 814 SCRA 529, 541.

[25] See *Ting v. Court of Appeals*, G.R. No. 146174, July 12, 2006, 494 SCRA 610, 620-623.

[26] *Bank of the Philippine Islands v. Uy*, G.R. No. 156994, August 31, 2005, 468 SCRA 633, 646.

Article 292(b)[27] of the Labor Code of the Philippines,[28] which provides:

> Art. 292. Miscellaneous Provisions x x x
>
> (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article [298] of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. x x x[29]

Here, petitioner argues that there was justifiable cause for the termination of Bautista's employment since the latter has fallen short of Shorncliffe's employment and work standards. She cited the report of Shorncliffe's Chief Executive Officer and Project Team Leader, Robert Aup, which detailed Bautista's shortcomings, as well as the report of Paul Thompson, Supervising Engineer of the Project to which Bautista was assigned, which mentioned the latter's incompetence.[30] Maintaining that the rights and obligations among the Overseas Filipino Worker (OFW), the local recruiter or agent, and the foreign employer or principal is governed by the employment

---

[27] As renumbered in DOLE Department Advisory No. 1, Series of 2015. Formerly Article 277.

[28] *EDI-Staffbuilders International, Inc. v. NLRC*, G.R. No. 145587, October 26, 2007, 537 SCRA 409, 432.

[29] As amended by R.A. No. 6715, Sec. 33.

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

contract which is the law among them, petitioner also claims that Bautista's employment was validly terminated even without notice as he was given the equivalent of one-month salary in lieu thereof.[31]

The Court is not convinced.

As observed by the CA, the evaluation report of Robert Aup was made only on August 22,2009, and the declaration of Paul Thompson was executed only on October 1, 2009, which dates are beyond the date of termination of Bautista's employment on July 10, 2009. The CA correctly concluded that these were made as an afterthought in order to lend credence to the claim that the termination of Bautista's employment was for a valid reason.[32] In *Skippers United Pacific, Inc. v. Maguad*,[33] we held that the Master's Statement Report presented by therein petitioners to corroborate their claim that the dismissal of therein respondents was for just cause, *i.e.*, incompetence, was issued 78 days[34] after therein respondents were repatriated to Manila and two months after the latter instituted a complaint for illegal dismissal before the NLRC. Such report can no longer be a fair and accurate assessment of therein respondents' competence as the same was presented only after the complaint was filed. Its execution was a mere afterthought in order to justify the dismissal of therein respondents which had long been effected before the report was made; hence, such report is a self-serving one.[35]

The Court thus finds that Bautista's incompetence as the alleged just cause for his dismissal was not proven by substantial evidence.

---

[31] *Id.* at 29-30, 36.

[32] *Id.* at 17-18.

[33] G.R. No. 166363, August 15, 2006, 498 SCRA 639.

[34] This is the correct number of days based on the pertinent dates as indicated in the case. See *id*. at 649.

[35] *Id.* at 662.

II.

In addition, Bautista was not accorded due process. Consequently, the Court is not convinced that he was legally dismissed.

The due process requirement is not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern since it constitutes a safeguard of the highest order in response to man's innate sense of justice. To meet the requirements of due process, the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected, *i.e.*: (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice after due hearing which informs the employee of the employer's decision to dismiss him.[36]

Here, Bautista was dismissed under Article 4.3 of the employment contract which allegedly permits his employer, Shorncliffe, to terminate the contract on unspecified "other grounds" by giving one month's written notice of its intention to terminate, or in lieu thereof, to pay the employee a sum equivalent to one month's salary.

Bautista was notified on July 6, 2009 that his services will be terminated effective on the close of business hours on July 10, 2009, allegedly because his performance was "unsatisfactory and did not meet the standards of the Company."[37] He was also paid one-month salary in lieu of one month's notice of the termination of his employment.[38] Surely, this cannot be considered compliance with the two-notice requirement mandated by the Labor Code in effecting a valid dismissal. The Labor Code requires both notice and hearing; notice alone will not suffice. The requirement of notice is intended to inform the

---

[36] *Id.* at 663.

[37] *Rollo*, p. 96.

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

employee concerned of the employer's intent to dismiss him and the reason for the proposed dismissal. On the other hand, the requirement of hearing affords the employee an opportunity to answer his employer's charges against him and accordingly defend himself therefrom before dismissal is effected.[39] In this case, Bautista was not given a chance to defend himself. Five days after the notice was served, he was repatriated. Clearly, he was denied his right to due process.

The CA aptly observed that Article 4.3 deprives the employee of his right to due process of law as it gives the employer the option to do away with the notice requirement provided that it grants one-month salary to the employee in lieu thereof. It denies the employee of the right to be apprised of the grounds for the termination of his employment without giving him an opportunity to defend himself and refute the charges against him. Moreover, the term "other grounds" is all-encompassing. It makes the employee susceptible to arbitrary dismissal. The employee may be terminated not only for just or authorized causes but also for anything under the sun that may suit his employer. Thus, the employee is left unprotected and at the mercy of his employer, subjected to the latter's whims.[40]

We cannot sustain the validity of Article 4.3 of the employment contract as it contravenes the constitutionally-protected right of every worker to security of tenure.[41]

Bautista's employment was for a fixed period of 31 months.[42] Article 4.3 took back this period from him by rendering it in effect a facultative one at the option of Shorncliffe, which may shorten that term at any time and for any cause satisfactory to itself, to a one-month period or even less, by simply paying Bautista a month's salary. The net effect of Article 4.3 is to render Bautista's employment basically employment at the

---

[39] *Skippers United Pacific, Inc. v. Maguad, supra* note 33 at 664-665.

[40] *Rollo*, p. 16.

[41] CONSTITUTION, Art. XIII, Sec. 3. See Footnote No. 22.

[42] *Rollo*, p. 98.

pleasure of Shorncliffe. The Court considers that the provision is intended to prevent any security of tenure from accruing in favor of Bautista even during the limited period of 31 months.[43]

To emphasize, overseas workers, regardless of their classification, are entitled to security of tenure, at least for the period agreed upon in their contracts. This means that they cannot be dismissed before the end of their contract terms without due process.[44] The law recognizes the right of an employer to dismiss employees in warranted cases, but it frowns upon the arbitrary and whimsical exercise of that right when employees are not accorded due process.[45] If they were illegally dismissed, the workers' right to security of tenure is violated.[46]

The law and jurisprudence guarantee to every employee security of tenure. This textual and the ensuing jurisprudential commitment to the cause and welfare of the working class proceed from the social justice principles of the Constitution that the Court zealously implements out of its concern for those with less in life. Thus, the Court will not hesitate to strike down as invalid any employer act that attempts to undermine workers' tenurial security.[47]

Indeed, while our Civil Code recognizes that parties may stipulate in their contracts such terms and conditions as they may deem convenient, these terms and conditions must not be contrary to law, morals, good customs, public order or policy.[48]

---

[43] See *Pakistan International Airlines Corporation v. Ople*, G.R. No. 61594, September 28, 1990, 190 SCRA 90.

[44] *Sameer Overseas Placement Agency, Inc. v. Cabiles, supra* note 23 at 60.

[45] *Tan, Jr. v. NLRC*, G.R. No. 85919, March 23, 1990, 183 SCRA 651, 657.

[46] *Sameer Overseas Placement Agency, Inc. v. Cabiles, supra* note 23 at 60.

[47] *Imasen Philippine Manufacturing Corporation v. Alcon*, G.R. No. 194884, October 22, 2014, 739 SCRA 186, 194.

[48] CIVIL CODE, Art. 1306.

The employment contract between Shorncliffe and Bautista is governed by Philippine labor laws. Hence, the stipulations, clauses, and terms and conditions of the contract must not contravene our labor law provisions.

Time and again, we have held that a contract of employment is imbued with public interest. The parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other. Also, while a contract is the law between the parties, the provisions of positive law that regulate such contracts are deemed included and shall limit and govern the relations between the parties.[49]

In sum, there being no showing of any clear, valid, and legal cause for the termination of Bautista's employment and that he was not afforded due process, the law considers the matter a case of illegal dismissal for which Bautista is entitled to indemnity. We uphold the Labor Arbiter's award of indemnity equivalent to Bautista's salaries for the unexpired term of his employment contract, and damages.

III.

Section 10 of R.A. No. 8042 provides that in case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full reimbursement of his placement fee with interest of 12% *per annum*, plus his salaries for the unexpired portion of his employment contract or for three months for every year of the unexpired term, whichever is less.

We declared the clause "or for three months for every year of the unexpired term, whichever is less" unconstitutional in the 2009 case of *Serrano v. Gallant Maritime Services, Inc.*,[50] and again in the 2014 case of *Sameer Overseas Placement*

---

[49] *Philippine National Bank v. Cabansag*, G.R. No. 157010, June 21, 2005, 460 SCRA 514, 533-534.

[50] G.R. No. 167614, March 24, 2009, 582 SCRA 254.

Agency, Inc. v. Cabiles,[51] after the provision found its way again in R.A. No. 10022[52] which took effect in 2010. We held that the clause violated substantive due process and the equal protection clause of the Constitution in that it generated classifications among workers that do not rest on any real or substantial distinctions that would justify different treatments in terms of the computation of money claims resulting from illegal termination.[53] Thus, we held that the proper indemnity in illegal dismissal cases should be the amount equivalent to the unexpired term of the employment contract. In this case, it is Bautista's monthly salary of ₱115,850.00[54] multiplied by 22 months, the remaining term of his employment contractor a total amount of ₱2,548,700.00.

We also upheld the Labor Arbiter's award of moral and exemplary damages to Bautista on the ground that his dismissal was without just and authorized cause, in complete disregard of his right to due process of law, and done in bad faith, in addition to being anti-Filipino and capricious.[55] Likewise, we find the award of attorney's fees proper. It is settled that when an action is instituted for the recovery of wages, or when employees are forced to litigate and consequently incur expenses to protect their rights and interests, the grant of attorney's fees is legally justifiable.[56]

Petitioner's argument that she should not be held jointly and severally liable with Shorncliffe for the payment of monetary

---

[51] *Supra* note 23.

[52] An Act Amending Republic Act No. 8042. Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress and For Other Purposes.

[53] *Sameer Overseas Placement Agency, Inc. v Cabiles, supra* note 23 at 57-60.

[54] *Rollo*, p. 97.

[55] *Id.* at 68.

[56] *Philippine National Bank v Cabansag, supra* note 49 at 536.

awards to Bautista as she had no control over the manner of implementation of the employment contract, she had no hand whatsoever in Bautista's dismissal, and that her agency was extinguished as soon as the employee was deployed to and have worked in Shorncliffe's construction project in Papua New Guinea,[57] has no merit.

In the first place, such joint and solidary liability is required prior to the issuance of a license to petitioner to operate a recruitment agency. Thus, Section 1(f)(3), Rule II, Part II of the 2002 POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers provides:

RULE II
ISSUANCE OF LICENSE

Sec. 1. *Requirements for Licensing*. Every applicant for license to operate a private employment agency shall submit a written application together with the following requirements:

x x x x x x x x x

f. A verified undertaking stating that the applicant:

x x x x x x x x x

3) **Shall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract**, including but not limited to payment of wages, death and disability compensation and repatriations[.] (Emphasis supplied.)

Furthermore, Section 10 of R.A. No. 8042 provides:

Sec. 10. *Money Claims*. x x x

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent

---

[57] *Rollo*, pp. 38-39, 122.

for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers.If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages. (Emphasis supplied.)

Consistent with the law and the POEA Rules, petitioner's joint and several liability is incorporated in Bautista's employment contract with Shorncliffe, which states:

Article 1: This Employment Contract is executed and entered into by and between:

A. EMPLOYER:

SHORNCLIFFE (PNG) LIMITED
(Name of Establishment)

x x x x x x x x x

Represented in the Philippines:

JOB ASIA MANAGEMENT SERVICES
By: Mr. JAIME M. ARREO
(Managing Consultant)

and persons authorized by Agent Company who will be jointly and severally responsible to [sic] compliance herewith:

and

B. EMPLOYEE: SALVADOR BUSTILLO BAUTISTA[58]
(Emphasis supplied.)

x x x x x x x x x

Petitioner thus cannot evade liability by claiming that she did not have any control over the foreign employer and had nothing to do with Bautista's dismissal, because her liability is defined by law and contract.

---

[58] *Id.* at 98.

We have held that the burden devolves not only upon the foreign-based employer but also on the employment or recruitment agency to adduce evidence to convincingly show that the worker's employment was validly and legally terminated. This is because the latter is not only an agent of the former, but is also solidarily liable with the foreign principal for any claims or liabilities arising from the dismissal of the worker.[59]

R.A. No. 8042 is a police power measure intended to regulate the recruitment and deployment of OFWs. It aims to curb, if not eliminate, the injustices and abuses suffered by numerous OFWs seeking to work abroad.[60] In *Sameer*, we explained that the provision on joint and several liability in R.A. No. 8042 is in line with the state's policy of affording protection to labor and alleviating workers' plight. It assures overseas workers that their rights will not be frustrated by difficulties in filing money claims against foreign employers. Hence, in the case of overseas employment, either the local agency or the foreign employer may be sued for all claims arising from the foreign employer's labor law violations. This way, the overseas workers are assured that someone—at the very least, the foreign employer's local agent—may be made to answer for violations that the foreign employer may have committed. By providing that the liability of the foreign employer may be "enforced to the full extent" against the local agent, the overseas worker is assured of immediate and sufficient payment of what is due them. The local agency that is held to answer for the overseas worker's money claims, however, is not left without remedy. The law does not preclude it from going after the foreign employer for reimbursement of whatever payment it has made to the employee to answer for the money claims against the foreign employer.[61]

---

[59] *EDI-Staffbuilders International, Inc. v. NLRC, supra* note 28 at 434.

[60] *Sto. Tomas v. Salac*, G.R. No. 152642, November 13, 2012, 685 SCRA 245, 262.

[61] *Sameer Overseas Placement Agency, Inc. v. Cabiles, supra* note 23 at 68-70.

WHEREFORE, the petition is **DENIED**. Petitioner is ordered to pay respondent:

1. Reimbursement of respondent's placement fee with interest at the rate of 12% *per annum*;
2. Two Million Five Hundred Forty-Eight Thousand Seven Hundred Pesos (₱2,548,700.00) representing Bautista's salaries for the unexpired portion of his contract;
3. Moral damages in the amount of One Hundred Fifty Thousand Pesos (₱150,000.00);
4. Exemplary damages in the amount of One Hundred Fifty Thousand Pesos (₱150,000.00); and
5. Attorney's fees at the rate of 10% of the monetary award exclusive of damages and reimbursement of placement fee in the amount of Two Hundred Fifty-Four Thousand Eight Hundred Seventy Pesos (₱254,870.00).

All monetary awards and damages (except reimbursement of placement fee) shall earn 6% interest per annum from finality of this judgment until fully paid.

SO ORDERED.

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

---

[*] Designated as Acting Chairperson of the First Division per Special Order No. 2559 dated May 11, 2018.

[**] Designated as additional Member per Raffle dated June 4, 2018.

[***] Designated as Acting Member of the First Division per Special Order No. 2560 dated May 11, 2018.

SECOND DIVISION

[G.R. No. 207004. June 6, 2018]

ASTRID A. VAN DE BRUG, MARTIN G. AGUILAR and GLENN G. AGUILAR, *petitioners, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 7202 (THE SUGAR RESTITUTION LAW); RESTITUTION; SHALL BE GRANTED ONLY TO SUGAR PRODUCERS WHO HAVE NET EXCESS PAYMENTS AFTER RECOMPUTATION OF THEIR LOANS AND APPLICATION OF EXCESS INTERESTS, PENALTIES AND SURCHARGES AGAINST THEIR OUTSTANDING LOAN OBLIGATIONS.— [T]he late spouses Aguilar had accounts that were covered by RA 7202. The subject crop loans of the late spouses Aguilar were "obtained sometime between the late 1970's and the early 1980's." x x x Pursuant to the IRR definition of terms, there appears to be no excess interest with respect to the RA 7202 accounts of the late spouses Aguilar because the actual interest payment or interest collected amounted to only ₱12,658.22, as of December 15, 1996, while the recomputed interest at 12% *per annum* totaled ₱689,944.52. Thus, with the actual interest collected not being more than the recomputed interest of the principal of the loans of the late spouses Aguilar covered by RA 7202 (amounting to ₱270,351.62), there could be no excess payment and there would be no amount that could be restituted to the Aguilars. This is clear from Section 9 of the IRR wherein [only] sugar producers who have net excess payments after recomputation of their loans and application of excess interests, penalties and surcharges against their outstanding loan obligations shall be entitled to restitution. x x x [S]ugar producers, who were entitled to restitution, were given a period of 180 calendar days from the effectivity of the IRR to file their claims for restitution of sugar losses with the BSP.

2. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; SOURCES OF OBLIGATIONS.— The

Aguilars x x x implore the Court x x x to compel PNB to extend to them the accommodation that PNB made with spouses Frederick and Mildred Pfleider (the spouses Pfleider) wherein in the Restructuring and Compromise Agreement (Compromise Agreement) that PNB entered into with the spouses Pfleider in Civil Case No. 7212 before Branch 45 of the RTC of Bacolod City, PNB credited in favor of the spouses Pfleider the value of their agricultural lots that PNB had also foreclosed and transferred via VOS to DAR. x x x The sources of obligations under Article 1157 of the Civil Code are: (1) law; (2) contracts; (3) quasi-contracts; (4) acts or omissions punished by law; and (5) quasi-delicts. Immediately, sources (2), (3) and (4) are inapplicable in this case. The Aguilars are not privies to the Compromise Agreement between PNB and the spouses Pfleider. Regarding law, as PNB's source of obligation, the CA correctly ruled that the Aguilars are not entitled to restitution under RA 7202. Thus, RA 7202 cannot be invoked as the statutory basis to compel PNB to treat the Aguilars similarly with the spouses Pfleider.

3. ID.; ID.; HUMAN RELATIONS; ABUSE OF RIGHTS; REQUISITES.— Aside from Chapter 2, Quasi-Delicts, of Title XVII. – Extra-Contractual Obligations, Book IV of the Civil Code, it is recognized that quasi-delict may arise under Chapter 2, Human Relations of the Preliminary Title of the Civil Code. x x x To make PNB liable under the principle of abuse of rights, the Aguilars have the burden to prove the requisites x x x. They claim that they are similarly circumstanced as the spouses Pfleider and there was no reason for PNB to treat them differently. PNB has explained that there are differences in the circumstances of its two sugar crop loan debtors which, to PNB, justify the different accommodations that it accorded to them. [I]t was incumbent upon the Aguilars, to make PNB liable for damages based on the principle of abuse of rights, to prove that PNB acted in bad faith and that its sole intent was to prejudice or injure them. The Aguilars, however, failed in this regard. x x x "In order to be liable for damages under the abuse of rights principle, the following requisites must concur: (a) the existence of a legal right or duty; (b) which is exercised in bad faith; and (c) for the sole intent of prejudicing or injuring another." In this case, the Aguilars failed to substantiate the above requisites to justify the award of damages in their favor against PNB,

who merely exercised its legal right as a creditor pursuant to RA 7202.

APPEARANCES OF COUNSEL

Espinosa Aldea-Espinosa and Associates Law Office for petitioners.

PNB Bacolod Legal Unit for respondent.

D E C I S I O N

CAGUIOA, *J.:*

Before the Court is a petition[1] for review (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] of the Court of Appeals[3] (CA) dated March 23, 2012 in CA-G.R. CV No. 00708, which granted the appeal of the respondent Philippine National Bank (PNB) and reversed the Decision[4] dated December 10, 2004 of the Regional Trial Court, 6th Judicial Region, Branch 58, San Carlos City, Negros Occidental (RTC) in Civil Case No. RTC-725 in favor of the petitioners. Likewise, the Resolution[5] of the CA[6] dated April 1, 2013, denying the petitioners' motion for reconsideration, is being assailed.

Facts and Antecedent Proceedings

The CA Decision states the following facts as culled from the records:

---

[1] *Rollo*, pp. 4-12, excluding Annexes.

[2] *Id*. at 57-69. Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino concurring.

[3] Twentieth Division.

[4] *Rollo*, pp. 28-55. Penned by Presiding Judge Moises G. Nifras, Sr.

[5] *Id*. at 75-76. Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Edgardo L. Delos Santos and Pamela Ann Abella Maxino concurring.

[6] Special Former Twentieth Division.

The late spouses Romulus[7] and Evelyn[8] Aguilar [the late spouses Aguilar] used to be borrowing clients of x x x Philippine National Bank [PNB], Victoria Branch x x x. The late [spouses Aguilar's] sugar crop loans, which were obtained sometime between the late 1970's and the early 1980's, were secured by real estate mortgage over four registered parcels of land, namely: residential Lot No. 3, Block 13, situated in Sagay, Negros Occidental [with an area of 342 square meters[9]], and agricultural Lots No[s]. 3587 [with an area of 225,594 square meters[10]], 3588 [with an area of 19,283 square meters[11]] and 3749 [with an area of 181,935 square meters[12]], all situated at Escalante, Negros Occidental. However, for failure of the late spouses Aguilar to pay their obligations with [PNB], the mortgage was foreclosed in 1985 and subsequently, ownership of the subject four pieces of property was consolidated under the name of [PNB].

With the enactment of RA 7202 on February 29, 1992, the late Romulus Aguilar wrote [PNB] on July 5, 1995, and he stated: "*Since our indebtedness with the PNB had been foreclosed, we are asking your good Office for a reconsideration of our account based on the Sugar Restitution Law*." After the death of Romulus Aguilar, his spouse, the late Evelyn Aguilar, received a letter from [PNB] dated September 17, 1997, during which occasion [PNB] informed the late Evelyn Aguilar that while the subject loan account was covered by the provisions of RA 7202 and have been audited by the Commission on Audit (COA), the late Evelyn Aguilar was still required to comply with the following matters: (1) to arrange and implement restructuring of accounts within sixty (60) days from receipt of the notice, (2) to signify her conformity to the computation of the account, and (3) to submit the ten (10) year crop production for the period 1974/1975 to 1984/1985.

Plaintiffs-appellees Aguilar [the Aguilars] claimed that they complied with the stated requirements, and that subsequently, [PNB]

---

[7] Died on January 10, 1996; *rollo*, p. 58.

[8] Died on March 22, 2001, after the instant case was filed; *id*. at 57.

[9] *Rollo*, p. 29.

[10] *Id*.

[11] *Id*.

[12] *Id*.

furnished them [with] Statements of Account, the earliest of which was the COA audited statement as of December 15, 1996 and the latest was as of November 30, 1999, which reflected a ₱2,236,337.91 total amount due.

[Based on Statement of Account as of November 30, 1999,[13] the accounts of the Aguilars with the PNB were computed as follows:

1. RA 7202 Accounts	₱1,043,656.36 (total principalof ₱270,351.62 plus 12%interest per annum amounting to ₱773,304.74, without penalty)
2. Non-RA 7202 Accounts	₱1,192,681.55 (total principal of ₱212,054.25 plus interest at regular rate amounting to ₱829,304.12, with penalty of ₱151,323.18.][14]

Further, [the Aguilars] adduced that inasmuch as the subject agricultural [lots] were already conveyed voluntarily by [PNB] to the Department of Agrarian Reform (DAR), they were advised by [PNB] to follow-up the payment for these pieces of realty with the Land Bank of the Philippines (LBP) in order for [PNB] to apply the proceeds of the sale to the account of the late spouses Aguilar. According to [the Aguilars], they were likewise assured by [PNB] that if the proceeds from LBP would exceed the obligations of the late spouses Aguilar, the excess amount would be returned to [the Aguilars], including the subject residential property. On December 21, 1998, LBP issued the Memorandum of Valuation of agricultural Lot No. 3749 for ₱1,254,328.17, and on November 23, 1999, for agricultural Lot No. 3587 in the amount of ₱1,957,684.31.

Following the November 23, 1999 Memorandum of Valuation, [the Aguilars] requested [PNB] to commence restructuring of the loan account, and on three occasions, *i.e.*, February 8, 2000, March 15, 2000 and April 24, 2000, one of the children of the late spouses Aguilar, x x x Glenn Aguilar, in behalf of his siblings x x x Astrid Van de Brug and Martin Aguilar, wrote [PNB] and asked that they be accorded the benefits of RA 7202. Through his letters, x x x Glenn Aguilar also made mention of an allegedly similar case, docketed as

---

[13] Marked as Exh. "G" and Exh. "3", records, p. 78.

[14] *Id*.

Civil Case No. 7212 entitled *Sps. Fred and Mildred Pfleider vs. PNB, et al.*, then pending before RTC, Branch 45, Bacolod City, wherein [PNB] purportedly entered into a compromise agreement with Sps. Pfleider, notwithstanding consolidation of the foreclosed property under the bank's name.

On September 22, 2000, [PNB] replied in writing and stated, among other matters, that: "*Since PNB has already acquired the properties at the foreclosure sale, it can now exercise its rights as owner of these properties, including the right to convey the same to the DAR and to receive the proceeds thereof from Land Bank of the Philippines, without any right to the excess proceeds, if any, inuring/accruing to your favor.*"

Hence, the case for implementation of RA 7202, with prayer for payment of ₱200,000.00 moral damages, ₱200,000.00 exemplary damages, ₱100,000.00 attorney's fees plus ₱1,500.00 fee per appearance and ₱25,000.00 litigation expenses, was filed by [the Aguilars] on January 3, 2001.

For its part, [PNB] emphasized that [the Aguilars] failed to comply with the requirements enumerated based on its September 17, 1997 letter. Hence, [PNB] argued that [the Aguilars] have no cause of action against [PNB] because whatever rights [the Aguilars] have under RA 7202 were already forfeited when they failed to comply with the requirements.

The non-compliance by [the Aguilars] of the requirements was confirmed by the Chief of [PNB's] Loans Department, x x x Edgardo Miraflor. While x x x Miraflor admitted that x x x Glenn Aguilar tried to negotiate with [PNB] for the restructuring of the account of the late spouses Aguilar under RA 7202, [the Aguilars] did not formally signify their conformity to [PNB's] recomputation of the account as of December 15, 1996, which was audited and certified by the COA. Neither did [the Aguilars] dispute the COA audited recomputation which disclosed that after recomputation based on the provisions of RA 7202, there was no excess payment on the account of the late spouses Aguilar. x x x Miraflor continued to add that while it was true that it was x x x Glenn Aguilar who followed up the status of LBP's payment of the subject agricultural lands which were already conveyed to the DAR, and that he advised x x x Glenn Aguilar to likewise negotiate with [PNB's] Bacolod Business Center, x x x Miraflor was subsequently notified by the Bacolod Business Center that pursuant to Department of Justice (DOJ) Opinion No. 91, Series

of 1995, the foreclosed pieces of property of [the Aguilars], which were already consolidated under the name of [PNB], could no longer be returned to them.

[PNB] further contended that [the Aguilars] cannot invoke the compromise agreement it entered into with Sps. Fred and Mildred Pfleider in *Civil Case No. 7212* because [the Aguilars] were not parties to the case.

By way of counterclaim, [PNB] prayed for ₱100,000.00 moral damages, ₱100,000.00 exemplary damages, attorney's fees and litigation expenses.

During the rebuttal stage, x x x Glenn Aguilar claimed that [the Aguilars] did not sign the restructuring agreement primarily because of the exclusion of the value of the agricultural lands, which were already conveyed to the DAR, in the recomputation of the account of the late spouses Aguilar.

After hearing, the [RTC] rendered the assailed Decision, the decretal portion whereof reads:

> "WHEREFORE, in view of the foregoing, judgment is hereby rendered dismissing the Defendant's counterclaim and ordering judgment in favor of the Plaintiffs and against the Defendant as follows:
>
> 1. To accord the Plaintiffs the benefits of R.A. 7202 and in particular to credit to the Plaintiffs' account the proceeds from the VOS[15] of the agricultural properties heretofore described as Lots 3585, 3749 and 3588, located at Escalante City, Negros Occidental, with the excess thereof being delivered to the Plaintiffs or the shortfall to be paid by the Plaintiffs in thirteen (13) years with interest provided for by R.A. 7202, and upon full payment of the account to return to the [P]laintiffs the title to and ownership of the abovementioned residential lot, Lot No. 3, Block 13, of the subdivision plan Psd-33419, Sagay Cadastre, now covered by TCT No. T-203;
>
> 2. Ordering the [D]efendants (sic) to pay [the] [P]laintiffs ₱100,000.00 moral damages, ₱50,000.00 exemplary

---

[15] Voluntary Offer to Sell.

damages, ₱50,000.00 attorney's fees and litigation expenses of ₱10,000.00 and to pay the costs.

SO ORDERED."[16]

The RTC justified the reconveyance or restitution of the residential lot in Sagay City to the Aguilars by crediting in their favor the proceeds of the Voluntary Offer to Sell (VOS) to the Department of Agrarian Reform (DAR) of the two agricultural lots, which "reached to more than Three Million Pesos[;] and in applying the proceeds thereof to the payment of their accounts, said outstanding account [would] be fully paid and in addition to that [PNB] would still be obligated to return the balance thereof which is more than ₱900,000.00 to the [Aguilars]."[17]

As to the Opinion of the Secretary of Justice, to the mind of the RTC, it refers only to foreclosed properties which, thru public auction, the ownership thereof has passed to third persons.[18] According to the RTC, it does not apply to the instant case because the subject foreclosed properties' ownership has not passed to third persons but only to another government agency that is also mandated to implement Republic Act No. (RA) 7202[19] or the Sugar Restitution Law.[20]

The RTC justified the judgment in favor of the Aguilars as in keeping with public policy behind RA 7202, which "was passed as a sort of social legislation and an urgent measure to uplift the plight of sugar producers who were put to a great disadvantage, thus they suffered damages, among which are non-payment of the sugar crop loans that led to foreclosure of

---

[16] *Rollo*, pp. 58-62.

[17] *Id.* at 53.

[18] *Id.*

[19] AN ACT AUTHORIZING THE RESTITUTION OF LOSSES SUFFERED BY SUGAR PRODUCERS FROM CROP YEAR 1974-1975 TO CROP YEAR 1984-1985 DUE TO THE ACTIONS OF GOVERNMENT-OWNED AND CONTROLLED AGENCIES, approved on February 29, 1992.

[20] *Rollo*, p. 53.

their collaterals thereof mainly 'due to actions taken by government agencies and in order to revive the economy in the sugar-producing areas of the country'," [21] thus:

> In plain and simple language what [PNB] has done in denying to the [Aguilars] the benefits of the Sugar Restitution Law is against the spirit that created the said Law, i.e. to help the sugar producers, the [Aguilars] herein included, who suffered due to the acts of government agencies.[22]

The RTC found PNB guilty of malice and bad faith in not pursuing its duty in helping the Aguilars avail of the benefits of RA 7202 and, pursuant to Articles 19 and 21 of the Civil Code, justified the award of moral and exemplary damages as well as attorney's fees and litigation expenses in favor of the Aguilars.[23]

Aggrieved by the RTC Decision, PNB appealed to the CA. The CA granted the appeal and reversed the RTC Decision.[24] In applying RA 7202, the CA found that the account of the late spouses Aguilar qualified under the law because indisputably, their sugar crop loans were obtained within the period covered by the law.[25] However, based on PNB's recomputation applying 12% *per annum* interest, which was audited and certified by the Commission on Audit (COA), the Aguilars were not entitled to restitution absent any excess payment after recomputation.[26] The CA did not credit the proceeds of the VOS to the DAR in favor of the Aguilars, but it in effect considered the account of the late spouses Aguilar as having been fully paid "through foreclosure of collateral" pursuant to Section 6 of the Rules and Regulations Implementing RA 7202 (IRR).[27]

---

[21] *Id*. at 52, citing RA 7202, Sec. 1.

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

[23] *Id*. at 54.

[24] *Id*. at 68.

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

[26] *Id*. at 68.

[27] See *id*. at 65-66.

The dispositive portion of the CA Decision states:

WHEREFORE, premises considered, the **APPEAL** is hereby **GRANTED**. Accordingly, the Decision appealed from is hereby **REVERSED**, and the Complaint for implementation of Republic Act (RA) No. 7202, otherwise known as the Sugar Restitution Law, docketed as *Civil Case No. RTC-725*, is hereby **DISMISSED**.

SO ORDERED.[28]

The Aguilars filed a Motion for Reconsideration,[29] which was denied by the CA in its Resolution[30] dated April 1, 2013.

The Aguilars filed their Petition with the Court. PNB filed its Comment[31] dated October 9, 2013, to which the Aguilars filed a Reply[32] dated October 22, 2013. PNB filed its Memorandum[33] dated August 8, 2014 and the Aguilars filed their Memorandum[34] dated September 29, 2014.

Issue

Based on the Petition, the sole issue is whether the CA erred in not including the sums and amounts which accrued to PNB from DAR's payment on account of the properties of the Aguilars.[35]

The Court's Ruling

At the core of the instant case is RA 7202, which was approved on February 29, 1992, and its declared policy is "to restitute the losses suffered by the sugar producers due to actions taken

---

[28] *Id*. at 68.

[29] *Id*. at 70-73.

[30] *Id*. at 75-76.

[31] *Id*. at 86-101.

[32] *Id*. at 103-105.

[33] *Id*. at 126-153.

[34] *Id*. at 160-176.

[35] *Id*. at 7.

by government agencies in order to revive the economy in the sugar-producing areas of the country."[36]

As to the institutions covered, Section 3 of RA 7202 provides:

SEC. 3. The Philippine National Bank, the Republic Planters Bank, the Development Bank of the Philippines and other government-owned and controlled financial institutions which have granted loans to the sugar producers shall extend to accounts of said sugar producers incurred from Crop Year 1974-1975 up to and including Crop Year 1984-1985 the following:

(a) Condonation of interest charged by the banks in excess of twelve percent (12%) **per annum** and all penalties and surcharges;

(b) The recomputed loans shall be amortized for a period of thirteen (13) years inclusive of a three-year grace period on principal effective upon the approval of this Act. The principal portion of the loan will carry an interest rate of twelve percent (12%) **per annum** and on the outstanding balance effective when the original promissory notes were signed and funds released to the producer.

Section 4 of RA 7202 provides which accounts of sugar producers are covered, thus:

SEC. 4. Accounts of sugar producers pertaining to Crop Year 1974-1975 up to and including Crop Year 1984-1985 which have been fully or partially paid, or may have been the subject of restructuring and other similar arrangements with government banks shall be covered by the provisions abovestated. The benefit of this Act shall not be extended to any sugar producer with a pending sequestration or ill-gotten wealth case before any administrative or judicial body. Any recovery shall be placed in escrow until the case has been finally resolved.

On the other hand, the IRR promulgated by the Bangko Sentral ng Pilipinas[37] (BSP) provides:

---

[36] RA 7202, Sec.1.

[37] Formerly the Central Bank of the Philippines was mandated, under Section 9 of RA 7202, to promulgate "[s]uch other rules and regulations as may be necessary for the adequate implementation of this Act." The RA 7202 IRR was approved by the BSP on August 27, 1993; Exh. "D", records, p. 11.

Sec. 4 For sugar producers who obtained loans from the lending banks during the period covered, the benefits provided herein shall be extended to those whose loans at the time of the effectivity of the Act:

a. Are still outstanding; or

b. Had been partially or fully paid, whether in cash, from proceeds of sale of assigned sugar quedans, through dacion en pago, or by way of execution against assets of the sugar producer other than the loan collaterals; or

c. Had been subjected to foreclosure of loan collaterals whether or not the foreclosure is a subject of litigation; or

d. Had been transferred or assigned to other government-owned and -controlled agencies or institutions; or

e. Had been the subject of restructuring or other similar arrangements, whether with the lending bank or with their assignees or transferees.[38]

Based on the foregoing, the entitlement of the Aguilars to the benefits of RA 7202 has been correctly recognized by the CA, *viz.*:

In essence, the issue that [the CA] needs to resolve is whether or not [the Aguilars] were entitled to the benefits of RA 7202. Nevertheless, [the CA] finds it vital to primarily establish whether the account of [the Aguilars'] predecessors-in-interest, the late spouses Aguilar, was qualified under RA 7202.

x x x x x x x x x

Based on the foregoing provisions, it appeared that the account of the late spouses Aguilar qualified under RA 7202 since indisputably, the sugar crop loans of the late spouses Aguilar, which were considered fully paid upon foreclosure of the mortgaged pieces of property, were obtained within the period covered by the law.

---

[38] Exh. "D", records, p. 11.

x x x x x x x x x

Succinctly, the sugar producer concerned was entitled to the benefit of recomputation of his loan account, and if warranted, to restitution of any excess payment on interests, penalties and surcharges, pursuant to *Section 3* of RA 7202.[39]

Indeed, the late spouses Aguilar had accounts[40] that were covered by RA 7202. The subject crop loans of the late spouses Aguilar were "obtained sometime between the late 1970's and the early 1980's."[41]

Now that certain accounts of the late spouses Aguilar have been established to be covered by RA 7202, the next question would be: what benefits does the law confer upon the Aguilars?

As provided in Section 3 of RA 7202, quoted above, and Section 6 of the IRR, quoted below, the Aguilars are entitled to: (1) condonation of interest charged in excess of 12% per annum and all penalties and surcharges; (2) recomputation of their sugar crop loans, and if there is interest in excess of 12% per annum, interests, penalties and surcharges, application of the excess payment as an offset and/or as payment for the late spouses Aguilar's outstanding loan obligations; and (3) restructuring or amortization of the recomputed loans for a period of 13 years inclusive of a three-year grace period on the principal, effective upon the approval of RA 7202.

The CA found that PNB recomputed the RA 7202 accounts of the late spouses Aguilar, which were audited and certified by the COA, and the recomputation resulted in the absence of any excess payment, *viz.*:

Indeed, [PNB] recomputed the account of the late spouses Aguilar based on 12% *per annum* interest rate, and the recomputation was audited and certified by the COA. Yet, the result of the recomputation,

---

[39] *Rollo*, pp. 64-67.

[40] The late spouses Aguilar had RA 7202 and non-RA 7202 accounts with PNB; Exh. "G" and Exh. "3", records, p. 78.

[41] *Rollo*, p. 58.

as reflected on the COA audited Statement of Account, and on the attached computation sheets, as of December 15, 1996, revealed:

Releases/ Accounts	Principal	**(a)** Actual Interest Payment	**(b)** Recomputed Interest at 12% p.a.	(c) Excess Payment (a-b=c)
1975/76	₱146,979.37	₱11,893.55	₱382,459.36	-0-
1976/77	95,372.25	764.67	238,103.64	-0-
1976/77	28,000.00	.00	69,381.52	-0-
TOTAL	₱270,351.62	P12,658.22	₱689,944.52	-0-

Seemingly, absent any excess payment after the recomputation of the account of the late spouses Aguilar based on 12% *per annum* interest rate, pursuant to *Section 9* of the Rules and Regulations Implementing RA 7202 *vis-à-vis Section 3* of RA 7202, [the Aguilars] were not entitled to restitution under RA 7202.[42]

Based on the foregoing, the CA denied the Aguilars' entitlement to restitution. The CA justified its computation based on Sections 6, 7 and 9(b) of the IRR, to wit:

"**SECTION 6.** E.O. 31,[43] as amended by E.O. 114[44] provides as follows:

x x x x x x x x x

'**SECTION 2.** In cases, however, where sugar producers **have no outstanding loan balance** with said financial institutions **as of the date of effectivity of RA No. 7202** (*i.e.* sugar producers who have **fully paid their loans** either **through** actual payment or **foreclosure of collateral**, or who have partially paid their loans and after the recomputation of the interest charges, they end up with excess payment to said financial institutions), **said producers shall be entitled to the benefits**

---

[42] *Id*. at 68.

[43] Executive Order No. 31 dated October 29, 1992 directing all government lending financial institutions to implement the Act. RA 7202 IRR, Sec. 2.b.

[44] Executive Order No. 114 dated July 23, 1993 amending Section 2 of E.O. 31. RA 7202 IRR, Sec. 2.c.

of recomputation in accordance with *Sections 3 and 4* of RA No. 7202, but the said financial institutions, **instead of refunding the interest in excess of twelve (12%) per cent *per annum*, interests, penalties and surcharges, apply the excess payment as an offset and/or as payment for the producers' outstanding loan obligations**. Applications of restructuring banks under *Section 6* of RA No. 7202 shall be filed with the Central Monetary Authority of the Philippines within one (1) year from application of excess payment.'

x x x x x x x x x

"**SECTION 7.** Lending banks shall recompute the outstanding loans at twelve percent (12%) simple interest *per annum* based on the original promissory notes and shall condone interest in excess of twelve per cent (12%) and all penalties and surcharges that were not paid. **Excess interest and all penalties and surcharges which had been paid shall be applied against the outstanding loan obligations of the sugar producers in accordance with *Section 6* of these Implementing Rules**. x x x

x x x x x x x x x

"SECTION 9. The following sugar producers shall be **entitled to restitution:**

[a. Those have no loan accounts with the lending banks but have suffered trading losses; and]

b. **Those who** borrowed from the lending banks as enumerated in *Section 4* of these Implementing Rules and **have <u>net excess payments</u> after recomputation of their loans as defined in *Section 2.k*[45] and application of excess interest, penalties and surcharges against their other outstanding loan obligations in accordance with *Section 6* of these Implementing Rules**. x x x"[46] (Additional emphasis and underscoring supplied)

---

[45] RA 7202 IRR, Sec. 2.k provides: "LOANS SUBJECT TO RECOMPUTATION shall refer to borrowings of sugar producers related to the production and milling of sugar which were granted by lending banks during the period covered."

[46] *Rollo*, pp. 66-67.

The above computation of the CA appears to be in accord with the above-quoted provisions of the IRR.

As defined under Section 2.p of the IRR, "EXCESS PAYMENT shall mean the overage of the excess interest as defined in Section 2.n and penalties and surcharges as defined in Section 2.o after applying them against the outstanding loan balance appearing in the books of the lending banks."[47] Section 2.n provides: "EXCESS INTEREST shall mean interest charged and/or collected by the lending bank over and above the twelve percent (12%) interest per annum on the amount of the principal of loan as defined in Section 2.k as such amount is determined from the original promissory note" while Section 2.o provides: "PENALTIES AND SURCHARGES shall mean all penalties and surcharges charged and/or collected by the lending bank."[48]

Pursuant to the IRR definition of terms, there appears to be no excess interest with respect to the RA 7202 accounts of the late spouses Aguilar because the actual interest payment or interest collected amounted to only ₱12,658.22, as of December 15, 1996, while the recomputed interest at 12% *per annum* totaled ₱689,944.52. Thus, with the actual interest collected not being more than the recomputed interest of the principal of the loans of the late spouses Aguilar covered by RA 7202 (amounting to ₱270,351.62),[49] there could be no excess payment and there would be no amount that could be restituted to the Aguilars. This is clear from Section 9 of the IRR wherein [only] sugar producers who have net excess payments after recomputation

---

[47] Exh. "D", records, p. 11.

[48] *Id*.

[49] The total of the principal of the non-RA 7202 accounts is ₱212,054.25, and if the ₱270,351.62 total of the principal of the RA 7202 accounts is added, total principal of the account of the late spouses Aguilar is ₱482,405.87, as of November 30, 1999. As of that date, interest of the non-RA 7202 accounts and penalty are computed at ₱829,304.12 and ₱151,323.18, respectively, or a total of ₱980,627.30, while interest of RA 7202 accounts amounted to ₱773,304.74. Thus, total outstanding loan obligations of the late spouses Aguilar as of November 30, 1999 stood at ₱2,236,337.91. Exh. "G" and Exh. "3", records, p. 78.

of their loans and application of excess interests, penalties and surcharges against their outstanding loan obligations shall be entitled to restitution.

On the matter of restitution, the IRR further provides:

> **Sec. 13** Sugar producers with foreclosed collaterals which are covered by the CARL shall also be entitled to restitution from the Sugar Restitution Fund and/or recomputation, condonation and restructuring.[50]

As defined by the IRR, "SUGAR RESTITUTION FUND shall refer to the ill-gotten wealth recovered by the Government through the PCGG[51] or any other agency or from any other source within the Philippines or abroad, and whatever assets or funds that may be recovered, or already recovered, which have been determined by PCGG or any other competent agency of the Government to have been stolen or illegally acquired from the sugar industry whether such recovery be the result of a judicial proceeding or by a compromise agreement."[52]

To be clear, sugar producers, who were entitled to restitution, were given a period of 180 calendar days from the effectivity of the IRR to file their claims for restitution of sugar losses with the BSP.[53]

Based on their Petition, the computation of the CA is disputed by the Aguilars because it did not "include the sums and amounts which accrued to [PNB] from DAR's payment on account of [their] properties."[54]

The Aguilars take the position that the total amount of ₱3,212,012.48, which PNB received from the Land Bank of the Philippines (LBP) based on the Memorandum of Valuation

---

[50] Exh. "D", records, p. 11.

[51] Presidential Commission on Good Government.

[52] RA 7202 IRR, Sec. 2.r, Exh. "D", records p. 11.

[53] RA 7202 IRR, Sec. 12.a, *id*.

[54] Petition, *rollo*, p. 7.

of Lot 3587 located at Magsaysay, Escalante City fixing the lot's value at ₱1,957,684.31[55] and the Memorandum of Valuation of Lot 3749 located at Pinapugasan, Escalante City fixing the lot's value at ₱1,254,328.17[56] pursuant to PNB's VOS to DAR of the said lots, should be deducted from their total outstanding loan obligations (for RA 7202 and non-RA 7202 accounts) in the amount of ₱2,236,337.91 as of the date of foreclosure of the collaterals as per Statement of Account marked Exhibit "G."[57] If their position is upheld, there would be an overage of ₱975,674.57, which should be returned to them by the terms of the IRR.[58] The Aguilars further claim that since two out of the four mortgaged lots are already enough to cover their outstanding loan balance and there is even an excess, then the other lots, in particular the residential land which is obviously not covered by the Comprehensive Agrarian Reform Program (CARP), should be restored to their possession and ownership.[59]

To this Court, this position of the Aguilars cannot be justified under RA 7202 and its IRR. To recall, Section 6 of the IRR, in part, provides that:

> x x x where sugar producers have **no outstanding loan balance** with said financial institutions **as of the date of effectivity of RA No. 7202** (i.e. sugar producers who have **fully paid their loans** x x x **through** x x x **foreclosure of collateral** x x x), **said producers shall be entitled to the benefits of recomputation in accordance with Sections 3 and 4 of RA No. 7202**, but the said financial institutions, **instead of refunding the interest in excess of twelve (12%) per cent per annum, interests, penalties and surcharges, apply the excess payment as an offset and/or as payment for the producers' outstanding loan obligations**. x x x[60] (Emphasis supplied; underscoring omitted)

---

[55] Exh. "H" and Exh. "5", records, p. 79.

[56] Exh. "I" and Exh. "6", *id*. at 84.

[57] *Supra* note 49.

[58] Petition, *rollo*, pp. 9-10.

[59] Petitioners' Memorandum, *rollo*, pp. 171-172.

[60] Exh. "D", records, p. 11.

And, based on PNB's recomputation which the CA upheld, there is no excess payment made by the late spouses Aguilar that has to be restituted to the Aguilars.

The Aguilars further implore the Court, as they did unsuccessfully with the CA, to compel PNB to extend to them the accommodation that PNB made with spouses Frederick[61] and Mildred Pfleider (the spouses Pfleider) wherein in the Restructuring and Compromise Agreement[62] (Compromise Agreement) that PNB entered into with the spouses Pfleider in Civil Case No. 7212 before Branch 45 of the RTC of Bacolod City,[63] PNB credited in favor of the spouses Pfleider the value of their agricultural lots that PNB had also foreclosed and transferred via VOS to DAR.[64] The Aguilars argue that "[they] are similarly circumstanced as the Pfleiders[,] [and] [t]here was no reason for PNB to treat [them] differently."[65]

PNB counters that RA 7202 "does not provide for the reconveyance of the foreclosed property/ies to the qualified sugar producers" and "[w]hat the qualified sugar producers with foreclosed property/ies were entitled to under R.A. No. 7202 was for the recomputation of their loan account and if there were any excess payment/s, to claim with the x x x BSP x x x for restitution."[66] PNB also posits that the foreclosure of the subject agricultural lots was done before the effectivity of RA 7202 and when they were subjected to the CARP, PNB, being then the landowner/claimant, had the right to claim and receive the CARP proceeds thereof.[67]

---

[61] Also referred to as Fred in some parts of the records.

[62] Exh. "E-1", records, pp. 16-20.

[63] See Joint Motion (For Approval of Compromise Agreement), Exh. "E" and Exh. "2", *id*. at 12-15.

[64] Petition, *rollo*, p. 8.

[65] *Id*. at 9.

[66] Comment, *id*. at 90.

[67] *Id*. at 91-92.

PNB cites DOJ Opinion No. 91, Series of 1995[68] (DOJ Opinion) where former DOJ Secretary Teofisto T. Guingona, Jr. opined that:

> x x x While the effect of Section 3 is to forestall foreclosure of mortgaged properties, the provision does not in terms undo foreclosure sales already consummated as of the effectivity of R.A. No. 7202. And rightly so, because property rights have already vested after a consummated foreclosure sale which the law (R.A. No. 7202) cannot disturb without violating the constitutional guaranties of due process and non-impairment of contracts clause.[69]

PNB likewise cites that for purposes of recomputation under RA 7202, CARP proceeds of foreclosed properties are not categorized as among the "LOAN PAYMENTS" to be credited to the loan accounts of borrowers; and it is the "value realized or credited to payment of the sugar producer's loan account from properties acquired thru x x x foreclosure of collaterals" that is part of "LOAN PAYMENTS" pursuant to Section 2.1 of the IRR.[70]

In addition, PNB contends that the Aguilars are not similarly situated with the spouses Pfleider based on the following:

> x x x In deference to [s]pouses Pfleider, they first gave their conformity to the recomputation made by PNB (as audited by COA) on their loan accounts without crediting therein as loan payments the value of the CARP proceeds of the agricultural lots, converse to the demands of [the Aguilars].
>
> x x x After recomputation of the crop loans and the condonation of interest in excess of x x x 12% x x x per annum, as well as penalties and surcharges, [s]pouses Pfleider confirmed and acknowledged as accurate, in all respect, the recomputed loan balance on their loans x x x[.]
>
> x x x Thereafter, [s]pouses Pfleider signed the Restructuring and Compromise Agreement with PNB based on the amount of the

---

[68] Exh. "7", records, pp. 201-203.

[69] Exh. "7", *id*. at 202; Comment, *rollo*, pp. 90-91.

[70] Exh. "D", *id*. at 11; *id*. at 92.

recomputation made by the latter. Thus, [s]pouses Pfleider were allowed to restructure their account for a period of x x x 13 x x x years. In this regard, PNB agreed that the value of the Escalante lots (agricultural properties) transferred by PNB to DAR, would be deducted from the aggregate amount due on the loans upon settlement by DAR and/or LBP of the reasonable and just compensation due PNB for the transfer to the Republic of the Philippines of the titles over said lots.

x x x Here, **petitioner Glenn Aguilar admitted that he did not signify his conformity to the re-computation as audited and certified to by COA and refused to sign the restructuring agreement because he was insisting that the CARP proceeds be first considered as loan payments and should be deducted from the loan accounts**.

x x x x x x x x x

x x x It must also be noted that if the CARP proceeds are to be credited to [the late] [s]pouses Aguilar's loan account in the recomputation, then, the restructuring agreement is no longer needed as the CARP proceeds are more than enough to cover the net loan balance. If this is allowed, there is nothing left to amortize. This is not the case of [s]pouses Pfleider from which [the Aguilars] sought same consideration. Definitely, [the Aguilars'] demand is far different from the circumstances obtaining insofar as the [s]pouses Pfleider are concerned, and in that case, there is no sound reason to consider the case of the latter in the instant petition.[71]

Citing Articles 19 and 21 of the Civil Code, the RTC found that PNB was "guilty of malice and bad faith in not pursuing its duty in helping [the Aguilars] avail of the benefits of said Sugar Restitution Law"[72] and awarded ₱100,000.00 moral damages. The RTC further noted that:

[The Aguilars] also correctly cited the identical case of the Spouses Fred and Mildred Pfleider which the defendant gave due course. While it is true that [the Aguilars] are not parties to the case nor signatories to their Compromise Agreement and [PNB] cannot be compelled to

---

[71] Comment, *rollo*, pp. 97-99.

[72] *Rollo*, p. 54.

give the same treatment to [the Aguilars], considering that like the Spouses Pfleider, [the Aguilars] are also their valued clients, at least [the Aguilars] deserve to be treated with fairness and equality.[73]

The CA did not rule categorically on the issue of whether the Aguilars should be entitled to the same treatment by PNB as the spouses Pfleider because, according to the CA, "it was unnecessary to dwell on other issues aired in the course of the Appeal" considering that the Aguilars were not entitled to restitution absent any excess payment after the recomputation of the RA 7202 accounts of the late spouses Aguilar.[74]

Such issue is, however, before the Court, thus: Does PNB have an obligation to accord the Aguilars the same treatment as it accorded the spouses Pfleider regarding the crediting of the VOS or CARP proceeds of their respective agricultural lots against their respective sugar crop loans covered by RA 7202?

The sources of obligations under Article 1157 of the Civil Code are: (1) law; (2) contracts; (3) quasi-contracts; (4) acts or omissions punished by law; and (5) quasi-delicts. Immediately, sources (2), (3) and (4) are inapplicable in this case. The Aguilars are not privies to the Compromise Agreement between PNB and the spouses Pfleider. Regarding law, as PNB's source of obligation, the CA correctly ruled that the Aguilars are not entitled to restitution under RA 7202. Thus, RA 7202 cannot be invoked as the statutory basis to compel PNB to treat the Aguilars similarly with the spouses Pfleider.

Aside from Chapter 2, Quasi-Delicts, of Title XVII. – Extra-Contractual Obligations, Book IV of the Civil Code, it is recognized that quasi-delict may arise under Chapter 2, Human Relations of the Preliminary Title of the Civil Code.

In the landmark case of *Velayo v. Shell Company of the Philippine Islands, Ltd.*,[75] the Court ruled, in effect, that the

---

[73] *Id.* at 53.

[74] *Id.* at 68.

[75] 100 Phil. 186 (1956).

undue preference made by an insolvent debtor corporation in transferring its C-54 plane in favor of a creditor corporation, which was its sister company, depriving its other creditors of the opportunity to recover said plane, was in violation of Article 19 in relation to Article 21 of the Civil Code, and observed that:

x x x Chapter 2 of the PRELIMINARY TITLE of the Civil Code, dealing on Human Relations, provides the following:

> "Art. 19. Any person must, *in the exercise of his rights and in the* performances of his duties, *act with justice*, *give everyone his due, and observe honesty and good faith*."

It maybe said that this article only contains a mere [declaration] of principles and while such statement may be x x x essentially correct, yet We find that such declaration is implemented by Article 21 and [sequence] of the same Chapter which prescribe the following:

> "Art. 21. Any [person] who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy *shall compensate the latter for the damage*."

The Code Commission commenting on this article, says the following:

> "Thus at one stroke, the legislator, if the foregoing rule is approved (as it was approved), would vouchsafe adequate legal remedy for that untold numbers of moral wrongs which is impossible for human foresight to provide for specifically in the statutes.
>
> "But, it may be asked, would this proposed article obliterate the boundary line between morality and law? The answer is that, in the last analysis, every good law draws its breath of life from morals, from those principles which are written with words of fire in the conscience of man. If this [premise] is admitted, then the proposed rule is a prudent earnest of justice in the face of the impossibility of enumerating, one by one, all wrongs which cause damages. When it is reflected that while codes of law and statutes have changed from age to age, the conscience of man has remained fixed to its ancient moorings, one can not but feel that it is safe and salutary to transmute, as

far as may be, moral norms into legal rules, thus imparting to every legal system that enduring quality which ought to be one of its superlative attributes.

"Furthermore, there is no belief of more baneful consequence upon the social order than that a person may with impunity cause damage to his fellow-men so long as he does not break any law of the State, though he may be defying the most sacred postulates of morality. What is more, the victim loses faith in the ability of the government to afford protection or relief.

"A provision similar to the one under consideration is embodied in article 826 of the German Civil Code.

"The same observations may be made concerning injurious acts that are contrary to public policy but are not forbidden by statute. There are countless acts of such character, but have not been foreseen by the lawmakers. *Among these are many business practices that are unfair or oppressive*, and certain acts of landholders and employers affecting their tenants and employees which contravene the public policy of social justice.

x x x (Report of the Code Commission on the Proposed Civil Code of the Philippines, p. 40-41).[76]

Also, in *Heirs of Purisima Nala v. Cabansag*,[77] the Court observed:

Preliminarily, the Court notes that both the RTC and the CA failed to indicate the particular provision of law under which it (sic) held petitioners liable for damages. Nevertheless, based on the allegations in respondent's complaint, it may be gathered that the basis for his claim for damages is Article 19 of the Civil Code, which provides:

Art. 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.

The foregoing provision sets the standards which may be observed not only in the exercise of one's rights but also in the performance of one's duties. When a right is exercised in a manner which does

---

[76] *Id.* at 202-203.

[77] 577 Phil. 310 (2008).

not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. But a right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. A person should be protected only when he acts in the legitimate exercise of his right; that is, when he acts with prudence and in good faith, but not when he acts with negligence or abuse. There is an abuse of right when it is exercised only for the purpose of prejudicing or injuring another. The exercise of a right must be in accordance with the purpose for which it was established, and must not be excessive or unduly harsh; there must be no intention to injure another.[78]

In order to be liable for damages under the abuse of rights principle, the following requisites must concur: (a) the existence of a legal right or duty; (b) which is exercised in bad faith; and (c) for the sole intent of prejudicing or injuring another.[79]

It should be stressed that malice or bad faith is at the core of Article 19 of the Civil Code. Good faith is presumed, and he who alleges bad faith has the duty to prove the same.[80] Bad faith, on the other hand, does not simply connote bad judgment to simple negligence, dishonest purpose or some moral obloquy and conscious doing of a wrong, or a breach of known duty due to some motives or interest or ill will that partakes of the nature of fraud. Malice connotes ill will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm.[81]

To make PNB liable under the principle of abuse of rights, the Aguilars have the burden to prove the requisites enumerated above. They claim that they are similarly circumstanced as the spouses Pfleider and there was no reason for PNB to treat them differently.[82]

---

[78] *Id*. at 315-316, citing *Hongkong and Shanghai Banking Corporation Limited v. Catalan*, 483 Phil. 525, 538-539 (2004).

[79] *Id*. at 316, citing *Far East Bank and Trust Company v. Pacilan, Jr.*, 503 Phil. 334, 343 (2005).

[80] *Id*., citing *Saber v. Court of Appeals*, 480 Phil. 723, 747 (2004).

[81] *Id*., citing *Saber v. Court of Appeals*, *id*. at 747-748.

[82] Petition, *rollo*, p. 9.

PNB has explained that there are differences in the circumstances of its two sugar crop loan debtors which, to PNB, justify the different accommodations that it accorded to them. PNB insists that the spouses Pfleider first gave their conformity to the recomputation made by PNB (as audited by COA) on their loan accounts without crediting therein as loan payments the value of the CARP proceeds of the agricultural lots.[83] After recomputation of the crop loans and condonation of interest in excess of 12% per annum, penalties and surcharges, the spouses Pfleider confirmed and acknowledged as accurate the recomputed balance on their loans and, thereafter they signed the Compromise Agreement with PNB.[84] The spouses Pfleider were then allowed to restructure their account for 13 years.[85] On PNB's part, it agreed that the value of the Escalante agricultural lots transferred by PNB to DAR would be deducted from the aggregate amount due on the loans upon settlement by DAR and/or LBP of the just compensation due PNB for the transfer of said lots to the Republic of the Philippines.[86] The settlement agreement between PNB and the spouses Pfleider was to the effect that PNB would credit as payment the CARP proceeds of the foreclosed agricultural properties in the Compromise Agreement provided that the case filed against PNB was withdrawn.[87]

According to PNB, the Aguilars, on the other hand, did not signify their conformity to the recomputation as audited and certified by the COA and refused to sign the restructuring agreement because they insisted that the CARP proceeds be first considered as loan payments and should be deducted from their loan accounts.[88] PNB has taken the position that if the CARP proceeds were to be credited to the loan accounts of the

---

[83] Comment, *id*. at 97.

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

[85] *Id*. at 98.

[86] *Id*.

[87] *Id*.

[88] *Id*.

Aguilars in the recomputation, then, the restructuring agreement would no longer be needed because the CARP proceeds were more than enough to cover the net balance of their accounts and, if that was allowed, there would be nothing to amortize.

PNB further contends that the Aguilars cannot invoke its Compromise Agreement with the spouses Pfleider because: (1) the former are not parties thereto; (2) the principle of relativity of contract would be violated; and (3) PNB's freedom to enter into contracts would also be violated if PNB would be compelled to accommodate the Aguilars.[89]

Given the foregoing explanation by PNB, it was incumbent upon the Aguilars, to make PNB liable for damages based on the principle of abuse of rights, to prove that PNB acted in bad faith and that its sole intent was to prejudice or injure them. The Aguilars, however, failed in this regard.

Also, the Court notes from the duly notarized Compromise Agreement between the spouses Pfleider and PNB dated December 30, 1999[90] that the accounts of the former to the latter were crop loans ("sugar and sugar-related loans") and, thus, covered by RA 7202,[91] unlike the accounts of the Aguilars which included non-RA 7202 accounts, as mentioned in the narration of facts. Since the Aguilars were delinquent in their accounts, including their non-RA 7202 accounts, and the mortgaged properties of the Aguilars similarly secured the non-RA 7202 accounts, PNB had no option but to foreclose the mortgage.

To recapitulate:

> x x x A person should be protected only when he acts in the legitimate exercise of his right; that is, when he acts with prudence and in good faith, but not when he acts with negligence or abuse. There is an abuse of right when it is exercised only for the purpose

---

[89] Answer, records, p. 35.

[90] Notarized on January 3, 2000, *id*. at 20.

[91] Exh. "E-1" and Exh. "2-A", *id*. at 16-17.

of prejudicing or injuring another. The exercise of a right must be in accordance with the purpose for which it was established, and must not be excessive or unduly harsh; there must be no intention to injure another.[92]

In order to be liable for damages under the abuse of rights principle, the following requisites must concur: (a) the existence of a legal right or duty; (b) which is exercised in bad faith; and (c) for the sole intent of prejudicing or injuring another.[93]

In this case, the Aguilars failed to substantiate the above requisites to justify the award of damages in their favor against PNB, who merely exercised its legal right as a creditor pursuant to RA 7202.

WHEREFORE, the petition for review is hereby **DENIED**. The Court of Appeals Decision dated March 23, 2012 and, consequently, Resolution dated April 1, 2013 in CA-G.R. CV No. 00708 are hereby **AFFIRMED.**

SO ORDERED.

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

---

[92] *Heirs of Purisima Nala v. Cabansag*, *supra* note 77, at 316, citing *Hongkong and Shanghai Banking Corporation Limited v. Catalan*, *supra* note 78, at 538-539.

[93] *Id*., citing *Far East Bank and Trust Company v. Pacilan, Jr.*, *supra* note 79, at 343.

THIRD DIVISION

[G.R. No. 209085. June 6, 2017]

NICANOR F. MALCABA, CHRISTIAN C. NEPOMUCENO, and LAURA MAE FATIMA F. PALIT-ANG, *petitioners, vs.* **PROHEALTH PHARMA PHILIPPINES, INC., GENEROSO R. DEL CASTILLO, JR., and DANTE M. BUSTO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; APPEALS; APPEAL BY AN EMPLOYER IN LABOR CASES IS PERFECTED ONLY BY FILING A GENUINE BOND OR MAY BE PERFECTED UPON SUBSTANTIAL COMPLIANCE THEREOF.— Appeal is not a matter of right. Courts and tribunals have the discretion whether to give due course to an appeal or to dismiss it outright. The perfection of an appeal is, thus, jurisdictional. Non-compliance with the manner in which to file an appeal renders the judgment final and executory. In labor cases, an appeal by an employer is perfected only by filing a bond equivalent to the monetary award. Thus, Article 229 [223] of the Labor Code provides: Article 229. [223] Appeal. . . . . In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from. x x x The purpose of requiring an appeal bond is "to guarantee the payment of valid and legal claims against the employer." It is a measure of financial security granted to an illegally dismissed employee since the resolution of the employer's appeal may take an indeterminable amount of time. x x x Procedural rules require that the appeal bond filed be "genuine." An appeal bond determined by the National Labor Relations Commission to be "irregular or not genuine" shall cause the immediate dismissal of the appeal. x x x [However,] while the procedural rules strictly require the employer to submit a genuine bond, an appeal could still be perfected if there was substantial compliance with the requirement.

2. COMMERCIAL LAW; CORPORATION CODE; THE DISMISSAL OF A CORPORATE OFFICER IS CONSIDERED AN INTRA-CORPORATE DISPUTE; JURISDICTION IS WITH THE REGIONAL TRIAL COURT.— Under the Labor Code, the Labor Arbiter exercises original and exclusive jurisdiction over termination disputes between an employer and an employee while the National Labor Relations Commission exercises exclusive appellate jurisdiction over these cases: x x x Under Section 25 of the Corporation Code, the President of a corporation is considered a corporate officer. The dismissal of a corporate officer is considered an intra-corporate dispute, not a labor dispute. x x x Further, in *Matling Industrial and Commercial Corporation v. Coros*, this Court stated that jurisdiction over intra-corporate disputes involving the illegal dismissal of corporate officers was with the Regional Trial Court, not with the Labor Arbiter: x x x The mere designation as a high-ranking employee, however, is not enough to consider one as a corporate officer. x x x The clear weight of jurisprudence clarifies that to be considered a corporate officer, *first*, the office must be created by the charter of the corporation, and *second*, the officer must be elected by the board of directors or by the stockholders.

3. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; JUST OR AUTHORIZED CAUSES; LOSS OF TRUST AND CONFIDENCE.— Article 294 [279] of the Labor Code provides that an employer may terminate the services of an employee only upon just or authorized causes. Article 297 [282] enumerates the just causes for termination, among which is "[f]raud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative[.]" Loss of trust and confidence is a just cause to terminate either managerial employees or rank-and-file employees who regularly handle large amounts of money or property in the regular exercise of their functions. For an act to be considered a loss of trust and confidence, it must be *first*, work-related, and *second*, founded on clearly established facts: x x x The breach of trust must likewise be *willful*, that is, "it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently."

4. ID.; ID.; ID.; ID.; WILLFUL DISOBEDIENCE OF THE LAWFUL ORDERS OF THE EMPLOYER.— Under Article 297 [282] of the Labor Code, an employer may terminate the services of an employee who commits willful disobedience of the lawful orders of the employer. x x x For disobedience to be considered as just cause for termination, two (2) requisites must concur: *first*, "the employee's assailed conduct must have been willful or intentional," and *second*, "the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he [or she] had been engaged to discharge." For disobedience to be willful, it must be "characterized by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination." The conduct complained of must also constitute "harmful behavior against the business interest or person of his [or her] employer." Thus, it is implied in every case of willful disobedience that "the erring employee obtains undue advantage detrimental to the business interest of the employer."

5. ID.; ID.; IILLEGAL DISMISSAL; ILLEGALY DISMISSED EMPLOYEE ENTITLED TO REINSTATEMENT AND FULL BACKWAGES.— Considering that petitioner Nepomuceno's dismissal was done without just cause, he is entitled to reinstatement and full backwages. If reinstatement is not possible due to strained relations between the parties, he shall be awarded separation pay at the rate of one (1) month for every year of service. x x x Petitioner Palit-Ang, nonetheless, is considered to have been illegally dismissed, her penalty not having been proportionate to the infraction committed. Thus, she is entitled to reinstatement and full backwages. If reinstatement is not possible due to strained relations between the parties, she shall be awarded separation pay at the rate of one (1) month for every year of service.

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for petitioners.

Atienza Madrid & Formento and *Pizarras & Associates Law Offices* for respondents.

D E C I S I O N

LEONEN, *J.*:

This case involves fundamental principles in labor cases.

First, in appeals of illegal dismissal cases, employers are strictly mandated to file an appeal bond to perfect their appeals. Substantial compliance, however, may merit liberality in its application.

Second, before any labor tribunal takes cognizance of termination disputes, it must first have jurisdiction over the action. The Labor Arbiter and the National Labor Relations Commission only exercise jurisdiction over termination disputes between an employer and an employee. They do not exercise jurisdiction over termination disputes between a corporation and a corporate officer.

Third, while this Court recognizes the inherent right of employers to discipline their employees, the penalties imposed must be commensurate to the infractions committed. Dismissal of employees for minor and negligible offenses may be considered as illegal dismissal.

This is a Petition for Review on Certiorari[1] assailing the Court of Appeals February 19, 2013 Decision[2] and September 10, 2013 Resolution[3] in CA-G.R. SP No. 119093, which reversed the judgments of the Labor Arbiter and of the National Labor Relations Commission. The Court of Appeals found that Nicanor F. Malcaba (Malcaba), a corporate officer, should have questioned his dismissal before the Regional Trial Court, not

---

[1] *Rollo*, pp. 10-74.

[2] *Id*. at 76-101. The Decision was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia of the Fourth Division, Court of Appeals, Manila.

[3] *Id*. at 103-104. The Resolution was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia of the Fourth Division, Court of Appeals, Manila.

before the Labor Arbiter. It likewise held that Christian C. Nepomuceno (Nepomuceno) and Laura Mae Fatima F. Palit-Ang (Palit-Ang) were validly dismissed from service for loss of trust and confidence, and insubordination, respectively.

ProHealth Pharma Philippines, Inc. (ProHealth) is a corporation engaged in the sale of pharmaceutical products and health food on a wholesale and retail basis. Generoso Del Castillo (Del Castillo) is the Chair of the Board of Directors and Chief Executive Officer while Dante Busto (Busto) is the Executive Vice President. Malcaba, Tomas Adona, Jr. (Adona), Nepomuceno, and Palit-Ang were employed as its President, Marketing Manager, Business Manager, and Finance Officer, respectively.[4]

Malcaba had been employed with ProHealth since it started in 1997. He was one of its incorporators together with Del Castillo and Busto, and they were all members of the Board of Directors in 2004. He held 1,000,000 shares in the corporation. He was initially the Vice President for Sales then became President in 2005.[5]

Malcaba alleged that Del Castillo did acts that made his job difficult. He asked to take a leave on October 23, 2007. When he attempted to return on November 5, 2007, Del Castillo insisted that he had already resigned and had his things removed from his office. He attested that he was paid a lower salary in December 2007 and his benefits were withheld.[6] On January 7, 2008, Malcaba tendered his resignation effective February 1, 2008.[7]

Nepomuceno, for his part, alleged that he was initially hired as a medical representative in 1999 but was eventually promoted to District Business Manager for South Luzon. On March 24, 2008, he applied for vacation leave for the dates April 24, 25, and 28, 2008, which Busto approved. When he left for Malaysia

---

[4] *Id*. at 144, NLRC Decision.

[5] *Id*. at 150, NLRC Decision.

[6] *Id*. at 79.

[7] *Id*. at 108.

on April 23, 2008, ProHealth sent him a Memorandum dated April 24, 2008 asking him to explain his absence. He replied through email that he tried to call ProHealth to inform them that his flight was on April 22, 2008 at 9:00 p.m. and not on April 23, 2008 but was unable to connect on the phone. He tried to explain again on May 2, 2008 and requested for a personal dialogue with Del Castillo.[8]

On May 7, 2008, Nepomuceno was given a notice of termination, which was effective May 5, 2008, on the ground of fraud and willful breach of trust.[9]

Palit-Ang, on the other hand, was hired to join ProHealth's audit team in 2007. She was later promoted to Finance Officer.[10] On November 26, 2007, Del Castillo instructed Palit-Ang to give ₱3,000.00 from the training funds to Johnmer Gamboa (Gamboa), a District Business Manager, to serve as cash advance.[11]

On November 27, 2007, Busto issued a show cause memorandum for Palit-Ang's failure to release the cash advance. Palit-Ang was also relieved of her duties and reassigned to the Office of the Personnel and Administration Manager.[12]

In her explanation, Palit-Ang alleged that when Gamboa saw that she was busy receiving cash sales from another District Business Manager, he told her that he would just return the next day to collect his cash advance.[13] When he told her that the cash advance was for car repairs, Palit-Ang told him to get the cash from his revolving fund, which she would reimburse after the repairs were done. Del Castillo was dissatisfied with her explanation and transferred her to another office.[14]

---

[8] *Id*. at 80.

[9] *Id*.

[10] *Id*. at 81.

[11] *Id*. at 82.

[12] *Id*.

[13] *Id*.

[14] *Id*. at 83.

On December 3, 2007, Palit-Ang was invited to a fact-finding investigation,[15] which was held on December 10, 2007, where Palit-Ang was again asked to explain her actions.[16]

On December 17, 2007, she was handed a notice of termination effective December 31, 2007, for disobeying the order of ProHealth's highest official.[17]

Malcaba, Nepomuceno, Palit-Ang, and Adona separately filed Complaints[18] before the Labor Arbiter for illegal dismissal, nonpayment of salaries and 13th month pay, damages, and attorney's fees.

The Labor Arbiter found that Malcaba was constructively dismissed. He found that ProHealth never controverted the allegation that Del Castillo made it difficult for Malcaba to effectively fulfill his duties. He likewise ruled that ProHealth's insistence that Malcaba's leave of absence in October 2007 was an act of resignation was false since Malcaba continued to perform his duties as President through December 2007.[19]

The Labor Arbiter declared that Nepomuceno's failure to state the actual date of his flight was an excusable mistake on his part, considering that this was his first infraction in his nine (9) years of service. He noted that no administrative proceedings were conducted before Nepomuceno's dismissal, thereby violating his right to due process.[20]

Palit-Ang's dismissal was also found to have been illegal as delay in complying with a lawful order was not tantamount to disobedience. The Labor Arbiter further noted that delay in giving a cash advance for car maintenance would not have

---

[15] *Id*. at 82.

[16] *Id*. at 22.

[17] *Id*. at 82.

[18] *Id*. at 171-174. Malcaba filed a Complaint while Adona, Nepomuceno, and Palit-Ang filed one Grievance Form.

[19] *Id*. at 311-312, Labor Arbiter Decision.

[20] *Id*. at 313-314, Labor Arbiter Decision.

affected the company's operations. He declared that Palit-Ang's dismissal was too harsh of a penalty.[21]

The dispositive portion of the Labor Arbiter's April 5, 2009 Decision[22] read:

> WHEREFORE, premises considered, judgment is hereby rendered declaring that complainants were illegally dismissed by respondents. Accordingly, respondents are directed solidarily to pay complainants the following:
>
> 1. Complainant Nicanor F. Malcaba:
>
> a. Separation pay of ₱1,800,000.00;
>
> b. Full backwages from the time of his illegal dismissal [o]n 11 November 2007 until the finality of this decision, which as of this date amounts to ₱2,810,795.40;
>
> c. 13th month pay for the years 2007 and 2008 amounting to ₱126,625.00;
>
> 2. Complainant Christian C. Nepomuceno:
>
> a. Separation pay of ₱190,000.00;
>
> b. Full backwages from the time of his illegal dismissal [i]n May 2007 until the finality of this decision, which as of this date amounts to ₱568,827.45;
>
> c. 13th month pay for 2008 amounting to ₱6,333.33;
>
> 3. Complainant Laura Mae Fatima F. Palit-Ang:
>
> a. Separation pay of ₱30,000.00;
>
> b. Full backwages from the time of her illegal dismissal on 1 January 2008 until the finality of this decision, which as of [t]his date amounts to ₱266,694.63;
>
> c. 13th month pay for 2008 of ₱18,000.00; and

---

[21] *Id*. at 314.

[22] *Id*. at 294-320. The Decision, docketed as NLRC NCR CASE NO. 08-12090-08, was penned by Labor Arbiter Fedriel S. Panganiban of the National Labor Relations Commission, Quezon City.

4. Complainant Tomas C. Adona, Jr.:

   a. Separation pay of ₱75,000.00;

   b. Full backwages from time of his illegal dismissal [i]n June 2007 until the finality of this decision, which as of this date amounts to ₱609,832.37;

   c. 13th month pay for 2008 of ₱10,416.66.

Complainants are further awarded moral damages of Php100,000.00 each and exemplary damages of Php100,000.00 each.

Finally, respondents are assessed the sum equivalent to ten percent (10%) of the total monetary award as and for attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.[23]

ProHealth appealed to the National Labor Relations Commission.[24] On September 29, 2010, the National Labor Relations Commission rendered its Decision,[25] affirming the Labor Arbiter's April 5, 2009 Decision with modifications. The dispositive portion of this Decision read:

WHEREFORE, premises considered, the appeal is partially granted. The assailed Decision is modified in that: a) complainant Adona is declared to have voluntarily resigned and is entitled only to his 13th month pay; b) the award of moral and, exemplary damages in favor of complainants Nepomuceno and Palit-Ang are deleted; and c) respondents del Castillo and Busto are held jointly and severally liable with ProHealth for the claims of complainant Malcaba.

All dispositions not affected by the modifications stay.

---

[23] *Id*. at 318-320, Labor Arbiter Decision.

[24] *Id*. at 322-361.

[25] *Id*. at 143-167. The Decision, docketed as NLRC LAC NO. 08-002162-09, was penned by Commissioner Isabel G. Panganiban-Ortiguerra and concurred in by Presiding Commissioner Benedicto R. Palacol and Commissioner Nieves Vivar-De Castro of the Sixth Division, National Labor Relations Commission, Quezon City.

SO ORDERED.[26]

ProHealth moved for reconsideration[27] but was denied by the National Labor Relations Commission in its January 31, 2011 Resolution.[28] Thus, ProHealth, Del Castillo, and Busto filed a Petition for Certiorari[29] before the Court of Appeals.

On February 19, 2013, the Court of Appeals rendered its Decision[30] reversing and setting aside the National Labor Relations Commission September 29, 2010 Decision.

On the procedural issues, the Court of Appeals found that ProHealth substantially complied with the requirement of an appeal bond despite it not appearing in the records of the surety company since ProHealth believed in good faith that the bond it secured was genuine.[31]

On the substantive issues, the Court of Appeals held that there was no employer-employee relationship between Malcaba and ProHealth since he was a corporate officer. Thus, he should have filed his complaint with the Regional Trial Court, not with the Labor Arbiter, since his dismissal from service was an intra-corporate dispute.[32]

The Court of Appeals likewise concluded that ProHealth was justified in dismissing Nepomuceno and Palit-Ang since both were given opportunities to fully explain their sides.[33] It found

---

[26] *Id*. at 166.

[27] *Id*. at 362-379.

[28] *Id*. at 168-170. The Resolution was penned by Commissioner Isabel G. Panganiban-Ortiguerra and concurred in by Presiding Commissioner Benedicto R. Palacol and Commissioner Nieves Vivar-De Castro of the Sixth Division, National Labor Relations Commission, Quezon City.

[29] *Id*. at 105-142.

[30] *Id*. at 76-101.

[31] *Id*. at 86.

[32] *Id*. at 87-90.

[33] *Id*. at 95.

that Nepomuceno's failure to diligently check the true schedule of his flight abroad and his subsequent lack of effort to inform his superiors were enough for his employer to lose its trust and confidence in him.[34] It likewise found that Palit-Ang displayed "arrogance and hostility" when she defied the lawful orders of the company's highest ranking officer; thus, her insubordination was just cause to terminate her services.[35]

While the Court of Appeals ordered the return of the amounts given to Malcaba, it allowed Nepomuceno and Palit-Ang to keep the amounts given considering that even if the finding of illegal dismissal were reversed on appeal, the employer was still obliged to reinstate and pay the wages of a dismissed employee during the period of appeal.[36] The dispositive portion of the Court of Appeals February 19, 2013 Decision read:

> WHEREFORE, premises considered, it is hereby ruled:
>
> (a) that the September 29, 2010 Decision and January 31, 2011 Resolution of the National Labor Relations Commission are REVERSED and SET ASIDE for being issued with grave abuse of discretion;
>
> (b) that Our Decision is without prejudice to Mr. Nicanor F. Malcaba's available recourse for relief through the appropriate remedy in the proper forum;
>
> (c) that all the amounts released in favor of Mr. Nicanor F. Malcaba amounting to Four Million Nine Hundred Thirty[-]Seven Thousand Four Hundred Twenty pesos and 40/100 (₱4,937,420.[40]) be RETURNED to herein petitioners;
>
> (d) that NO REFUND will be ordered by this Court against Mr. Christian Nepomuceno and Ms. Laura Mae Fatima Palit-Ang.

---

[34] *Id.* at 91-92.

[35] *Id.* at 93.

[36] *Id.* at 96-100.

SO ORDERED.[37]

Malcaba, Nepomuceno, and Palit-Ang moved for reconsideration but were denied in a Resolution[38] dated September 10, 2013. Hence, this Petition[39] was filed before this Court.

Petitioners argue that the Court of Appeals should have dismissed outright the Petition for Certiorari since respondents failed to post a genuine appeal bond before the National Labor Relations Commission. They allege that when Sheriff Ramon Nonato P. Dayao attempted to enforce the judgment award against the appeal bond, he was informed that the appeal bond procured by respondents did not appear in the records of Alpha Insurance and Surety Company, Inc. (Alpha Insurance). They also claim that respondents were notified by the National Labor Relations Commission four (4) times that their appeal bond was not genuine, showing that respondents did not comply with the requirement in good faith.[40]

Petitioners contend that petitioner Malcaba properly filed his Complaint before the Labor Arbiter since he was an employee of respondent ProHealth, albeit a high-ranking one. They argue that respondents merely alleged that petitioner Malcaba is a corporate officer but failed to substantiate this allegation.[41] They maintain that petitioner Malcaba did not resign on September 24, 2007 considering that the General Information Sheet for 2007 submitted on October 11, 2007 listed him as respondent ProHealth's President. They submit that respondent Del Castillo's action took a toll on petitioner Malcaba's well-being; hence, the latter merely took a leave of absence and returned to work in November 2007. They claim that respondents made it difficult for petitioner Malcaba to continue his work upon

---

[37] *Id*. at 100-101.

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

[39] *Id*. at 10-74. The Comment (*rollo*, pp. 632-647) was filed on March 21, 2014 while the Reply (*rollo*, pp. 662-681) was filed on July 24, 2014.

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

[41] *Id*. at 36-45.

his return, resulting in his resignation in January 2008. Thus, they argue that petitioner Malcaba was constructively dismissed.[42]

Petitioners likewise argue that petitioners Nepomuceno and Palit-Ang were illegally dismissed. They claim that petitioner Nepomuceno committed an "honest and negligible mistake"[43] that should not have warranted dismissal considering his loyal service for nine (9) years. They contend that petitioner Nepomuceno's absence did not injure respondent ProHealth's business since he turned over all pending work to a reliever before he left and even surpassed his sales quota for the month.[44] They likewise claim that his dismissal was done in violation of his right to due process since he was not given any opportunity to explain his side and was only given a notice of termination two (2) days after he was actually dismissed.[45]

Petitioners maintain that petitioner Palit-Ang believed in good faith that Gamboa would just claim his cash advance the day after he tried to claim it and that there was nothing in her actions that would prove that she intended to disobey or defy respondent Del Castillo's instructions. They insist that delay in complying with orders is not tantamount to disobedience and would not constitute just cause for petitioner Palit-Ang's dismissal. They likewise submit that while petitioner Palit-Ang was subjected to a fact-finding investigation, respondents failed to inform her of her right to be assisted by counsel.[46]

Respondents, on the other hand, counter that a liberal application of the procedural rules was necessary in their case since they acted in good faith in posting their appeal bond.[47] They likewise contend that the issue should have already been

---

[42] *Id*. at 46-54.

[43] *Id*. at 55.

[44] *Id*. at 55-57.

[45] *Id*. at 57-59.

[46] *Id*. at 60-63.

[47] *Id*. at 633-635.

considered moot since petitioners "were able to garnish and collect the amounts allegedly due to them."[48]

Respondents likewise insist that petitioner Malcaba was a corporate officer considering that he was not only an incorporator and stockholder, but also an elected Director and President of respondent ProHealth.[49] They also point out that he filed his labor complaint seven (7) months after his resignation and that his voluntary resignation already disproves his claim of constructive dismissal.[50]

Respondents argue that they were justified in dismissing petitioners Nepomuceno and Palit-Ang. They contend that petitioner Nepomuceno's abandonment of his duties at a critical sales period and his failure to immediately advise his superiors of his whereabouts was ground for respondents to lose their trust and confidence in him.[51] They likewise maintain that petitioner Palit-Ang was correctly found by the Court of Appeals to have defied the lawful instructions of respondent Del Castillo and illustrated her "grave disrespect towards authority."[52]

From the arguments and allegations of the parties, it is clear that this case involves three (3) different illegal dismissal complaints, with three (3) different complainants in three (3) different factual situations during three (3) different time periods. The only commonality is that they involve the same respondents.

While this Court commends the economy by which the National Labor Relations Commission resolved these cases, the three (3) complaints should have been resolved separately since the three (3) petitioners raise vastly different substantive issues. This leaves this Court with the predicament of having to resolve three (3) different cases of illegal dismissal in one

---

[48] *Id*. at 635.

[49] *Id*. at 636-637.

[50] *Id*. at 641.

[51] *Id*. at 642-643.

[52] *Id*. at 643-644.

(1) Petition for Review. Thus, each petitioner's case will have to be resolved separately within this Decision. This Court's ruling over one (1) petitioner may not necessarily affect the other co-petitioners. The National Labor Relations Commission's zeal for economy and convenience should never prejudice the individual rights of each party. The National Labor Relations Commission should know the rule that joinder of parties[53] or causes of action[54] applies suppletorily in appeals[55] and for good reason.[56]

Petitioners raise the common procedural issue of whether or not respondents failed to perfect their appeal when it was discovered that their appeal bond was a forged bond, which this Court will address before proceeding with the substantive issues. The substantive issues raised, however, are dependent on the factual circumstances applicable to each petitioner. This Court tackles these substantive issues in order:

First, whether or not the Labor Arbiter and National Labor Relations Commission had jurisdiction over petitioner Nicanor F. Malcaba's termination dispute considering the allegation that he was a corporate officer, and not a mere employee;

Second, whether or not petitioner Christian C. Nepomuceno was validly dismissed for willful breach of trust when he failed to inform respondents ProHealth Pharma Philippines, Inc.,

---

[53] RULES OF COURT, Rule 3, Sec. 6.

[54] RULES OF COURT, Rule 2, Sec. 5.

[55] 2011 NLRC RULES OF PROCEDURE, Rule I, Sec. 3 provides:

Section 3. SUPPLETORY APPLICATION OF THE RULES OF COURT. — In the absence of any applicable provision in these Rules, and in order to effectuate the objectives of the Labor Code, the pertinent provisions of the Rules of Court of the Philippines may, in the interest of expeditious dispensation of labor justice and whenever practicable and convenient, be applied by analogy or in a suppletory character and effect.

[56] See *Republic v. Hernandez*, 323 Phil. 606 (1996) [Per *J.* Regalado, Second Division] where this Court discussed the rationale for the procedural rule on joinder of parties and causes of action.

Generoso R. Del Castillo, Jr., and Dante M. Busto of the actual dates of his vacation leave; and

Finally, whether or not petitioner Laura Mae Fatima F. Palit-Ang was validly dismissed for willful disobedience when she failed to immediately comply with an order of her superior.

I

Appeal is not a matter of right.[57] Courts and tribunals have the discretion whether to give due course to an appeal or to dismiss it outright. The perfection of an appeal is, thus, jurisdictional. Non-compliance with the manner in which to file an appeal renders the judgment final and executory.[58]

In labor cases, an appeal by an employer is perfected only by filing a bond equivalent to the monetary award. Thus, Article 229 [223][59] of the Labor Code provides:

Article 229. [223] Appeal.

. . . . . .

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

This requirement is again repeated in the 2011 National Labor Relations Commission Rules of Procedure:

Section 4. Requisites for Perfection of Appeal. — (a) The appeal shall be:

. . . . . .

---

[57] See *Colby Construction and Management Corporation v. National Labor Relations Commission*, 564 Phil. 145 (2007) [Per *J.* Chico-Nazario, Third Division].

[58] See *Navarro v. National Labor Relations Commission*, 383 Phil. 765 (2000) [Per *J.* Quisumbing, Third Division].

[59] As amended by Rep. Act No. 6715, Sec. 12.

(5) accompanied by:

. . . . . .

(ii) posting of a cash or surety bond as provided in Section 6 of this Rule[.]

. . . . . .

Section 6. Bond. — In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in the amount to the monetary award, exclusive of damages and attorney's fees.

In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission and shall be accompanied by original or certified true copies of the following:

(a) a joint declaration under oath by the employer, his/her counsel, and the bonding company, attesting that the bond posted is genuine, and shall be in effect until final disposition of the case;

(b) an indemnity agreement between the employer-appellant and bonding company;

(c) proof of security deposit or collateral securing the bond: provided, that a check shall not be considered as an acceptable security; and,

(d) notarized board resolution or secretary's certificate from the bonding company showing its authorized signatories and their specimen signatures.

The Commission through the Chairman may on justifiable grounds blacklist an accredited bonding company.

A cash or surety bond shall be valid and effective from the date of deposit or posting, until the case is finally decided, resolved or terminated, or the award satisfied. This condition shall be deemed incorporated in the terms and conditions of the surety bond, and shall be binding on the appellants and the bonding company.

The appellant shall furnish the appellee with a certified true copy of the said surety bond with all the above-mentioned supporting

documents. The appellee shall verify the regularity and genuineness thereof and immediately report any irregularity to the Commission.

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal, and censure the responsible parties and their counsels, or subject them to reasonable fine or penalty, and the bonding company may be blacklisted.

No motion to reduce bond shall be entertained except on meritorious grounds, and only upon the posting of a bond in a reasonable amount in relation to the monetary award.

The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal.[60]

The purpose of requiring an appeal bond is "to guarantee the payment of valid and legal claims against the employer."[61] It is a measure of financial security granted to an illegally dismissed employee since the resolution of the employer's appeal may take an indeterminable amount of time. In particular:

The requirement that the employer post a cash or surety bond to perfect its/his appeal is apparently intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It was intended to discourage employers from using an appeal to delay, or even evade, their obligation to satisfy their employees' just and lawful claims.[62]

Procedural rules require that the appeal bond filed be "genuine." An appeal bond determined by the National Labor

---

[60] 2011 NLRC RULES OF PROCEDURE, Rule 6, Secs. 3 and 6. Section 6 was amended by NLRC *En Banc* Res. No. 14-15 (2015).

[61] *Navarro v. National Labor Relations Commission*, 383 Phil. 765, 774 (2000) [Per *J.* Quisumbing, Third Division].

[62] *Viron Garments Manufacturing v. National Labor Relations Commission*, G.R. No. 97357, March 18, 1992, 207 SCRA 339, 342 [Per *J.* Griño-Aquino, First Division].

Relations Commission to be "irregular or not genuine" shall cause the immediate dismissal of the appeal.[63]

In this case, petitioners allege that respondents' appeal should not have been given due course by the National Labor Relations Commission since the appeal bond they filed "[did] not appear in the records of [Alpha Insurance]"[64] and was, therefore, not genuine. As evidence, they presented a certification from Alpha Insurance, which read:

> This is to certify that the bond being presented by MR. JOSEPH D. DE JESUS is allegedly a Surety Bond filed with the NATIONAL LABOR RELATIONS COMMISSION, identified as Bond No. G(16)00358/2009 on an alleged case NLRC NCR Case No. 08-12090-08, is a faked and forged bond, and it was not issued by ALPHA INSURANCE & SURETY COMPANY, INC.[65]

This Court in *Navarro v. National Labor Relations Commission*[66] found that an employer failed to perfect its appeal as it submitted an appeal bond that was "bogus[,] having been issued by an officer no longer connected for a long time with the bonding company."[67] The mere fictitiousness of the bond, however, was not the only factor taken into consideration. This Court likewise took note of the employer's failure to sufficiently explain this irregularity and its failure to file the bond within the reglementary period.

In *Quiambao v. National Labor Relations Commission*,[68] this Court held that the mandatory and jurisdictional requirement of the filing of an appeal bond could be relaxed if there was substantial compliance. *Quiambao* proceeded to outline situations that could be considered as substantial compliance, such as

---

[63] 2011 NLRC RULES OF PROCEDURE, Rule 6, Sec. 6, as amended by NLRC *En Banc* Res. No. 14-15 (2015).

[64] *Rollo*, p. 30.

[65] *Id*. at 468.

[66] 383 Phil. 765 (2000) [Per *J*. Quisumbing, Third Division].

[67] *Id*. at 776.

[68] 324 Phil. 455 (1996) [Per *J*. Mendoza, Second Division].

late payment, failure of the Labor Arbiter to state the exact amount of money judgment due, and reliance on a notice of judgment that failed to state that a bond must first be filed in order to appeal.[69] *Rosewood Processing v. National Labor Relations Commission*[70] likewise enumerated other instances where there would be a liberal application of the procedural rules:

> Some of these cases include: (a) counsel's reliance on the footnote of the notice of the decision of the labor arbiter that the aggrieved party may appeal . . . within ten (10) working days; (b) fundamental consideration of substantial justice; (c) prevention of miscarriage of justice or of unjust enrichment, as where the tardy appeal is from a decision granting separation pay which was already granted in an earlier final decision; and (d) special circumstances of the case combined with its legal merits or the amount and the issue involved.[71]

Thus, while the procedural rules strictly require the employer to submit a genuine bond, an appeal could still be perfected if there was substantial compliance with the requirement.

In this instance, the National Labor Relations Commission certified that respondents filed a security deposit in the amount of ₱6,512,524.84 under Security Bank check No. 0000045245,[72] showing that the premium for the appeal bond was duly paid and that there was willingness to post it.[73] Respondents likewise attached documents proving that Alpha Insurance was a legitimate and accredited bonding company.[74]

---

[69] *Id*. at 462-463 citing *Rada v. NLRC*, 282 Phil. 80 (1992) [Per *J*. Regalado, Second Division]; *Blancaflor v. NLRC*, 291-A Phil. 398 (1993) [Per *J*. Regalado, Second Division]; and *Your Bus Lines, et al. v. NLRC*, 268 Phil. 169 (1990) [Per *J*. Gancayco, First Division].

[70] 352 Phil. 1013 (1998) [Per *J*. Panganiban, First Division].

[71] *Id*. at 1029 citing *Philippine Airlines, Inc. vs. National Labor Relations Commission*, 328 Phil. 814 (1996) [Per *J*. Francisco, Third Division].

[72] *Rollo*, pp. 570-571.

[73] See *Garcia v. KJ Commercial*, 683 Phil. 376 (2012) [Per *J*. Carpio, Second Division].

[74] *Rollo*, pp. 572-582.

Despite their failure to collect on the appeal bond, petitioners do not deny that they were eventually able to garnish the amount from respondents' bank deposits.[75] This fulfills the purpose of the bond, that is, "to guarantee the payment of valid and legal claims against the employer[.]"[76] Respondents are considered to have substantially complied with the requirements on the posting of an appeal bond.

II

Under the Labor Code, the Labor Arbiter exercises original and exclusive jurisdiction over termination disputes between an employer and an employee while the National Labor Relations Commission exercises exclusive appellate jurisdiction over these cases:

> Article 224. [217] Jurisdiction of the Labor Arbiters and the Commission. — (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:
>
> . . . .
>
> (2) Termination disputes;
>
> . . . .
>
> (b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.[77]

The presumption under this provision is that the parties have an employer-employee relationship. Otherwise, the case would be cognizable in different tribunals even if the action involves a termination dispute.

---

[75] *Id*. at 665.

[76] *Navarro v. National Labor Relations Commission*, 383 Phil. 765, 774 (2000) [Per *J*. Quisumbing, Third Division].

[77] LABOR CODE, Art. 224 [217] as amended by Rep. Act No. 6715, Sec. 9.

Petitioner Malcaba alleges that the Court of Appeals erred in dismissing his complaint for lack of jurisdiction, insisting that he was an employee of respondent, not a corporate officer.

At the time of his alleged dismissal, petitioner Malcaba was the President of respondent corporation. Strangely, this same petitioner disputes this position as respondents' bare assertion,[78] yet he also insists that his name appears as President in the corporation's General Information Sheet for 2007.[79]

Under Section 25 of the Corporation Code,[80] the President of a corporation is considered a corporate officer. The dismissal of a corporate officer is considered an intra-corporate dispute, not a labor dispute. Thus, in *Tabang v. National Labor Relations Commission*:[81]

> A corporate officer's dismissal is always a corporate act, or an intra-corporate controversy, and the nature is not altered by the reason or wisdom with which the Board of Directors may have in taking such action. Also, an intra-corporate controversy is one which arises between a stockholder and the corporation. There is no distinction, qualification, nor any exemption whatsoever. The provision is broad and covers all kinds of controversies between stockholders and corporations.[82]

---

[78] *Rollo*, p. 38.

[79] *Id*. at 46-47. Petitioner Malcaba argued that his name still appeared in the 2007 GIS to dispute respondents' claim that he had already resigned in 2007.

[80] CORP. CODE, Sec. 25 states:

> Section 25. Corporate officers, quorum. — Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

[81] 334 Phil. 424 (1997) [Per *J.* Regalado, Third Division].

[82] *Id*. at 430, citing *Fortune Cement Corporation vs. NLRC, et al.,* 271 Phil. 268 (1991) [Per *J*. Griño-Aquino, First Division] and *SEC, et al. vs. Court of Appeals, et al*., 278 Phil. 141 (1991) [Per *J*. Padilla, Second Division].

Further, in *Matling Industrial and Commercial Corporation v. Coros*,[83] this Court stated that jurisdiction over intra-corporate disputes involving the illegal dismissal of corporate officers was with the Regional Trial Court, not with the Labor Arbiter:

> Where the complaint for illegal dismissal concerns a corporate officer, however, the controversy falls under the jurisdiction of the Securities and Exchange Commission (SEC), because the controversy arises out of intra-corporate or partnership relations between and among stockholders, members, or associates, or between any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively; and between such corporation, partnership, or association and the State insofar as the controversy concerns their individual franchise or right to exist as such entity; or because the controversy involves the election or appointment of a director, trustee, officer, or manager of such corporation, partnership, or association. Such controversy, among others, is known as an intra-corporate dispute.
>
> Effective on August 8, 2000, upon the passage of Republic Act No. 8799, otherwise known as The Securities Regulation Code, the SEC's jurisdiction over all intra-corporate disputes was transferred to the RTC, pursuant to Section 5.2 of RA No. 8799, to wit:
>
> > 5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.[84]

---

[83] 647 Phil. 324 (2010) [Per *J.* Bersamin, Third Division].

[84] *Matling Industrial and Commercial Corporation v. Coros*, 647 Phil. 324, 339 (2010) [Per *J.* Bersamin, Third Division] *citing* Pres. Decree No. 902-A, Sec. 5.

The mere designation as a high-ranking employee, however, is not enough to consider one as a corporate officer. In *Tabang*, this Court discussed the distinction between an employee and a corporate officer, regardless of designation:

> The president, vice-president, secretary and treasurer are commonly regarded as the principal or executive officers of a corporation, and modern corporation statutes usually designate them as the officers of the corporation. However, other offices are sometimes created by the charter or by-laws of a corporation, or the board of directors may be empowered under the by-laws of a corporation to create additional offices as may be necessary.
>
> It has been held that an "office" is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an "employee" usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.[85]

The clear weight of jurisprudence clarifies that to be considered a corporate officer, *first*, the office must be created by the charter of the corporation, and *second*, the officer must be elected by the board of directors or by the stockholders.

Petitioner Malcaba was an incorporator of the corporation and a member of the Board of Directors.[86] Respondent corporation's By-Laws creates the office of the President. That foundational document also states that the President is elected by the Board of Directors:

---

[85] *Tabang v. National Labor Relations Commission*, 334 Phil. 424, 429 (1997) [Per *J*. Regalado, Third Division] *citing* 2 Fletcher Cyc. Corp., 1982 rev. ed., Sec. 2690, *as cited in* I R.N. LOPEZ, *THE CORPORATION CODE OF THE PHILIPPINES ANNOTATED 423*; CORP. CODE, Sec. 25; SEC Opinion, dated March 25, 1983, Mr. Edison Alba; I J. CAMPOS, JR., *THE CORPORATION CODE, COMMENTS, NOTES AND SELECTED CASES 383-384*; 2 Fletcher Cyc. Corp., Ch. II, Sec. 266; and *Aldritt vs. Kansas Centennial Global Exposition, Inc.*, 189 Kan 649, 371 P2d 818, 424.

[86] *Rollo*, p. 150.

ARTICLE IV
OFFICER

Section 1. Election/Appointment — Immediately after their election, the Board of Directors shall formally organize by electing the President, the Vice President, the Treasurer, and the Secretary at said meeting.[87]

This case is similar to *Locsin v. Nissan Lease Philippines*:[88]

Locsin was undeniably Chairman and President, and was elected to these positions by the Nissan board pursuant to its By-laws. As such, he was a corporate officer, not an employee. The CA reached this conclusion by relying on the submitted facts and on Presidential Decree 902-A, which defines corporate officers as "those officers of a corporation who are given that character either by the Corporation Code or by the corporation's by-laws." Likewise, Section 25 of Batas Pambansa Blg. 69, or the Corporation Code of the Philippines (*Corporation Code*) provides that corporate officers are the **president**, secretary, **treasurer** and such **other officers as may be provided for in the by-laws**.[89] (Emphasis in the original)

Petitioners cite *Prudential Bank and Trust Company v. Reyes*[90] as basis that even high-ranking officers may be considered regular employees, not corporate officers.[91] *Prudential Bank*, however, is not applicable to this case.

In *Prudential Bank*, an employer was considered *estopped* from raising the argument of an intra-corporate dispute since this was only raised when the case was filed with this Court. This Court also noted that an employee *rose from the ranks* and was regularly performing tasks integral to the business of the employer throughout the length of her tenure, thus:

It appears that private respondent was appointed Accounting Clerk by the Bank on July 14, 1963. From that position she rose to become

---

[87] *Id*. at 396.

[88] 648 Phil. 596 (2010) [Per *J*. Brion, Third Division].

[89] *Id*. at 612.

[90] 404 Phil. 961 (2001) [Per *J*. Gonzaga-Reyes, Third Division].

[91] *Rollo*, p. 39.

supervisor. Then in 1982, she was appointed Assistant Vice-President which she occupied until her illegal dismissal on July 19, 1991. The bank's contention that she merely holds an elective position and that in effect she is not a regular employee is belied by the nature of her work and her length of service with the Bank. As earlier stated, she rose from the ranks and has been employed with the Bank since 1963 until the termination of her employment in 1991. As Assistant Vice President of the foreign department of the Bank, she is tasked, among others, to collect checks drawn against overseas banks payable in foreign currency and to ensure the collection of foreign bills or checks purchased, including the signing of transmittal letters covering the same. It has been stated that "the primary standard of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer.["] Additionally, "an employee is regular because of the nature of work and the length of service, not because of the mode or even the reason for hiring them." As Assistant Vice-President of the Foreign Department of the Bank she performs tasks integral to the operations of the bank and her length of service with the bank totaling 28 years speaks volumes of her status as a regular employee of the bank. In fine, as a regular employee, she is entitled to security of tenure; that is, her services may be terminated only for a just or authorized cause. This being in truth a case of illegal dismissal, it is no wonder then that the Bank endeavored to the very end to establish loss of trust and confidence and serious misconduct on the part of private respondent but, as will be discussed later, to no avail.[92]

An "Assistant Vice President" is not among the officers stated in Section 25 of the Corporation Code.[93] A corporation's President, however, is explicitly stated as a corporate officer.

---

[92] *Prudential Bank and Trust Company v. Reyes*, 404 Phil. 961, 474 (2001) [Per *J.* Gonzaga-Reyes, Third Division], citing *Bernardo vs. NLRC*, 369 Phil. 443 (1999) [Per *J.* Panganiban, Third Division].

[93] CORP. CODE, Sec. 25 provides:

Section 25. Corporate officers, quorum. — Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

Finding that petitioner Malcaba is the President of respondent corporation and a corporate officer, any issue on his alleged dismissal is beyond the jurisdiction of the Labor Arbiter or the National Labor Relations Commission. Their adjudication on his money claims is void for lack of jurisdiction. As a matter of equity, petitioner Malcaba must, therefore, return all amounts received as judgment award pending final adjudication of his claims. This Court's dismissal of petitioner Malcaba's claims, however, is without prejudice to his filing of the appropriate case in the proper forum.

III

Article 294 [279] of the Labor Code provides that an employer may terminate the services of an employee only upon just or authorized causes.[94] Article 297 [282] enumerates the just causes for termination, among which is "[f]raud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative[.]"

Loss of trust and confidence is a just cause to terminate either managerial employees or rank-and-file employees who regularly handle large amounts of money or property in the regular exercise of their functions.[95]

For an act to be considered a loss of trust and confidence, it must be *first*, work-related, and *second*, founded on clearly established facts:

---

[94] LABOR CODE, Art. 294 provides:

Article 294 [279]. Security of tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[95] See *Alvarez v. Golden Tri Bloc*, 718 Phil. 415 (2013) [Per J. Reyes, First Division].

The complained act must be work related such as would show the employee concerned to be unfit to continue working for the employer and it must be based on a willful breach of trust and founded on clearly established facts. The basis for the dismissal must be clearly and convincingly established but proof beyond reasonable doubt is not necessary.[96]

The breach of trust must likewise be *willful*, that is, "it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently."[97]

Petitioner Nepomuceno alleges that he was illegally dismissed merely for his failure to inform his superiors of the actual dates of his vacation leave. Respondents, however, contend that as District Business Manager, petitioner Nepomuceno lost the corporation's trust and confidence by failing to report for work during a crucial sales period.

As found by the National Labor Relations Commission, petitioner Nepomuceno had filed for leave, which was approved, for April 24, 25, and 28, 2008 to go on vacation in Malaysia. However, he left for Malaysia on the evening of April 22, 2008, and thus, failed to report for work on April 23, 2008.

Petitioner Nepomuceno claims that he only knew that his flight was for the evening of April 22, 2008 on the day of his flight. Respondents, however, insist that he "deliberately concealed the actual date of departure as he knows that he would be out of the country on a crucial period of sales generation and bookings . . . [and] therefore knew that his application for leave would be denied."[98] Otherwise stated, respondents contend

---

[96] *Alvarez v. Golden Tri Bloc*, 718 Phil. 415, 426 (2013) [Per *J*. Reyes, First Division] citing *Jerusalem v. Keppel Monte Bank*, 662 Phil. 676 (2011) [Per *J*. Del Castillo, First Division].

[97] *Atlas Consolidated Mining and Development Corporation v. National Labor Relations Commission*, 352 Phil. 1088, 1097 (1998) [Per *J*. Puno, Second Division].

[98] *Rollo*, p. 158.

that his dismissal was a valid exercise of their management prerogative to discipline and dismiss managerial employees unworthy of their trust and confidence.

The concept of a management prerogative was already passed upon by this Court in *San Miguel Brewery Sales Force Union v. Ople*:[99]

> Except as limited by special laws, an employer is free to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of work. . . .

Every business enterprise endeavors to increase its profits. In the process, it may adopt or devise means designed towards that goal. In *Abott Laboratories vs. NLRC*, . . . We ruled:

> . . . Even as the law is solicitous of the welfare of the 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.

So long as a company's management prerogatives are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, this Court will uphold them.[100]

---

[99] 252 Phil. 27 (1989) [Per *J*. Griño-Aquino, First Division].

[100] *Id*. at 30-31, citing *NLU vs. Insular La Yebana Co*., 112 Phil. 821 (1961) [Per *J*. Labrador, *En Banc*]; *Republic Savings Bank vs. CIR*, 128 Phil. 230 (1967) [Per *J*. Castro, *En Banc*]; PERFECTO V. HERNANDEZ, *LABOR RELATIONS LAW 44* (1985); *Abbott Laboratories vs. NLRC*, 238 Phil. 699 (1987) [Per *J*. Gutierrez, Jr., Third Division]; *LVN Pictures Workers vs. LVN*, 146 Phil. 153 (1970) [Per *J*. Castro, Second Division]; *Phil. American Embroideries vs. Embroidery and Garment Workers*, 136 Phil. 36 (1969) [Per *J*. Makalintal, *En Banc*]; and *Phil. Refining Co. vs. Garcia*, 124 Phil. 698 (1966) [Per *J*. J.B.L. Reyes, *En Banc*].

While an employer is free to regulate all aspects of employment, the exercise of management prerogatives must be in good faith and must not defeat or circumvent the rights of its employees.

In industries that mainly rely on sales, employers are free to discipline errant employees who deliberately fail to report for work during a crucial sales period. It would have been reasonable for respondents to discipline petitioner Nepomuceno had he been a problematic employee who unceremoniously refused to do his work.

However, as found by the Labor Arbiter and the National Labor Relations Commission, petitioner Nepomuceno turned over all of his pending work to a reliever before he left for Malaysia. He was able to reach his sales quota and surpass his sales target even before taking his vacation leave. Respondents did not suffer any financial damage as a result of his absence. This was also petitioner Nepomuceno's first infraction in his nine (9) years of service with respondents.[101] None of these circumstances constitutes a *willful* breach of trust on his part. The penalty of dismissal, thus, was too severe for this kind of infraction.

The manner of petitioner Nepomuceno's dismissal was likewise suspicious. In all cases of employment termination, the employee must be granted due process. The manner by which this is accomplished is stated in Book V, Rule XXIII, Section 2 of the Rules Implementing the Labor Code:

> Section 2. Standard of due process: requirements of notice.
>
> — In all cases of termination of employment, the following standards of due process shall be substantially observed.
>
> I. For termination of employment based on just causes as defined in Article 282 of the Code:
>
> (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;

---

[101] *Rollo*, p. 159.

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

(c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstance, grounds have been established to justify his termination.

Here, petitioner Nepomuceno received a memorandum on April 23, 2008, asking him to explain why no administrative investigation should be held against him. He submitted an explanation on the same day and another explanation on May 2, 2008. On May 7, 2008, he was given his notice of termination, which had already taken effect two (2) days earlier, or on May 5, 2008.[102]

It is true that "[t]he essence of due process is simply an opportunity to be heard."[103] Petitioner Nepomuceno had two (2) opportunities within which to explain his actions. This would have been sufficient to satisfy the requirement. The delay in handing him his notice of termination, however, appears to have been an afterthought. While strictly not a violation of procedural due process, respondents should have been more circumspect in complying with the due process requirements under the law.

Considering that petitioner Nepomuceno's dismissal was done without just cause, he is entitled to reinstatement and full backwages.[104] If reinstatement is not possible due to strained

---

[102] *Id.* at 157.

[103] *Philippine Long Distance Telephone Company v. National Labor Relations Commission*, G.R. No. 71499, July 19, 1989, 175 SCRA 437, 440 [Per *J.* Griño-Aquino, First Division] citing *Bermejo vs. Barrios*, 142 Phil. 655 (1970) [Per *J.* Zaldivar, First Division].

[104] LABOR CODE, Art. 294 provides:

Article 294. [279] Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. *An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances,*

relations between the parties, he shall be awarded separation pay at the rate of one (1) month for every year of service.[105]

IV

Under Article 297 [282] of the Labor Code, an employer may terminate the services of an employee who commits willful disobedience of the lawful orders of the employer:

> Article 297. [282] Termination by Employer. — An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work[.]

For disobedience to be considered as just cause for termination, two (2) requisites must concur: *first*, "the employee's assailed conduct must have been wilful or intentional," and *second*, "the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he [or she] had been engaged to discharge."[106] For disobedience to be willful, it must be "characterized by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination."[107]

The conduct complained of must also constitute "harmful behavior against the business interest or person of his [or her] employer."[108]

---

and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (Emphasis supplied)

[105] See *De Vera v. National Labor Relations Commission*, 269 Phil. 653 (1990) [Per *J.* Cruz, First Division].

[106] *Gold City Integrated Port Services v. National Labor Relations Commission*, 267 Phil. 863, 872 (1990) [Per *J.* Feliciano, Third Division] *citing Batangas Laguna Tayabas Bus Company v. Court of Appeals*, 163 Phil. 494 (1976) [Per *J.* Martin, First Division].

[107] *Batangas Laguna Tayabas Bus Company v. Court of Appeals*, 163 Phil. 494, 502 (1976) [Per *J.* Martin, First Division] *citing* 35 Am. Jur., p. 478.

[108] *Dongon v. Rapid Movers and Forwarders*, 716 Phil. 533, 544 (2013) [Per *J.* Bersamin, First Division] *citing* the Separate Opinion of *J.* Tinga in *Agabon v. National Labor Relations Commission*, 485 Phil. 248 (2004) [Per *J.* Ynares-Santiago, *En Banc*].

Thus, it is implied in every case of willful disobedience that "the erring employee obtains undue advantage detrimental to the business interest of the employer."[109]

Petitioner Palit-Ang, as Finance Officer, was instructed by respondent Del Castillo to give a cash advance of ₱3,000.00 to District Branch Manager Gamboa on November 26, 2007. This order was reasonable, lawful, made known to petitioner Palit-Ang, and pertains to her duties.[110] What is left to be determined, therefore, is whether petitioner Palit-Ang intentionally and willfully violated it as to amount to insubordination.

When Gamboa went to collect the money from petitioner Palit-Ang, he was told to return the next day as she was still busy. When petitioner Palit-Ang found out that the money was to be used for a car tune-up, she suggested to Gamboa to just get the money from his mobilization fund and that she just would reimburse it after.[111] The Court of Appeals found that these circumstances characterized petitioner Palit-Ang's "arrogance and hostility,"[112] in failing to comply with respondent Del Castillo's order, and thus, warranted her dismissal.

On the contrary, there was no ill will between Gamboa and petitioner Palit-Ang. Petitioner Palit-Ang's failure to immediately give the money to Gamboa was not the result of a perverse mental attitude but was merely because she was busy at the time. Neither did she profit from her failure to immediately give the cash advance for the car tune-up nor did respondents suffer financial damage by her failure to comply. The severe penalty of dismissal was not commensurate to her infraction. In *Dongon v. Rapid Movers and Forwarders*:[113]

> To us, dismissal should only be a last resort, a penalty to be meted only after all the relevant circumstances have been appreciated and

---

[109] *Id*.

[110] *Rollo*, p. 19.

[111] *Id*. at 164.

[112] *Id*. at 93.

[113] 716 Phil. 533 (2013) [Per *J*. Bersamin, First Division].

evaluated with the goal of ensuring that the ground for dismissal was not only serious but true. The cause of termination, to be lawful, must be a serious and grave malfeasance to justify the deprivation of a means of livelihood. This requirement is in keeping with the spirit of our Constitution and laws to lean over backwards in favor of the working class, and with the mandate that every doubt must be resolved in their favor.

Although we recognize the inherent right of the employer to discipline its employees, we should still ensure that the employer exercises the prerogative to discipline humanely and considerately, and that the sanction imposed is commensurate to the offense involved and to the degree of the infraction. The discipline exacted by the employer should further consider the employee's length of service and the number of infractions during his employment. The employer should never forget that always at stake in disciplining its employee are not only his position but also his livelihood, and that he may also have a family entirely dependent on his earnings.[114]

Petitioner Palit-Ang likewise assails the failure of respondents to inform her of her right to counsel when she was being investigated for her infraction. As previously discussed, "[t]he essence of due process is simply an opportunity to be heard,"[115] not that the employee must be accompanied by counsel at all times. A hearing was conducted and she was furnished a notice of termination explaining the grounds for her dismissal.[116] She was not denied due process.

Petitioner Palit-Ang, nonetheless, is considered to have been illegally dismissed, her penalty not having been proportionate

---

[114] *Id.* at 545-546 citing *Hongkong and Shanghai Banking Corp. v. National Labor Relations Commission*, 328 Phil. 1156 (1996) [Per J. Panganiban, Third Division]; *Coca-Cola Bottlers Phils., Inc. v. Daniel*, 499 Phil. 491 (2005) [Per J. Panganiban, Third Division]; *Pioneer Texturizing Corp. v. National Labor Relations Commission*, 345 Phil. 1057 (1997) [Per J. Francisco, *En Banc*]; and *Almira v. B.F. Goodrich Philippines, Inc.*, 157 Phil. 110 (1974) [Per J. Fernando, Second Division].

[115] *Philippine Long Distance Telephone Company v. National Labor Relations Commission*, G.R. No. 71499, July 19, 1989, 175 SCRA 437, 440 [Per J. Griño-Aquino, First Division] citing *Bermejo vs. Barrios*, 142 Phil. 655 (1970) [Per J. Zaldivar, First Division].

[116] *Rollo*, p. 165.

to the infraction committed. Thus, she is entitled to reinstatement and full backwages.[117] If reinstatement is not possible due to strained relations between the parties, she shall be awarded separation pay at the rate of one (1) month for every year of service.[118]

WHEREFORE, the Petition is **PARTIALLY GRANTED**. Petitioner Christian C. Nepomuceno and petitioner Laura Mae Fatima F. Palit-Ang are **DECLARED** to have been illegally dismissed. They are, therefore, entitled to reinstatement without loss of seniority rights, or in lieu thereof, separation pay; and the payment of backwages from the filing of their Complaints until finality of this Decision.

The Court of Appeals February 19, 2013 Decision and September 10, 2013 Resolution in CA-G.R. SP No. 119093, finding that the National Labor Relations Commission had no jurisdiction to adjudicate petitioner Nicanor F. Malcaba's claims is **SUSTAINED**. Petitioner Malcaba is further ordered to **RETURN** the amount of ₱4,937,420.40 to respondents for having been erroneously awarded. This shall be without prejudice to the filing of petitioner Malcaba's claims in the proper forum.

This case is hereby **REMANDED** to the Labor Arbiter for the proper computation of petitioners Christian C. Nepomuceno's and Laura Mae Fatima F. Palit-Ang's money claims.

SO ORDERED.

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

---

[117] LABOR CODE, Art. 294 provides:

Article 294. [279] Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. *An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement*. (Emphasis supplied)

[118] See *De Vera v. National Labor Relations Commission*, 269 Phil. 653 (1990) [Per *J.* Cruz, First Division].

THIRD DIVISION

[G.R. Nos. 211820-21. June 6, 2018]

KENSONIC, INC., *petitioner, vs.* **UNI-LINE MULTI-RESOURCES, INC., (PHIL.),** *respondent.*

[G.R. Nos. 211834-35. June 6, 2018]

UNI-LINE MULTI-RESOURCES, INC., *petitioner, vs.* **KENSONIC, INC.,** *respondent.*

SYLLABUS

1. **COMMERCIAL LAW; INTELLECTUAL PROPERTY CODE (IPC); MARK DISTINGUISHED FROM COPYRIGHT; SECTION 123(h) OF THE IPC PROHIBITS THE REGISTRATION OF A TRADEMARK THAT CONSISTS EXCLUSIVELY OF SIGNS THAT ARE GENERIC FOR THE GOODS OR SERVICES THAT THEY SEEK TO IDENTIFY.—** [T]he controversy revolves around the SAKURA mark which is not a copyright. The distinction is significant. A mark is any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise, and includes a stamped or marked container of goods. In contrast, a copyright is the right to literary property as recognized and sanctioned by positive law; it is an intangible, incorporeal right granted by statute to the author or originator of certain literary or artistic productions, whereby he or she is invested, for a specific period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them. x x x Section 123(h) of the *Intellectual Property Code* prohibits the registration of a trademark that consists exclusively of signs that are generic for the goods or services that they seek to identify. It is clear from the law itself, therefore, that what is prohibited is not having a generic mark but having such generic mark being identifiable to the good or service.

2. **ID.; ID.; THE PROHIBITION UNDER SECTION 123 OF THE IPC EXTENDS TO GOODS THAT ARE RELATED TO THE REGISTERED GOODS BUT NOT TO THE GOODS**

THAT THE REGISTRANT MAY PRODUCE IN THE FUTURE; CASE OF *MIGHTY CORPORATION V. E. & J. GALLO WINERY* ON THE DIFFERENT FACTORS BY WHICH TO DETERMINE WHETHER OR NOT GOODS ARE RELATED TO EACH OTHER FOR PURPOSES OF REGISTRATION.— The prohibition under Section 123 of the *Intellectual Property Code* extends to goods that are related to the registered goods, not to goods that the registrant may produce *in the future*. To allow the expansion of coverage is to prevent future registrants of goods from securing a trademark on the basis of mere possibilities and conjectures that may or may not occur at all. x x x In *Mighty Corporation v. E. & J. Gallo Winery*, the Court has identified the different factors by which to determine whether or not goods are related to each other for purposes of registration: Non-competing goods may be those which, though they are not in actual competition, are so related to each other that it can reasonably be assumed that they originate from one manufacturer, in which case, confusion of business can arise out of the use of similar marks. They may also be those which, being entirely unrelated, cannot be assumed to have a common source; hence, there is no confusion of business, even though similar marks are used. Thus, there is no trademark infringement if the public does not expect the plaintiff to make or sell the same class of goods as those made or sold by the defendant. In resolving whether goods are related, several factors come into play: (a) the business (and its location) to which the goods belong (b) the class of product to which the goods belong (c) the product's quality, quantity, or size, including the nature of the package, wrapper or container (d) the nature and cost of the articles (e) the descriptive properties, physical attributes or essential characteristics with reference to their form, composition, texture or quality (f) the purpose of the goods (g) whether the article is bought for immediate consumption, that is, day-to-day household items (h) the fields of manufacture (i) the conditions under which the article is usually purchased and (j) the channels of trade through which the goods flow, how they are distributed, marketed, displayed and sold. x x x In *Taiwan Kolin Corporation, Ltd. v. Kolin Electronics, Co., Inc.*, the Court has opined that the mere fact that goods belonged to the same class does not necessarily mean that they are related; and that the factors listed in *Mighty*

Corporation v. E. & J. Gallo Winery should be taken into consideration.

APPEARANCES OF COUNSEL

Nisce Mamuric Guinto Rivera & Alcantara for Kensonic, Inc.
Sioson Sioson & Associates for Uni-Line Multi-Resources, Inc.

D E C I S I O N

BERSAMIN, *J.*:

The case concerns the cancellation of the registration of the trademark SAKURA for the goods of Uni-Line Multi Resources, Inc. (Phils.) (Uni-Line) being sought by Kensonic, Inc. (Kensonic) on the ground that the latter had prior use and registration of the SAKURA mark.

The Case

Under consideration are the consolidated appeals urging the review and reversal of the decision promulgated on July 30, 2013[1] and the amended decision promulgated on March 19, 2014,[2] whereby the Court of Appeals (CA) affirmed the decision rendered on June 11, 2012 by the Director General of the Intellectual Property Office (IPO) upholding the cancellation of the application of Uni-Line for the registration of the SAKURA mark for goods falling under Class 09 of the Nice International Classification of Goods (Nice Classification), and allowing the registration of Uni-Line's SAKURA mark registration for goods falling under Class 07 and Class 11 of the Nice Classification.[3]

---

[1] *Rollo* (G.R. Nos. 211820-21), Vol. I, pp. 10-27; penned by Associate Justice Francisco P. Acosta, and concurred in by Associate Justice Fernanda Lampas Peralta and Associate Justice Nina G. Antonio-Valenzuela.

[2] *Id*. at 30-35.

[3] *Id*. at 156-163; per IPO Director General Ricardo R. Blancaflor.

Antecedents

The CA summarized the following factual and procedural antecedents, *viz.*:

On June 15, 1999, Uni-Line filed an application for the registration of the mark "SAKURA" for amplifier, speaker, cassette, cassette disk, video cassette disk, car stereo, television, digital video disk, mini component, tape deck, compact disk charger, VHS, and tape rewinder falling under Class 9 of the Nice International Classification of Goods. Kensonic opposed Uni-Line's application which was docketed as IPC No. 14-2004-00160 (**IPC 1**). The Director of the Bureau of Legal Affairs (**BLA**) rendered Decision No. 2005-01 dated November 29, 2005 finding that Kensonic was the first to adopt and use the mark SAKURA since 1994 and thus rejecting Uni-Line's application. On January 19, 2006, said Decision became final and executory.

While IPC Case 1 was pending, Uni-Line filed an application and was issued a certificate of registration for the mark "SAKURA & FLOWER DESIGN" for use on recordable compact disk (CD-R) computer, computer parts and accessories falling under Class 9. On September 7, 2006, Kensonic filed a petition for cancellation docketed as IPC No. 14-2006-00183 (**IPC 2**) of Uni-Line's registration. In Decision No. 08-113 dated August 7, 2008, the BLA Director held that Uni-Line's goods are related to Kensonic's goods and that the latter was the first user of the mark SAKURA used on products under Class 9. The BLA Director thus cancelled Uni-Line's certificate of registration. Uni-Line moved for reconsideration of the BLA Director's Decision which is pending resolution to date.

On June 6, 2002, Uni-Line filed an application for the registration of the trademark SAKURA for use on the following:

Goods	Nice Classification
Washing machines, high pressure washers, vacuum cleaners, floor polishers, blender, electric mixer, electrical juicer	Class 07
Television sets, stereo components, DVD/VCD players, voltage regulators, portable generators, switch breakers, fuse	Class 09

Refrigerators, air conditioners, oven toaster, turbo broiler, rice cooker, microwave oven, coffee maker, sandwich/waffle maker, electric stove, electric fan, hot & cold water dispenser, airpot, electric griller and electric hot pot	Class 11

Uni-Line's application was thereafter published, and there being no opposition thereto, Certificate of Registration No. 4-2002-004572 for the mark SAKURA effective March 18, 2006 was issued.

On September 7, 2006, Kensonic filed with the BLA a Petition for Cancellation of Uni-Line's Certificate of Registration alleging that in October 1994, it introduced the marketing of SAKURA products in the Philippines and that it owned said SAKURA products and was the first to use, introduce and distribute said products. Kensonic also alleged that in IPC 1, it opposed Uni-Line's application to register SAKURA and was already sustained by the Director General, which Decision is now final and executory. Kensonic further alleged that it is the owner of a copyright for SAKURA and that since 1994, has maintained and established a good name and goodwill over the SAKURA products.

Kensonic filed its Supplemental Petition for Cancellation and its Reply to Uni-Line's Answer. Uni-Line filed its Rejoinder thereto.[4]

Decision of the
Bureau of Legal Affairs (BLA), IPO

After due proceedings, the BLA issued Decision No. 2008-149 dated August 11, 2008,[5] whereby it ruled in favor of Kensonic and against Uni-Line, and directed the cancellation of Registration No. 4-2002-004572 of the latter's SAKURA mark. It observed that an examination of the SAKURA mark of Kensonic and that of Uni-Line revealed that the marks were

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

[5] *Id*. at 167-190.

confusingly similar with each other; that the goods sought to be covered by the SAKURA registration of Uni-Line were related to the goods of Kensonic, thereby necessitating the cancellation of the registration of Uni-Line's mark; and that considering that Kensonic had used the SAKURA mark as early as 1994 in Class 09 goods (namely: amplifiers, speakers, cassette disks, video cassette disks, car stereos, televisions, digital video disks, mini components, tape decks, compact disk chargers, VHS and tape rewinders), Kensonic had acquired ownership of the SAKURA mark, and should be legally protected thereon. The dispositive portion reads:

WHEREFORE, premises considered, the Verified Petition for Cancellation is hereby **GRANTED**. Accordingly, Certificate of Registration No. 4-2002-004572 issued on 18 March 2006 for the trademark "SAKURA" in the name of Uni-Line Multi Resources, Inc. Phils., is hereby ordered **CANCELLED**.

Let the file wrapper of this case be forwarded to the Bureau of Trademark (BOT) for appropriate action in accordance with this Decision.

SO ORDERED.[6]

Decision of the Director General, IPO

On appeal,[7] the Director General of the IPO modified the decision of the BLR by upholding Uni-Line's registration of the SAKURA mark as to goods classified as Class 07 and Class 11, thereby effectively reversing the BLR, but affirmed the BLR as regards the treatment of the SAKURA mark that covered the goods falling under Class 09. The Director General clarified that the marks of Uni-Line and Kensonic were similar if not identical; that considering that Inter Partes Case No. 14-2004-00160 (IPC 1) already effectively ruled that the products registered by Uni-Line were goods related to those covered by the registration of Kensonic, the registration of Uni-Line insofar as those products sought to be registered under Class 09 were

[6] *Id*. at 189-190.

[7] *Id*. at 156-163.

concerned (*i.e.*, television sets, stereo components, DVD/VCD players, voltage regulators, portable generators, switch breakers, fuse) was correctly cancelled; that the registration of products of Uni-Line falling under Class 07 and Class 11 should not be cancelled because the products were different from the goods registered under Class 09 in the name of Kensonic; that there should be evidence showing how the continued registration of the SAKURA mark of Uni-Line would cause damage to Kensonic; and that the goods covered by the SAKURA registration of Uni-Line and the SAKURA registration of Kensonic should be distinguished because:

> In addition, the ordinary purchaser must be thought of, as having, and credited with, at least a modicum of intelligence. It does not defy common sense to assert that a purchaser would be cognizant of the product he is buying. As a general rule, an ordinary buyer does not exercise as much prudence in buying an article for which he pays a few centavos as he does in purchasing a more valuable thing. Expensive and valuable items are normally bought only after deliberate, comparative and analytical investigation.
>
> In this instance, the products of the Appellants under Classes 7 and 11 are home appliances which are not the ordinary everyday goods the public buys and consumes. These products are not inexpensive items and a purchaser would ordinarily examine carefully the features and characteristics of the same. It is, therefore, farfetched that the purchasing public would be misled or be deceived as to the source or origin of the products. Furthermore, there is nothing in the records that indicate any plans by the Appellee to enter into business transactions or to the manufacture and distribution of goods similar to the products of the Appellants under Classes 7 and 11."[8]

The Director General of the IPO decreed as follows:

> Wherefore, premises considered, the appeal is hereby dismissed in so far as the cancellation of the Appellant's Cert. of Reg. No. 4-2002-004572 for goods enumerated and falling under Class 9 is concerned. However, the appeal is hereby granted in so far as the cancellation of Cert. of Reg. No. 4-2002-004572 for goods enumerated and falling under Classes 7 and 11 is concerned.

---

[8] *Rollo* (G.R. Nos. 211820-21), Vol. I, p. 162.

Accordingly, Cert. of Reg. No. 4-2002-004572 issued in favor of the Appellant for the mark SAKURA is hereby amended. The registration of goods enumerated under Class 9, namely television sets, stereo components, DVD/VCD players, voltage regulators, portable generators, switch breakers, fuse is hereby cancelled.

Let a copy of this Decision as well as the records of this case be furnished and returned to the Director of the Bureau of Legal Affairs for appropriate action. Further, let also the Director of the Bureau of Trademarks and the library of Documentation, Information and Technology Transfer Bureau be furnished a copy of this Decision for information, guidance, and records purposes.

SO ORDERED.[9]

Judgment of the CA

Both parties appealed to the CA, which promulgated its decision on July 30, 2013 dismissing the appeal of Kensonic (C.A.-G.R. SP No. 125420) and granting Uni-Line's appeals (C.A.-G.R. SP No. 125424). The CA upheld Kensonic's ownership of the SAKURA mark based on its showing of its use of the mark since 1994, but ruled that despite the identical marks of Kensonic and Uni-Line, Kensonic's goods under Class 09 were different from or unrelated to Uni-Line's goods under Class 07 and Class 11. It observed that the protection of the law regarding the SAKURA mark could only extend to television sets, stereo components, DVD and VCD players but not to Uni-Line's voltage regulators, portable generators, switch breakers and fuses due to such goods being unrelated to Kensonic's goods; that Kensonic's registration only covered electronic audio-video products, not electrical home appliances; and that the similarity of the marks would not confuse the public because the products were different and unrelated. It ruled:

WHEREFORE, the Petition filed by Kensonic, Inc., in C.A.-G.R. SP No. 125420 is **DENIED** and the Petition filed by Uni-Line Multi Resources, Inc. (Phils.) is **GRANTED**.

---

[9] *Rollo* (G.R. Nos. 211820-21), Vol. I, p. 163.

Accordingly, the Decision dated June 11, 2012 of Director General Ricardo R. Blancaflor of the Intellectual Property Office is **MODIFIED** such that Uni-Line's Appeal insofar as the cancellation of its Certificate of Registration No. 4-2002-004572 for goods enumerated and falling under Class 9 is **GRANTED** but **DELETING** therefrom the goods television sets, stereo components, DVD players and VCD players. The Decision dated June 11, 2012 of the Director General is hereby **UPHELD** insofar as it granted Uni-Line's Appeal on the cancellation of its Certificate of Registration No. 4-2002-004572 for goods enumerated and falling under Class 7 and Class 11.

SO ORDERED.[10]

Kensonic sought partial reconsideration, submitting that voltage regulators, portable generators, switch breakers and fuse were closely related to its products; that maintaining the two SAKURA marks would cause confusion as to the source of the goods; and that Uni-Line's goods falling under Class 07 and Class 11 were closely related to its goods falling under Class 09.

In the assailed amended decision promulgated on March 19, 2014,[11] the CA sided with Kensonic, and reverted to the ruling by the Director General of IPO cancelling the registration of the SAKURA mark covering all the goods of Uni-Line falling under Class 09 on the basis that all the goods belonged to the general class of goods. The CA decreed:

WHEREFORE, the Motion for Partial Reconsideration filed by Kensonic Inc. is **PARTIALLY GRANTED**. Uni-Line is prohibited from using the mark SAKURA for goods falling under Class 9, but is allowed to use the mark SAKURA for goods falling under Classes 7 and 11. Thus, the DENIAL of Uni-Line's Appeal insofar as the cancellation of its Certificate of Registration No. 4-2002-004572 for goods enumerated and falling under Class 9 is **UPHELD**. The Decision dated June 11, 2012 of the Director General is **AFFIRMED *in toto***.

SO ORDERED.[12]

---

[10] *Id*. at 108.

[11] *Supra* note 2.

[12] *Rollo* (G.R. Nos. 211820-21), Vol. I, pp. 116-117.

Issues

Hence, this appeal by both parties.

Kensonic (G.R. Nos. 211820 – 21) insists that the CA erred in not considering that Uni-Line's goods under Class 07 and Class 11 were related to its goods falling under Class 09; and that all the agencies below were unanimous in declaring that the marks were identical, and, as such, the use of the SAKURA marks would lead to confusion about the source of the goods.

Uni-Line (G.R. Nos. 211834 – 35) contends that the SAKURA mark could not be appropriated because it simply referred to cherry blossom in Japanese and was thus a generic name that was not copyrightable; that it was grave error for the IPO and the CA to rule that Kensonic owned the mark; and that voltage regulators, portable generators, switch breakers and fuse were unrelated to Kensonic's products because Uni-Line's products were not electronic.

The following issues are, therefore, to be resolved:

(1) Is the SAKURA mark capable of appropriation?

(2) Are Kensonic's goods falling under Class 09 related to Uni-Line's goods falling under Class 07 and Class 11?; and

(3) Are Uni-Line's goods falling under Class 9, namely: voltage regulators, portable generators, switch breakers and fuses, related to Kensonic's goods falling under Class 9?

Ruling of the Court

The appeal of Kensonic in G.R. Nos. 211820-21 is dismissed but the petition in G.R. Nos. 211834-35 is partially granted.

I.
The SAKURA mark can be appropriated

Uni-Line's opposition to Kensonic's ownership of the SAKURA mark insists that the SAKURA mark is not copyrightable for being generic. Such insistence is unacceptable.

To be noted is that the controversy revolves around the SAKURA mark which is not a copyright. The distinction is significant. A mark is any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise, and includes a stamped or marked container of goods.[13] In contrast, a copyright is the right to literary property as recognized and sanctioned by positive law; it is an intangible, incorporeal right granted by statute to the author or originator of certain literary or artistic productions, whereby he or she is invested, for a specific period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them.[14] Obviously, the SAKURA mark is not an artistic or literary work but a sign used to distinguish the goods or services of one enterprise from those of another.

An examination of the pertinent laws also reveals that Uni-Line mistakenly argues that the SAKURA mark was not capable of registration for being generic.

Section 123(h) of the *Intellectual Property Code* prohibits the registration of a trademark that consists exclusively of signs that are generic for the goods or services that they seek to identify. It is clear from the law itself, therefore, that what is prohibited is not having a generic mark but having such generic mark being identifiable to the good or service. In *Asia Brewery, Inc*., *v. Court of Appeals*,[15] the Court ruled that there was no infringement of San Miguel Brewery's Pale Pilsen trademark because Pale Pilsen could not be appropriated. The Court explained:

> The fact that the words *pale pilsen are part of ABI's trademark does not constitute an infringement of SMC's trademark: SAN MIGUEL PALE PILSEN, for "pale pilsen" are generic words descriptive of the color ("pale"), of a type of beer ("pilsen"), which is a light*

---

[13] Section 121.1, *Intellectual Property Code*.

[14] *Black's Law Dictionary*, Centennial Edition. 6th ed. West Group, St. Paul Minnesota, USA, 1990, p. 336.

[15] G.R. No. 103543, July 5, 1993, 224 SCRA 437, 448-449.

bohemian beer with a strong hops flavor that originated in the City of Pilsen in Czechoslovakia and became famous in the Middle Ages. (Webster's Third New International Dictionary of the English Language, Unabridged. Edited by Philip Babcock Gove. Springfield, Mass.: G & C Merriam Co., ©) 1976, page 1716.) "Pilsen" is a "primarily geographically descriptive word," (Sec. 4, subpar. [e] Republic Act No. 166, as inserted by Sec. 2 of R.A. No. 638) hence, non-registerable and not appropriable by any beer manufacturer. The Trademark Law provides:

> "Sec. 4. . . . The owner of trade-mark, trade-name or service-mark used to distinguish his goods, business or services from the goods, business or services of others shall have the right to register the same [on the principal register], unless it:
>
> x x x x x x x x x
>
> "(e) Consists of a mark or trade-name which, when applied to or used in connection with the goods, business or services of the applicant is *merely descriptive or deceptively misdescriptive of them*, or when applied to or used in connection with the goods, business or services of the applicant is *primarily geographically descriptive* or deceptively misdescriptive of them, or is primarily merely a surname." (Emphasis supplied.)

The words "pale pilsen" may not be appropriated by SMC for its exclusive use even if they are part of its registered trademark: SAN MIGUEL PALE PILSEN, any more than such descriptive words as "evaporated milk," "tomato ketchup," "cheddar cheese," "corn flakes" and "cooking oil" may be appropriated by any single manufacturer of these food products, for no other reason than that he was the first to use them in his registered trademark. In Masso Hermanos, S.A. vs. Director of Patents, 94 Phil. 136, 139 (1953), it was held that a dealer in shoes cannot register "Leather Shoes" as his trademark because that would be merely descriptive and it would be unjust to deprive other dealers in leather shoes of the right to use the same words with reference to their merchandise. No one may appropriate generic or descriptive words. They belong to the public domain (Ong Ai Gui vs. Director of Patents, 96 Phil. 673, 676 [1955]):

> "A word or a combination of words which is merely descriptive of an article of trade, or of its composition, characteristics, or qualities, cannot be appropriated and protected as a trademark to the exclusion of its use by others . . . inasmuch as all persons

> have an equal right to produce and vend similar articles, they also have the right to describe them properly and to use any appropriate language or words for that purpose, and *no person can appropriate to himself exclusively any word or expression, properly descriptive of the article, its qualities, ingredients or characteristics*, and thus limit other persons in the use of language appropriate to the description of their manufactures, *the right to the use of such language being common to all*. This rule excluding descriptive terms has also been held to apply to trade-names. As to whether words employed fall within this prohibition, it is said that the true test is not whether they are exhaustively descriptive of the article designated, but whether in themselves, and as they are commonly used by those who understand their meaning, they are reasonably indicative and descriptive of the thing intended. If they are thus descriptive, and not arbitrary, they cannot be appropriated from general use and become the exclusive property of anyone. (52 Am. Jur. 542-543.)
>
> ". . . Others may use the same or similar descriptive word in connection with their own wares, provided they take proper steps to prevent the public being deceived. (Richmond Remedies Co. vs. Dr. Miles Medical Co., 16 E. [2d] 598.)
>
> ". . . A descriptive word may be admittedly distinctive, especially if the user is the first creator of the article. It will, however, be denied protection, not because it lacks distinctiveness, but rather because others are equally entitled to its use. (2 Callman, Unfair Competition and Trademarks, pp. 869-870.)"

This, however, is not the situation herein. Although SAKURA refers to the Japanese flowering cherry[16] and is, therefore, of a generic nature, such mark did not identify Kensonic's goods unlike the mark in *Asia Brewery, Inc., v. Court of Appeals*. Kensonic's DVD or VCD players and other products could not be identified with cherry blossoms. Hence, the mark can be appropriated.

Kensonic's prior use of the mark since 1994 made it the owner of the mark, and its ownership cannot anymore be

---

[16] Merriam-Webster, Inc. 2018. Accessed at https://www.merriam-webster.com/dictionary/sakura last April 2, 2018.

challenged at this stage of the proceedings. Seeking the review of Kensonic's ownership would entail the examination of facts already settled by the lower tribunals. Uni-Line's challenge to the ownership of the SAKURA mark should stop here because the Court cannot act on a factual matter in this appeal by petition for review on *certiorari*, which is limited to the consideration of questions of law. Section 1, Rule 45 of the *Rules of Court* specifically so 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 Court of Tax Appeals, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

The distinction between a question of law and a question of fact is well defined. According to *Tongonan Holdings and Development Corporation v. Escaño, Jr.*:[17]

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

---

[17] G.R. No. 190994, September 7, 2011, 657 SCRA 306, 314, citing *Republic of the Philippines v. Malabanan,* G.R. No. 169067, October 6, 2010, 632 SCRA 338, 345.

It is timely to remind, too, that the Court is not a trier of facts. Hence, the factual findings of the quasi-judicial body like the IPO, especially when affirmed by the CA, are binding on the Court.[18] Jurisprudence has laid down certain exceptions to the rule of bindingness,[19] but, alas, Uni-Line did not discharge its burden to show how its urging for a review of the factual findings came within any of the exceptions.

II.
Uni-Line's goods classified under Class 07 and Class 11 were not related to Kensonic's goods registered under Class 09

The CA did not err in allowing the registration of Uni-Line's products falling under Class 07 and Class 11, for, indeed, those

---

[18] Section 4, Rule 3 of the *Internal Rules of the Supreme Court*, which states that the Court "shall respect the factual findings of lower courts" subject to the exceptions enumerated therein.

[19] *Tan v. Andrade*, G.R. No. 171904, August 7, 2013, 703 SCRA 198, 205; and *Salcedo v. People,* G.R. No. 137143, December 8, 2000, 347 SCRA 499, 505, where the Court enumerated the following exceptions, namely:

(1) When the factual findings of the CA and the trial court are contradictory;

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

(3) When the inference made by the CA from its findings of fact is manifestly mistaken, absurd or impossible;

(4) When there is grave abuse of discretion in the appreciation of facts;

(5) When the CA, in making its findings, went beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;

(6) When the judgment of the CA is premised on misapprehension of facts;

(7) When the CA failed to notice certain relevant facts which, if properly considered, would justify a different conclusion;

(8) When the findings of fact are themselves conflicting;

(9) When the findings of fact are conclusions without citation of the specific evidence on which they are based; and

(10) When the findings of fact of the CA are premised on the absence of evidence but such findings are contradicted by the evidence on record.

products – as found by the lower tribunals – were unrelated to the goods of Kensonic registered under Class 09.

Still, Kensonic contends that the goods of Uni-Line classified under Class 07 and Class 11 were covered by the prohibition from registration for being within the normal potential expansion of Kensonic.

The contention is unwarranted.

The prohibition under Section 123 of the *Intellectual Property Code* extends to goods that are related to the registered goods, not to goods that the registrant may produce *in the future*. To allow the expansion of coverage is to prevent future registrants of goods from securing a trademark on the basis of mere possibilities and conjectures that may or may not occur at all. Surely, the right to a trademark should not be made to depend on mere possibilities and conjectures.

In *Mighty Corporation v. E. & J. Gallo Winery*,[20] the Court has identified the different factors by which to determine whether or not goods are related to each other for purposes of registration:

> Non-competing goods may be those which, though they are not in actual competition, are so related to each other that it can reasonably be assumed that they originate from one manufacturer, in which case, confusion of business can arise out of the use of similar marks. They may also be those which, being entirely unrelated, cannot be assumed to have a common source; hence, there is no confusion of business, even though similar marks are used. Thus, there is no trademark infringement if the public does not expect the plaintiff to make or sell the same class of goods as those made or sold by the defendant.
>
> In resolving whether goods are related, several factors come into play:
>
> (a) the business (and its location) to which the goods belong
>
> (b) the class of product to which the goods belong
>
> (c) the product's quality, quantity, or size, including the nature of the package, wrapper or container

[20] G.R. No. 154342, July 14, 2004, 434 SCRA 473, 509-511.

(d) the nature and cost of the articles

(e) the descriptive properties, physical attributes or essential characteristics with reference to their form, composition, texture or quality

(f) the purpose of the goods

(g) whether the article is bought for immediate consumption, that is, day-to-day household items

(h) the fields of manufacture

(i) the conditions under which the article is usually purchased and

(j) the channels of trade through which the goods flow, how they are distributed, marketed, displayed and sold. (Citations omitted)

An examination of the foregoing factors reveals that the goods of Uni-Line were not related to the goods of Kensonic by virtue of their differences in class, the descriptive attributes, the purposes and the conditions of the goods.

III.
The goods of Kensonic were also unrelated to the goods of Uni-Line although both belonged to Class 9

Uni-Line posits that its goods under Class 09 were unrelated to the goods of Kensonic; and that the CA's holding of the goods being related by virtue of their belonging to the same class was unacceptable.

In *Taiwan Kolin Corporation, Ltd. v. Kolin Electronics, Co., Inc.*,[21] the Court has opined that the mere fact that goods belonged to the same class does not necessarily mean that they are related; and that the factors listed in *Mighty Corporation v. E. & J. Gallo Winery* should be taken into consideration, to wit:

---

[21] G.R. No. 209843, March 25, 2015, 754 SCRA 556, 571-572.

As mentioned, the classification of the products under the NCL is merely part and parcel of the factors to be considered in ascertaining whether the goods are related. It is not sufficient to state that the goods involved herein are electronic products under Class 9 in order to establish relatedness between the goods, for this only accounts for one of many considerations enumerated in *Mighty Corporation*.
x x x

Clearly then, it was erroneous for respondent to assume over the CA to conclude that all electronic products are related and that the coverage of one electronic product necessarily precludes the registration of a similar mark over another. In this digital age wherein electronic products have not only diversified by leaps and bounds, and are geared towards interoperability, it is difficult to assert readily, as respondent simplistically did, that all devices that require plugging into sockets are necessarily related goods.

It bears to stress at this point that the list of products included in Class 9 can be sub-categorized into five (5) classifications, namely: (1) apparatus and instruments for scientific or research purposes, (2) information technology and audiovisual equipment, (3) apparatus and devices for controlling the distribution and use of electricity, (4) optical apparatus and instruments, and (5) safety equipment. From this sub-classification, it becomes apparent that petitioner's products, *i.e.*, televisions and DVD players, belong to audiovisual equipment, while that of respondent, consisting of automatic voltage regulator, converter, recharger, stereo booster, AC-DC regulated power supply, step-down transformer, and PA amplified AC-DC, generally fall under devices for controlling the distribution and use of electricity.

Based on the foregoing pronouncement in *Taiwan Kolin Corporation, Ltd. v. Kolin Electronics, Co., Inc.*, there are other sub-classifications present even if the goods are classified under Class 09. For one, Kensonic's goods belonged to the information technology and audiovisual equipment sub-class, but Uni-Line's goods pertained to the apparatus and devices for controlling the distribution of electricity sub-class. Also, the Class 09 goods of Kensonic were final products but Uni-Line's Class 09 products were spare parts. In view of these distinctions, the Court agrees with Uni-Line that its Class 09 goods were unrelated to the Class 09 goods of Kensonic.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari* in G.R. No. 211820-21; **PARTIALLY GRANTS** the petition for review on *certiorari* in G.R. Nos. 211834-35; **REVERSES** and **SETS ASIDE** the amended decision promulgated on March 19, 2014; **PARTIALLY REINSTATES** the decision promulgated on July 30, 2013 insofar as it allowed the registration by Uni-Line Multi-Resources, Inc. under the SAKURA mark of its voltage regulators, portable generators, switch breakers and fuses; and **ORDERS** Kensonic, Inc. to pay the costs of suit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 212413. June 6, 2018]

MA. ROSARIO AGARRADO, RUTH LIBRADA AGARRADO AND ROY AGARRADO, for themselves and for the benefit of their siblings and co-owners *ROBERTO AGARRADO, REUEL ANDRES AGARRADO, HEIRS OF THE LATE RODRIGO AGARRADO, JR., REX AGARRADO and JUDY AGARRADO*, *petitioners, vs.* **CRISTITA LIBRANDO-AGARRADO and ANA LOU AGARRADO-KING,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; WHETHER A CASE IS INCAPABLE OF PECUNIARY ESTIMATION, IDENTIFICATION OF THE NATURE OF THE PRINCIPAL ACTION OR REMEDY SOUGHT IS

PRIMARILY NECESSARY.— In determining whether a case is incapable of pecuniary estimation, the case of *Cabrera vs. Francisco*, in reiterating the case of *Singson vs. Isabela Sawmill*, teaches that identifying the nature of the principal action or remedy sought is primarily necessary. It states: In 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).

2. ID.; ID.; CASES FOR PARTITION OF REAL PROPERTIES; FAILURE TO ALLEGE THE ASSESSED VALUE OF A REAL PROPERTY IN THE COMPLAINT WOULD RESULT TO A DISMISSAL OF THE CASE.— For actions on partition, the subject matter is two-phased. In *Bagayas vs. Bagayas*, the Court ruled that partition is at once an action (1) for declaration of co-ownership and (2) for segregation and conveyance of a determinate portion of the properties involved. Thus, in a complaint for partition, the plaintiff seeks, first, a declaration that he/she is a co-owner of the subject properties, and second, the conveyance of his/her lawful share. x x x Jurisdiction over cases for partition of real properties therefore, like all others, is determined by law. Particularly, the same is identified by Sections 19(2) and 33(3) of the Judiciary Reorganization Act of 1980, as amended by Republic Act 7691. The provisions state that in all civil actions which involve title to, or possession of, real property, or any interest therein, the RTC shall exercise exclusive original jurisdiction where the assessed value of the property exceeds ₱20,000.00 or, for civil actions in Metro Manila, where such value exceeds ₱50,000.00. For those below the foregoing threshold amounts, exclusive jurisdiction lies with the Metropolitan Trial Courts (MeTC),

> Municipal Trial Courts (MTC), or Municipal Circuit Trial Courts (MCTC). Thus, the determination of the assessed value of the property, which is the subject matter of the partition, is essential. This, the courts could identify through an examination of the allegations of the complaint. x x x According to *Foronda-Crystal*, failure to allege the assessed value of a real property in the complaint would result to a dismissal of the case. The reason put forth by the Court is that: x x x absent any allegation in the complaint of the assessed value of the property, **it cannot be determined whether the RTC or the MTC has original and exclusive jurisdiction over the petitioner's action.**

APPEARANCES OF COUNSEL

Lyndon P. Caña for petitioners.
Romeo Carlos E. Ting, Jr. for respondents.

D E C I S I O N

REYES, JR., *J.*:

An action for partition of real estate is at once an action for the determination of the co-owners of the subject property and an action for the eventual conveyance of specific portions thereof to the co-owners. While this subject matter is incapable of pecuniary estimation, the proper court which would have jurisdiction over the action would still depend on the subject property's assessed values in accordance with Secs. 19(2) and 33(3) of The Judiciary Reorganization Act of 1980, as amended.[1]

The Case

Challenged before the Court *via* this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the April 19, 2013 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV.

---

[1] B.P. 129 (1980), as amended by R.A. No. 7691 (1994).

[2] Penned by then Associate, now Executive Justice Gabriel T. Ingles, and concurred in by Associate Justices Pampio A. Abarintos and Marilyn B. Lagura-Yap; *rollo*, pp. 73-84.

No. 02669, which affirmed with modification the January 17, 2007 Decision[3] of the Regional Trial Court (RTC), Branch 44, of Bacolod City in Civil Case No. 03-11893. Likewise challenged is the subsequent March 27, 2014 Resolution[4] of the CA which upheld its earlier decision.

The Antecedent Facts

As borne by the records of the case, it appears that the petitioners Ma. Rosario Agarrado (Ma. Rosario), Ruth Librada Agarrado (Ruth), and Roy Agarrado (Roy) are children of the late spouses Rodrigo (Rodrigo) and Emilia (Emilia) Agarrado, who, during their lifetime, acquired a 287-square-meter land (subject property) in Bacolod City, Negros Occidental. The subject property was registered in the name of the spouses Rodrigo and Emilia and was covered by Transfer Certificate of Title No. T-29842-B.[5]

On August 18, 1978, Emilia died intestate, leaving Rodrigo and their children as her compulsory heirs.

Meanwhile, unknown to the petitioners, Rodrigo was involved in an illicit affair with respondent Cristita Librando-Agarrado (Cristita), with whom Rodrigo begot respondent Ana Lou Agarrado-King (Ana Lou). As it turned out, Ana Lou was conceived during the existence of the marriage between Rodrigo and Emilia, but was born on September 27, 1978—one month after the dissolution of Rodrigo and Emilia's marriage through the latter's death.

Eventually, Rodrigo married Cristita on July 6, 1981.

On December 8, 2000, Rodrigo also succumbed to mortality and died. He left his surviving spouse, Cristita, his legitimate children by his marriage with Emilia, and Ana Lou.

---

[3] Rendered by Presiding Judge Rodney A. Bolunia; *id*. at 114-122.

[4] Penned by Associate, now Executive Justice Gabriel T. Ingles, and concurred in by Associate Justices Pamela Ann Abella Maximo and Marilyn B. Lagura Yap; *id*. at 86-87.

[5] *Id*. at 74.

On January 23, 2003, Cristita and Ana Lou filed a complaint before the Regional Trial Court (RTC), Branch 44, of Bacolod City for the partition of the subject property, with Ma. Rosario, Ruth, Roy, "and other heirs of Rodrigo Agarrado"[6] as defendants. None of the other heirs were however named in any pleading filed by either the plaintiffs (now respondents) or defendants (now petitioners).

Eventually, the RTC rendered its January 17, 2007 Decision, which ordered the parties to partition the subject property "among themselves by proper instruments of conveyance or any other means or method."[7] The *fallo* of the decision reads:

> WHEREFORE, plaintiff Ana Lou Agarrado-King and the defendants herein are ordered to partition the property subject of this case (Lot 10, Block 6) among themselves by proper instruments of conveyance or any other means or method after which the Court shall confirm the partition so agreed upon by them, otherwise the Court will appoint commissioners to effect partition at the expense of the parties.
>
> SO ORDERED.[8]

Aggrieved, the petitioners elevated the case to the Court of Appeals, which, through the assailed April 19, 2013 Decision, affirmed with modification the January 17, 2007 Decision of the RTC. The *fallo* of the decision of the appellate court reads:

> **WHEREFORE,** the appeal is **DISMISSED.** The Decision dated January 17, 2007, of the Regional Trial Court, 6th Judicial Region, Branch 44, Bacolod City in Civil Case No. 03-11893 is **AFFIRMED with MODIFICATION** in that:
>
> 1. We declare plaintiffs-appellees Cristita Librando Agarrado and Ana Lou Agarrado-King as well as defendants-appellants as co-owners of the subject property;
>
> 2. We grant judicial partition in the following manner:

---

[6] *Id*. at 88.

[7] *Id*. at 122.

[8] *Id*.

(a) Plaintiff-appellee Cristita Librando Agarrado is entitled to 2/9;

(b) Ma. Rosario, Ruth and Roy Agarrado are entitled to 6/9 plus ¼ to be divided equally among them unless they agree otherwise; and

(c) Ana Lou Agarrado-King is entitled to 1/9 of the property.

The partition and segregation of the subject property is hereby ordered as outlined in Rule 69 of the Revised Rules of Court, as amended.

No pronouncements as to costs.

SO ORDERED.[9]

Despite the petitioners' motion for reconsideration, the CA affirmed its April 19, 2013 Decision *via* the March 27, 2014 Resolution.

Hence, this petition.

The Issues

The petitioners anchor their prayer for the reversal of the April 19, 2013 Decision and March 27, 2014 Resolution based on the following issues:

a. Whether the Hon. Court of Appeals erred in excluding the FIVE OTHER heirs (children of the first marriage) of their inheritance by the alleged failure to prove their filiation in the proceedings before the Honorable Regional Trial Court;

b. Harmonizing substantive and procedural law, whether the Honorable Court of Appeals erred in not appreciating Respondents' implied recognition or "admission by silence" under Section 32 of Rule 130 of the Rules of Court as evidence of the filiation of the five (5) other children of the late Rodrigo Agarrado, Sr. (namely Reuel Andres Agarrado, Rodrigo Agarrado, Jr., Rex Agarrado, Roberto Agarrado and Judy Agarrado);

---

[9] *Id*. at 83-84.

c. Whether the Hon. Court of Appeals in its contested Decision, mathematically MISAPPLIED the formula under the pertinent rules of succession in the Family Code and/or Civil Code to determine the shares of both Petitioners and Respondents to the subject house and lot;

d. Relatedly, whether the Hon. Court of Appeals is correct in ruling that a family home cannot be recognized as such simply because it was not registered as such;

e. Whether all the GSIS, PHILHEALTH and other benefits all claimed, taken, and received by the Respondents are to be charged against whatever share they may have over the subject "house and lot" of the late Rodrigo Agarrado, Sr., as well as the funeral expenses expended by the first family alone?

f. Whether the Hon. Court of Appeals was correct in not ordering the dismissal of the case for failure of Plaintiffs-Respondents to allege the market value and pay the right docket fees at the incipience of the Complaint.[10]

In sum, the submissions of the petitioners seek to determine the following: (1) the compulsory heirs of the late Rodrigo; (2) the portion of the estate to which each of the compulsory heirs are entitled; (3) the propriety of collating to the total estate the medical and burial expenses shouldered by the petitioners and the benefits (GSIS, PHILHEALTH) received by the respondents; (4) the effect of the allegation that the subject property is the petitioners' family home; and (5) the effect on jurisdiction of the failure to indicate the market value of the subject property in the complaint filed before the RTC.

The Court's Ruling

After a careful perusal of the arguments presented and the evidence submitted, the Court finds merit in the petition.

---

[10] *Id*. at 20-22.

For obvious reasons, the Court shall first consider the issue on jurisdiction.

The petitioners argue that the complaint must be dismissed for the failure of the respondents to allege the assessed value of the subject property. They said that the appellate court failed to appreciate this jurisdictional requirement, which was indispensable in the determination of the jurisdiction of the RTC. They further averred that the case should not have proceeded in the first place.[11]

The CA glossed over this issue by saying that the action for partition instituted by the respondents in the RTC is one incapable of pecuniary estimation, which would thus confer jurisdiction over the case to the RTC. In ruling thus, the appellate court invoked the guidance of the case of *Russel vs. Vestil*,[12] and stated that:

> We are guided by the ruling in *Russel vs Vestil,* 304 SCRA 739, March 17, 1999 wherein **the Supreme Court considered petitioners' complaint seeking the annulment of the document entitled "Declaration of Heirs and Deed of Confirmation of Previous Oral Partition," as an action incapable of pecuniary estimation,** rationalizing that the resolution of the same principally involved the determination of hereditary rights. In effect, the partition aspect is an action incapable of pecuniary estimation. (Emphasis and underscoring supplied)[13]

This, however, is an error that must be reversed. The appellate court's reliance on *Russel* is misplaced.

The Court, in *Russel,* explained that the complaint filed by the plaintiff is one incapable of pecuniary estimation because the subject matter of the complaint is **not one of partition, but one of the annulment of a document** denominated as a "Declaration of Heirs and Deed of Confirmation of Previous

---

[11] *Id.* at 45-47.

[12] 364 Phil. 392 (1999).

[13] *Rollo*, p. 77.

Oral Partition." Considering that the annulment of a document is the main subject matter, and that the same is incapable of pecuniary estimation, then necessarily, the RTC has jurisdiction.

This is not so in the present case.

In determining whether a case is incapable of pecuniary estimation, the case of *Cabrera vs. Francisco*,[14] in reiterating the case of *Singson vs. Isabela Sawmill*,[15] teaches that identifying the nature of the principal action or remedy sought is primarily necessary. It states:

> In 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).[16] (Emphasis and underscoring supplied)

For actions on partition, the subject matter is two-phased. In *Bagayas vs. Bagayas*,[17] the Court ruled that partition is at once an action (1) for declaration of co-ownership and (2) for segregation and conveyance of a determinate portion of the properties involved. Thus, in a complaint for partition, the plaintiff seeks, first, a declaration that he/she is a co-owner of the subject properties, and second, the conveyance of his/her lawful share.[18]

---

[14] 716 Phil. 574 (2013).

[15] 177 Phil. 575 (1979).

[16] *Supra* note 14, at 586-587.

[17] 718 Phil. 91, 98 (2013).

[18] *Id*.

The case of *Russel,* the very same case cited by the Court of Appeals, determined that while actions for partition are incapable of pecuniary estimation owing to its two-phased subject matter, **the determination of the court which will acquire jurisdiction over the same must still conform to Sec. 33(3) of B.P. 129, as amended.** *Russel* said:

> **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).** (Emphasis and underscoring supplied)

This is also the tenor of the case of *Barrido vs. Nonato*[19] where the Court upheld the jurisdiction of the Municipal Trial Court in Cities (MTCC), Branch 3, of Bacolod City over the action for partition because the assessed value of the subject property was only ₱8,080.00. As basis, *Barrido* likewise cited Sec. 33(3) of B.P. 129, as amended.

To be sure, according to the recent case of *Foronda-Crystal vs. Son*,[20] jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. To exercise this, the court or adjudicative body must acquire, among others, jurisdiction over the subject matter,[21] **which is conferred by law** and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists.[22]

---

[19] G.R. No. 176492, October 20, 2014, 738 SCRA 510, 515-516.

[20] *Glynna Foronda-Crystal v. Aniana Lawas Son*, G.R. No. 221815, November 29, 2017.

[21] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, 760 Phil. 954, 960 (2015) citing *Spouses Genato v. Viola*, 625 Phil. 514, 527 (2010).

[22] *Id*., See *Philippine Coconut Producers Federation, Inc. v. Republic of the Phils.*, 679 Phil. 508, 568 (2012), citing *Allied Domecq Philippines, Inc. v. Villon*, 482 Phil. 894, 900 (2004).

Jurisdiction over cases for partition of real properties therefore, like all others, is determined by law. Particularly, the same is identified by Sections 19(2) and 33(3) of the Judiciary Reorganization Act of 1980, as amended by Republic Act 7691.[23]

The provisions state that in all civil actions which involve title to, or possession of, real property, or any interest therein, the RTC shall exercise exclusive original jurisdiction where the assessed value of the property exceeds ₱20,000.00 or, for civil actions in Metro Manila, where such value exceeds ₱50,000.00.[24] For those below the foregoing threshold amounts, exclusive jurisdiction lies with the Metropolitan Trial Courts (MeTC), Municipal Trial Courts (MTC), or Municipal Circuit Trial Courts (MCTC).[25]

Thus, the determination of the assessed value of the property, which is the subject matter of the partition, is essential. This, the courts could identify through an examination of the allegations of the complaint.

According to the case of *Tumpag vs. Tumpag*,[26] it is a hornbook doctrine that the court should only look into the facts alleged in the complaint to determine whether a suit is within its jurisdiction.[27] According to the case of *Spouses Cruz vs. Spouses Cruz, et al.*,[28] only these facts can be the basis of the court's competence to take cognizance of a case, and that one cannot advert to anything not set forth in the complaint, such as evidence adduced at the trial, to determine the nature of the action thereby initiated.[29]

---

[23] *Batas Pambansa Blg.* 129 (1980), as amended by Rep. Act No. 7691 (1994).

[24] *Id.* Sec. 19(2).

[25] *Id.* Sec. 33(3).

[26] G.R. No. 199133, September 29, 2014, 737 SCRA 62, 69.

[27] *Tumpag v. Tumpag*, G.R. No. 199133, September 29, 2014, 737 SCRA 62, 69.

[28] 616 Phil. 519 (2009).

[29] *Id.* at 523-524.

According to *Foronda-Crystal*, failure to allege the assessed value of a real property in the complaint would result to a dismissal of the case. The reason put forth by the Court is that:

> x x x absent any allegation in the complaint of the assessed value of the property, **it cannot be determined whether the RTC or the MTC has original and exclusive jurisdiction over the petitioner's action.** Indeed, the courts cannot take judicial notice of the assessed or market value of the land. (Emphasis and underscoring supplied, citations omitted)

This same *ratio* has been repeated in a number of cases, including the cases of *Spouses Cruz vs. Spouses Cruz, et al.*[30] and *Quinagoran vs. Court of Appeals*,[31] where the Court concluded that:

> Considering that the respondents failed to allege in their complaint the assessed value of the subject property, the RTC seriously erred in denying the motion to dismiss. Consequently, all proceedings in the RTC are null and void, and the CA erred in affirming the RTC.[32]

Based on the foregoing, in *Foronda-Crystal*, the Court already established the rules that have to be followed in determining the jurisdiction of the first and second level courts. It said:

> A reading of the quoted cases would reveal a pattern which would invariably guide both the bench and the bar in similar situations. Based on the foregoing, **the rule on determining the assessed value of a real property, insofar as the identification of the jurisdiction of the first and second level courts is concerned, would be two-tiered:**
>
> **First,** the general rule is that jurisdiction is determined by the assessed value of the real property as alleged in the complaint; and
>
> **Second,** the rule would be liberally applied if the assessed value of the property, while not alleged in the complaint, could still be

---

[30] *Supra* note 28.

[31] 557 Phil. 650 (2007).

[32] *Id*. at 661.

identified through a facial examination of the documents already attached to the complaint. (Emphasis and underscoring supplied)

On the basis of this most recent ruling, the Court is without any recourse but to agree with the petitioners in dismissing the complaint filed before the RTC for lack of jurisdiction.

A scouring of the records of this case revealed that the complaint did indeed lack any indication as to the assessed value of the subject property. In fact, the only reference to the same in the complaint are found in paragraphs six, seven, and eight thereof, which state that:

"6. Meanwhile, during the lifetime of Rodrigo Agarrado, he acquired certain real and personal properties due to his hard work, one of which is the parcel of land with improvements standing thereon, located at Barangay Villamonte, Bacolod City, more particularly described as follows, to wit:

x x x x x x x x x

7. RODRIGO AGARRADO died intestate and leaving no debts. Upon his death, plaintiffs by operation of law, became co-owners of the afore-described property jointly with the other heirs, the herein defendants;

8. Demand thru counsel has been made by the herein plaintiffs upon the defendants for the partition of the subject property, but the same was simply ignored. Copy of the Demand Letter is hereto attached and marked as Annex 'D' and forming part hereof."[33]

None of these assertions indicate the assessed value of the property to be partitioned that would invariably determine as to which court has the authority to acquire jurisdiction. More, none of the documents annexed to the complaint and as attached in the records of this case indicates any such amount. Thus, the petitioners are correct in restating their argument against the RTC's jurisdiction, for it has none to exercise.

---

[33] *Rollo*, pp. 89-90.

Clearly, therefore, jurisprudence has ruled that an action for partition, while one not capable of pecuniary estimation, falls under the jurisdiction of either the first or second level courts depending on the amounts specified in Secs. 19(2) and 33(3) of B.P. 129, as amended. Consequently, a failure by the plaintiff to indicate the assessed value of the subject property in his/her complaint, or at the very least, in the attachments in the complaint as ruled in *Foronda-Crystal*, is dismissible because the court which would exercise jurisdiction over the same could not be identified.

Consequently, as the complaint in this case is dismissible for its failure to abide by the rules in *Foronda-Crystal*, then the Court sees no further necessity to discuss the other issues raised.

WHEREFORE, premises considered, the April 19, 2013 Decision and March 27, 2014 Resolution of the Court of Appeals in CA-G.R. CV. No. 02669, as well as the January 17, 2007 Decision of the Regional Trial Court, Branch 44, of Bacolod City in Civil Case No. 03-11893 are hereby **SET ASIDE.** The complaint is hereby **DISMISSED** without prejudice to its refiling in the proper court.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 213914. June 6, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANUEL FERRER *y* REMOQUILLO *a.k.a.* "KANO," KIYAGA MACMOD *y* USMAN *a.k.a.* "KIYAGA" and DIMAS MACMOD *y* MAMA *a.k.a.* "DIMAS,"** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT REQUIRED IN CRIMINAL CASES.—** The legal principle constantly upheld in our jurisprudence is that in all criminal cases, the presumption of innocence of an accused is a constitutional right that should be upheld at all times. x x x It is on the basis of this constitutional presumption that case law trenchantly maintains that the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution. While not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience. Thus, the conviction of an accused can only be justified if his guilt has been established beyond reasonable doubt.

2. **ID.; CRIMINAL PROCEDURE; APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW.—** The Court is aware that as a general rule, on the question of whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, it having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. This rule finds even more stringent application where the findings are sustained by the CA, as in this case. But it must be equally stressed that this general rule is not cast in stone as not to admit recognized exceptions considering that

an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.

3. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** Jurisprudence is consistent as to the elements that the prosecution needs to prove beyond reasonable doubt in order to secure a conviction for illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165, *viz*: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused. In all prosecutions for violations of R.A. No. 9165, the *corpus delicti* is the dangerous drug itself, the existence of which is essential to a judgment of conviction; thus, its identity must be clearly established beyond reasonable doubt to prove its case against the accused. In order to preclude, therefore, any doubt on the identity of the dangerous drugs, the prosecution has the burden to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.

4. **ID.; ID.; CHAIN OF CUSTODY; FOUR LINKS IN THE CHAIN OF CUSTODY OF THE CONFISCATED ITEM THAT MUST BE ESTABLISHED; NONCOMPLIANCE EXCUSED IN THE PRESENCE OF JUSTIFIABLE GROUND AND THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS WERE PROPERLY PRESERVED.—** In conjunction with Sec. 21, Art. II of R.A. No. 9165, jurisprudence dictates the four links in the chain of custody of the confiscated item that must be established by the prosecution: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal

> drug seized from the forensic chemist to the court. x x x [N]oncompliance with the requirements of Sec. 21 of R.A. No. 9165 on justifiable grounds shall not render void and invalid the seizure and custody of the confiscated items as long as the integrity and the evidentiary value of the items had been properly preserved by the apprehending team. The burden therefore is with the prosecution to prove that: (a) there is justifiable ground for non-compliance; **and** (b) the integrity and evidentiary value of the seized items are properly preserved.

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

MARTIRES, *J.*:

Accused-appellants MANUEL FERRER *y* REMOQUILLO a.k.a. "KANO," KIYAGA MACMOD *y* USMAN a.k.a. "KIYAGA" and DIMAS MACMOD *y* MAMA a.k.a. "DIMAS" appeal from the 29 November 2013 Decision[1] and 25 April 2014 Resolution[2] of the Court of Appeals (*CA*), Fourth Division, in CA-G.R. CR-H.C. No. 05531 affirming the 29 March 2012 Judgment[3] of the Regional Trial Court (*RTC*), Branch 204, Muntinlupa City, and denying their Motion for Reconsideration,[4] respectively.

---

[1] *Rollo*, pp. 2-12; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ricardo R. Rosario and Leoncia R. Dimagiba.

[2] CA *rollo*, pp. 150-151.

[3] Records, pp. 456-467; penned by Judge Juanita T. Guerrero.

[4] CA *rollo*, pp. 126-134.

THE FACTS

Accused-appellants were charged with Violation of Section (*Sec.*) 5, in relation to Sec. 26 of Article (*Art.*) II, of Republic Act (*R.A.*) No. 9165[5] in an Information docketed as Criminal Case No. 06-761, the accusatory portion of which reads as follows:

> That on the 12th day of August 2006, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, and mutually helping and aiding one another, not being authorized by law, did then and there, willfully and unlawfully sell, trade, deliver, and give away to another Methamphetamine Hydrochloride, a dangerous drug, weighing 98.29 grams, contained in two (2) heat-sealed transparent plastic sachets, in violation of the above-cited law.
>
> CONTRARY TO LAW.[6]

When arraigned, the accused-appellants[7] pleaded not guilty to the charge against them. Hence, trial ensued.

The prosecution presented PO1 Benito F. Viernes, Jr.[8] (*Viernes*) who, during the time material to the case, was an intelligence operative assigned to the Philippine Drug Enforcement Agency (*PDEA*) Calabarzon.[9] The testimony of Police Inspector Ruben M. Apostol (*Apostol*) was dispensed with after the parties stipulated that he was a forensic chemist assigned at the Philippine National Police (*PNP*) Regional Crime Laboratory (*laboratory*), Camp Vicente Lim (*Camp Lim*), Calamba, Laguna.

---

[5] Entitled "An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as amended, Providing Funds Therefor and for Other Purposes.

[6] Records, p. 1.

[7] *Id.* at 50 and 73.

[8] Variably referred to as "Benito Biemes" in the TSN.

[9] Acronym for Cavite, Laguna, Batangas, Rizal and Quezon provinces.

The accused-appellants Manuel Ferrer (*Manuel*), Kiyaga Macmod (*Kiyaga*), and Dimas Macmod (*Dimas*) took the witness stand to refute the charge against them.

The Version of the Prosecution

On 11 August 2006, a confidential informant (*CI*) came to the PDEA Calabarzon Office, and informed the Regional Director that she was to deal with Manuel alias "Kano" in the sale of a hundred grams of shabu amounting to ₱500.000.00. The CI also informed that the transaction would take place at the parking lot of Festival Mall (*mall*), Muntinlupa City. Consequently, the Regional Director tasked Police Inspector Gregorio Caraig (*Caraig*) to lead a ten-member team with Viernes as the poseur-buyer and PO1 Carla Mayo (*Mayo*) as the backup arresting officer. As a pre-arranged signal that the sale was consummated, Viernes was to call Mayo's cellphone.[10]

A surveillance of the area was done on the same day. Before the actual operation took place, the team prepared a pre-operation report[11] while Viernes prepared a request[12] to the PDEA for authority to operate outside the area of jurisdiction. PDEA granted the request by issuing a certificate of coordination.[13] Viernes placed his personal markings on the two ₱500.00 bills[14] to be used as marked money, had the markings recorded in the blotter, and then placed the two bills on top of the boodle money.[15]

On 12 August 2006, armed with the proper authority to conduct their operation, the team proceeded to the transaction area. Viernes, accompanied by the CI, drove the vehicle going to the mall while the rest of the team rode in another vehicle.

---

[10] TSN, 20 June 2007, pp. 3-7.

[11] Records, p. 346; Exh. "A".

[12] Id. at 348; Exh. "C".

[13] *Id*. at 347; Exh. "B".

[14] *Id*. at 360; Exhs. "M" to "M-2".

[15] TSN, 20 June 2007, pp. 6-10; TSN, 18 July 2007, pp. 5-7.

When they arrived at the mall at about 12:30 p.m., the CI contacted Manuel who later arrived with Kiyaga and Dimas (*spouses Macmods*). The accused-appellants approached the vehicle and boarded it with Manuel taking the seat behind Viernes, Kiyaga in the middle, and Dimas on the right side. After introducing Viernes to the accused- appellants, the CI alighted from the vehicle to serve as lookout.[16]

When Manuel asked Viernes if he had the money, Viernes replied that he had the ₱500,000.00 and showed the former a paper bag containing the boodle money with the two real ₱500.00 bills on top. Viernes then demanded the shabu. Believing that Viernes was a real buyer, Manuel ordered Kiyaga to give Viernes the shabu. Kiyaga got two transparent plastic sachets from her pocket and handed these to Viernes who in turn handed the money to Dimas as told to do so by Manuel. With the transaction consummated, Viernes called Mayo's cellphone. Before Dimas could discover that the paper bag contained boodle money, Viernes introduced himself as a PDEA police operative and arrested Manuel, while the rest of the team arrested Kiyaga and Dimas.[17]

After the accused-appellants were arrested, Viernes marked the heat-sealed transparent plastic sachets as Exhs. "A"[18] and "B"[19] with his initials "BFV." The accused-appellants were informed of their constitutional rights and thereafter were brought to Camp Lim. Viernes was in possession of the confiscated plastic sachets from the time they left the mall until they reached Camp Lim.[20]

---

[16] TSN, 18 July 2007, pp. 7-13 and 15.

[17] *Id*. at 13-14, 16 and 19-20.

[18] Exh. "D".

[19] Exh. "D-1".

[20] TSN, 18 July 2007, pp. 20-23.

Upon arriving at their office, Viernes prepared the certificate of inventory[21] of the confiscated items, and the booking sheet and arrest report for Manuel,[22] Kiyaga,[23] and Dimas.[24] Viernes prepared the request[25] for the laboratory examination of the confiscated two pieces heat-sealed transparent sachets bearing the markings EXH. "A" and EXH. "B", "BFV", "08-12-06," and his initials, and the requests[26] for the drug testing and physical/medical examination of the accused-appellants. On the same day, at 5:45 p.m., Viernes and Mayo brought to the laboratory the documents pertinent to the requests and the two pieces of transparent sachets.[27]

On 12 August 2006, the laboratory, through Apostol, issued Chemistry Report No. D-316-06[28] containing the following findings on the contents of the transparent sachets:

FINDINGS:

Qualitative examination conducted on specimen A and B gave **POSITIVE** result to the tests for the presence of **Methamphetamine hydrochloride**, a dangerous drug. x x x

As to the drug tests, the laboratory found Manuel postive for methamphetamine hydrochloride and the spouses Macmods negative for the same.[29]

The Version of the Defense

According to Manuel, two weeks prior to the 12 August 2006 incident, Jack and Grace (*the couple*) came to his store looking

---

[21] Records, p. 349; Exh. "E".

[22] *Id*. at 350; Exh. "F".

[23] *Id*. at 351; Exh. "F-1".

[24] *Id*. at 352; Exh. "F-2".

[25] *Id*. at 353; Exh. "G".

[26] *Id*. at 354 and 355; Exhs. "H" and "I".

[27] TSN, 18 July 2007, pp. 24-32.

[28] Records, p. 356; Exh. "J".

[29] *Id*. at 357; Exh. "K".

for Omar because they could not find him in the house he was renting which was just four houses away from Manuel's house. The couple were introduced to him by Omar, who was engaged in selling pirated compact disks (*CDs*). The couple called Omar's cellphone and they talked about selling the merchandise which they were supposed to buy from him. He presumed that the merchandise the couple referred to were the pirated CDs because these were what Omar sold.[30]

On 12 August 2006, at about 9:00a.m., the couple arrived at his store asking for Omar's whereabouts. When he told them that he did not know where Omar was, the couple called Omar's number. After the couple talked with Omar, the cellphone was handed to him. He obliged when Omar asked him to bring the couple to the mall.[31]

When they reached the mall, Omar called to tell him to wait until the person he had asked to fetch the couple arrived. He told Omar that he would wait at a certain fast food restaurant and that the person who would fetch the couple could be identified through his red shirt. Two persons, who he later came to know as the spouses Macmods when he was brought to the Canlubang police station, thereafter came and asked him if he was "Kano." He answered in the affirmative and subsequently brought the spouses Macmods to the parking area where the couple were waiting. The couple and the spouses Macmods subsequently left for Sucat.[32]

When Omar was on his way home, three men who introduced themselves as police officers blocked his way and told him that they would be bringing him to the police station for verification purposes. He asked them for what violation but he was told that he would only be questioned. At the police station, he told them that he did not know the spouses Macmods; he was nonetheless incarcerated with them. Grace was released

---

[30] TSN, 11 August 2010, pp. 2-4.

[31] *Id*. at 4-6.

[32] *Id*. at 6-7.

from the police station, Jack was incarcerated, but Omar was never arrested.[33]

In their defense, the spouses Macmods deposed that on 12 August 2006, at around 9:00 a.m., they were outside the mall waiting for its opening when they were approached by a man, who they later came to know to be Manuel, asking for the location of a certain coffee shop. Despite having told Manuel that they did not know where the coffee shop was, he didn't leave the area. Suddenly, two men approached Manuel and talked with him. A commotion thereafter ensued when six men and a female arrived. The lone female, who was in handcuffs, uttered "Itong dalawa kasama nila, isama na natin" (These two are their companions, let us bring them also) referring to them. At that instance, they were made to board a vehicle, while Manuel was made to ride in another vehicle.[34]

While the spouses Macmods were inside the vehicle, the men who accosted them asked for ₱300,000.00 so that there would be no more problems. When they told them that they did not have that amount, the men lowered it to ₱50,000.00; but because they did not give in to this demand, they were incarcerated for two weeks. It was only during the inquest that the spouses Macmods were told they were being charged for selling illegal drugs.[35]

The Ruling of the RTC

The RTC found that the testimony of Viernes, the lone witness for the prosecution, was straightforward, unwavering, direct, and truthful in all aspects. It ruled that all the elements for the successful prosecution for illegal selling of prohibited drugs have been proven, *viz*: the identity of the buyer, who was Viernes; the identity of the sellers, who were the accused-appellants; the object of the sale, which was the 98.9 grams of

---

[33] *Id*. at 8-10.

[34] TSN, 10 November 2010, pp. 3-8.

[35] *Id*. at 8-13.

methamphetamine hydrochloride, a prohibited drug; the consideration, which was the marked buy-bust money consisting of two ₱500.00 bills; the delivery of the items from Kiyaga to Viernes; and the receipt of the money by Dimas from Viernes.[36]

The RTC held that the chain of custody was never broken because the drug items were in the possession of Viernes from the time of confiscation to their transfer to the laboratory for examination; and that the markings and inventory of the drug items properly insured their integrity and purity.[37]

According to the RTC, the concerted overt actions of the three accused-appellants led to the conclusion that they conspired in selling and delivering the drug items to the poseur-buyer. Moreover, the denial of the accused-appellants pales in comparison to the direct and unwavering testimony of Viernes.[38]

The dispositive portion of the RTC judgment reads:

> **WHEREFORE**, premises considered and finding all the accused GUILTY beyond reasonable doubt of Violation of Sec. 5 of Republic Act No. 9165, MANUEL FERRER *y* REMOQUILLO, KIYAGA MACMOD *y* USMAN and DIMAS MACMOD *y* MAMA are each sentenced to LIFE IMPRISONMENT. They are further ordered to pay a fine of Php500,000.00 each and the costs of the suit.
>
> The subject drug evidence consisting of two (2) packets of shabu are ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.
>
> The preventive imprisonment undergone by all the accused shall be credited in their favor.
>
> SO ORDERED.[39]

Not satisfied with the ruling of the RTC, the accused-appellants appealed to the CA.

---

[36] Records, p. 465.

[37] *Id*.

[38] *Id*. at 466-467.

[39] *Id*. at 467.

The Ruling of the CA

The CA found that the prosecution was able to establish the essential elements in an illegal sale of shabu and that the alleged inconsistencies cited by the accused-appellants do not materially affect the credibility of the prosecution's witness.[40]

The CA affirmed the findings of the RTC as to the unbroken chain of custody of the seized items and stated that what was important was the preservation of the identity and integrity of these items. The CA ruled that the accused-appellants' allegation of frame-up did not deserve credence while it upheld the presumption that the members of the buy-bust team performed their duties in a regular manner.[41]

Hence, the CA disposed of the case as follows:

WHEREFORE, premises considered, the appeal is ***DISMISSED*** for lack of merit. The judgment dated March 29, 2012 of the Regional Trial Court of Muntinlupa City, Branch 204, in Criminal Case No. 06-761, is ***AFFIRMED***.

SO ORDERED.[42]

Seeking to have the decision reversed, the accused-appellants moved for a reconsideration,[43] but the CA found no merit in their arguments and denied the motion.[44]

ISSUES

I.

SEC. 21 OF R.A. NO. 9165 WAS GROSSLY DISREGARDED. THERE WAS NO JUSTIFIABLE GROUND FOR NONCOMPLIANCE THEREWITH.

---

[40] *Rollo*, pp. 7-8.

[41] *Id*. at 8-11.

[42] *Id*. at 11

[43] CA *rollo*, pp. 126-133.

[44] *Id*. at 150-151.

II.

THERE WAS A BROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY SEIZED DRUGS.[45]

OUR RULING

The appeal is impressed with merit.

The presumption that an accused is innocent prevails until his guilt is proven beyond reasonable doubt.

The legal principle constantly upheld in our jurisprudence is that in all criminal cases, the presumption of innocence of an accused is a constitutional right that should be upheld at all times.[46] The principle breathes life to the following provision in the fundamental law of the land, to wit:

> 2. In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided, that he has been duly notified and his failure to appear is unjustifiable.[47]

It is on the basis of this constitutional presumption that case law trenchantly maintains that the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution.[48] While not impelling such a degree of proof

---

[45] *Rollo*, pp. 36 and 42.

[46] *People v. Arposeple*, G.R. No. 205787, 22 November 2017.

[47] Sec. 14(2), Art. III of the 1987 Constitution.

[48] *People v. Rodriguez*, G.R. No. 211721, 20 September 2017.

as to establish absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience.[49] Thus, the conviction of an accused can only be justified if his guilt has been established beyond reasonable doubt[50] which, under the Revised Rules of Court, is defined as follows:

> **Section 2.** *Proof beyond reasonable doubt.* — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

The Court is aware that as a general rule, on the question of whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, it having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies.[51] This rule finds even more stringent application where the findings are sustained by the CA,[52] as in this case. But it must be equally stressed that this general rule is not cast in stone as not to admit recognized exceptions considering that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[53]

With these jurisprudential teachings as guide, the Court shall proceed with the evaluation of the case before it.

---

[49] *Daayata v. People*, G.R. No. 205745, 8 March 2017.

[50] *People v. Alboka*, G.R. No. 212195, 21 February 2018.

[51] *Id*.

[52] *Belmonte v. People*, G.R. No. 224143, 28 June 2017.

[53] *People v. Arposeple*, *supra* note 46.

The prosecution failed to prove that the apprehending team complied with Sec. 21 of R.A. No. 9165.

Jurisprudence is consistent as to the elements that the prosecution needs to prove beyond reasonable doubt in order to secure a conviction for illegal sale of dangerous drugs under Sec. 5,[54] Art. II of R.A. No. 9165, *viz*: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.[55]

In all prosecutions for violations of R.A. No. 9165, the *corpus delicti* is the dangerous drug itself, the existence of which is essential to a judgment of conviction; thus, its identity must be clearly established[56] beyond reasonable doubt to prove its case against the accused.[57] In order to preclude, therefore, any doubt on the identity of the dangerous drugs, the prosecution has the burden to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its

---

[54] 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.

x x x x x x x x x

[55] *People v. Alboka*, *supra* note 50.

[56] *People v. Arposeple*, *supra* note 46.

[57] *People v. Calvelo*, G.R. No. 223526, 6 December 2017.

presentation in court as evidence of the *corpus delicti*. In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place.[58] Equally significant, therefore, as establishing all the elements of violation of R.A. No. 9165 is proving that there was no hiatus in the chain of custody of the dangerous drugs and paraphernalia.[59] The Court has unfailingly explained the need to establish the identity of the seized drugs, *viz*:

> Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering. or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.[60]

Noteworthily, even the Dangerous Drugs Board (*DDB*) — the policy — making and strategy-formulating body in the planning and formulation of policies and programs on drug prevention and control tasked to develop and adopt a comprehensive, integrated, unified and balanced national drug abuse prevention and control strategy[61] — has expressly defined chain of custody involving the dangerous drugs and other substances in the following terms in Sec. 1(b) of DDB Regulation No. 1, Series of 2002,[62] to wit:

---

[58] *Id*.

[59] *People v. Arposeple*, *supra* note 46.

[60] *Id*., citing *People v. Jaafar*, G.R. No. 219829, 18 January 2017, 815 SCRA 19, 29.

[61] Sec. 77, R.A. No. 9165.

[62] Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the IRR of R.A. No. 9165 in relation to Section 81(b), Article IX of R.A. No. 9165.

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.

On the one hand, R.A. No. 9165 provides for the specific procedure to guide the police officers in preserving the integrity and evidentiary value of the seized items from the accused, *viz*:

Sec. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

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

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner,

shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

x x x x x x x x x

The Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 specifically outlines the proper procedure to be followed in effecting Sec. 21(a) of the Act, *viz*:

a. The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further that noncompliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**. (emphasis and underscoring supplied)

In conjunction with Sec. 21, Art. II of R.A. No. 9165, jurisprudence dictates the four links in the chain of custody of the confiscated item that must be established by the prosecution: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating

officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[63]

On the first link, the prosecution was able to establish that Viernes marked the confiscated heat-sealed transparent plastic sachets with the markings Exhibits "A"[64] and "B"[65] and his initials "BFV" and the date "08-12-06" in the presence of the accused-appellants.[66] It must be stressed however, that equally required pursuant to Sec. 21, Art. II of R.A. No. 9165 is that the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same.

While it would appear from the certificate of inventory that the inventory was witnessed by "Ding Bermudez" (*Bermudez*) of the Press Corps and barangay kagawad "Artemio P. Torres" (*Torres*), the prosecution never tried to elicit from Viernes how and when these witnesses to the inventory affixed their respective signatures on the certificate. Neither were Bermudez and Torres called to the witness stand to testify on the manner by which they signed the certificate. The Court cannot close its eyes on this glaring flaw as it has repeatedly stressed that "**[w]ithout the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the [seized drugs], the**

---

[63] *People v. Alboka*, *supra* note 50.

[64] Exh. "D".

[65] Exh. "D-1".

[66] TSN, 18 July 2007, pp. 20-22.

evils of switching, 'planting' or contamination of the evidence that had tainted the buy-busts conducted under the regime of R.A No. 6425[67] again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused**. Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."[68]

Additionally, the prosecution was not able to prove that the seized items were inventoried and photographed in the presence of the accused--appellants and that copies thereof were furnished them. Indeed, the records do not show any photograph depicting the confiscated items. Worse, the certificate of inventory was not even signed by the accused-appellants or their representatives which would only lend truth to the probability that, in actuality, the inventory was never done in their presence.

What fortifies the probability that no inventory was actually made in the presence of the accused-appellants was the fact that Viernes never mentioned in his affidavit[69] that the confiscated items were inventoried at the police station. Viernes' affidavit plainly provides that after the marking of the two heat-sealed transparent sachets in the presence of the accused--appellants, the items were brought to the crime laboratory for examination. For sure, if the inventory and the taking of pictures of the seized items had actually taken place in accordance with the prescribed procedure under Sec. 21 of R.A. No. 9165, Viernes would not have failed to state the same in his affidavit.

Also truly surprising was that even Viernes was not sure that he was the one who prepared the certificate of inventory.

---

[67] Entitled "The Dangerous Drugs Act of 1972."

[68] *People v. Ceralde*, G.R. No. 228894, 7 August 2017, citing *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[69] Records, pp. 358-359; Exh. "L".

During direct examination, Viernes admitted that he was the one who prepared the certificate, *viz*:

FISCAL BAYBAY:

Q. Did you in fact reach your office with the accused and the items?
A. Yes, sir.

Q. In your office, what documents if any, did you [prepare] in order to record the confiscation of the items you identified?

A. The preparation of the certificate of inventory, sir.

Q. Where were you when that certificate of inventory was prepared?
A. I was present when it was prepared, sir.

Q. Who prepared?

A. Me, sir.[70] (emphasis supplied)

On cross-examination, Viernes wavered in his testimony stating that it was the investigator who prepared the certificate but thereafter claimed to have prepared this document upon being confronted with his statements during the direct examination, *viz*:

ATTY MEDINA:

Q. By the way, you said that after the operation there was this certificate of inventory that was prepared?
A. Yes, sir.

Q. And who actually prepared the certificate of inventory?
A. Our investigator and we were there when it was prepared, sir.

Q. So, it was the investigator who actually prepared the inventory?
A. Yes, sir.

---

[70] TSN, 18 July 2007, p. 24.

Q. Not you as you have stated in your direct testimony?

FISCAL BAYBAY: I think the witness should be confronted with the transcript whether he actually said [that] during direct testimony.

x x x x x x x x x

ATTY. MEDINA: On page 24 of the transcript of stenographic notes dated July 16, 2007 line number 18, who prepared, referring to the certificate of inventory, the answer was me.

A. The investigator and I were the ones who prepared it, sir.

Q. But not actually you who prepared the inventory?

A. He was the one who printed out the inventory but I was the one who wrote the inventory, sir.[71] (emphases supplied)

In a catena of cases, the Court had ruled that under varied field conditions, strict compliance with the requirements of Sec. 21 of R.A. No. 9165 may not always be possible. The Court clarifies that with the effectivity of R.A. No. 10640,[72] Sec. 21 of R.A. No. 9165 now reads:

SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphemalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals,

---

[71] TSN, 24 April 2008, pp. 28-29.

[72] Entitled "An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the 'Comprehensive Dangerous Drugs Act of 2002.'"

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 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**. (emphasis and underscoring supplied)

Thus, noncompliance with the requirements of Sec. 21 of R.A. No. 9165 on justifiable grounds shall not render void and invalid the seizure and custody of the confiscated items as long as the integrity and the evidentiary value of the items had been properly preserved by the apprehending team. The burden therefore is with the prosecution to prove that: (a) there is justifiable ground for non-compliance; **and** (b) the integrity and evidentiary value of the seized items are properly preserved.[73]

The record, however, is bereft of any showing that the prosecution was able to establish the justifiable ground on why the apprehending team did not comply with the guidelines set forth in Sec. 21, R.A. No. 9165, and to prove that the integrity and value of the seized evidence had nonetheless been preserved. Since the justifiable ground for noncompliance was not proven as a fact, the Court cannot presume what these grounds are or that they even exist.[74] Unquestionably, the first link in the chain of custody in this case was inherently weak causing it to irreversibly break from the other links. With the absence of

---

[73] *People v. Año*, G.R. No. 230070, 14 March 2018.

[74] *Id*.

the first link, there can no longer be a chain of custody to speak of; hence, it becomes immaterial to dwell on the succeeding links.

Under the principle that penal laws are strictly construed against the government, stringent compliance with Sec. 21, R.A. No. 9165 and its IRR is fully justified.[75] The truth that the prosecution failed to prove with resolute accuracy that the dangerous drugs presented in court as evidence against the accused-appellants were those seized from them, and the justifiable ground for the apprehending team's noncompliance with Sec. 21 of R.A. No. 9165, heavily weigh against a finding that the guilt of the accused-appellants were proven beyond reasonable doubt. Stated otherwise, the breaches in the procedure committed by the police officers, and left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the appellants as the integrity and evidentiary value of the *corpus delicti* had been compromised.[76] The Court, therefore, has no option but to acquit.

The Court lauds the untiring and unrelenting efforts of the drug enforcement agencies and the prosecutorial service in their arduous task to lessen if not totally eradicate the proliferation of prohibited drugs in the country and to arrest their pernicious effects on our countrymen, especially the youth. Notwithstanding, it will not be tiresome for the Court to tenaciously call the attention of these agencies to be prudent in the performance of their duties and to scrupulously observe the laws as they do so. It must be emphasized that the Court will not hesitate to uphold the accused's constitutional right to be presumed innocent over his conviction for a crime which has not been proven beyond reasonable doubt.

WHEREFORE, in view of the foregoing, we **REVERSE** and **SET ASIDE** the 29 November 2013 Decision and 25 April 2014 Resolution of the Court of Appeals in CA-G.R. CR-HC

---

[75] *People v. Arposeple*, *supra* note 46.

[76] *Id*.

No. 05531. Accused-appellants Manuel Ferrer *y* Remoquillo, Kiyaga Macmod *y* Usman, and Dimas Macmod *y* Mama are hereby **ACQUITTED** of the crime charged against them for failure of the prosecution to prove their guilt beyond reasonable doubt. They are ordered **IMMEDIATELY RELEASED** from detention unless they are otherwise legally confined for another cause.

Let a copy of this Decision be sent to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of Corrections is directed to report to the Court the action he will have taken within five (5) days from receipt of this Decision.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 214053. June 6, 2018]

TEODORICO CASTILLO, ALICE CASTILLO, and ST. EZEKIEL SCHOOL, INC., *petitioners, vs.* **BANK OF THE PHILIPPINE ISLANDS,** *respondent.*

SYLLABUS

REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC CASES; A PETITION WHICH HAS BEEN RENDERED MOOT AND ACADEMIC IS RIPE FOR DISMISSAL; CASE AT BAR.— Considering the lapse of time since the filing of the petitioners' Withdrawal of Petition and the lack of action on respondent's part, it appears that the instant Petition has been rendered moot and academic, and is thus ripe for

dismissal. Since the withdrawal of the Petition came upon the initiative of petitioners, respondent's inaction may be considered to be an implied concurrence or approval of the same.

APPEARANCES OF COUNSEL

Ricardo J.M. Rivera Law Office for petitioners.
Franklin S. Umadhay for respondent.

R E S O L U T I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the June 16, 2014 Decision[2] of the Court of Appeals (CA) dismissing the appeal in CA-G.R. CV No. 98643, as well as its September 1, 2014 Resolution[3] denying herein petitioners' Motion for Reconsideration.[4]

Sometime in 1997, Prudential Bank — now Bank of the Philippine Islands (BPI), herein respondent — extended various loans to petitioners Teodorico and Alice Castillo amounting to at least ₱20 million. As security, petitioners mortgaged property covered by Transfer Certificate of Title No. 102607 (the subject property) for which corresponding deeds of real estate mortgage were executed.

Petitioners defaulted in their loan payments. BPI thus filed a Petition for Extrajudicial Foreclosure of Real Estate Mortgage before the Regional Trial Court (RTC) of Malolos, Bulacan. At the auction sale held on November 26, 2008, BPI emerged as the highest bidder.

---

[1] *Rollo.* pp. 9-40.

[2] *Id.* at 42-49; penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Fernanda Lampas Peralta and Myra V. Garcia-Fernandez.

[3] *Id.* at 63-64.

[4] *Id.* at 51-61.

Petitioners were unable to redeem the subject property. A Certificate of Sale was thus issued in BPI's favor.

On June 23, 2009, BPI filed a Petition for *Ex Parte* Issuance of Writ of Possession[5] before the RTC, Third Judicial Region, Branch 79, which was docketed as LRC Case No. P 333-2009.

On September 23, 2011, the RTC issued a Decision[6] granting BPI's prayer for a writ of possession, thus:

> WHEREFORE, considering that petitioner was able to substantiate the material allegations contained in the petition, through testimonial and documentary evidence, this Court is impelled to give DUE COURSE to its prayer to be placed in possession of the subject property.
>
> Accordingly, let a Writ of Possession be issued directing the Deputy Sheriff of this Court, Enrique C. Calaguas, to place the petitioner bank in possession of the property covered by Transfer Certificate of Title No. T-102607, of the Registry of Deeds for the Province of Bulacan, pursuant to Section 7, Act No. 3135, as amended by Republic Act No. 4118.
>
> **SO ORDERED.**[7]

Petitioners interposed an appeal[8] before the CA, docketed as CA-G.R. CV No. 98643. However, in a June 16, 2014 Decision, the CA dismissed the appeal and affirmed the September 23, 2011 Decision of the RTC.

Petitioners moved to reconsider, but in its September 1, 2014 Resolution, the CA held its ground. Hence, the present Petition.

On March 4, 2015, respondent filed its Comment[9] to the instant Petition. On August 20, 2015, petitioners filed their Reply.[10]

---

[5] *Id*. at 67-73.

[6] *Id* at 125-132; penned by Judge Olivia V. Escubio-Samar.

[7] *Id*. at 132.

[8] *Id*. at 133-151; petitioners' Appellants' Brief.

[9] *Id*. at 159-167.

[10] *Id*. at 174-176.

In a January 25, 2016 Resolution,[11] the Court resolved to give due course to the Petition. Thereafter, the parties submitted their respective memoranda.[12]

On October 13, 2016, petitioners filed a Withdrawal of Petition,[13] with a prayer for withdrawal or dismissal of the instant Petition on the ground of compromise.

In an April 3, 2017 Resolution,[14] the Court required BPI to comment on the petitioners' Withdrawal of Petition. However, to date, the bank has failed to file its written comment.

Considering the lapse of time since the filing of the petitioners' Withdrawal of Petition and the lack of action on respondent's part, it appears that the instant Petition has been rendered moot and academic, and is thus ripe for dismissal. Since the withdrawal of the Petition came upon the initiative of petitioners, respondent's inaction may be considered to be an implied concurrence or approval of the same.

WHEREFORE, the Petition is **DISMISSED.**

SO ORDERED.

Leonardo-de Castro[*] (*Acting Chairperson*), *Perlas-Bernabe,*[**] and *Gesmundo,*[***] *JJ.,* concur.

Tijam, J., on official leave.

---

[11] *Id*. at 178-179.

[12] *Id*. at 180-207, 211-225.

[13] *Id*. at 227-231.

[14] *Id*. at 238.

[*] Per Special Order No. 2559 dated May 11, 2018.

[**] Per raffle dated June 6, 2018.

[***] Per Special Order No. 2560 dated May 11, 2018.

FIRST DIVISION

[G.R. No. 214940. June 6, 2018]

MARIA DE LEON TRANSPORTATION, INC., represented by MA. VICTORIA D. RONQUILLO, *petitioner, vs.* **DANIEL M. MACURAY,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ABANDONMENT OF EMPLOYMENT; NOT PRESENT WHEN EMPLOYEE AVAILED OF THE EMPLOYER'S PRACTICE OF ALLOWING ITS BUS DRIVERS TO TAKE BREAKS FROM WORK; PAYMENT OF UNPAID SALARIES AND RETIREMENT BENEFITS ARE PROPER.—** [R]espondent availed of petitioner's company practice and unwritten policy – of allowing its bus drivers to take needed breaks or sabbaticals to enable them to recover from the monotony of driving the same route for long periods – and obtained work elsewhere. x x x [W]hen [respondent] did this, he was already approaching retirement age – he was 58 years old in April, 2009, when he took a break from being a bus driver – and when he filed the labor case in November, 2011, he was already 60. He was born on May 20, 1951. By that time, he had served petitioner for 18 years, or from April 1991 up to March 31, 2009. x x x [S]ince respondent was not dismissed from work, x x x [he is entitled to his] unpaid salary/commission, and retirement benefits, which are due to him for the reason that he reached the age of retirement while under petitioner's employ.

2. **CIVIL LAW; DAMAGES; ATTORNEY'S FEES; PROPER ACTIONS FOR RECOVERY OF WAGES AND IN ANY OTHER CASE THE COURT DEEMS IT JUST AND EQUITABLE.—** As for attorney's fees, the Court finds that respondent is entitled thereto. Under paragraphs 7 and 11, respectively, of Article 2208 of the Civil Code, attorney's fees and expenses of litigation, other than judicial costs, may be recovered "in actions for the recovery of wages of household helpers, laborers and skilled workers" and "in any other case where the court deems it just and equitable that attorney's fees

and expenses of litigation should be recovered." The CA award of ₱20,000.00 is thus reasonable and just under the circumstances.

APPEARANCES OF COUNSEL

Hidalgo Estepa and Associates Law Offices for petitioner.
Castro & Ulep Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to set aside the March 17, 2014 Decision[2] and September 17, 2014 Resolution[3] of the Court of Appeals (CA) granting the Petition for *Certiorari*[4] in CA-G.R. SP No. 130387 and denying herein petitioner's Motion for Reconsideration,[5] respectively.

Factual Antecedent

On November 21, 2011, respondent Daniel M. Macuray filed a Complaint[6] for illegal dismissal against petitioner Maria De Leon Transportation, Inc. before the Regional Arbitration Branch No. 1 of San Fernando City, La Union, docketed as NLRC Case No. RAB-I-11-1119-11 (LC).

In his Position Paper,[7] respondent claimed that, in April, 1991, he was employed as a bus driver of petitioner, a company engaged in paid public transportation; that he plied the Laoag-Manila-

---

[1] *Rollo,* pp. 13-68.

[2] *Id.* at 74-95; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Michael P. Elbinias and Victoria Isabel A. Paredes.

[3] *Id.* at 70-72.

[4] *Id.* at 190-216.

[5] *Id.* at 373-392.

[6] *Id.* at 119.

[7] *Id.* at 120-136.

Laoag route; that he received a monthly pay/commission of ₱20,000.00; that, in November 2009, petitioner's dispatcher did not assign a bus to him, for no apparent reason; that for a period of one month, he continually returned to follow up if a bus had already been assigned to him; that finally, when he returned to the company premises, the bus dispatcher informed him that he was already considered AWOL (absent without leave), without giving any reason therefor; that he went back to follow up his status for about six months in 2010, but nobody attended to him; that he was not given any notice or explanation regarding his employment status; that he felt betrayed by the petitioner, after having served the latter for 18 years; that he considered himself illegally dismissed; that during this time, he was already 62 years old, but he received no benefits for his service; that he was being charged for the cost of gasoline for the bus he would drive; and that petitioner owed him three months' salary for the year 2009. Thus, he prayed that he be awarded backwages, separation pay, retirement pay, 13th month pay, damages, attorney's fees, and costs of suit.

In its Position Paper and other pleadings,[8] petitioner claimed that respondent was hired on commission basis, on a "no work, no pay" and "per travel, per trip" basis; that respondent was paid an average of ₱10,000.00 commission per month without salary; that, contrary to his claim of illegal dismissal, respondent permanently abandoned his employment effective March 31, 2009, after he failed to report for work; that it received information later on that respondent was already engaged in driving his family truck and was seen doing so at public roads and highways; that respondent's claim of illegal dismissal was not true, as there was no dismissal or termination of his services, and no instructions to do so were given; that the bus dispatcher from whom respondent inquired about his status had no power to terminate or declare him AWOL; that respondent had not actually approached management to inquire about his employment status, even though he and all the other employees

[8] *Id.* at 237-247, 315-337.

knew that the Assistant Manager, Corporate Secretary, and Director of the bus company, Elias Dimaya, resided with his family within the bus company's station and compound in San Nicolas, Ilocos Norte; that respondent's witnesses had an axe to grind against petitioner, which accounts for their false testimonies; that based on respondent's Complaint, he claimed to have been illegally dismissed in January, 2009, which was contrary to the documentary evidence which showed that he continued to work until March, 2009, after which he completely abandoned his employment; that per Joint Affidavit[9] of petitioner's bus dispatchers, it is not true that respondent ever made inquiries and follow-ups about his employment until mid-2010; that there was no illegal dismissal, and thus respondent was not entitled to his monetary claims; that respondent never refuted the claim that he abandoned his employment with petitioner because he took on a new job as driver for his family's trucking business and was seen doing so in public roads and highways; that it was common practice for bus drivers of the petitioner to simply stop reporting for work for short periods of time, or even years, after which they would return and ask to be allowed to drive petitioner's buses once more, which management allowed after the absentee drivers gave satisfactory and reasonable explanations for their absences; that this practice was impliedly sanctioned in order to give the drivers the opportunity to take time off from the stress and boredom of driving on long trips; that respondent's allegations were not true, particularly his claim that he was told by a bus dispatcher that he was considered AWOL, since he refused to divulge the identity of the bus dispatcher who gave such information to him; and that there was no truth to respondent's allegations that the cost of gasoline for every bus trip was charged to him, as it was shouldered by the petitioner. Petitioner prayed for the dismissal of the case.

---

[9] *Id.* at 322-323.

Ruling of the Labor Arbiter

On August 24, 2012, Labor Arbiter Irenarco R. Rimando rendered a Decision[10] dismissing the case for lack of merit, declaring that —

> x x x [Complainant] cannot state with certainty the date and time of his dismissal if it was January 2009, middle of 2009 or November 2009 x x x.
>
> [I]n his pro forma complaint sheet, he mentioned that he was already 61 at the time that he filed his complaint on 23 November 2011. Yet in his position paper he mentioned that he was already 62 years old after he rendered service for 18 years x x x.
>
> On the issue of constructive dismissal, seemingly Rudy Compañero and Loreto Casil presented a story that [showed] they were aware that Daniel Macuray was poorly treated by respondent when he was still employed between 2007 and 2009. But the records [did] not show that the complainant had shown any sign of whimper or protest. Therefore, x x x the claim is unfounded.
>
> The [alleged] unpaid fuel expenses that were incurred by unidentified drivers for respondent's bus with Body No. 1 [was] not supported by substantial evidence which a reasonable mind might accept to justify a conclusion. He did not present a single accounting of his purchases for diesel fuel and how much. The complainant did not even claim that the unpaid gasoline expenses were charged to him.
>
> The complainant failed to present evidence that the treatment he received from respondent was unreasonable or oppressive and unbearable that would amount to a constructive dismissal x x x.
>
> x x x x x x x x x
>
> The complainant never returned back to work after 31 March 2009. An informal voluntary termination is recognized under the law as an authorized ground for dismissal x x x. In such case compliance with the two (2) notice requirement of due process is not necessary. When this happens the employee is not entitled to separation pay and

---

[10] *Id*. at 110-118.

backwages. The dismissal is not illegal. Hence the claims for separation pay, backwages and damages are denied.

x x x x x x x x x

IN VIEW THEREOF, this case is dismissed for lack of merit.

SO ORDERED.[11] (Citations omitted)

Ruling of the National Labor Relations Commission

Respondent filed a Memorandum of Appeal[12] before the National Labor Relations Commission (NLRC). On December 28, 2012, a Resolution[13] was issued modifying the Labor Arbiter's judgment by awarding in favor of respondent the amount of ₱50,000.00 as financial assistance. The NLRC held:

x x x A close evaluation of the records however [showed] that complainant-appellant was unsure of the date of his dismissal. In his complaint, he entered the date January, 2009, in his pleadings the year 2009 and [in] his position paper be stated the month of November, 2009. Moreover, he failed to identify the dispatcher who did not assign a bus to him. Complainant-appellant therefore failed to establish the fact of his alleged dismissal with substantial evidence.

On the other hand, respondents-appellees stress that complainant-appellant did not report for work anymore from March 31, 2009 and in support thereof submitted folders showing the particulars of the trips where complainant-appellant served as assistant driver for the period 3 January to 30 March 2009; that neither did complainant-appellant file any leave of absence. Thus, respondents-appellees concluded that by his failure to report for work beginning 31 March 2009, complainant-appellant permanently abandoned and severed his employment effective 31 March 2009.

Although absence without valid or justifiable reason is an element of abandonment, settled is the rule, however, that mere absence or

---

[11] *Id*. at 116-118.

[12] *Id*. at 137-168.

[13] *Id*. at 100-107: penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Presiding Commissioner Alex A. Lopez and Commissioner Gregorio O. Bilog III.

failure to report for work is not tantamount to abandonment of work. x x x

x x x Respondents-appellees' conclusion that complainant-appellant abandoned his work lacks factual basis.

In the consolidated cases of Leonardo vs. NLRC x x x the Supreme Court also ordered the reinstatement sans backwages of the employee x x x who was declared neither to have abandoned his job nor was he constructively dismissed. As pointed out by the Court, in a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer. Each party must bear his own loss.

In this case, we note that complainant-appellant is already sixty two years old and he may not be apt for the job as bus driver considering the long hours of travel from Laoag City to Manila. Hence, his reinstatement may no longer be possible. Separation pay however[,] cannot also be awarded to complainant-appellant because he was not dismissed by respondent appellee. In cases where there was no dismissal at all, separation pay should not be awarded. x x x

Under this circumstance, financial assistance may be allowed as a measure of social justice and as an equitable concession. x x x

x x x Respondents-appellees are therefore ordered to award financial assistance to complainant appellant in the amount of FIFTY THOUSAND PESOS (₱50,000.00).

WHEREFORE, premises considered, the DECISION dated 24 August 2012 is hereby MODIFIED ordering respondents-appellees to award financial assistance by (sic) complainant-appellant in the amount of FIFTY THOUSAND (₱50,000.00) PESOS.

SO ORDERED.[14] (Citations omitted)

Respondent filed a Motion for Reconsideration,[15] which the NLRC denied in a March 18, 2013 Resolution.[16]

---

[14] *Id*. at 104-107.

[15] *Id*. at 169-183.

[16] *Id*. at 96-98.

Ruling of the Court of Appeals

Respondent filed a Petition for *Certiorari*[17] before the CA, questioning the NLRC dispositions and praying for the relief he originally sought in his labor complaint.

On March 17, 2014, the CA rendered the assailed Decision, decreeing thus:

> We find the petition to be meritorious.
>
> x x x x x x x x x
>
> In an illegal dismissal case, the *onus probandi* rests on the employer company to prove that its dismissal of an employee was for a valid cause. There is no such proof of a valid cause in the instant case. On the contrary, the facts bear the marks of constructive dismissal.
>
> x x x x x x x x x
>
> The Labor Arbiter's findings that there was an informal voluntary termination has no basis. Based on the age of petitioner as appearing in the records of this case, he was 58 years of age in November of 2009 when he was no longer assigned any bus. Nearing his retirement, it [was] irrational that he would suddenly opt for an informal voluntary termination. Thus, the NLRC's appreciation of facts is more in keeping with logic as it held that there was no abandonment. Surely, petitioner kept going back to the respondent company to check whether or not there would already be a bus assigned to him. There being no bad records or previous transgressions committed by the petitioner against respondent company, or any third party in relation to his job during his eighteen (18) years of working for respondent company, there was no rhyme nor reason why he would suddenly not be assigned a bus to drive and no reason why he would suddenly voluntarily stop working while nearing his retirement.
>
> x x x x x x x x x
>
> Reinstatement of petitioner, however, may not be in the best interest of respondent company and or petitioner himself. As correctly declared by the NLRC, petitioner is 'already sixty-two years old and he may not be apt for the job as a bus driver considering the long hours of

---

[17] *Id*. at 190-216.

travel from Laoag City to Manila. Hence, his reinstatement may no longer be possible.'

x x x x x x x x x

Undoubtedly, herein petitioner Daniel Macuray was performing a job that has an intimate connection to the business of respondent company as he worked as a driver of respondent Maria de Leon Transportation, a public transportation business company, for eighteen (18) years. As a regular employee who has been constructively dismissed, petitioner is entitled to separation pay equivalent to one (1) month salary for every year of service.

Under the above-mentioned twin remedies, there is likewise basis for the grant of backwages. x x x. In this case, petitioner was illegally dismissed in November of 2009 when he was no longer assigned any bus without cause or reason. Thus, his backwages may be computed from November of 2009 until December 28, 2012, when the NLRC held that 'reinstatement may no longer be possible.'

Reinstatement being no longer possible and petitioner being 62 years old, petitioner is entitled to retirement pay, having worked for respondent company for eighteen (18) years. It is herein noted that the required length of service, to be entitled to retirement pay under the law, is only five (5) years. The applicable law is Article 287 of the Labor Code, a amended by R.A. No. 7641 x x x:

x x x x x x x x x

In view thereof, petitioner is entitled to one-half (½) of his monthly commission for every year of service. x x x. Thus, for having been illegally dismissed, petitioner therein was entitled not only to separation pay and full backwages, but additionally, to his retirement benefits pursuant to any collective bargaining agreement in the workplace or, in the absence thereof, as provided in Section 14, Book VI 8 of the Implementing Rules of the Labor Code.

x x x x x x x x x

As interpreted by the Supreme Court in *Auto Bus Transport Systems vs. Bautista,* 'employees engaged on task or contract basis or paid on purely commission basis are not automatically exempted from the grant of service incentive leave, unless, they fall under the classification of field personnel.' Herein petitioner does not fall under the classification of field personnel. If required to be at specific places

at specific times, employees including drivers cannot be said to be field personnel despite the fact that they are performing work away from the principal office of the [employer]. In this regard, Section 2, Rule V, Book III of the Implementing Rules and Regulations provides that '[e]very employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.' x x x

Petitioner, who is paid on purely commission basis, is however not entitled to a 13th month pay, being among those specifically enumerated by law as not covered by PD No. 851 (the law requiring employers to pay employees 13th month pay) x x x

x x x x x x x x x

Prescinding from the foregoing, moral damages, exemplary damages, nominal damages and attorney's fees are due to the petitioner.

x x x Petitioner is thus awarded moral damages in the amount of ₱100,000.00 and exemplary damages in the amount of ₱50,000.00.

x x x In accordance with existing jurisprudence, petitioner is awarded ₱30,000.00 in nominal damages.

A grant of attorney's fees in the amount of ₱20,000.00 is likewise proper.

x x x x x x x x x

WHEREFORE, in view of the foregoing premises, the petition is hereby GRANTED. The Resolutions dated December 28, 2012 and March 18, 2013 issued by the National Labor Relations Commission in NLRC LAC No. 10-003028-12 and Decision dated August 24, 2012, rendered by the Regional Arbitration Branch No. 1 of the Commission in NLRC Case No. RAB-I-11-1119-11 (LC) are REVERSED AND SET ASIDE.

Accordingly, a NEW JUDGMENT is entered finding herein petitioner to have been illegally dismissed by respondent company from employment and thus is entitled to: 1) separation pay; 2) backwages; 3) retirement pay; 4) service incentive leave; 5) moral damages; 6) exemplary damages; 7) nominal damages; and 8) attorney's fees.

Let this case be remanded to the NLRC for computation of the exact amounts due to the petitioner consistent with the findings made in this Decision.

SO ORDERED.[18] (Citations omitted)

Petitioner filed a motion for reconsideration, but the CA denied the same through its September 17, 2014 Resolution. Hence, the instant Petition.

In an April 18, 2016 Resolution,[19] the Court resolved to give due course to the Petition.

Issue

Petitioner argues in this Petition that —

1. THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN NOT DISMISSING OUTRIGHT THE PETITION FOR *CERTIORARI* FOR HAVING BEEN FILED X X X BEYOND THE 60-DAY REGLEMENTARY PERIOD. X X X

X X X X X X X X X

3. THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN NOT DISMISSING OUTRIGHT THE PETITION FOR *CERTIORARI* ON THE GROUND THAT THE DOCKET FEES WERE NOT PAID BY PRIVATE RESPONDENT AT THE TIME HE FILED THE PETITION OR WITHIN HIS REQUESTED PERIOD OF EXTENSION X X X

4. THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN NOT DISMISSING OUTRIGHT THE PETITION FOR *CERTIORARI* OF THE PRIVATE RESPONDENT ON THE GROUND THAT HE FAILED TO INDICATE THEREIN THE OTHER TWO (2) MATERIAL DATES, NAMELY: THE DATE OF HIS RECEIPT OF THE RESOLUTION DATED 28 DECEMBER 2012 OF RESPONDENT COMMISSION MODIFYING THE DECISION DATED 24 AUGUST 2012 OF EXECUTIVE LABOR ARBITER, AND THE DATE WHEN HE FILED HIS MOTION FOR RECONSIDERATION THERETO. X X X

---

[18] *Id*. at 83-94.

[19] *Id*. at 513-514.

5. THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN CONCLUDING THAT PRIVATE RESPONDENT WAS CONSTRUCTIVELY OR ILLEGALLY DISMISSED BY PETITIONER X X X

6. THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN CONCLUDING THAT PRIVATE RESPONDENT IS ENTITLED TO SEPARATION PAY, BACKWAGES, RETIREMENT PAY, SERVICE INCENTIVE LEAVE PAY, MORAL DAMAGES, EXEMPLARY DAMAGES, NOMINAL DAMAGES AND ATTORNEY'S FEES.[20]

Petitioner's Arguments

Petitioner argues that the CA erred in entertaining respondent's Petition for *Certiorari* as it was belatedly filed and defective in form; that the CA erred in failing to appreciate that respondent was not illegally dismissed, but that he voluntarily resigned and abandoned his employment when he left to work for his family's trucking business; that respondent knowingly timed the filing of the instant labor case in such a way as to recover retirement and other benefits; and that since there was no illegal dismissal, respondent was thus not entitled to his money claims, including retirement pay and damages, as there was no bad faith on petitioner's part.

Respondent's Argument

Respondent argues that the Petition should be denied for lack of merit; that the CA's dispositions are correct and must be upheld; that there were no procedural lapses in the filing of the CA Petition for *Certiorari;* that petitioner itself was guilty of procedural lapses in the filing of the instant Petition; that the CA was correct in finding that he was illegally dismissed from employment; and that the CA did not err in awarding his money claims.

---

[20] *Id*. at 29-32.

Our Ruling

Respondent claims that he continued to follow up on his employment status for six months. Petitioner counters that he could not have done the follow ups because members of its top management never met with him; even the bus dispatchers, who were not part of the bus company's management, denied meeting with respondent; they declared in a joint affidavit submitted to the labor tribunals that respondent never approached them at any time during the said period that respondent claimed he continued following up on his work status.

Indeed, respondent did not specify to whom his follow-ups were directed; if they were upon management, he would have said so, and the bus company management would have had no reason to deny this claim. However, the only follow-up he particularly referred to was one directed to a bus dispatcher, a certain Roger Pasion, who even denied the claim in an affidavit.[21]

For its part, petitioner claims that respondent simply stopped reporting for work; that he left his post as bus driver to work for his family's trucking business; and that he was seen driving the family truck on public roads and highways. This was not denied by the respondent. Petitioner further contends that what respondent did was typical of its bus drivers; they simply stop reporting for work for short periods of time, even years, only to re-appear looking to work for the company once again. Petitioner states that this is allowed in order to give its drivers the needed break from boredom typically encountered from driving on long trips on familiar, boring routes, a sort of therapy and sabbatical, a time to refresh oneself from monotonous work that benefits the driver, passengers, and the bus company itself; that this practice also affords its drivers the opportunity to find more lucrative employment or greener pastures elsewhere without foreclosing the possibility of returning to work for the company in the future.

---

[21] *Id*. at 322-323.

The Court is inclined to believe petitioner's allegations: respondent left his work as bus driver to work for his family's trucking business. There is no truth to the allegation that respondent was dismissed, actually or constructively. He claims that the dispatcher informed him that he was AWOL; however, a mere bus dispatcher does not possess the power to fire him from work – this is a prerogative belonging to management. Respondent did not show that he met with management to inquire on his status. On the other hand, it appears that the Assistant Manager, Corporate Secretary, and Director of the bus company, Elias Dimaya, resided with his family within the bus company's station and compound in San Nicolas, Ilocos Norte. Having worked for the bus company for 18 years, respondent should have known this fact, and he could have visited with Elias Dimaya at anytime, if his employment was so important that it meant his own survival and that of his family. Apparently, however, it would appear that this was not the case, for the simple reason that respondent had found employment elsewhere.

Thus, respondent's failure to show that his follow-ups were properly directed at management bolsters petitioner's claim that no follow-ups were made by him. The logical explanation for this is that he found employment elsewhere and thus opted to stop reporting for work, as was the practice of other bus drivers working for petitioner.

At any rate, even assuming that respondent was indeed told by respondent's bus dispatcher Roger Pasion that he was AWOL, this was not tantamount to dismissal, actual or constructive. An ordinary bus dispatcher has no power to dismiss an employee; in a typical bus company, a driver might even be of more significance than an ordinary dispatcher. Bus drivers are a more valuable resource than a dispatcher; without the former, the latter is useless. Without a driver, there could be no bus to dispatch or trip to schedule. It cannot therefore be said that an ordinary dispatcher is superior to a bus driver; at most, they are equal in rank.

The fact that respondent made no sincere effort to meet with the management of the bus company gives credence to petitioner's allegation that he was never fired from work.

However, it cannot be said that respondent abandoned his employment. Petitioner itself admitted that it sanctioned the practice of allowing its drivers to take breaks from work in order to afford them the opportunity to recover from the stresses of driving the same long and monotonous bus routes by accepting jobs elsewhere, as some form of sabbatical or vacation, without losing productivity and in come and to safeguard the interests of the company and its patrons, as well as to avoid fatal accidents were the drivers to be suffered to work under continuous stressful conditions occasioned by driving on the same monotonous routes day in and day out.

Simply put, respondent availed of petitioner's company practice and unwritten policy – of allowing its bus drivers to take needed breaks or sabbaticals to enable them to recover from the monotony of driving the same route for long periods – and obtained work elsewhere. It appears that what matters to respondent is that when he did this, he was already approaching retirement age – he was 58 years old in April, 2009, when he took a break from being a bus driver – and when he filed the labor case in November, 2011, he was already 60. He was born May 20, 1951.[22] By that time, he had served petitioner for 18 years, or from April 1991 up to March 31, 2009. Respondent may have thought that for serving the bus company for a significant period, he should be rewarded for his loyalty.

Thus, since respondent was not dismissed from work, petitioner may not be held liable for his (respondent's) monetary claims, except those that were actually owing to him by way of unpaid salary/commission, and retirement benefits, which are due to him for the reason that he reached the age of retirement while under petitioner's employ. As to unpaid salaries/ commissions, it appears from the record that petitioner failed to pay respondent three months' worth, that is, for the period

[22] *Id*. at 80.

January to March, 2009 – which, at ₱10,000.00 per month – amounts to ₱30,000.00. Indeed, this could be one of the reasons why respondent stopped reporting after March 31, 2009, as he complained of petitioner's failure to pay his salaries/commissions for the said period.

As for retirement benefits, respondent is entitled to them considering that he was never dismissed from work, either for cause or by resignation or abandonment. As far as petitioner is concerned, he merely went on a company-sanctioned sabbatical. It just so happened that during this sabbatical, he reached the retirement age of 60; by this time, he is already 67 years old. By filing the labor case, he may have pre-empted the payment of his retirement benefits; but it is a clear demand for retirement benefits nonetheless. Understandably, respondent may have already expected that he would not be paid retirement benefits since he stopped reporting for work in 2009 when he took his sabbatical; for him, such move might have been construed as a resignation or abandonment by his employer, the petitioner, and rightly so – for this is precisely petitioner's defense in this case.

Under Article 287 of the Labor Code,

> Art. 287. Retirement. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.
>
> In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.
>
> In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (½) month salary for every year of

service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term one-half (½) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

Retail, service and agricultural establishments or operations employing not more than (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions provided under Article 288 of this Code.

In the absence of a retirement plan or agreement in Maria De Leon Transportation, Inc., the Court hereby declares that respondent is entitled to one month's salary for every year of service, that is:

₱10,000.00 x 18 years = ₱180,000.00

Retirement compensation equivalent to one month's salary for every year of service is more equitable and just than the CA's pronouncement of one-half month's salary per year of service, which the Court finds insufficient. This is considering that petitioner has been paying its drivers commission equivalent to less than the minimum wage for the latter's work, and in respondent's case, it has delayed payment of the latter's compensation for three months. On the other hand, petitioner's lax policies regarding the coming and going of its drivers, as well as the fact that respondent's layovers are considerable – it appears that throughout his employment, respondent spends a good number of days each month not driving for petitioner, which thus allows him to accept other work outside – makes up for deficiencies in the parties' compensation arrangement.

Petitioner's argument that respondent's CA Petition for *Certiorari* should have been dismissed outright for being tardy and for being procedurally defective deserves no consideration. As has been shown above, respondent is entitled to part of his monetary claims; the NLRC judgment failed to appreciate that respondent remained an employee of petitioner. As against

petitioner's claim of procedural infirmities, the Court must uphold and protect respondent's substantive rights. Procedure cannot prevail over substantive rights in this case.

> Indeed, where as here, there is a strong showing that grave miscarriage of justice would result from the strict application of the [r]ules, we will not hesitate to relax the same in the interest of substantial justice. It bears stressing that the rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within our power to suspend the rules, or except a particular case from its operation.[23]

On the other hand, the CA Decision is unwarranted on account of its declaration that respondent was illegally dismissed from work, which is not the case. As a result, it awarded other claims that respondent was not entitled to.

As for attorney's fees, the Court finds that respondent is entitled thereto. Under paragraphs 7 and 11, respectively, of Article 2208 of the Civil Code, attorney's fees and expenses of litigation, other than judicial costs, may be recovered "in actions for the recovery of wages of household helpers, laborers and skilled workers" and "in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered." The CA award of ₱20,000.00 is thus reasonable and just under the circumstances.

Having resolved the case in the foregoing manner, the Court finds no need to address the other issues raised by the parties. They have become unnecessary and superfluous; their resolution contributes nothing to the essence of the Court's disposition.

---

[23] *Coronel v. Hon. Desierto,* 448 Phil. 894, 903 (2003).

WHEREFORE, the March 17, 2014 Decision and September 17, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 130387 are **REVERSED** and **SET ASIDE,** and in lieu thereof, judgment is hereby rendered **AWARDING** respondent Daniel M. Macuray the following amounts:

1. ₱30,000.00 as unpaid salaries/commissions for the period January to March, 2009;

2. ₱180,000.00 as retirement pay;

3. ₱20,000.00 as and by way of attorney's fees; and

4. Interest of 12% *per annum* on the total monetary awards, computed from the filing of the Complaint up to June 30, 2013, and thereafter 6% *per annum* from July 1, 2013 until their full satisfaction.

SO ORDERED.

Leonardo-de Castro[*] (*Acting Chairperson*), *Jardeleza,* and *Gesmundo,*[**] *JJ.,* concur.

Tijam, J., on official leave.

THIRD DIVISION

[G.R. No. 215732. June 6, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CHRISTOPHER BADILLOS,** *accused-appellant.*

---

[*] Per Special Order No. 2559 dated May 11, 2018.

[**] Per Special Order No. 2560 dated May 11, 2018.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; RULES & ADMISSIBILITY; TESTIMONIAL EVIDENCE; EXCEPTIONS TO THE HEARSAY RULE; DYING DECLARATION; REQUISITES.— A dying declaration is admissible in evidence if the following circumstances are present: (1) it concerns the cause and the surrounding circumstances of the declarant's death; (2) it is made when death appears to be imminent and the declarant is under a consciousness of impending death; (3) the declarant would have been competent to testify had he or she survived; and (4) the dying declaration is offered in a case in which the subject of the inquiry involves the declarant's death. In order to make a dying declaration admissible, a fixed belief in inevitable and imminent death must be entered into by the declarant. It is the declarant's belief of his impending death and not the rapid succession of his death in point of fact that renders his declaration admissible as a dying declaration. The test is whether the declarant has abandoned all hopes of survival and looks on death as certainly impending.

2. ID.; ID.; ID.; ID.; ID.; PART OF THE *RES GESTAE*.— [W]hile Alex's statement does not qualify as a dying declaration, the same may still be admitted as an exception to the hearsay rule for being part of *res gestae*. For a statement to be considered part of *res gestae*, the following elements must concur: (a) the principal act, the *res gestae*, is a startling occurrence; (b) the statement was made before the declarant had time to contrive or devise; and (c) the statement concerns the occurrence in question and its immediate attending circumstances.

3. ID.; ID.; FACTUAL FINDINGS OF THE TRIAL COURT, RESPECTED.— In criminal cases, the established rule is that factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record. It is only in exceptional circumstances, such as when the trial court overlooked material and relevant matters, that this Court will re-calibrate and evaluate the factual findings of the court below.

4. ID.; ID.; ALIBI; INHERENTLY WEAK DEFENSE EASY TO FABRICATE AND HIGHLY UNRELIABLE.— Alibi is an inherently weak defense because it is easy to fabricate and highly

unreliable. To merit approbation, the appellant must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time when the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed. x x x Furthermore, alibi cannot prevail over the positive and credible testimony of the prosecution witness that accused-appellant committed the crime. Indeed, a categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying thereon, prevails over the defenses of denial and alibi which, if not substantiated by clear and convincing proof, constitute self-serving evidence undeserving of weight in law.

5. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS; SUDDENNESS OF ATTACK IS NOT SUFFICIENT WHEN NOT CONSCIOUSLY ADOPTED.— Treachery is present 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. A finding of the existence of treachery should be based on clear and convincing evidence. Such evidence must be as conclusive as the fact of killing itself and its existence cannot be presumed. In the absence of proof beyond reasonable doubt that treachery attended the killing of the victim, the crime is homicide, not murder. Thus, for treachery to be appreciated, two elements must concur: *first*, the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and *second*, the said means, method, and manner of execution were deliberately adopted. It has been consistently held, however, that mere suddenness of an attack is not sufficient to constitute treachery where it does not appear that the aggressor adopted such mode of attack to facilitate the perpetration of the killing without risk to himself.

6. ID.; HOMICIDE; PENALTY AND MONETARY AWARDS.— Under Article 249 of the Revised Penal Code, the penalty for homicide is *reclusion temporal*. Considering that there is neither aggravating nor mitigating circumstance, the penalty should be imposed in its medium period pursuant to Article 64(1) of

the RPC. Applying the Indeterminate Sentence Law, Christopher should be sentenced to an indeterminate penalty the minimum of which should be within the range of the penalty next lower in degree than that prescribed by law for the offense, that is, *prision mayor* (6 years and 1 day to 12 years) and the maximum of which should be within the range of *reclusion temporal* in its medium period (14 years 8 months and 1 day to 17 years and 4 months). Accordingly, the Court imposes upon Christopher the indeterminate penalty ranging from twelve (12) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum. Further, following *People v. Jugueta*, Christopher is ordered to pay (1) ₱50,000.00 as civil indemnity; and (2) ₱50,000.00, as moral damages. In addition, he is also ordered to pay ₱50,265.90 for the funeral and burial expenses incurred by Alex's family.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MARTIRES, *J.*:

On appeal is the 23 April 2014 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 05864, which affirmed the 21 September 2012 Decision[2] of the Regional Trial Court of Malolos, Bulacan, Branch 78, in Criminal Case No. 50-M-2008 finding herein accused-appellant Christopher Badillos (*Christopher*) guilty beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code (*RPC*).

---

[1] *Rollo*, pp. 2-18; penned by Associate Justice Magdangal M. De Leon, and concurred in by Associate Justice Stephen C. Cruz and Associate Justice Eduardo B. Peralta, Jr.

[2] Records, pp. 430-439; penned by Judge Gregorio S. Sampaga.

THE FACTS

On 5 November 2007, Christopher and a "John Doe" were charged with murder for the killing of Alex H. Gregory (*Alex*) in an Information, the accusatory portion of which reads:

> That [o]n or about the 11th day of August 2007, in the [M]unicipality of Bocaue, [P]rovince of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and helping each other, armed with a knife and with intent to kill one Alex H. Gregory, did then and there willfully, unlawfully and feloniously, with treachery attack, assault and stab with the said knife and hit with a piece of wood the said Alex H. Gregory, hitting the latter on the left portion of his chest, thereby inflicting upon him serious physical injuries which directly caused his death.
>
> Contrary to law.[3]

On 26 February 2008, Christopher, with the assistance of counsel, was arraigned and pleaded not guilty to the charge against him.[4] Trial on the merits thereafter ensued.

Evidence for the Prosecution

The prosecution presented three (3) witnesses, namely: Domingo C. Gregory (*Domingo*), Jonathan Gregory (*Jonathan*), and Elsa H. Gregory (*Elsa*). The prosecution also sought the presentation of Cecilia Lopez (*Cecilia*), the forensic physician Police Superintendent James Margallo Belgira (*P/Supt. Belgira*), and Dr. Corazon Del Rosario (*Dr. Del Rosario*) as witnesses. Cecilia's testimony, however, was dispensed with in view of the defense's admission that it would only be corroborative with the testimonies of Domingo and Jonathan. The testimonies of P/Supt. Belgira and Dr. Del Rosario were also dispensed with in view of the defense's admission of their respective qualifications, as well as the authenticity of the contents of the documents they were to identify. The combined testimonies of the prosecution witnesses sought to establish the following:

---

[3] Records, p. 2.

[4] *Id*. at 28.

Domingo testified that on 11 August 2007, at around 7:00 P.M. or 8:00 P.M., he and his cousin, Alex, were walking home to Brgy. Malibo Matanda, Pandi, Bulacan, after attending the barrio fiesta of Barangay Sta. Clara, Sta. Maria, Bulacan.[5] They were walking along an alley or "*tawid--bukid*" at Barangay Batia, Bocaue, Bulacan, when, suddenly, Christopher and an unidentified person appeared in front of them. Christopher was armed with a bladed weapon, while the unidentified person held a wooden club more particularly described as a "*dos por dos*."[6] The unidentified person struck Alex with the wooden club three times hitting him on the nape and at the back of his head. Christopher followed by stabbing Alex once in his left chest.[7] Alex was able to run at first but shortly after fell to the ground. The two assailants chased Alex, but they failed to catch him as residents from nearby houses started gathering near the scene. Thereafter, Domingo ran towards the house of his co-worker to ask for help.[8] On cross-examination, Domingo stated that the place where the incident took place was well-lit by the street lights.[9]

Domingo could not think of any reason or ill motive why Christopher and his companion would harm Alex.[10] He recalled, however, that Alex and Christopher had an argument prior to the incident. He narrated that earlier that day, he, Alex, and Christopher were among the guests of a certain "*Bong*" at the barrio fiesta of Barangay Sta. Clara. At around 6:00 P.M., they were partaking of food and drinks together with other visitors when an altercation ensued between Alex and Christopher.[11] At that time, Domingo was speaking with someone else and

---

[5] TSN, dated 1 August 2008, pp. 3-4.

[6] *Id*. at 5-7.

[7] *Id*. at 8-9.

[8] *Id*. at 9.

[9] *Id*. at 19.

[10] *Id*. at 10.

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

could not hear what the two were arguing about.[12] After that, Domingo and Alex decided to go home, leaving Bong's house ahead of Christopher. Domingo continued that they tried hailing tricycles but when they failed to find a ride, they decided to walk home.[13] Domingo could not estimate how far they had walked before they were ambushed by Christopher and his companion. He alleged, however, that the incident happened near the residence of Christopher who was a resident of Barangay Batia.[14]

Jonathan testified that at around 7:00 P.M. or 8:00 P.M. on 11 August 2007, he was in their house at Barangay Malibo Matanda when his *comadre*, Cecilia, came and informed him that his brother, Alex, was stabbed at Barangay Batia. After hearing the news, he immediately rushed to his brother on his motorcycle.[15] He arrived at the scene of the crime at around 9:00 P.M.[16] There, he saw Alex bloodied, sprawled on the ground, and almost dying or "*naghihingalo*." While in this condition, Alex told him that he was stabbed by "*Boyet*" whose real name was Christopher.[17] After a while, a police mobile arrived and brought Alex to the hospital. Alex, however, died on the same night.[18]

Jonathan explained that they had known Christopher even before the incident because he was their neighbor at Barangay Batia when they were residing there.[19]

On her part, Elsa, Alex's mother, testified that they incurred more than ₱100,000.00 for the wake and funeral of Alex.[20] Of

---

[12] *Id*. at 12.

[13] *Id*.

[14] *Id*. at 13.

[15] TSN, dated 7 August 2009, pp. 6-7.

[16] TSN, dated 11 September 2009, p. 24.

[17] TSN, dated 7 August 2009, pp. 8-9.

[18] TSN, dated 11 September 2009, p. 11; Records, p. 12; Exhibit "C".

[19] TSN, dated 7 August 2009, p. 9.

[20] TSN, dated 4 July 2008, pp. 5-6.

this amount, however, only a total of ₱50,265.90 were supported by receipts.[21]

The medico-legal report[22] prepared by the forensic physician, P/Supt. Belgira, revealed that Alex sustained multiple abrasions on his head and a stab wound on his left pectoral region. P/Supt. Belgira concluded that the cause of death was the stab wound.

Evidence for the Defense

The defense presented Christopher, his cousin Myrna Acedillo (*Myrna*), and his uncle Alex Rapsing (*Rapsing*) as witnesses. Their testimonies sought to establish the defense of alibi, as follows:

Christopher testified that on 11 August 2007, at around 5:00 P.M., he was at Rapsing's house to celebrate the fiesta of Barangay Sta. Clara.[23] While there, Domingo and Alex, both already drunk, passed by Rapsing's house. One of Rapsing's guests invited Domingo and Alex to join their drinking session to which the two accepted.[24] At around 6:00 P.M., Christopher decided to leave as his mother had earlier instructed him to go to Canumay, Valenzuela, to borrow money from Myrna. Rapsing's guests, including Domingo and Alex, accompanied him to the tricycle terminal which was about 50 meters away.[25]

After boarding a tricycle and then another vehicle, Christopher arrived at Myrna's residence between 7:00 P.M. and 8:00 P.M. After he pledged his ATM card for ₱3,000.00, Myrna told him to stay for the night as it was already late. Christopher left Myrna's place and went home only on the following morning.[26]

---

[21] Records, pp. 260-265; Exhibits "E" to "E-4".

[22] *Id*. at 13; Exhibit "D".

[23] TSN, dated 31 March 2011, p. 2.

[24] *Id*. at 3-4.

[25] *Id*. at 5.

[26] *Id*. at 6-7.

Christopher denied that he had anything to do with the death of Alex. He insisted that he could not have stabbed Alex as he was far from the scene of the crime at that time.[27] While he admitted knowing Domingo as he was a former neighbor,[28] he denied meeting Alex prior to 11 August 2007.[29]

On his part, Rapsing testified that Christopher arrived at his house on 11 August 2007 at around 4:00 P.M. He was his only guest at that time as his *kumpare*, a certain Peter Genejada, had yet to arrive. At around 5:00 P.M., after consuming two shots of Emperador Light, Christopher left and proceeded to Valenzuela.[30] On the other hand, Myrna testified that it was past 7:30 P.M. when Christopher arrived at her house. Christopher sought Myrna's help in borrowing money.[31] At around 8:00 P.M., Myrna accompanied Christopher to borrow money from a certain "Digoy." Thereafter, they returned to Myrna's house where Christopher spent the night and stayed until the following morning.[32]

The RTC Ruling

In its decision, the RTC found Christopher guilty beyond reasonable doubt of the crime of murder. It was convinced that the prosecution was able to prove the identity of Christopher as the person who stabbed and killed Alex. Moreover, the trial court considered Alex's statement to Jonathan as a dying declaration pointing to Christopher as his assailant. It did not give credence to Christopher's defense of alibi noting the failure to demonstrate physical impossibility of his presence at the crime scene at the time of the incident. The trial court further appreciated the aggravating circumstance of treachery to qualify

---

[27] *Id*. at 7-8.

[28] *Id*. at 3.

[29] *Id*. at 8.

[30] TSN, dated 13 February 2012, pp. 3-4.

[31] TSN, dated 23 April 2012, pp. 5-6.

[32] *Id*. at 8-9.

the killing to murder ratiocinating that Christopher, in committing the crime, employed means, methods, or forms to insure its execution without risk to himself. The dispositive portion of the decision reads:

> WHEREFORE, the foregoing considered, this Court hereby finds accused Christopher Badillos GUILTY of the crime of Murder penalized under the provisions of Art. 248 of the Revised Penal Code. Accordingly, he is sentenced to suffer the penalty of RECLUSION PERPETUA and to indemnity the heirs of Alex H. Gregory: a. ₱75,000.00 as civil indemnity for his death; b. ₱50,000.00 as moral damages; and c. ₱50,265.90 representing the funeral and burial expenses incurred by the family.
>
> In the service of his sentence, accused who is a detention prisoner shall be credited with the entire period he has undergone preventive imprisonment.
>
> SO ORDERED.[33]

Aggrieved, Christopher filed a notice of appeal to elevate the case to the CA.[34]

The CA Ruling

In its decision, the CA affirmed the 21 September 2012 RTC decision. The appellate court opined that the trial court properly considered Alex's last words to his brother as a dying declaration. It also ruled that Christopher's alibi cannot prevail over his positive identification by Domingo as the person who killed the victim, and Alex's dying declaration pointing to Christopher as the perpetrator. The appellate court further affirmed the trial court's appreciation of the qualifying aggravating circumstance of treachery. The dispositive portion of the appealed decision provides:

> **WHEREFORE**, the appealed Decision dated September 21, 2012 of the Regional Trial Court, Branch 78, Malolos, Bulacan in Criminal Case No. 50-M-2008 is hereby **AFFIRMED**.

---

[33] Records, p. 439.

[34] *Id*. at 441.

SO ORDERED.[35]

Hence, this appeal.

THE ISSUE

WHETHER THE TRIAL AND APPELLATE COURTS ERRED IN CONVICTING ACCUSED-APPELLANT CHRISTOPHER BADILLOS FOR THE CRIME CHARGED WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

THE COURT'S RULING

The appeal lacks merit.

Alex's declaration cannot be considered as a dying declaration; admissible as part of res gestae.

Before proceeding to the main issue of this case, the Court notes that the trial and appellate courts erred when they considered Alex's utterances to Jonathan identifying Christopher as the perpetrator of the crime as a dying declaration.

A dying declaration is admissible in evidence if the following circumstances are present: (1) it concerns the cause and the surrounding circumstances of the declarant's death; (2) it is made when death appears to be imminent and the declarant is under a consciousness of impending death; (3) the declarant would have been competent to testify had he or she survived; and (4) the dying declaration is offered in a case in which the subject of the inquiry involves the declarant's death.[36] In order to make a dying declaration admissible, a fixed belief in inevitable and imminent death must be entered into by the declarant. It is the declarant's belief of his impending death and not the rapid succession of his death in point of fact that renders his declaration admissible as a dying declaration. The test is whether the

---

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

[36] *People v. Rarugal*, 701 Phil. 592, 601-602 (2013).

declarant has abandoned all hopes of survival and looks on death as certainly impending.[37]

In his testimony, Jonathan narrated Alex's condition when he uttered the name of the person who stabbed him, to wit:

PROS. MALAPIT:

Q. Did you actually reach that place?
A. Yes, sir.

Q. What did you find out?
A. I found my brother bloodied and sprawled on the ground.

Q. You were referring to Alex Gregory?
A. Yes, sir.

Q. What was his condition at that time?
A. He was "naghihingalo" and he told me the person responsible in stabbing him.

Q. What were the names given to you?
A. Boyet, sir.

Q. Do you know who is the Boyet referred to by Alex?
A. He is only [alias] Boyet but his real name is Christopher Badillos.[38]

x x x x x x x x x

COURT:

Witness may answer.

A. It is true that he was "naghihingalo" and even tore his shirt and then he mentioned to me the name of the person responsible.

Q. Can you describe how is "naghihingalo"?
A. I cannot explain his condition during that time. He was "nagwawala na."[39]

---

[37] *People v. Quisayas*, 731 Phil. 577, 595 (2014).

[38] TSN, dated 7 August 2009, pp. 8-9.

[39] TSN, dated 11 September 2009, p. 29.

While Jonathan was under the impression that his brother was in the throes of death, it does not appear that the declarant himself was conscious of his impending death. The fact that Alex was ripping his shirt while he uttered the name of his assailant is not sufficient to qualify such as a dying declaration.

Nevertheless, while Alex's statement does not qualify as a dying declaration, the same may still be admitted as an exception to the hearsay rule for being part of *res gestae*.

For a statement to be considered part of *res gestae*, the following elements must concur: (a) the principal act, the *res gestae*, is a startling occurrence; (b) the statement was made before the declarant had time to contrive or devise; and (c) the statement concerns the occurrence in question and its immediate attending circumstances.[40] All the foregoing elements are present in this case.

First, the stabbing incident constituted the startling occurrence. *Second*, there was no sufficient time for Alex to contrive or devise a falsehood when he uttered the name of his assailant to Jonathan. Between the infliction of the mortal wound upon Alex and his statement surrounding this incident, at most two hours had elapsed. This interval of time is hardly sufficient to conjure up a story or concoct and contrive a falsehood given that even an interval of four hours is still considered as nearly contemporaneous to the startling occurrence.[41] *Lastly*, the statement concerned the circumstances surrounding the stabbing of Alex.

No reason to disturb factual findings by the trial court

In criminal cases, the established rule is that factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record. It is only in exceptional

---

[40] *People v. Calinawan*, G.R. No. 226145, 13 February 2017.

[41] *People v. Codilla*, 291-A Phil. 538, 552 (1993).

circumstances, such as when the trial court overlooked material and relevant matters, that this Court will re-calibrate and evaluate the factual findings of the court below.[42]

The Court finds no reason to depart from this rule especially considering that the factual findings reached by the trial court were affirmed by the appellate court.

Christopher insists that the prosecution failed to prove his guilt beyond reasonable doubt because it was established that he was in another place when Alex was killed.

This argument fails to impress.

Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the appellant must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time when the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed.[43]

In this case, to prove Christopher's alibi, the defense presented Rapsing, who testified that Christopher was in his house at Barangay Sta. Clara on 11 August 2007, and left at around 5:00 P.M. on the same day; and Myrna, who testified that Christopher arrived at her house at Barangay Canumay, Valenzuela City, at around 7:30 P.M. These testimonies, however, fail to show that it would be physically impossible for Christopher to be present at the crime scene when the crime was committed.

As aptly observed by the appellate court, Rapsing's account covers only the events which transpired before the crime was committed. Moreover, his narration of the events was inconsistent with Christopher's version. *First*, Rapsing's statement that Christopher arrived at his house at around 4:00 P.M. is inconsistent with Christopher's testimony that he arrived at Rapsing's house at around 5:00 P.M. and left at around 6:00 P.M. *Second*, Rapsing's account that Christopher was his only

---

[42] *People v. Esteban*, 735 Phil. 663, 670-671 (2014).

[43] *People v. Gani*, 710 Phil. 466, 473 (2013).

guest at that time contradicts the latter's testimony that he was joined by Domingo, Alex, and other guests at Rapsing's house for a drinking session. On the other hand, Myrna's testimony only concerns matters which supposedly happened after the crime had been committed.

In fine, the testimonies of the defense witnesses did not, in any way, demonstrate the required physical impossibility on the part of Christopher to be present at the scene of the crime at the time of its commission.

Furthermore, alibi cannot prevail over the positive and credible testimony of the prosecution witness that accused-appellant committed the crime. Indeed, a categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying thereon, prevails over the defenses of denial and alibi which, if not substantiated by clear and convincing proof, constitute self-serving evidence undeserving of weight in law.[44]

Domingo positively identified Christopher as one of the assailants of Alex. He also categorically stated that Christopher was the one who stabbed Alex. In addition, the victim himself told Jonathan that it was Christopher who stabbed him. The Court sees no reason to doubt Alex's positive testimony considering that the prosecution was able to establish that the eyewitness is familiar with both the victim and the accused; that the scene of the crime afforded good visibility; and that no improper motive can be attributed to the witness testifying against the accused.[45] The Court also has no reason not to give credence to Alex's statement as it has already been established that the same is part of *res gestae*.

From the foregoing, it is clear that the trial and appellate courts did not err in finding Christopher guilty beyond reasonable doubt for the killing of Alex.

---

[44] *People v. Villamor*, 780 Phil. 817, 825 (2016).

[45] *People v. Jalbonian*, 713 Phil. 93, 104 (2013).

The crime committed is Homicide; presence of treachery not established.

In convicting Christopher of murder, the trial and appellate courts appreciated the aggravating circumstance of treachery, finding the attack on Alex sudden and unexpected. Specifically, the trial court observed that Christopher and his companion deliberately waited for the victim in the alley, armed themselves with weapons, and attacked the unsuspecting victim in a swift and abrupt manner giving him no opportunity to repel the aggression.

However, contrary to the pronouncements of the trial and appellate courts, the presence of treachery was not established.

Treachery is present 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.[46]

A finding of the existence of treachery should be based on clear and convincing evidence. Such evidence must be as conclusive as the fact of killing itself and its existence cannot be presumed. In the absence of proof beyond reasonable doubt that treachery attended the killing of the victim, the crime is homicide, not murder.[47]

Thus, for treachery to be appreciated, two elements must concur: *first*, the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and *second*, the said means, method, and manner of execution were deliberately adopted.[48] It has been consistently held, however, that mere

---

[46] *People v. De Leon*, 428 Phil. 556, 581 (2002)

[47] *People v. Bugarin*, G.R. No. 224900, 15 March 2017.

[48] *People v. Camat*, 692 Phil. 55, 85 (2012).

suddenness of an attack is not sufficient to constitute treachery where it does not appear that the aggressor adopted such mode of attack to facilitate the perpetration of the killing without risk to himself.[49]

In this case, there was no showing that the mode of attack on Alex was consciously adopted without risk to the assailants. In the first place, the trial court's observation that Christopher and his companion deliberately waited for Alex in the alley would require the former to have a prior knowledge of the latter's plan to pass through the said alley at Barangay Batia. Based on Domingo's narration of events, however, there was no opportunity for Christopher to learn of such resolution. In his testimony, Domingo narrated the events prior to the attack, as follows:

PROS. MALAPIT:

Q. After that what happened next?
A. I decided to go home.

Q. Who first left the place of your *compadre*, you and Alex or Christopher Badillos?
A. We left ahead, sir, to board a tricycle but all that passed were fully loaded so we decided to return to my *compadre* and when we arrived there Christopher was no longer there.

Q. After reaching the place from where you came, which is the house of your *compadre*, what did you do next?
A. We decided to walk in the field.[50]

Clear from Domingo's narration is the fact that he and Alex decided to walk home along Barangay Batia only after they failed to find a ride home. And at the time they arrived at that decision, Christopher was no longer around to learn of such. Given these circumstances, it is highly doubtful that Christopher could have anticipated Alex along the alley or "*tawid-bukid*" at Barangay Batia. Consequently, treachery cannot be appreciated

---

[49] *People v. Camilet*, 226 Phil. 316, 324 (1986).

[50] TSN, dated 1 August 2008, p. 12.

to qualify the crime to murder as the mode of attack could not have been consciously or deliberately adopted. Without treachery, Christopher can only be convicted of homicide.

Penalty and Monetary Awards

Under Article 249 of the Revised Penal Code, the penalty for homicide is *reclusion temporal*. Considering that there is neither aggravating nor mitigating circumstance, the penalty should be imposed in its medium period pursuant to Article 64(1) of the RPC. Applying the Indeterminate Sentence Law, Christopher should be sentenced to an indeterminate penalty the minimum of which should be within the range of the penalty next lower in degree than that prescribed by law for the offense, that is, *prision mayor* (6 years and 1 day to 12 years) and the maximum of which should be within the range of *reclusion temporal* in its medium period (14 years 8 months and 1 day to 17 years and 4 months). Accordingly, the Court imposes upon Christopher the indeterminate penalty ranging from twelve (12) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum.

Further, following *People v. Jugueta*,[51] Christopher is ordered to pay (1) ₱50,000.00 as civil indemnity; and (2) ₱50,000.00, as moral damages. In addition, he is also ordered to pay ₱50,265.90 for the funeral and burial expenses incurred by Alex's family.

WHEREFORE, accused-appellant Christopher Badillos is found **GUILTY** beyond reasonable doubt of the crime of Homicide, defined and penalized under Article 249 of the Revised Penal Code. He is sentenced to suffer the indeterminate penalty of twelve (12) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum. He is further ordered to pay the heirs of the deceased Alex H. Gregory the following: ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱50,265.90 representing the

---

[51] 783 Phil. 806 (2016).

funeral and burial expenses. All monetary awards shall earn interest at the rate of six percent (6%) per annum reckoned from the finality of this decision until their full payment.[52]

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 217027. June 6, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NARCISO SUPAT *y* RADOC *alias* "Isoy,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— To sustain a conviction for illegal possession of dangerous drugs the following elements must be established: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.

2. ID.; ID.; ILLEGAL SALE OF DRUGS; ELEMENTS.— [F]or a successful prosecution of the offense of illegal sale of drugs, the following elements must be proven: (1) the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was

---

[52] *People v. Combate*, 653 Phil. 487, 806 (2010).

presented as evidence; and (3) the buyer and the seller were identified.

3. ID.; ID.; ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; *CORPUS DELICTI*; THE PROSECUTION MUST PROVE BEYOND REASONABLE DOUBT THAT THE SUBSTANCE SEIZED FROM THE ACCUSED IS EXACTLY THE SAME SUBSTANCE OFFERED IN COURT AS PROOF OF THE CRIME.—[In illegal sale and illegal possession of dangerous drugs,] the confiscated drug constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction. It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty. The prosecution must prove, beyond reasonable doubt, that the substance seized from the accused is exactly the same substance offered in court as proof of the crime. Each link to the chain of custody must be accounted for. This resonates even more in buy-bust operations because "by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great."

4. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; INVENTORY AND PHOTOGRAPH; REQUIREMENTS.— Section 21, Article II of RA 9165 lays down the procedures that the buy-bust team must strictly follow to preserve the identity and integrity of the confiscated drugs and/or paraphernalia x x x. RA 9165 was amended by RA 10640 which imposed less stringent requirements in the procedure. The amendment was approved on July 15, 2014. As the alleged crimes in this case were committed on October 8, 2005, x x x Section 21 is applicable. Relevantly, 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 photographing of the seized items and added a saving clause in case of non-compliance with the requirements under justifiable grounds x x x. [T]he x x x 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. 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 strictly complied with for a successful prosecution of the crimes of illegal sale and/or illegal possession of dangerous drugs under RA 9165. To be sure, case law 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.

5. **ID.; ID.; ID.; ID.; MUST BE MADE IMMEDIATELY AFTER, OR AT THE PLACE OF APPREHESION AND ONLY WHEN IT IS NOT PRACTICABLE THAT THE INVENTORY AND PHOTOGRAPHING ARE ALLOWED AT THE NEAREST POLICE STATION OR THE NEAREST OFFICE OF THE APPREHENDING OFFICER OR TEAM.—** Section 21(1) of RA 9165 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**. Further, 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 that the IRR allows the inventory and photographing at the nearest police station or the nearest office of the apprehending officer/team.

6. **ID.; ID.; ID.; ID.; THREE-WITNESS REQUIREMENT; THE PRESENCE OF THE THREE WITNESSES MUST BE SECURED NOT ONLY DURING THE INVENTORY BUT, MORE IMPORTANTLY, AT THE TIME OF THE WARRANTLESS ARREST.—** [T]he 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. In other words, the buy-bust team has enough time and opportunity to bring with them said witnesses. x x x [W]hile 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. x x x The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect and guard against the possibility of planting, contamination, or loss of the seized drug. 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.

7. ID.; ID.; ID.; DEVIATION FROM THE MANDATORY REQUIREMENTS OF SECTION 21 IN EXCEPTIONAL CASES, WHEN ALLOWED.— Following the IRR of RA 9165, the courts may allow a deviation from the mandatory requirements of Section 21 in exceptional cases, 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 elements are present, the seizure and custody of the confiscated drug shall not be rendered void and invalid regardless of the noncompliance with the mandatory requirements of Section 21. It has also been emphasized that the State bears the burden of proving the justifiable cause. Thus, for the said saving clause to apply, the prosecution must first recognize the lapse or lapses on the part of the buy-bust team and justify or explain the same.

8. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY; CANNOT OVERCOME THE STRONGER PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED.— 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 in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein. Here, the reliance of the RTC and CA on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.

PERALTA, *J.*, *separate concurring opinion*:

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CUSTODY AND DISPOSITION OF SEIZED ITEMS; PROCEDURE; THE PROSECUTION BEARS THE BURDEN OF PROVING A VALID CAUSE FOR NON-COMPLIANCE THEREWITH AND ITS FAILURE TO FOLLOW THE MANDATED PROCEDURE MUST BE ADEQUATELY EXPLAINED AND PROVEN AS A FACT IN ACCORDANCE WITH THE RULES ON EVIDENCE.— To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules and Regulations (*IRR*) of R.A.No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and added a saving clause in case the procedure is not followed x x x. It bears emphasis that R.A. No. 10640, which amended Section 21 of R.A. No. 9165, now only requires **two (2) witnesses** to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; **and** (b) either a representative from the National Prosecution Service

or the media. x x x However, under the original provision of Section 21 and its IRR, which is applicable at the time the appellant committed the crimes charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses**, namely: (a) a representative from the media, **and** (b) the DOJ, **and**; (c) any elected public official who shall be required to sign copies of the inventory and be given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity." The prosecution bears the burden of proving a 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 trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of 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. It should take note that 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 items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.

2. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY; MAY BE CONTRADICTED AND OVERCOME BY EVIDENCE OF NON-COMPLIANCE WITH THE LAW.— Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellant's conviction. 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 flawed because the lapses themselves are affirmative proofs of irregularity. 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 found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.

3. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CUSTODY AND DISPOSITION OF SEIZED ITEMS; CHAIN OF CUSTODY; THE CHAIN OF CUSTODY RULE IS A MATTER OF EVIDENCE AND A RULE OF PROCEDURE, AND THAT THE COURT HAS THE LAST SAY REGARDING THE APPRECIATION OF EVIDENCE.— At this point, it is not amiss to express my position regarding the issue of which between the Congress and the Judiciary has jurisdiction to determine sufficiency of compliance with the rule on chain of custody, which essentially boils down to the application of procedural rules on admissibility of evidence. In this regard, I agree with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam* that "if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to inadmissibility that would automatically destroy the prosecution's case but rather to the weight of evidence presented for each particular case." As aptly pointed out by Justice Leonardo-De Castro, the Court's power to promulgate judicial rules, including rules of evidence, is no longer shared by the Court with Congress. I subscribe to the view of Justice Leonardo-De Castro that the chain of custody rule is a matter of evidence and a rule of procedure, and that the Court has the last say regarding the appreciation of evidence. Evidentiary matters are indeed well within the powers of courts to appreciate and rule upon, and so, when the courts find appropriate, substantial compliance with the chain of custody rule as long as the integrity and evidentiary value of the seized items have been preserved may warrant the conviction of the accused.

4. ID.; ID.; ID.; MARKING, INVENTORY AND PHOTOGRAPH; CONSIDERED AS POLICE INVESTIGATION PROCEDURES WHICH CALL FOR ADMINISTRATIVE SANCTIONS IN CASE OF NON-COMPLIANCE, BUT NON-OBSERVANCE THEREOF SHOULD NOT AFFECT

THE VALIDITY OF THE SEIZURE OF THE EVIDENCE.— [T]he requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance. Violation of such procedure may even merit penalty under R.A. No. 9165 x x x. However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence.

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.:*

Before the Court is an ordinary appeal[1] filed by accused-appellant Narciso Supat y Radoc alias "Isoy" (Narciso) assailing the Decision[2] dated August 14, 2014 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05461, which affirmed the Decision[3] dated November 24, 2011 of the Regional Trial Court of San Pedro, Laguna, Branch 93 (RTC), in Crim. Case Nos. 5434-SPL and 5435-SPL, finding Narciso guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of

---

[1] CA *rollo*, pp. 95-97.

[2] *Id*. at 83-93. Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Amy C. Lazaro-Javier and Zenaida T. Galapate-Laguilles.

[3] Records (Crim. Case No. 5435-SPL), pp. 164-168. Penned by Judge Francisco Dizon Paño.

Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

Narciso was charged in two (2) separate Informations dated October 24, 2005, before the RTC, docketed as Crim. Case Nos. 5434-SPL and 5435-SPL. In Crim. Case No. 5434-SPL, Narciso was charged with the crime of illegal sale of dangerous drugs, the accusatory portion of the Information reading as follows:

> That on or about October 8, 2005, in the Municipality of San Pedro, province of Laguna, Philippines and within the jurisdiction of this Honorable Court the said accused without any legal authority, did then and there willfully, unlawfully and feloniously sell, pass and deliver to a police poseur-buyer in consideration of one (1) piece one hundred peso bill, one (1) heat-sealed transparent plastic sachet of METHAMPHETAMINE HYDROCHLORIDE, commonly known as "shabu", a dangerous drug, weighing zero point three (0.03) gram.
>
> CONTRARY TO LAW.[5]

In Crim. Case No. 5435-SPL, Narciso was charged with the crime of illegal possession of dangerous drugs. The Information there pertinently states:

> That on or about October 8, 2005, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court the said accused without authority of the law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control two (2) small heat-sealed transparent plastic sachets containing methamphetamine hydrochloride, commonly known as "shabu", a dangerous drug, with a total weight of zero point seventy one (0.71) gram.

---

[4] 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).

[5] Records (Crim. Case No. 5434-SPL), p. 1.

CONTRARY TO LAW.[6]

Upon his arraignment, Narciso pleaded not guilty to the foregoing charges.[7] During the pre-trial, the identity of Narciso and the jurisdiction of the trial court over his person were admitted.[8]

Version of the Prosecution

The Prosecution presented as witnesses PO3 Alexander Rivera y Amata (PO3 Rivera), SPO4 Melchor Dela Peña y Peruel (SPO4 Dela Peña) and SPO1 Alejandro Ame y Dimandal (SPO1 Ame). Their testimonies, as summarized by the CA, are as follows:

> On 8 October 2005, a civilian informant and a Barangay Tanod of San Antonio, San Pedro, Laguna arrived at the Municipal Police Station and reported to the Intelligence Section Chief [SPO4 Dela Peña] the illegal drug activities of [Narciso]. SPO4 [Dela] Peña immediately formed a team comprised of himself, [PO3 Rivera], [SPO1 Ame] and PO2 Rommel Bautista. The team conducted a surveillance operation at Holiday Hills, Narra Road, San Antonio, San Pedro, Laguna. The surveillance confirmed that [Narciso] was indeed involved in illegal drug activities. A briefing was conducted where PO3 Rivera was designated as the poseur-buyer for the buy-bust operation and was given a marked ₱100.00 bill to be used as buy-bust money. It was agreed that the pre-arranged signal would be the giving of a ring to SPO4 [Dela] Peña's mobile phone.
>
> PO3 Rivera and the civilian informant proceeded to the house of [Narciso] while the rest of the team positioned themselves along Narra Road and waited for PO3 Rivera's call. The informant introduced PO3 Rivera to [Narciso] as a customer. PO3 Rivera handed the ₱100.00 marked bill to [Narciso], and the latter, in turn, handed PO3 Rivera a plastic sachet containing a white crystalline substance. After receiving the sachet, PO3 Rivera gave SPO4 [Dela] Peña's phone a ring. The rest of the team immediately entered [Narciso's] house and arrested [Narciso]. SPO1 Ame recovered from [Narciso] the buy-bust money

---

[6] Records (Crim. Case No. 5435-SPL), p. 1.

[7] *Id*. at 21.

[8] *Id*. at 38.

and two (2) more sachets containing the same white crystalline substance after conducting a search on his person. The seized items were handed to SPO4 [Dela] Peña and were taken to the police station, together with [Narciso]. The sachet bought by PO3 Rivera from [Narciso] was marked by SPO4 [Dela] Peña as "NS-B", while the two (2) other sachets confiscated by SPO1 Ame from [Narciso's] possession were marked as "NS-P". An inventory of these seized items was conducted. Afterward[s], SPO4 [Dela] Peña transferred the custody of the seized sachets to the crime laboratory for examination. Forensic Chemist Police Senior Inspector (PSI) Donna Villa Hue[l]gas conducted the laboratory examination on the specimens delivered by SPO4 [Dela] Peña. The white crystalline substance contained in the seized plastic sachets was determined to be methamphetamine hydrochloride, also known as *shabu.*[9]

During the trial, Narciso admitted the existence and due execution of the following documents:

1. Laboratory Request for Examination dated October 8, 2005;
2. Chemistry Report No. D-1127-05;
3. Final Chemistry Report No. D-1127-05;
4. Chemistry Report Findings;
5. Conclusion; and
6. Name and signature of Donna Huelgas.[10]

Version of the Defense

On the other hand, the evidence for the defense was summarized by the CA as follows:

On 8 October 2005, at around 10:00 a.m., [Narciso] was at home watching television (TV) with his brother Christopher Supat and a neighbor named Violy. [Narciso] noticed five (5) men entering their compound and eventually their house. He recognized the faces of the two (2) men as the Barangay Tanods, and he learned later that the three (3) other men were police officers. Upon entering the house,

---

[9] CA *rollo,* pp. 85-86.

[10] *Id.* at 86.

the group arrested and handcuffed [Narciso]. His house was searched and when they found nothing, he was left inside the house handcuffed. After fifteen (15) to thirty (30) minutes, the police officers returned and showed him two (2) plastic sachets containing shabu allegedly recovered from his person. Thereafter, [Narciso] was brought to the police station.

To corroborate the foregoing account, the defense presented the testimony of Kurt Pilacan, who was twelve (12) years old when the incident happened. [He testified that] [a]t around 1:00 p.m., he was also watching TV at the house of [Narciso], together with five or six children. While watching TV, he heard a gunshot and a group of five (5) men entered the house of [Narciso]. The latter was immediately handcuffed. The men searched the house and found a cellphone and pieces of jewelry. They left the house and upon their return, they showed to [Narciso] illegal drugs placed in a plastic sachet.[11]

The Ruling of the RTC

On November 24, 2011, the RTC rendered judgment[12] finding Narciso guilty beyond reasonable doubt for the crimes of (1) violation of Section 5 of RA 9165, sentencing him to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00 and to pay the costs; and (2) violation of Section 11 of RA 9165, sentencing him to suffer an indeterminate penalty of imprisonment from twelve (12) years and one (1) day as minimum to fifteen (15) years as maximum and to pay a fine in the amount of ₱300,000.00.[13]

The trial court gave full credence to the testimony of the prosecution witnesses on the reason that, as police officers, they are presumed to have regularly performed their duties and official functions. The RTC held that there is no evidence to show that the police officers were motivated by any reason other than to accomplish their mission to curb drug abuse. The RTC further ruled that Narciso's denial is a feeble defense which

---

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

[12] *Supra* note 3.

[13] *Id*. at 168.

cannot stand against the positive testimony of the prosecution witnesses and the presumption of regularity enjoyed by the arresting officers.[14]

Aggrieved, Narciso appealed[15] his case to the CA claiming that the identity of the seized drugs was not proven in violation of Section 21 of RA 9165. Narciso argued that the trial court failed to consider the following irregularities in the conduct of the buy-bust operation: (1) no inventory of the seized items was conducted in the presence of representatives from media, Department of Justice (DOJ), and elective official; and (2) no photographs of the seized items were taken.[16] Narciso further claimed that there were gaps in the chain of custody of the seized items because there was no information on what happened after the seized drugs were marked at the police station and the prosecution did not present the forensic chemist who examined the seized drugs.[17]

The Ruling of the CA

In the questioned Decision,[18] the CA affirmed Narciso's conviction.

The CA held that, contrary to Narciso's claim, the prosecution was able to prove the *corpus delicti* of the crimes charged and all the other elements of illegal sale and illegal possession of drugs.[19] The CA found that the chain of custody of the seized drugs from the time they were recovered from Narciso until they were presented in court for verification was preserved;[20] and it is of no moment that the forensic chemist was not presented as witness because Narciso already admitted the existence and

---

[14] *Id*. at 167.

[15] *Id*. at 170.

[16] CA *rollo,* p. 45.

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

[18] *Supra* note 2.

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

[20] *Id*. at 89.

due execution of the specimens submitted for laboratory examination, the Request for Laboratory Examination, and the Final Chemistry Report No. D-1127-05.[21]

The CA further held that the failure of the apprehending police officers to comply with the procedural requirements of Section 21(1), Article II of RA 9165, is not fatal to the prosecution's cause, provided that the integrity and evidentiary value of the subject drugs were preserved, as in this case.[22] The CA also noted that the fact that the buy-bust team did not mark and photograph the seized drugs immediately after Narciso's arrest does not make the seizure and custody invalid or void because the implementing rules allow the marking, photographing and inventory of the seized items at the place of the operation or nearest police station, whichever is practicable.[23]

Moreover, the CA stressed that the defense never objected to the failure of the apprehending officers to strictly comply with the procedure in Section 21 of RA 9165; thus, whatever justifiable reasons the apprehending police officers might have therefor will remain unknown.[24] Narciso bears the burden of showing that the evidence was tampered with to overcome the presumption of regularity of official functions.[25]

Undaunted, Narciso filed his Notice of Appeal[26] of the CA Decision on September 9, 2014.

On June 22, 2015, the Court issued a Resolution[27] requiring the parties to file their respective supplemental briefs within thirty (30) days from notice.

---

[21] *Id*. at 91.

[22] *Id*. at 90.

[23] *Id*.

[24] *Id*. at 91.

[25] *Id*. at 91-92.

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

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

Narciso and the OSG filed their respective manifestations dated September 11, 2015 and September 23, 2015 stating that they will no longer file supplemental briefs.[28]

Issue

Whether or not Narciso's guilt for violation of Sections 5 and 11 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 Narciso as the prosecution **utterly failed** to prove that the buy-bust team complied with the mandatory requirements of Section 21 of RA 9165 and to establish the unbroken chain of custody of the seized drugs.

In this case, Narciso was charged with illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. To sustain a conviction for illegal possession of dangerous drugs the following elements must be established: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.[29] On the other hand, for a successful prosecution of the offense of illegal sale of drugs, the following elements must be proven: (1) the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) the buyer and the seller were identified.[30]

In both cases, the confiscated drug constitutes the very *corpus delicti* of the offense[31] and the fact of its existence is vital to

---

[28] *Id*. at 21-25, 26-32.

[29] *People v. Paz*, G.R. No. 229512, January 31, 2018, p. 7.

[30] *People v. Bartolini,* 791 Phil. 626, 633-634 (2016).

[31] *People v. Sagana,* G.R. No. 208471, August 2, 2017, p. 8.

sustain a judgment of conviction.[32] It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.[33] The prosecution must prove, beyond reasonable doubt, that the substance seized from the accused is exactly the same substance offered in court as proof of the crime. Each link to the chain of custody must be accounted for.[34]

This resonates even more in buy-bust operations because "by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great."[35]

In this regard, Section 21, Article II of RA 9165 lays down the procedures that the buy-bust team must strictly follow to preserve the identity and integrity of the confiscated drugs and/or paraphernalia:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) ***The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, 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***

---

[32] *Derilo v. People,* 784 Phil. 679, 686 (2016).

[33] See *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 6.

[34] See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[35] *People v. Saragena*, G.R. No. 210677, August 23, 2017, p. 7.

from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

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

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours[.] (Emphasis supplied)

The requirements of paragraph 1, Section 21, Article II of RA 9165.

RA 9165 was amended by RA 10640[36] which imposed less stringent requirements in the procedure. The amendment was approved on July 15, 2014. As the alleged crimes in this case were committed on October 8, 2005, the afore-quoted version of Section 21 is applicable.

Relevantly, 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 photographing of the seized items and added a saving clause in case of non-compliance with the requirements under justifiable grounds, thus:

---

[36] 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."

SECTION 21. x x x

(a) The apprehending officer/team having initial custody and control of the drugs shall, **immediately after seizure and confiscation**, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: **Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**[.] (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. 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 strictly complied with for a successful prosecution of the crimes of illegal sale and/or illegal possession of dangerous drugs under RA 9165. To be sure, case law 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.[37] 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.[38]

In the present 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 mandatory requirements under Section 21.

Section 21(1) of RA 9165 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.** Further, 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**

---

[37] *Gamboa v. People*, 799 Phil. 584, 597 (2016), citing *People v. Umipang*, 686 Phil. 1024, 1038-1039 (2012).

[38] *Id*.

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 that the IRR allows the inventory and photographing at 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 — 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. In other words, the buy-bust team has enough time and opportunity to bring with them said witnesses.

Moreover, 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.

Here, the buy-bust team utterly failed to comply with the foregoing requirements.

To start with, no photographs of the seized drugs were taken at the place of seizure or at the police station where the inventory was conducted. To be sure, the taking of photographs of the seized drugs is not a menial requirement that can be easily dispensed with. Photographs provide credible proof of the state or condition of the illegal drugs and/or paraphernalia recovered from the place of apprehension to ensure that the identity and integrity of the recovered items are preserved.

More importantly, there was no compliance with the three-witness rule. Based on the narrations of PO3 Rivera[39] and SPO4 Dela Peña,[40] not one of the witnesses required under Section 21 was present at the time the plastic sachets were allegedly seized from Narciso or during the inventory of the recovered drugs at the police station. Moreover, while the Certification of Inventory[41] dated October 8, 2005 shows the signature of a certain Arturo L. Hatulan, an elected official, the prosecution failed to present him as witness to testify thereon or to clarify whether he was also present at the time the drugs were allegedly recovered from Narciso. In any event, the buy-bust team still lacked two witnesses – representatives from the DOJ and media – and offered no explanation as to their absence. Their submissions, in fact, do not indicate that they even exerted genuine effort to secure the presence of the required witnesses at the time of apprehension.

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect and guard against the possibility of planting, contamination, or loss of the seized drug. 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. The pronouncement of the Court in *People v. Mendoza*,[42] is enlightening:

> x x x Without the ***insulating*** presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the sachets of *shabu*, the evils of switching, "planting" or contamination of the evidence that had tainted

---

[39] See TSN, March 17, 2008, pp. 3-4.

[40] See TSN, February 17, 2009, pp. 9-15.

[41] Exh. "E", records (Crim. Case No. 5434-SPL), p. 16.

[42] 736 Phil. 749 (2014).

the buy-busts conducted under the regime of RA No. 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.[43] (Emphasis supplied)

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 buy-bust 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 saving clause does not apply to this case.

Following the IRR of RA 9165, the courts may allow a deviation from the mandatory requirements of Section 21 in exceptional cases, 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.**[44] If these elements are present, the seizure and custody of the confiscated drug shall not be rendered void and invalid regardless of the noncompliance with the mandatory requirements of Section 21. It has also

---

[43] *Id*. at 764.

[44] RA 9165, Sec. 21(1) as implemented by its IRR.

been emphasized that the State bears the burden of proving the justifiable cause.[45] Thus, for the said saving clause to apply, the prosecution must first recognize the lapse or lapses on the part of the buy-bust team and justify or explain the same.[46]

In the present case, the prosecution failed to satisfy both requirements.

The prosecution failed to prove justifiable ground for non-compliance.

The first requirement for the saving clause to apply is for the prosecution to recognize the lapses in the prescribed procedures and then provide a suitable explanation for noncompliance.

Here, the prosecution did not even concede that there were lapses in the conduct of the buy-bust operation. Also, no explanation was offered as to the absence of the three (3) witnesses at the place and time of seizure, or as to the failure to photograph the confiscated items immediately after seizure or during inventory in the presence of the insulating witnesses. It must be noted that the requirements under Section 21 are not unknown to the buy-bust team, who are presumed to be knowledgeable of the law demanding the preservation of the links in the chain of custody.[47] They are dutybound to fully comply with the requirements thereof, and if their compliance is not full, they should at least have the readiness to explain the reason for the step or steps omitted from such compliance.[48]

Verily, it was error on the part of the CA to put the blame on the accused for the prosecution's failure to prove justifiable cause. The prosecution has the positive duty to prove compliance with the procedure set forth in Section 21 of RA 9165, and

---

[45] *People v. Beran*, 724 Phil. 788, 822 (2014).

[46] *People v. Reyes,* G.R. No. 199271, October 19, 2016, 806 SCRA 513, 536.

[47] *People v. Geronimo*, G.R. No. 180447, August 23, 2017, p. 8.

[48] *Id*.

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.[49] The existence of justifiable cause must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[50]

The prosecution failed to establish the chain of custody of the seized drugs.

In *People v. Alviz*,[51] 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 this case, **gaps exist** in the chain of custody of the seized items which creates reasonable doubt as to the identity and integrity thereof.

First, the confiscated items were not marked immediately upon seizure. In *People v. Gonzales*,[52] the Court explained that:

---

[49] *People v. Ramos*, G.R. No. 233744, February 28, 2018, pp. 9-10.

[50] *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 7, citing *People v. De Guzman,* 630 Phil. 637, 649 (2010).

[51] 703 Phil. 58, 73 (2013).

[52] 708 Phil. 121 (2013).

The first stage in the chain of custody is the marking of the dangerous drugs or related items. Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest. The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. **Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence. In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value**.[53] (Emphasis supplied)

Notably in this case, three (3) plastic sachets were recovered from Narciso: (1) sachet bought by PO3 Rivera and (2) sachets confiscated by PO3 Ame; but the markings were made not in the place of seizure and not by the police officer who recovered the seized drugs.

Second, SPO4 Dela Peña testified that he was the one who made the Request for Laboratory Examination.[54] However, the Request for Laboratory Examination dated October 8, 2005 was not subscribed by him but by Police Superintendent Sergio A. Dimandal.[55] Also, contrary to the findings of the trial court, SPO4 Dela Peña's testimony is not clear as to who actually delivered the drugs together with the request to the crime laboratory for forensic examination.[56]

Third, the Request for Laboratory Examination,[57] with its accompanying specimen, was received from a certain PO2 Corpus

---

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

[54] TSN, February 17, 2009, p. 13.

[55] Exh. "C", records (Crim. Case No. 5434-SPL), p. 14.

[56] See TSN, February 17, 2009, pp. 13-14.

[57] Exh. "C", records (Crim. Case No. 5434-SPL), p. 14.

by a certain PO1 Legaspi R.B. on October 8, 2005 at 9:15 p.m.; **but the records are bereft of any evidence as to how the seized items were passed on and placed in the hands of PO2 Corpus and PO1 Legaspi R.B., or how the integrity of said items was preserved while they remained in their custody. Moreover, no other testimony was offered to explain how the seized drugs were turned over to PSI Donna Villa Huelgas, the forensic chemist who conducted the examination**.

Fourth, the Court does not see from the records the details on how the specimen was handled from the time it was submitted for laboratory examination up to time it was formally offered to the court. Forensic Chemist PSI Huelgas did not testify on how she handled the seized item during examination and before it was transferred to the court — which testimony is required to ensure that that there was no change in the condition of the seized drug and no opportunity for someone not in the chain to have possession while in her custody. In this case, instead of the forensic chemist turning over the substance to the court and testifying, the parties merely stipulated on the existence and due execution of the Chemistry Report No. D-1127-05, Final Chemistry Report No. D-1127-05, Chemistry Report findings and conclusions, and the name and signature of PSI Huelgas. However, these stipulations do not prove how the drugs were handled by said chemist.

The Court's ruling in *People v. Sanchez*[58] (*Sanchez*) lends guidance. In *Sanchez,* the trial court dispensed with the testimony of the forensic chemist therein after the parties stipulated that "the items allegedly confiscated from the accused were submitted to the crime laboratory for examination and the findings were put into writing."[59] As a result, only the sole testimony of the poseur-buyer was presented to attest to the chain of custody of the seized items therein. The Court held:

---

[58] 590 Phil. 214 (2008).

[59] *Id*. at 225.

x x x [The sole testimony presented by the prosecution] failed to disclose the identities of the desk officer and the investigator to whom the custody of the drugs was given, and how the latter handled these materials. No reference was ever made to the person who submitted the seized specimen to the PNP Crime Laboratory for examination. Likewise, no one testified on how the specimen was handled after the chemical analysis by the forensic chemist. **While we are aware that the RTC's Order of August 6, 2003 dispensed with the testimony of the forensic chemist because of the stipulations of the parties, we view the stipulation to be confined to the handling of the specimen at the forensic laboratory and to the analytical results obtained. The stipulation does not cover the manner the specimen was handled before it came to the possession of the forensic chemist and after it left his possession**. To be sure, personnel within the police hierarchy (as SPO2 Sevilla's testimony casually mentions) must have handled the drugs but evidence of how this was done, *i.e.*, how it was managed, stored, preserved, labeled and recorded from the time of its seizure, to its receipt by the forensic laboratory, up until it was presented in court and subsequently destroyed — is absent from the evidence adduced during the trial. x x x

The recent case of *Lopez v. People* is particularly instructive on how we expect the chain of custody or "movement" of the seized evidence to be maintained and why this must be shown by evidence:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same**.[60] (Emphasis supplied)

---

[60] *Id*. at 237-238.

In turn, the importance of establishing the chain of custody in drugs cases was explained in *Mallillin v. People*[61]:

> 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.[62]

As in *Sanchez,* the Court finds that while the parties indeed made the stipulations in question, such stipulations do not relate to or do not cover the specific manner by which the seized items were handled while in their possession. Further, they do not indicate how such items were subsequently turned over to the next responsible party.

As the seized drugs themselves are the *corpus delicti* of the crimes charged, it is of utmost importance that there be no doubt or uncertainty as to their identify and integrity. The State, and no other party, has the responsibility to explain the lapses in the procedures taken to preserve the chain of custody of the dangerous drugs. Without the explanation by the State, the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.[63]

---

[61] 576 Phil. 576 (2008).

[62] *Id*. at 588-589.

[63] *People v. Gonzales*, *supra* note 52, at 123.

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.[64] The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[65]

Here, the reliance of the RTC and CA on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.[66] The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[67] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[68] This Court, in *People v. Catalan*,[69] had already warned the lower courts against this pitfall:

> Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, mainly because the accused did not show that they had ill motive behind his entrapment.
>
> We hold that both lower courts committed gross error in relying on the presumption of regularity.

---

[64] 1987 CONSTITUTION, Art. III, Sec. 14(2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

[65] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[66] See *People v. Mendoza*, *supra* note 42, at 770.

[67] *Id*.

[68] See *People v. Catalan*, 699 Phil. 603, 621 (2012).

[69] *Id*.

Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. **We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence.** Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.

Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that *triggers* the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.[70] (Emphasis supplied)

In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165. What further militates against according the apprehending officers in this case the presumption of regularity is the fact that even the pertinent internal anti-drug operation procedures then in force were not followed. Under the 1999 Philippine National Police Drug Enforcement Manual,[71] the conduct of buy-bust operations requires the following:

---

[70] *Id*. at 621.

[71] PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

ANTI-DRUG OPERATIONAL PROCEDURES

V. SPECIFIC RULES

x x x x x x x x x

B. Conduct of Operation: (As far as practicable, all operations must be officer led)

1. Buy-Bust Operation — in the conduct of buy-bust operation, the following are the procedures to be observed:

a. Record time of jump-off in unit's logbook;

b. Alertness and security shall at all times be observed[;]

c. Actual and timely coordination with the nearest PNP territorial units must be made;

d. Area security and dragnet or pursuit operation must be provided[;]

e. Use of necessary and reasonable force only in case of suspect's resistance:

f. If buy-bust money is dusted with ultra violet powder make sure that suspect ge[t] hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;

g. In pre-positioning of the team members, the designated arresting elements must clearly and actually observe the negotiation/transaction between suspect and the poseur-buyer;

h. Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which maybe concealed in his body, vehicle or in a place within arms[']reach;

i. After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;

j. Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;

k. **Take actual inventory of the seized evidence by means of weighing and/or physical counting**, as the case may be;

l. **Prepare a detailed receipt of the confiscated evidence** for issuance to the possessor (suspect) thereof;

> m. **The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence** with their initials and also indicate the date, time and place the evidence was confiscated/seized;
>
> n. **Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera**; and
>
> o. Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination. (Emphasis and underscoring supplied)

The Court has ruled in *People v. Zheng Bai Hui*[72] that it will not presume to set an *a priori* basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.

All told, the prosecution failed to prove the *corpus delicti* of the offenses of sale and possession 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 drugs. In other words, the prosecution was not able to overcome the presumption of innocence of accused-appellant Narciso.

As a reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply**

---

[72] 393 Phil. 68, 133 (2000).

with. In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.[73]

WHEREFORE, premises considered, the Decision dated August 14, 2014 of the Court of Appeals in CA-G.R. CR-H.C. 05461 is **REVERSED** and **SET ASIDE**. Accused-appellant Narciso Supat y Radoc is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Decision, the action he has taken. A copy shall also be furnished to the Director General of Philippine National Police for his information.

SO ORDERED.

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

Peralta, J., please see separate concurring opinion.

---

[73] See *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

SEPARATE CONCURRING OPINION

PERALTA, *J.*:

I concur with the *ponencia* in acquitting accused-appellant Narciso Supat y Radoc of the charges of illegal sale and illegal possession of dangerous drugs, or violation of Sections 5 and 11, Article II of Republic Act No. 9165 (*R.A. No. 9165*),[1] respectively. Indeed, the prosecution failed to prove the *corpus delicti* of the said offenses due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody and handling of the seized drugs. I also agree that despite the non-observance requirement under Section 21[2] of R.A. No. 9165, no justifiable reason was proffered by the prosecution as to (1) why no photographs of the seized drugs were taken at the place of the seizure or at the police station where the inventory was conducted; and (2) why not one of the three witnesses required under the said provision was present at the time the plastic sachets were seized from accused-appellant

---

[1] "*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*"

[2] 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;

or during the inventory of the recovered drugs at the police station. Be that as it may, I would like to emphasize on important matters relative to Section 21 of R.A. No. 9165, as amended.

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and added a saving clause in case the procedure is not followed:[3]

> (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.**

It bears emphasis that R.A. No. 10640,[4] which amended Section 21 of R.A. No. 9165, now only requires **two (2) witnesses** to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; **and** (b) either a representative from the National Prosecution Service **or** the media.

---

[3] *People v. Ramirez,* G.R. No. 225690, January 17, 2018.

[4] "*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."*

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe conceded 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 the increasing drug addiction and also, in the conflicting decisions of the courts."[5] Senator Poe stressed the necessity for the amendment of Section 21 based on the public hearing that the Senate Committee on Public Order and Dangerous Drugs had conducted, which revealed 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 the remote areas. For another there were instances where elected *barangay* officials themselves were involved in the punishable acts apprehended and thus, it is difficult to get the most grassroot-elected public official to be a witness as required by law."[6]

In his Co-sponsorship speech, Senator Vicente C. Sotto III said that in view of a substantial number of acquittals in drug-related cases due to the varying interpretations of prosecutors and 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."[7] Senator Sotto explained why the said provision should be amended:

> 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 the seized illegal drugs.

---

[5] Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

[6] *Id.*

[7] *Id.*

x x x x x x x x x

Section 21(a) of RA 9165 need 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 of illegal drugs or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances where 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.[8]

However, under the original provision of Section 21 and its IRR, which is applicable at the time the appellant committed the crimes charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses**, namely: (a) a representative from

---

[8] *Id*. at 349-350.

the media, **and** (b) the DOJ, **and**; (c) any elected public official who shall be required to sign copies of the inventory and be given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[9]

The prosecution bears the burden of proving a 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 trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law.[10] 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. It should take note that 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 items.[11] Strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.[12]

In this case, the prosecution never alleged and proved that the presence of all the required witnesses was not obtained for any of the following reasons, such as: (1) **their attendance was impossible because the place of arrest was a remote area**; (2) **their safety during the inventory and photograph of the seized drugs were threatened by an immediate**

---

[9] *People v. Sagana*, G.R. No. 208471, August 2, 2017.

[10] *People v. Miranda*, G.R. No. 229671, January 31, 2018; *People v. Paz,* G.R. No. 229512, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018.

[11] *People v. Saragena,* G.R. No. 210677, August 23, 2017.

[12] *Id.*

retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) **the elected official themselves were involved in the punishable acts sought to be apprehended**; (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125**[13] **of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention**; or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**

Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellant's conviction. 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 flawed because the lapses themselves are affirmative proofs of irregularity.[14] 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 found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.[15]

---

[13] Art. 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.

[14] *People v. Ramirez, supra* note 3.

[15] *People v. Gajo*, G.R. No. 217026, January 22, 2018.

At this point, it is not amiss to express my position regarding the issue of which between the Congress and the Judiciary has jurisdiction to determine sufficiency of compliance with the rule on chain of custody, which essentially boils down to the application of procedural rules on admissibility of evidence. In this regard, I agree with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam*[16] that "if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to inadmissibility that would automatically destroy the prosecution's case but rather to the weight of evidence presented for each particular case." As aptly pointed out by Justice Leonardo-De Castro, the Court's power to promulgate judicial rules, including rules of evidence, is no longer shared by the Court with Congress.

I subscribe to the view of Justice Leonardo-De Castro that the chain of custody rule is a matter of evidence and a rule of procedure, and that the Court has the last say regarding the appreciation of evidence. Evidentiary matters are indeed well within the powers of courts to appreciate and rule upon, and so, when the courts find appropriate, substantial compliance with the chain of custody rule as long as the integrity and evidentiary value of the seized items have been preserved may warrant the conviction of the accused.

I further submit that **the requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance. Violation of such procedure may even merit penalty under R.A. No. 9165**, to wit:

Section 29. *Criminal Liability for Planting of Evidence.* – Any person who is found guilty of "planting" any dangerous drug and/

[16] G.R. No. 202206, March 5, 2018.

or controlled precursor and essential chemical, regardless of quantity and purity, shall suffer the penalty of death.

Section 32. *Liability to a Person Violating Any Regulation Issued by the Board.* – The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person found violating any regulation duly issued by the Board pursuant to this Act, in addition to the administrative sanctions imposed by the Board.

However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence.

SECOND DIVISION

[G.R. No. 217301. June 6, 2018]

CONSOLIDATED BUILDING MAINTENANCE, INC. and SARAH DELGADO, *petitioners, vs.* **ROLANDO ASPREC, JR. and JONALEN BATALLER,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL ISSUES ARE NOT PROPER; EXCEPTIONS; VARIANCE IN FACTUAL DETERMINATION OF THE LABOR ARBITER AND THE COURT OF APPEALS ON ONE HAND AND THE NLRC ON THE OTHER.— Initially, it must be said that the issues of whether CBMI is an independent contractor, and the matter of respondents' employment status

are questions of fact that are not the proper subjects of a petition for review under Rule 45 of the Rules of Court. However, considering the variance between the factual determination of the LA and the CA on the one hand, and the NLRC on the other, this case presents an exception for the Court to re-evaluate the evidence on record.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR-ONLY CONTRACTING; FACTORS INDICATING THE EXISTENCE OF AN INDEPENDENT CONTRACT RELATIONSHIP.— Labor-only contracting is defined by Article 106 of the Labor Code of the Philippines, as an arrangement where a person, who does ***not*** have substantial capital or investment, supplies workers to an employer to perform activities which are directly related to the principal business of such employer. Furthermore, jurisprudence instructs that the existence of an independent contract relationship may be indicated by several factors, *viz.:* [S]uch as, but not necessarily confined to, whether the contractor was carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of specified pieces of work; the control and supervision of the workers; the power of the employer with respect to the hiring, firing and payment of the workers of the contractor; the control of the premises; the duty to supply premises, tools, appliances, materials and labor; and the mode, manner and terms of payment.

3. ID.; ID.; ID.; DEPARTMENT ORDER (DO) NO. 18-02 DOES NOT ABSOLUTELY PROHIBIT JOB CONTRACTUALS; CONTRACTORS AND SUBCONTRACTORS ARE REQUIRED TO REGISTER WITH THE DOLE REGIONAL OFFICES.— DO No. 18-02 reiterates the prohibition against labor-only contracting, x x x [However,] job contracting is not absolutely prohibited. Indeed, an employer is allowed to farm out the performance or completion of a specific job, work or service, within a definite or specified period, and regardless of whether the said task is to be performed or completed within or outside its premises. Job contracting is deemed legitimate and permissible when the contractor has substantial capital or investment, and runs a business that is independent and free from control by the principal. x x x In addition to the foregoing, DO No. 18-02 requires that contractors

and subcontractors be registered with the DOLE Regional Offices. The system of registration has been established under the DO to regulate and monitor contracting arrangements. It is imposed to ensure that those contractors operate in accordance with law and its guiding principles. But unlike the elements of substantial capital or investment and control, the absence of registration merely gives rise to the *presumption* that the contractor is engaged in labor-only contracting. Conversely, in the absence of evidence to the contrary, flowing from the presumption of regularity in the performance of official functions, the existence of registration in favor of a contractor is a strong badge of legitimacy in favor of the contractor.

4. ID.; ID.; EMPLOYMENT; RIGHT OF CONTROL IS DETERMINATIVE OF EMPLOYER-EMPLOYEE RELATIONSHIP.— For purposes of determining whether a job contractor is engaged in legitimate contracting or prohibited labor-only contracting, DO No. 18-02, defines the "right of control" as: [T]he right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means in achieving that end. From these, it can readily be inferred that the element of control that is determinative of an employer-relationship "does not merely relate to the mutually desirable result intended by the contractual relationship; they must have the nature of dictating the means and methods to be employed in attaining the result." Nonetheless, as the Court emphasized in *Almeda, et al. v. Asahi Glass Philippines, Inc.,* "[t]he power of control refers merely to the existence of the power and not to the actual exercise thereof. It is not essential for the employer to actually supervise the performance of duties of the employee; it is enough that the former has a right to wield the power." The contract of service, while of itself is not determinative of the relationship between the parties, nonetheless provides useful leads into the relationship between the principal on the one hand, and the job contractor on the other.

5. ID.; OMNIBUS RULES IMPLEMENTING THE LABOR CODE; IMPOSITION OF PREVENTIVE SUSPENSION SHOULD NOT EXCEED 30 DAYS.— CBMI, as the employer has the power to impose discipline upon the respondents who are its employees, which includes the imposition of the preventive suspension pending investigation. x x x Section 4, Rule XIV

of the Omnibus Rules Implementing the Labor Code is explicit in that the period of preventive suspension should not exceed 30 days, x x x that the employer act within the 30-day period of preventive suspension by concluding the investigation either by absolving the respondents of the charges or meting corresponding penalty if liable. Otherwise, the employer must reinstate the employee, or extend the period of suspension provided the employee's wages and benefits are paid in the interim. Failure by the employer to comply with these, the preventive suspension is deemed illegal as it amounts to a constructive dismissal.

6. **ID.; TERMINATION OF EMPLOYMENT; LAY-OFF, AS AN EXERCISE OF MANAGEMENT PREROGATIVE MUST BE DONE IN GOOD FAITH AND WITHIN THE PARAMETERS SET FORTH BY LAW.—** When a "lay-off" is permanent, it amounts to dismissal. However, when the same is temporary, it is regarded as a mere suspension of the employment status of the employee. Notably, while the Court recognizes lay-off as an exercise of management prerogative, jurisprudence requires that the same must be attended by good faith and that notice must be given to the employees concerned and the DOLE at least one (1) month prior to the intended date of lay-off or retrenchment. Article 286 of the Labor Code, as cited by CBMI, likewise contemplates lay-off, particularly that which is temporary in nature, and as such must be for a period not exceeding six months. In which case, apart from causes attributable to the employer, the temporary suspension of employment may also be on account of the employee's performance of military or civic duty. x x x Considering the dire consequences of "lay-off" to an employee, jurisprudence places upon the employer the burden to prove with sufficient and convincing evidence the justification therefor, and as well compliance with the parameters set forth by law.

APPEARANCES OF COUNSEL

Berberabe Santos & Quiñones for petitioners.
Legal Advocates For Worker's Interest (Lawin) for respondents.

D E C I S I O N

REYES, JR., *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 123429 dated November 15, 2013, and Resolution[3] dated March 4, 2015, denying the motion for reconsideration thereof. The assailed decision denied the petition for *certiorari* filed by Consolidated Building Maintenance, Inc. (CBMI) and its Human Resource Manager Sarah Delgado (collectively referred to as the petitioners) assailing the Resolution[4] dated September 28, 2011 of the National Labor Relations Commission (NLRC) and reinstated the Decision[5] dated June 27, 2011 of the Labor Arbiter (LA).

The Antecedent Facts

CBMI is a corporation engaged in the business of providing janitorial, kitchen, messengerial, elevator maintenance and allied services to various entities.[6] Among CBMI's clients is Philippine Pizza, Inc.-Pizza Hut (PPI). For PPI, CBMI provides kitchen, delivery, sanitation and other related services pursuant to contracts of services, which are valid for one-year periods.[7] Records reveal that contracts of services were executed between PPI and CBMI in the years 2000[8] and from 2002 until 2010.[9]

---

[1] *Rollo,* pp. 3-67.

[2] Penned by Associate Justice Michael P. Elbinias, with Associate Justices Isaias P. Dicdican and Nina G. Antonio-Valenzuela, concurring; *id*. at 73-94.

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

[4] *Id*. at 402-408.

[5] *Id*. at 335-350.

[6] *Id*. at 6.

[7] *Id*. at 8.

[8] *Id*. at 150-154.

[9] *Id*. at 155-214.

Rolando Asprec, Jr. (Asprec) and Jonalen Bataller (Bataller) (collectively referred to as the respondents) alleged that they are regular employees of PPI, the former having commenced work as a "Rider" in January 2001 and the latter as "team member/ slice cashier" in March 2008, both assigned at PPI's Pizza Hut, Marcos Highway, Marikina City Branch.

In his *Sinumpaang Salaysay* dated February 8, 2011, Asprec averred that after the expiration of his contract on November 4, 2001, PPI advised him to go on leave for one (1) month and ten (10) days. Thereafter, he was called for an interview by PPI's Area Manager, Rommel Blanco. After passing the same, he was told to proceed to the office of CBMI where he signed a contract. Asprec stated that except for the fact that the payslips were then issued by CBMI, work proceeded as usual with him being assigned at the same branch and performing his usual duties as "Rider/Production Person."[10]

Bataller had a similar experience as she narrated in her *Sinumpaang Salaysay* dated February 8, 2011. She related that before the expiration of her employment contract, she was informed by Pizza Hut Restaurant Manager Jun Samar that as a precondition for continued employment, she had to "submit first a resignation letter, had to pass through CBMI, and after six months she should go on vacation for one month." Thereafter, she was interviewed by PPI General Manager Edilberto Garcia. Bataller advanced that after she passed the interview, PPI prepared her documents and then forwarded the same to CBMI. She then resumed employment in December 2008 until July 23, 2010, with her being assigned at the same branch, performing her usual duties, and receiving the same salary.[11]

On the other hand, CBMI posited that the respondents are its employees. CBMI claimed that the respondents were investigated based on an Incident Report by PPI's Store Manager

---

[10] *Id*. at 302-303.

[11] *Id*. at 312-314.

Karl Clemente of an attempted theft on July 23, 2010. On which date, one Jessie Revilla (Revilla) supposedly delivered an excess of two boxes to PPI's slice booth at the Light Rail Train (LRT) Santolan, Pasig Station, which the respondents failed to report.

Anent the incident, Asprec asserted that he has no knowledge of such actions by Revilla and claimed that the same is outside his responsibility as a "production person." Nonetheless, Asprec claimed that on account of the incident, he has been suspended for eight days and then was eventually dismissed.[12]

On the other hand, Bataller, who was manning the slice booth at the LRT Santolan, Pasig Station on the day of the incident, claimed that when Revilla brought the three boxes of pizza which she ordered, she was busy attending to customers and thus did not notice that there has been an excess in the delivery. Nonetheless, she posited that immediately upon discovery, she called Revilla but the latter was already far from the station and as such could no longer go back. Revilla allegedly went back to get the two extra pizza boxes later that day.

Bataller likewise submitted that she has informed the area manager of the incident, but was thereafter asked to proceed to PPI's Marcos Highway branch. There, she was interviewed along with Asprec and Revilla, and then told to report to the head office. Starting July 24, 2010, she was allegedly no longer allowed to return to work.[13]

On November 12, 2010, the respondents filed their Complaint against the petitioners for constructive illegal dismissal, illegal suspension, and non-payment of separation pay.[14]

In their Complaint, the respondents argued two points: first, that their transfer from PPI to CBMI constituted labor-only contracting and was a mere scheme by PPI to prevent their

---

[12] *Id*. at 404.

[13] *Id*. at 74-75.

[14] *Id*. at 258-263.

regularization; and second, that they were illegally dismissed without cause and due process of law.[15]

On December 20, 2010, the respondents amended their Complaint by impleading PPI and including a prayer for reinstatement and payment of moral and exemplary damages and attorney's fees.[16]

Ruling of the LA

The LA rendered a Decision[17] on June 27, 2011, granting respondents' complaint in this wise:

> WHEREFORE, premises considered, the respondent companies are hereby found liable for having illegally dismissed [the respondents] and are hereby ordered TO REINSTATE them to their former positions without loss of seniority rights and TO PAY to EACH of the [respondents] their backwages from July 26, 2010 up to the date of actual reinstatement, which as of the date of this decision is ₱121,000.00 and ₱100,000.00 each as moral damages; ₱50,000.00 each as exemplary damages plus ten percent (10%) of the totality of the awards as and for attorney's fees.
>
> All other claims and charges are dismissed for lack of merit.
>
> SO ORDERED.[18]

In its decision, the LA applied the four-fold test and ruled that the respondents are employees of PPI. Consequently, the LA held that the arrangement between CBMI and PPI constitutes labor-only contracting and imposed upon them solidary liability for the respondents' claim.[19]

The LA ruled that as the employer, the burden is upon PPI to prove that the dismissal was based on a just cause and that there has been compliance with procedural due process, which

---

[15] *Id*. at 340.

[16] *Id*. at 264-269.

[17] *Id*. at 335-350.

[18] *Id*. at 350.

[19] *Id*. at 342-346, 349.

it failed to do. Thus, the LA concluded that the respondents have been illegally dismissed.[20]

With this ruling, the petitioners and PPI appealed to the NLRC.[21]

Ruling of the NLRC

On September 28, 2011, the NLRC rendered its Resolution[22] affirming with modification the LA's Decision dated June 27, 2011. The dispositive portion of the resolution reads:

> WHEREFORE, premises considered, the appeal filed by [PPI] is GRANTED and is hereby DROPPED as party to the case.
>
> CBMI's appeal is DISMISSED. [The petitioners] are ordered to pay the [respondents] the following:
>
> 1. backwages computed from August 20, 2010 up to the finality of this decision, and,
>
> 2. separation pay equivalent to one month's pay for every year of service, and
>
> 3. 10% attorney's fees based on the total judgment award.
>
> SO ORDERED.[23]

In contrast with the finding of the LA, the NLRC held that the respondents are regular employees of CBMI. In so ruling, the NLRC relied heavily on the employment contract and CBMI's admission of the respondents' employment.[24] In this regard, and considering that there is no allegation of under payment or non-payment of wages, the NLRC ordered PPI to be dropped from the case.

---

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

[21] *Id*. at 351-400.

[22] *Id*. at 402-409.

[23] *Id*. at 408.

[24] *Id*. at 405.

Both the petitioners and the respondents filed their respective motions for partial reconsideration[25] but they were denied by the NLRC in its Resolution[26] dated November 29, 2011.

The parties herein separately filed their appeal *via* petitions for *certiorari* with the CA.[27]

In their Petition,[28] the petitioners alleged, among others, that the NLRC gravely abused its discretion in awarding backwages, separation pay, and attorney's fees despite the absence of finding that the respondents have been illegally dismissed.

On the other hand, the respondents in their petition claimed that the totality of evidence presented proves that they are the regular employees not of CBMI but of PPI. They asserted that their transfer to CBMI was a mere ploy to prevent their regularization, this bolstered by the fact that even after they signed with CBMI, they remained to be under the direct supervision of PPI.[29]

Ruling of the CA

On November 15, 2013, the CA rendered the herein assailed Decision[30] denying the petition for *certiorari*, to wit:

> IN VIEW OF ALL THESE, the Petition is DENIED. The assailed Resolutions of [NLRC] are SET ASIDE. The Decision of the [LA] is REINSTATED.
>
> SO ORDERED.[31]

The CA held that the NLRC erred in dropping PPI as a party to the case, as contrary to its findings, CBMI failed to prove

---

[25] *Id*. at 410-433.

[26] *Id*. at 460-462.

[27] *Id*. at 467-504; 505-525.

[28] *Id*. at 467-504.

[29] *Id*. at 519-520, 522.

[30] *Id*. at 73-93.

[31] *Id*. at 93.

that it was an independent contractor, or was engaged in permissible job contracting.

According to the CA, the totality of the circumstances surrounding the case established that it was PPI and not CBMI which has the discretion and control over the manner and method by which the respondents' works are to be accomplished.

Furthermore, considering that the respondents performed tasks which are necessary and desirable to the usual trade or business of PPI, and use tools and equipment of the latter in their work, the CA concluded that CBMI falls under the definition of a "labor only contractor," which is prohibited under Article 106 of the Labor Code. Hence:

> Being a labor-only contractor, CBMI was deemed to be an agent of Pizza Hut, which in turn, was therefore, the principal of CBMI. Concomitantly, an employer-employee relationship was created between Pizza Hut as principal, and private respondents as employees. Pizza Hut, as a result is solidarily liable with petitioners for private respondents' claims. x x x.[32] (Citations omitted)

As agent of PPI, the CA ruled that it is incumbent upon the petitioners to prove that the dismissal was for a just and valid cause which it failed to do, accordingly, the CA concluded that the dismissal is illegal and the respondents are entitled to their money claims.[33]

Petitioners sought a reconsideration[34] of the November 15, 2013 Decision but the CA denied it in its Resolution[35] dated March 4, 2015.

Issues

In the instant petition, the petitioners submit the following issues for this Court's resolution:

---

[32] *Id*. at 86.

[33] *Id*. at 87, 92.

[34] *Id*. at 98-117.

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

I.

WHETHER OR NOT THE HONORABLE CA GRAVELY AND SERIOUSLY ERRED IN THE APPLICATION OF LAW AND JURISPRUDENCE WHEN IT HELD THAT CBMI IS A LABOR-ONLY CONTRACTOR.

II.

WHETHER OR NOT THE HONORABLE CA GRAVELY AND SERIOUSLY ERRED IN THE APPLICATION OF LAW AND JURISPRUDENCE WHEN IT HELD THAT THE RESPONDENTS WERE ILLEGALLY DISMISSED.

III.

WHETHER OR NOT THE HONORABLE CA GRAVELY AND SERIOUSLY ERRED IN THE APPLICATION OF LAW AND JURISPRUDENCE WHEN IT AWARDED BACKWAGES IN FAVOR OF THE RESPONDENTS.

IV.

WHETHER OR NOT THE HONORABLE CA GRAVELY AND SERIOUSLY ERRED IN THE APPLICATION OF LAW AND JURISPRUDENCE WHEN IT AWARDED MORAL DAMAGES, EXEMPLARY DAMAGES, AND ATTORNEY'S FEES TO THE RESPONDENTS.[36]

In sum, the issues to be resolved by this Court in the instant case are the following: *first*, whether or not the respondents are employees of CBMI; and *second*, whether or not the respondents have been illegally dismissed and as such entitled to their monetary claims.

Ruling of the Court

The petition is partly meritorious.

---

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

Initially, it must be said that the issues of whether CBMI is an independent contractor, and the matter of respondents' employment status are questions of fact that are not the proper subjects of a petition for review under Rule 45 of the Rules of Court. However, considering the variance between the factual determination of the LA and the CA on the one hand, and the NLRC on the other, this case presents an exception for the Court to re-evaluate the evidence on record.[37]

The resolution of the first issue hinges on the determination of the status of CBMI, *i.e.,* whether or not it is a labor-only contractor or an independent contractor.

In support of its position that it is engaged in legitimate job contracting, CBMI attached for the Court's reference, its Certificate of Registration[38] with the Department of Labor and Employment (DOLE). Furthermore, it cites that it has been in operation for almost 50 years, counting various institutions among its clients.

Under the premises and based on the evidence presented by the parties, the Court is inclined to sustain the position of CBMI that it is an independent contractor.

Labor-only contracting is defined by Article 106 of the Labor Code of the Philippines, as an arrangement where a person, who does ***not*** have substantial capital or investment, supplies workers to an employer to perform activities which are directly related to the principal business of such employer. Furthermore, jurisprudence instructs that the existence of an independent contract relationship may be indicated by several factors, *viz.*:

> [S]uch as, but not necessarily confined to, whether the contractor was carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship;

---

[37] *Royale Homes Marketing Corp. v. Alcantara*, 739 Phil. 744, 755-756 (2014); *South East International Rattan, Inc., et al. v. Coming,* 729 Phil. 298, 300 (2014); *Norkis Trading Co., Inc. v. Gnilo*, 568 Phil. 256, 265 (2008).

[38] *Rollo,* p. 133.

the right to assign the performance of specified pieces of work; the control and supervision of the workers; the power of the employer with respect to the hiring, firing and payment of the workers of the contractor; the control of the premises; the duty to supply premises, tools, appliances, materials and labor; and the mode, manner and terms of payment.[39]

The issue in this case being the status of the respondents, the pertinent Department Order (DO) implementing the aforecited provision of the Labor Code is DOLE DO No. 18-02, Series of 2002, the regulation in force at the time the respondents were hired and assigned to PPI.[40]

DO No. 18-02 reiterates the prohibition against labor-only contracting, *viz.*:

> Section 5. Prohibition against labor-only contracting. Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:
>
> i. The contractor or subcontractor does not have substantial capital or investment which relates to the job, work, or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
>
> ii. The contractor does not exercise the right to control the performance of the work of the contractual employee.
>
> x x x x x x x x x

---

[39] *Coca-Cola Bottlers Phils., Inc. v. Agito, et al.*, 598 Phil. 909, 928 (2009), citing *San Miguel Corp. v. Maersk Integrated Services, Inc.,* 453 Phil. 543, 566-567 (2003).

[40] *Leo V. Mago and Leilani E. Colobong v. Sunpower Philippines Manufacturing Limited,* G.R. No. 210961, January 24, 2018; *Superior Packaging Corp. v. Balagsay, et al.,* 697 Phil. 62, 71-72 (2012). See *DOLE Philippines, Inc. v. Esteva,* 538 Phil. 817 (2006).

From the foregoing, it is clear that job contracting is not absolutely prohibited. Indeed, an employer is allowed to farm out the performance or completion of a specific job, work or service, within a definite or specified period, and regardless of whether the said task is to be performed or completed within or outside its premises. Job contracting is deemed legitimate and permissible when the contractor has substantial capital or investment, and runs a business that is independent and free from control by the principal. Further, in *Norkis Trading Co., Inc. v. Gnilo*,[41] it is required that "the agreement between the principal and the contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits."[42] The absence of any of these elements results in a finding that the contractor is engaged in labor-only contracting.

In addition to the foregoing, DO No. 18-02 requires that contractors and subcontractors be registered with the DOLE Regional Offices. The system of registration has been established under the DO to regulate and monitor contracting arrangements.[43] It is imposed to ensure that those contractors operate in accordance with law and its guiding principles.[44]

But unlike the elements of substantial capital or investment and control, the absence of registration merely gives rise to the *presumption* that the contractor is engaged in labor-only contracting.[45] Conversely, in the absence of evidence to the contrary, flowing from the presumption of regularity in the performance of official functions, the existence of registration in favor of a contractor is a strong badge of legitimacy in favor of the contractor.

---

[41] 568 Phil. 256 (2008).

[42] *Rollo*, pp. 92-93.

[43] D.O. No. 18-02, Series of 2002, Sections 11 and 12.

[44] *Id*. at Section 1.

[45] *Id*. at Section 11.

It is not disputed that CBMI is a duly licensed labor contractor by the DOLE.[46] As the primary agency tasked to regulate job contracting, DOLE is presumed to have acted in accordance with its mandate and after due evaluation of rules and regulations in its registration of CBMI.[47] The Certificate of Registration issued by DOLE recognizes CBMI as an independent contractor as of February 13, 2008, and regards the validity of the latter's registration as such until February 14, 2011,[48] well within the period relevant to this appeal. In this light, it then becomes incumbent upon the respondents to rebut the presumption of regularity to prove that CBMI is not a legitimate contractor as determined by the DOLE, which they failed to do.[49]

While the Certificate of Registration offered as evidence pertains only to a period of three years from February 13, 2008 until February 14, 2011, case law dictates that the status of CBMI may be evaluated on the basis of the corporation's activities and status prior to their registration.[50]

In this case, the Court finds that CBMI has established compliance with the requirements of legitimate job contracting previously cited.

Per documentary evidence attached by CBMI, the company's total assets at the time of filing of the respondents' complaint before the NLRC in 2010 amounted to Php84,351,349.00.[51] Based on its attached Audited Financial Statements for the years 2008 and 2009, its total assets, which consists of cash, receivables,

---

[46] *Rollo,* p. 133.

[47] *Leo V. Mago and Leilani E. Colobong v. Sunpower Philippines Manufacturing Limited*, *supra* note 40; *Gallego v. Bayer Philippines, Inc., et al.,* 612 Phil. 250, 261-262 (2009).

[48] *Rollo,* p. 133.

[49] *Sasan, Sr., et al. v. NLRC*, *4th Div., et al.*, 590 Phil. 685, 704 (2008).

[50] *Almeda, et al. v. Asahi Glass Philippines, Inc.,* 586 Phil. 103, 106 (2008).

[51] *Rollo,* p. 220.

and property and equipment, amounted to Php79,203,902.00[52] and Php76,189,554.00,[53] respectively.

Likewise from the records, as of December 2010, CBMI has an authorized capital stock of 1,000,000.00 shares, half of which or 500,000.00 have been subscribed.[54] Its retained earnings for the years 2009 and 2010 consists of Php6,433,525.00 and Php 10,988,890.00, respectively.[55] Incidentally, for the years 2005 to 2007 and 2012, CBMI's paid-up capital amounted to Php3,500,000.00,[56] which is even beyond by the standard set by the DOLE D.O. No. 18-A, series of 2011, of what constitutes "substantial capital."[57]

Clearly, CBMI has substantial capital to maintain its manpower business. From the evidence adduced by CBMI, it is also clear that it runs a business independent from the PPI. Based on its registration with the Securities and Exchange Commission (SEC), CBMI has been in existence since 1967;[58] and has since provided a variety of services to entities in various fields, such as banking, hospitals, and even government institutions. CBMI counts among its clients, De La Salle University (DLSU), Philippine National Bank (PNB), Smart Communications, Inc., SM Supermalls, and the United States (US) Embassy. In the case of the US Embassy for instance, CBMI has been a service contractor for seven years.[59]

---

[52] *Id*. at 229.

[53] *Id*. at 232.

[54] *Id*. at 222.

[55] *Id*. at 220.

[56] *Id*. at 224, 227, 534.

[57] Per Sec. 3(i) of D.O. 18-A, series of 2011, "substantial capital" refers to paid-up capital stocks/shares of at least Three Million Pesos (Php3,000,000.00) in case of corporations.

[58] *Rollo*, p. 121.

[59] *Id*. at 141; *Neri v. National Labor Relations Commission*, 296 Phil. 610 (1993).

Above all, CBMI maintains the "right of control" over the respondents. For purposes of determining whether a job contractor is engaged in legitimate contracting or prohibited labor-only contracting, DO No. 18-02, defines the "right of control" as:

> [T]he right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means in achieving that end.[60]

From these, it can readily be inferred that the element of control that is determinative of an employer-relationship "does not merely relate to the mutually desirable result intended by the contractual relationship; they must have the nature of dictating the means and methods to be employed in attaining the result."[61] Nonetheless, as the Court emphasized in *Almeda, et al. v. Asahi Glass Philippines, Inc.,*[62] "[t]he power of control refers merely to the existence of the power and not to the actual exercise thereof. It is not essential for the employer to actually supervise the performance of duties of the employee; it is enough that the former has a right to wield the power."[63]

The contract of service, while of itself is not determinative of the relationship between the parties, nonetheless provides useful leads into the relationship between the principal on the one hand, and the job contractor on the other.[64] In this case, the "Contract of Services" between CBMI and PPI for the year 2000, imposes upon the former the obligation to provide not only the necessary personnel to perform "kitchen, busing, rider/ delivery, and sanitation services" but as well to provide tools and equipment necessary for the rendition of such services.[65]

---

[60] DOLE D.O. No. 18-02, Series of 2002, Section 5.

[61] *Tongko v. The Manufacturers Life Insurance Co. (Phils.), Inc., et al.,* 655 Phil. 384, 402 (2011).

[62] 586 Phil. 103 (2008).

[63] *Id*. at 113.

[64] *Coca-Cola Bottlers Phils., Inc. v. Dela Cruz, et al*., 622 Phil. 886, 905 (2009).

[65] *Rollo,* p. 150.

Also, it is understood under the agreement that upon deployment, the personnel are already qualified and possessed of the necessary skills for their assigned tasks.[66] Pertinently, the said contract provides for the following:

V. HIRING AND PAYROLL

The INDEPENDENT CONTRACTOR shall be responsible for the hiring, supervision, discipline, suspension, or termination of its own employees, including those assigned to the CLIENT. The employees of the INDEPENDENT CONTRACTOR shall be under its own payroll. The INDEPENDENT CONTRACTOR shall ensure the proper and prompt payment of each employee's wages and contributions to the SSS, Pag-Ibig and to other agencies as may be required under the law.

VI. SUPERVISION OF THE INDEPENDENT CONTRACTOR'S PERSONNEL

The INDEPENDENT CONTRACTOR shall provide coordinators/ supervisors, such that there shall be at least one (1) coordinator/ supervisor in each place of business of the CLIENT as listed in ANNEX A of the CONTRACT. The coordinator/supervisor shall direct the performance of the services rendered by the INDEPENDENT CONTRACTOR's employees. The coordinator/supervisor shall, likewise, ensure that the agreed number of personnel is on site and that the qualities of services are maintained at the agreed standards.[67]

The same obligations have been imposed upon CBMI, albeit differently worded, under its Contract of Services with PPI for the years 2002,[68] 2003,[69] 2004,[70] 2006,[71] 2007,[72] and 2008.[73]

---

[66] *Id*. at 151.

[67] *Id*.

[68] *Id*. at 155-160.

[69] *Id*. at 161-166.

[70] *Id*. at 167-171.

[71] *Id*. at 173-177.

[72] *Id*. at 178-182.

[73] *Id*. at 183-187.

For the year 2009[74] and 2010,[75] the Contract of Services further detailed these provisions, in that the contract provided that CBMI has the "sole authority to control and direct the performance of the details of the work of its employees." Further, that any complaints or reports regarding the performance, misconduct, or negligence of the persons so deployed shall be made in writing and addressed by PPI to CBMI, the latter having the sole authority to discipline its employees.[76]

Without necessarily touching on the respondents' status prior to their employment with CBMI, in the instant controversy, the petitioners' control over the respondents is manifested by the fact that they wield and exercise the following powers over them: "selection and engagement, payment of wages, dismissal, and control over the employees' conduct."[77]

It is indisputable from the respondents' employment contracts[78] that they were hired by CBMI.[79] It was also the latter who assigned respondents at PPI's Marcos Highway Branch after they were briefed of company policies and their duties.[80] It is also CBMI who pays the respondents their salaries, and remits premiums to PhilHealth and Social Security System.[81]

The nature of CBMI's agreement with PPI requires the former to assign employees to perform specific services for the latter.[82] CBMI deploys employees already equipped of the skills based on the specific service demanded by PPI to be accomplished.

---

[74] *Id*. at 194-204.

[75] *Id*. at 205-214.

[76] *Id*. at 197, 207-208.

[77] See *Philippine Airlines, Inc. v. NLRC,* 358 Phil. 919, 934-935 (1998).

[78] *Rollo*, pp. 233-235.

[79] *Id*. at 404-405.

[80] *Id*. at 32, 236-237.

[81] *Id*. at 238-341.

[82] *Supra* notes 68-75.

Ultimately, the training necessary to acquire the skills essential to perform the duties of a rider for Asprec, and as a team member for Bataller, have been provided for by CBMI. Simply, the manner in which respondents perform their task are all dictated by CBMI, the sole concern of PPI being the result, *i.e.,* what and how many items are to be produced and where to deliver the same. Noteworthy, CBMI maintains the sole power to determine respondents' place of assignment and their transfer from one work assignment to another.[83] CBMI's manner of deployment and its choice as to who will be assigned for a specific task or location does not require the approval or acceptance of PPI.[84]

Moreover, it is evident from how this controversy unfolded that CBMI maintains the power to discipline the respondents. In accordance with the terms of the 2010 Contract of Services, an Incident Report[85] was prepared by PPI's Store Manager who then submitted the same to CBMI. Pursuant to its power of supervision over the respondents, CBMI initiated the investigation[86] and on the basis thereof imposed upon the respondents preventive suspension from August 5 to 19, 2010.[87] It may not be amiss to point out that the respondents' participation in these proceedings is indicative of their recognition of CBMI's disciplinary authority over them.[88]

All these, without doubt indicate that CBMI possesses the power of control over the respondents; which in turn supports the conclusion that CBMI carries a business independent of PPI.

---

[83] *Rollo*, p. 9; *Alilin, et al. v. Petron Corporation,* 735 Phil. 509, 528 (2014); *South Davao Development Company, Inc. v. Gamo,* 605 Phil. 604, 613 (2009).

[84] *Rollo,* p. 141; *Neri v. National Labor Relations Commission, supra* note 59, at 618-619.

[85] *Rollo*, p. 242.

[86] *Id.* at 243-244.

[87] *Id.* at 250-251.

[88] *Id.* at 245-249; 252-253.

With respect to the respondents' dismissal, the Court affirms the decision of the NLRC.

CBMI, as the employer has the power to impose discipline upon the respondents who are its employees, which includes the imposition of the preventive suspension pending investigation.[89] However, as correctly noted by the NLRC, the extension of the period of suspension by the CBMI is unwarranted under the attendant circumstances.

Section 4, Rule XIV of the Omnibus Rules Implementing the Labor Code is explicit in that the period of preventive suspension should not exceed 30 days, after which, the employee must be reinstated and paid the wages and other benefits due, *viz.*:

> SECTION 4. *Period of suspension.* — No preventive suspension shall last longer than 30 days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

To recall, in this case, after the conduct of administrative hearing, the respondents have been suspended by CBMI for a period of 15 days or from August 5 to 19, 2010.[90] Thereafter, allegedly due to the reduced need of PPI and on account of the incident subject of investigation, respondents have been placed on "temporary-lay-off status" for a period of six months or from August 20, 2010 until February 20, 2011.[91] Succinctly, respondents have been under preventive suspension for more than the maximum period allowed by law, without any word as to the result of the investigation, and without having been reinstated to their former or to a substantially equivalent position,

---

[89] Omnibus Rules Implementing the Labor Code, Rule XIV, Section 3.

[90] *Rollo,* pp. 250-251.

[91] *Id*. at 254-255.

which thus renders the period of extended suspension illegal. It bears to stress albeit at the risk of repetition, the Omnibus Rules Implementing the Labor Code requires that the employer act within the 30-day period of preventive suspension by concluding the investigation either by absolving the respondents of the charges or meting corresponding penalty if liable. Otherwise, the employer must reinstate the employee, or extend the period of suspension provided the employee's wages and benefits are paid in the interim.[92] Failure by the employer to comply with these, the preventive suspension is deemed illegal as it amounts to a constructive dismissal.[93]

In an attempt to justify its action, CBMI alleged that the respondents were merely placed under "floating status," due to a decline in the demand of PPI for respondents' services. According to CBMI, the placing of respondents in a "floating status" due to unavailability of work has long been recognized as a valid exercise of management prerogative.[94] In support thereof, CBMI cites Article 286[95] of the Labor Code, to wit:

> ART. 286. *When employment not deemed terminated.* — The *bona-fide* suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption

---

[92] *Genesis Transport Service, Inc., et al. v. Unyon ng Malayang Manggagawa ng Genesis Transport, et al.,* 631 Phil. 350, 359 (2010).

[93] *Mandapat v. Add Force Personnel Services, Inc., et al.,* 638 Phil. 150, 156 (2010).

[94] *Rollo,* p. 48.

[95] Now Article 301, per Department Advisory No. 01, Renumbering the Labor Code of the Philippines, as Amended, Series of 2015; pursuant to Section 5 of Republic Act No. 10151, entitled "An Act Allowing the Employment of Night Workers, thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, as amended, otherwise known as The Labor Code of the Philippines," July 26, 2010.

of operations of his employer or from his relief from the military or civic duty.

In the case of *Sebuguero, et al. v. NLRC*,[96] the term "lay-off" or what is also referred to as retrenchment is defined as:

> [T]he termination of employment initiated by the employer through no fault of the employee's and without prejudice to the latter, resorted to by management during periods of business recession, industrial depression, or seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation. Simply put, it is an act of the employer of dismissing employees because of losses in the operation of a business, lack of work, and considerable reduction on the volume of his business, a right consistently recognized and affirmed by this Court.[97] (Citations omitted)

When a "lay-off" is permanent, it amounts to dismissal. However, when the same is temporary, it is regarded as a mere suspension of the employment status of the employee.[98] Notably, while the Court recognizes lay-off as an exercise of management prerogative, jurisprudence requires that the same must be attended by good faith and that notice must be given to the employees concerned and the DOLE at least one (1) month prior to the intended date of lay-off or retrenchment.[99]

Article 286 of the Labor Code, as cited by CBMI, likewise contemplates lay-off, particularly that which is temporary in nature, and as such must be for a period not exceeding six months. In which case, apart from causes attributable to the employer, the temporary suspension of employment may also be on account of the employee's performance of military or civic duty.

---

[96] 318 Phil. 635 (1995).

[97] *Id*. at 646.

[98] *Lopez v. Irvine Construction Corp., et al.,* 741 Phil. 728, 740 (2014).

[99] *Id*. at 741.

To the Court, CBMI's claim that the suspension falls under Article 286 of the Labor Code is a mere afterthought to justify its extension of respondents' period of preventive suspension. For one, the equivocal wording of the notice evinces the real reason behind the extended period of suspension, *i.e.,* the attempted stealing incident. The notices dated August 23, 2010 to the respondents read:

> CBMI would like to inform you that due to the reduced needs of its client for your services, **and** because of the incident that happened last July 23, 2010, your assignment as Team Member PH Marcos H-way have been subjected to further investigation.
>
> Meanwhile, the management has no option but to place you on temporary – lay off or status effective August 20, 2010 until February 20, 2011. Further, CBMI will expedite effort to process your employment as soon as there is available project that fits your qualification and expertise.
>
> In view thereof, please coordinate with the undersigned for possible transfer of assignment.[100] (Emphasis Ours)

The said conclusion is bolstered by the fact that other than its bare allegation, CBMI failed to adduce evidence to prove that there has indeed been a reduction in the demand of PPI for the services it provides. Likewise, PPI, despite having all the opportunity to do so, did not corroborate CBMI's submission. In addition, CBMI also failed to comply with the mandatory one-month notice requirement. The law requires that notice be given one month prior to the intended date of lay-off. In this case, the notice to the respondents dated August 23, 2010 has been sent *via* registered mail on August 20, 2010, for an intended period of lay-off starting August 20, 2010 to February 20, 2011. The records are bereft of proof that CBMI furnished a copy of the said notice to the DOLE.

Considering the dire consequences of "lay-off" to an employee, jurisprudence places upon the employer the burden to prove

---

[100] *Id.* at 254-255.

with sufficient and convincing evidence the justification therefor, and as well compliance with the parameters set forth by law.[101] On account of CBMI's failure to discharge this burden in this case, the Court views that the extended period of suspension is illegal, which thus entitles the respondents to their money claims.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **PARTLY GRANTED.** Accordingly, the Decision dated November 15, 2013 of the Court of Appeals in CA-G.R. SP No. 123429, is hereby **REVERSED and SET ASIDE**. The Resolution dated September 28, 2011 of the National Labor Relations Commission in NLRC NCR Case No. 11-15889-10 and NLRC NCR Case No. 11-16067-10 insofar as it holds petitioner Consolidated Building Maintenance, Inc. liable for the money claims of respondents Rolando Asprec, Jr. and Jonalen Bataller is hereby **REINSTATED.**

In addition, respondents Rolando Asprec, Jr. and Jonalen Bataller are entitled to interest on the monetary awards at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

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

---

[101] *Lopez v. Irvine Construction Corp., et al., supra* note 98.

SECOND DIVISION

[G.R. No. 218269. June 6, 2018]

IN RE: APPLICATION FOR LAND REGISTRATION, SUPREMA T. DUMO, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND TITLES; APPLICATION FOR LAND REGISTRATION (PD NO. 1529); REQUIREMENTS FOR JUDICIAL CONFIRMATION OF IMPERFECT TITLE UNDER SECTION 14 PD NO. 1529 MUST BE FULFILLED.— The requirements for judicial confirmation of imperfect title are found in Section 14 of Presidential Decree No. 1529 (PD No. 1529), which provides: Section 14. *Who may apply*. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives: (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier. (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws. (3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws. (4) Those who have acquired ownership of land in any other manner provided for by law. x x x [I]t is necessary in an application for land registration that the court determines whether or not an applicant fulfills the requirements under any of the paragraphs of Section 14 of PD No. 1529.

2. ID.; ID.; ID.; ID.; REQUIREMENT THAT THE LAND SOUGHT TO BE REGISTERED IS ALIENABLE AND DISPOSABLE LAND OF THE PUBLIC DOMAIN; DOCUMENTS THAT MUST BE PRESENTED.— The first requirement is to prove that the land sought to be registered is alienable and disposable land of the public domain. x x x [I]n

an application for land registration, the applicant has the burden of overcoming the presumption that the State owns the land applied for, and proving that the land has already been classified as alienable and disposable. x x x In *Republic of the Philippines v. T.A.N. Properties*, *Inc.*, this Court has held that an applicant must present x x x *first,* a copy of the original classification approved by the Secretary of the Department of Environment and Natural Resources (DENR) and certified as a true copy by the legal custodian of the official records, and *second*, a certificate of land classification status issued by the Community Environment and Natural Resources Office (CENRO) or the Provincial Environment and Natural Resources Office (PENRO) based on the land classification approved by the DENR Secretary. x x x The certification issued by the CENRO or PENRO, by itself, does not prove the alienable and disposable character of the land sought to be registered. The certification should always be accompanied by the original or certified true copy of the original classification approved by the DENR Secretary or the President.

3. ID.; ID.; ID.; ID.; REQUIREMENT OF POSSESSION OR OCCUPATION FROM 12 JUNE 1945 OR EARLIER; TO DETERMINE IF THE SAME IS MATERIAL, IT MUST BE DISTINGUISHED IF THE APPLICATION OF THE REGISTRATION OF LAND IS BEING MADE UNDER PARAGRAPH 1 OR PARAGRAPH 2 OF SECTION 14 OF PD NO. 1529.— Another requirement under Section 14(1) of PD No. 1529 is to prove that the applicant and her predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the land under a *bona fide* claim of ownership since 12 June 1945 or earlier. x x x To determine whether possession or occupation from 12 June 1945 or earlier is material, one has to distinguish if the application for the registration of land is being made under paragraph 1 or paragraph 2 of Section 14 of PD No. 1529. x x x To summarize the discussion and reiterate the guidelines set by this Court in *Heirs of Malabanan v. Republic of the Philippines*, we state: 1. If the applicant or his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the land sought to be registered under a *bona fide* claim of ownership **since 12 June 1945 or earlier**, the applicant must prove that the land has been classified by the

Executive department as **alienable and disposable land of the public domain**. This is covered by Section 14(1) of PD No. 1529 in relation to Section 48(b) of CA No. 141. While it is not necessary that the land has been alienable and disposable since 12 June 1945 or earlier, the applicant must prove that the President or DENR Secretary has classified the land as alienable and disposable land of the public domain at any time before the application was made. 2. If the occupation and possession of the land commenced at any time after 12 June 1945, the applicant may still register the land if he or his predecessors-in-interest have complied with the requirements of **acquisitive prescription** under the Civil Code **after** the land has been expressly declared as **patrimonial property** or no longer needed for public use, public service or the development of national wealth. This is governed by Section 14(2) of PD No. 1529 in relation to the Civil Code. Under the Civil Code, acquisitive prescription, whether ordinary or extraordinary, applies only to private property. Thus, the applicant must prove **when** the land sought to be registered was **expressly declared** as patrimonial property because it is only from this time that the period for acquisitive prescription would start to run.

CAGUIOA, *J., concurring and dissenting opinion*:

1. CIVIL LAW; LAND TITLES; APPLICATION FOR LAND REGISTRATION (PD NO. 1529); REQUIREMENTS; THE LAND SOUGHT TO BE REGISTERED IS ALIENABLE AND DISPOSABLE LAND OF THE PUBLIC DOMAIN; DOCUMENTS AS EVIDENCE THEREOF; THE COPY OF THE ORIGINAL CLASSIFICATION APPROVED BY THE DENR SECRETARY AND CERTIFIED AS TRUE COPY BY THE LEGAL CUSTODIAN OF THE OFFICIAL RECORDS IS UNNECESSARY.— On the basis of the Court's 2010 decision in *T.A.N.*, the *ponencia* holds that applicants must present the following in order to prove that the land subject of a registration proceeding has been classified as alienable and disposable: (i) a certificate of land classification status issued by the CENRO or PENRO of the DENR; and (ii) a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. I submit that the second requirement established in *T.A.N.* has been rendered superfluous and unnecessary by the

issuance of DENR Administrative Order No. (DENR AO) 2012-09, which delegated unto the CENRO, PENRO and the NCR Regional Executive Director (RED-NCR) not only the authority to issue **certifications** on land classification status, but also **certified true copies of approved land classification maps** (LC maps) with respect to lands falling within their respective jurisdictions.

2. **ID.; ID.; ID.; CASE OF *MALABANAN V. REPUBLIC* ON THE REQUIREMENTS FOR ORIGINAL REGISTRATION UNDER SECTION 14(2); AN EXPRESS GOVERNMENT MANIFESTATION THAT SAID LAND CONSTITUTES PATRIMONIAL PROPERTY, OR IS "NO LONGER RETAINED" BY THE STATE FOR PUBLIC USE, PUBLIC SERVICE, OR THE DEVELOPMENT OF NATIONAL WEALTH.—** Citing *Malabanan*, the *ponencia* holds that Dumo failed to establish that the disputed property consists of private land susceptible of acquisitive prescription under the Civil Code, since she failed to submit any evidence of an express declaration made by the State converting the same to patrimonial property. Under *Malabanan*, the requirements for original registration under Section 14(2) are: (i) a declaration that the land subject of the application is alienable and disposable; (ii) **an express government manifestation that said land constitutes patrimonial property, or is "no longer retained" by the State for public use, public service, or the development of national wealth;** and (iii) proof of possession for the period and in the manner prescribed by the Civil Code for acquisitive prescription, reckoned from the moment the property subject of the application is released from the public dominion. x x x In cases where the property subject of the application had been previously utilized by the State for some public purpose, then there must be proof of the abandonment of State use in order for the land to be held as having been withdrawn from public dominion. In these cases (*i.e.*, where the property had been previously utilized for some public purpose), it is the applicant who has the burden of proving an express government manifestation that the land subject of his application has been withdrawn from public purpose/use so that it already constitutes "converted" patrimonial property. I submit that this is the correct understanding of Art. 422 of the Civil Code, and it is only within this context that the second requirement in *Malabanan* applies.

APPEARANCES OF COUNSEL

Aurora P. Sanglay for petitioner.
Jaime S. Linsangan collaborating counsel for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on certiorari under Rule 45 of the Rules of Court. Petitioner Suprema T. Dumo (Dumo) challenges the 28 January 2014 Decision[1] and the 19 May 2015 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 95732, which modified the Joint Decision of the Regional Trial Court (RTC), Branch 67, Bauang, La Union, in Civil Case No. 1301-Bg for *Accion Reivindicatoria*[3] and LRC Case No. 270-Bg for Application for Land Registration.[4]

The Facts

Severa Espinas, Erlinda Espinas, Aurora Espinas, and Virginia Espinas filed a Complaint for Recovery of Ownership, Possession and Damages with Prayer for Writ of Preliminary Injunction against the heirs of Bernarda M. Trinidad (Trinidad), namely, Leticia T. Valmonte, Lydia T. Nebab, Purita T. Tanag, Gloria T. Antolin, Nilo Trinidad, Elpidio Trinidad, Fresnida T. Saldana,

---

[1] *Rollo*, pp. 52-65. Penned by Associate Justice Rodil V. Zalameda, with Associate Justices Ramon M. Bato, Jr. and Agnes Reyes-Carpio concurring.

[2] *Id.* at 98-102.

[3] *Severa Espinas, Erlinda Espinas, Aurora Espinas and Virginia Espinas, heirs of Marcelino Espinas (Plaintiffs) v. Leticia T. Valmonte, Lydia T. Nebab, Purita T. Tanag, Gloria T. Antolin, Nilo Trinidad, Elpidio Trinidad, Fresnida T. Saldana, Nefresha T. Tolentino, Suprema T. Dumo, heirs of Bernarda M. Trinidad (Defendants).*

[4] In Re: Application for Land Registration, Suprema T. Dumo (Applicant).

Nefresha T. Tolentino, and Dumo. The plaintiffs are the heirs of Marcelino Espinas (Espinas), who died intestate on 6 November 1991, leaving a parcel of land (Subject Property) covered by Tax Declaration No. 13823-A, which particularly described the property as follows:

> A parcel of land located [in] Paringao, Bauang, La Union classified as unirrigated Riceland with an area of 1,065 square meters covered by Tax Declaration No. 13823-A, bounded on the North by Felizarda N. Mabalay; on the East by Pedro Trinidad; on the South by Girl Scout[s] of the Philippines and on the West by China Sea and assessed at ₱460.00.[5]

The Subject Property was purchased by Espinas from Carlos Calica through a Deed of Absolute Sale dated 19 October 1943. Espinas exercised acts of dominion over the Subject Property by appointing a caretaker to oversee and administer the property. In 1963, Espinas executed an affidavit stating his claim of ownership over the Subject Property. Espinas had also been paying realty taxes on the Subject Property.

Meanwhile, on 6 February 1987, the heirs of Trinidad executed a Deed of Partition with Absolute Sale over a parcel of land covered by Tax Declaration No. 17276, which particularly described the property as follows:

> A parcel of sandy land located [in] Paringao, Bauang, La Union, bounded on the North by Emiliana Estepa, on the South by Carlos Calica and Girl Scout[s] Camp and on the West by China Sea, containing an area of 1[,]514 square meters more or less, with an assessed value [of] ₱130.00.[6]

Finding that the Deed of Partition with Absolute Sale executed by the heirs of Trinidad included the Subject Property, the heirs of Espinas filed a Complaint for Recovery of Ownership, Possession and Damages to protect their interests (Civil Case No. 1301-Bg). The heirs of Espinas also sought a Temporary

---

[5] *Rollo*, p. 54.

[6] *Id*.

Restraining Order to enjoin the Writ of Partial Execution of the Decision in Civil Case No. 881, a Forcible Entry complaint filed by the heirs of Trinidad against them.

In the Complaint for Recovery of Ownership, Possession and Damages, Dumo, one of the defendants therein, filed a Motion to Dismiss based on *res judicata*. Dumo argued that Espinas had already applied for the registration of the Subject Property and that such application had been dismissed. The dismissal of the land registration application of Espinas was affirmed by the CA, and attained finality on 5 December 1980.

The Motion to Dismiss filed by Dumo was denied by the RTC, which held that the land registration case cannot operate as a bar to the Complaint for Recovery of Ownership, Possession and Damages because the decision in the land registration case did not definitively and conclusively adjudicate the ownership of the Subject Property in favor of any of the parties.

The heirs of Trinidad thereafter filed their collective Answer, where they denied the material allegations in the complaint.

Additionally, Dumo filed an application for registration of two parcels of land, covered by Advance Plan of Lot Nos. 400398 and 400399 with a total area of 1,273 square meters (LRC Case No. 270-Bg). Dumo alleged that the lots belonged to her mother and that she and her siblings inherited them upon their mother's death. She further alleged that through a Deed of Partition with Absolute Sale dated 6 February 1987, she acquired the subject lots from her siblings. Dumo traces her title from her mother, Trinidad, who purchased the lots from Florencio Mabalay in August 1951. Mabalay was Dumo's maternal grandfather. Mabalay, on the other hand, purchased the properties from Carlos Calica.

The heirs of Espinas opposed Dumo's application for land registration on the ground that the properties sought to be registered by Dumo are involved in the *accion reivindicatoria* case. Thus, the RTC consolidated the land registration case with the Complaint for Recovery of Ownership, Possession and Damages.

The Office of the Solicitor General entered its appearance and filed its opposition for the State in the land registration case.

The Ruling of the RTC

On 2 July 2010, the RTC rendered its Joint Decision, finding that the Subject Property was owned by the heirs of Espinas. The RTC ordered the dismissal of Dumo's land registration application on the ground of lack of registerable title, and ordered Dumo to restore ownership and possession of the lots to the heirs of Espinas. The dispositive portion of the Joint Decision reads:

> WHEREFORE, premises considered[,] judgment is rendered:
>
> In LRC Case No. 270-Bg: Ordering the dismissal of the land registration on [the] ground of lack of registerable title on the part of Suprema Dumo.
>
> In Civil Case No. 1301-Bg: Declaring the Heirs of Marcelino Espinas as the owners of the lots subject of [the] application; ordering the applicant-defendant Suprema Dumo to restore ownership and possession of the lots in question to the Heirs of Marcelino Espinas.
>
> SO ORDERED.[7]

The RTC found that based on the evidence presented, the heirs of Espinas had a better right to the Subject Property. In particular, the RTC found that based on the records of the Bureau of Lands, the lot of Espinas was previously surveyed and approved by the Bureau of Lands and when the survey was made for Trinidad, there was already an approved plan for Espinas. Also, the RTC found that the tax declarations submitted by Dumo in support of her application failed to prove any rights over the land. Specifically, the tax declaration of Mabalay, from whom Dumo traces her title, showed that the land was first described as bounded on the west by Espinas. The subsequent tax declaration in the name of Trinidad, which cancelled the

---

[7] *Id.* at 50.

tax declaration in the name of Mabalay, showed that the land was no longer bounded on the west by Espinas, but rather, by the China Sea. The area of the lot also increased from 3,881 to 5,589 square meters. All of the subsequent tax declarations submitted by Dumo covering the lot in the name of her mother stated that the lot was no longer bounded on the west by Espinas, but rather, by the China Sea. The RTC held that the only logical explanation to the inconsistency in the description of the land and the corresponding area thereof is that the lot of Espinas was included in the survey conducted for Trinidad.

The RTC also rejected the theory of Dumo that the lot of Espinas was eaten by the sea. The RTC found that during the ocular inspection, it was established that the lots adjoining the lot of Espinas on the same shoreline were not inundated by the sea. To hold the theory posited by Dumo to be true, the RTC reasoned that all the adjoining lots should also have been inundated by the sea. However, it was established through the ocular inspection that the lots adjoining the property of Espinas on the same shoreline remained the same, and thus the Subject Property had not been eaten by the sea.

The Ruling of the CA

The CA rendered its Decision dated 28 January 2014, affirming the RTC's decision dismissing the application for land registration of Dumo, and finding that she failed to demonstrate that she and her predecessors-in-interest possessed the property in the manner required by law to merit the grant of her application for land registration.

The CA, however, modified the decision of the RTC insofar as it found that the Subject Property belonged to the heirs of Espinas. The CA found that since the property still belonged to the public domain, and the heirs of Espinas were not able to establish their open, continuous, exclusive and notorious possession and occupation of the land under a *bona fide* claim of ownership since 12 June 1945 or earlier, it was erroneous for the RTC to declare the heirs of Espinas as the owners of the Subject Property.

The dispositive portion of the Decision of the CA reads:

WHEREFORE, premises considered, the Appeal is PARTLY GRANTED and the assailed Joint Decision issued by the court *a quo* is hereby MODIFIED in that the Complaint for *Accion Reivindicatoria* (Civil Case No. 1301-Bg) filed by plaintiffs-appellees is DISMISSED for lack of cause of action.

The Decision is AFFIRMED in all other respects.

SO ORDERED.[8]

Dumo filed a Motion for Partial Reconsideration and subsequently, an Omnibus Motion for Entry of Judgment and to Resolve, asking the CA to issue an entry of judgment insofar as the civil case is concerned and to declare the land registration case submitted for resolution without any comment/opposition. The CA denied both motions in a Resolution dated 19 May 2015.[9]

Hence, this petition.

The Issues

In this petition, Dumo seeks a reversal of the decision of the CA, and raises the following arguments:

A. THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN, IN DENYING THE PETITION FOR LAND REGISTRATION, IT WENT BEYOND THE ISSUES RAISED, THEREBY VIOLATING OR CONTRAVENING THE RULING OF THIS HONORABLE COURT IN, AMONG OTHERS, "*LAM V. CHUA, 426 SCRA 29; DEPARTMENT OF AGRARIAN REFORM V. FRANCO, 471 SCRA 74; BERNAS V. COURT OF APPEALS, 225 SCRA 119; PROVINCE OF QUEZON V. MARTE, 368 SCRA 145 AND FIVE STAR BUS CO., INC. V. COURT OF APPEALS, 259 SCRA 120.*"

---

[8] *Id.* at 65.

[9] *Id.* at 98-102.

B. THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN, IN DENYING THE PETITION FOR LAND [REGISTRATION], IT RULED THAT PETITIONER AND HER PREDECESSORS-IN-INTEREST FAILED TO PROVE CONTINUOUS, EXCLUSIVE, AND ADVERSE POSSESSION AND OCCUPATION OF THE SUBJECT PROPERTY IN THE CONCEPT OF [AN] OWNER FROM JUNE 12, 1945 OR EARLIER, THEREBY VIOLATING OR CONTRAVENING THE RULING OF THIS HONORABLE COURT IN "*REPUBLIC OF THE PHILIPPINES VERSUS COURT OF APPEALS, 448 SCRA 442.*"

C. THAT, IN ANY EVENT, AND WITHOUT PREJUDICE TO THE FOREGOING, THE HONORABLE COURT OF AP[P]EALS COMMITTED A REVERSIBLE ERROR WHEN, IN DENYING THE PETITION FOR LAND REGISTRATION, IT FAILED TO CONSIDER PETITIONER'S EXHIBIT 'A' WHICH WAS FORMALLY OFFERED TO PROVE THAT THE SUBJECT PROPERTY WAS DISPOSIBLE [sic] AND ALIENABLE TO WHICH THE RESPONDENT MADE NO OBJECTION[.]

D. THAT FURTHER, AND WITHOUT PREJUDICE TO THE FOREGOING, THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN, IN DENYING THE PETITION FOR LAND REGISTRATION, IT FAILED TO CONSIDER THE SUPPORTING EVIDENCE THEREFOR, AGAIN, WITHOUT OBJECTION FROM THE RESPONDENT, THEREBY DEPRIVING PETITIONER OF HER FUNDAMENTAL RIGHT TO DUE PROCESS OF LAW.[10]

The Ruling of the Court

Essentially, Dumo argues that the CA committed a reversible error because (1) the issue of whether she was in open, continuous, exclusive and notorious possession of the land since 12 June 1945 was not an issue in the RTC; (2) the requirement of possession and occupation from 12 June 1945 is not essential to her application since she has acquired title over the land by prescription; (3) she has proven that the land applied for has already been declared alienable and disposable; and (4) her

[10] *Id*. at 16-17.

right to due process was violated since the issues considered by the CA were not properly raised during the trial.

We find that none of Dumo's arguments deserve any merit.

Going beyond the issues raised in the RTC and due process of law

Dumo argues that the issue of whether the possession started on 12 June 1945 or earlier was never raised in the RTC. She also argues that no issue was raised as to whether or not the land that she seeks to register is alienable and disposable. Thus, Dumo argues that the CA erred, and also violated her right to due process, when it considered these issues in determining whether or not the application for land registration should be granted.

We do not agree.

In an application for land registration, it is elementary that the applicant has the burden of proving, by clear, positive and convincing evidence, that her alleged possession and occupation were of the nature and duration required by law.[11] Thus, it was upon Dumo to prove that she and her predecessors-in-interest possessed and occupied the land sought to be registered in the nature and duration required by law.

Dumo cannot validly argue that she was not afforded due process when the CA considered to review the evidence she herself offered to support her application for land registration. On the contrary, she was given every opportunity to submit the documents to establish her right to register the land. She simply failed to do so.

When Dumo filed with the RTC the application for registration of her land, she was asking the RTC to confirm her incomplete title. The requirements for judicial confirmation of imperfect title are found in Section 14 of Presidential Decree No. 1529 (PD No. 1529), which provides:

---

[11] *Republic of the Philippines v. Tri-Plus Corporation*, 534 Phil. 181 (2006), citing *Republic of the Philippines v. Enciso*, 511 Phil. 323 (2005).

Section 14. *Who may apply*. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.
>
> (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.
>
> (3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.
>
> (4) Those who have acquired ownership of land in any other manner provided for by law.
>
> x x x x x x x x x

Thus, it is necessary in an application for land registration that the court determines whether or not an applicant fulfills the requirements under any of the paragraphs of Section 14 of PD No. 1529.

Simply put, when Dumo filed her application for the registration of the lots she claims to have inherited from her mother and bought from her siblings, the issue of whether she complied with all the requirements was the very crux of the application. It cannot be argued that because the Republic failed to oppose or raise the issue in the RTC, the CA may no longer consider this issue. On the contrary, the classification of the land sought to be registered, and the duration and nature of the possession and occupation have always been, and will always be the issues in an application for land registration. It would truly be absurd for Dumo, or any other applicant for land registration, to expect the courts to grant the application without first determining if the requisites under the law have been complied with.

The CA had every right to look into the compliance by Dumo with the requirements for the registration of the land, and we find that the CA correctly found that Dumo has acquired no registerable title to the lots she seeks to register.

Registration of land under Section 14(1)

To reiterate, under Section 14(1) of PD No. 1529, Dumo had the burden of proving the following:

(1) that the land or property forms part of the alienable and disposable lands of the public domain;

(2) that the applicant and his predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the same; and

(3) that it is under a *bona fide* claim of ownership since 12 June 1945, or earlier.[12]

The first requirement is to prove that the land sought to be registered is alienable and disposable land of the public domain. This is because under the Regalian Doctrine, as embodied in the 1987 Philippine Constitution, lands which do not clearly appear to be within private ownership are presumed to belong to the State.[13] Thus, in an application for land registration, the applicant has the burden of overcoming the presumption that the State owns the land applied for, and proving that the land has already been classified as alienable and disposable.[14] To overcome the presumption that the land belongs to the State, the applicant must prove by clear and incontrovertible evidence at the time of application that the land has been classified as alienable and disposable land of the public domain.

Classification of lands of the public domain may be found under Article XII of the 1987 Philippine Constitution. More

---

[12] *Republic of the Philippines v. Estate of Santos,* G.R. No. 218345, 7 December 2016, 813 SCRA 541.

[13] *Republic of the Philippines v. Heirs of Spouses Ocol*, G.R. No. 208350, 14 November 2016, 808 SCRA 549.

[14] *Id*.

specifically, Section 3 of Article XII classifies lands of the public domain into (1) agricultural, (2) forest or timber, (3) mineral lands, and (4) national parks.[15] Of these four classifications, only agricultural lands may be alienated and disposed of by the State.

The 1987 Philippine Constitution also provides that "agricultural lands of the public domain **may be further classified by law** according to the uses to which they may be devoted."[16] Based on the foregoing, it is clear that the classification of lands of the public domain is first and foremost provided by the Constitution itself. Of the classifications of lands of the public domain, agricultural lands may further be classified by law, according to the uses it may be devoted to.

The classification of lands of the public domain into agricultural lands, as well as their further classification into alienable and disposable lands of the public domain, is a legislative prerogative which may be exercised only through the enactment of a valid law. This prerogative has long been exercised by the legislative department through the enactment of Commonwealth Act No. 141 (CA No. 141) or the Public Land Act of 1936.[17] Section 6 of CA No. 141 remains to this day the existing general law governing the classification of lands of the public domain into alienable and disposable lands of the public domain.[18]

---

[15] Sec. 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof, by purchase, homestead, or grant.

[16] *Id*.

[17] Approved on 7 November 1936.

[18] *Chavez v. Public Estates Authority*, 433 Phil. 506 (2002).

Section 1827[19] **of the Revised Administrative Code of 1917**[20] merely authorizes the Department Head to classify as agricultural lands those forest lands which are better adapted and more valuable for agricultural purposes. Section 1827 does not authorize the Department Head to classify agricultural lands as alienable and disposable lands as this power is expressly delegated by the same Revised Administrative Code of 1917 solely to the Governor-General.

The existing administrative code under the 1987 Philippine Constitution is Executive Order No. 292 or the Administrative Code of 1987. This existing code did not reenact Section 1827 of the Revised Administrative Code of 1917. Nevertheless, in the absence of incompatibility between Section 1827 of the Revised Administrative Code of 1917 and the provisions of the Administrative Code of 1987, we can grant that Section 1827 has not been repealed.[21] This is in view of the repealing clause in Section 27, Final Provisions, Book VII of the Administrative Code of 1987, which provides:

---

[19] Section 1827. Assignment of Forest Land for Agricultural Purposes. – Lands in public forests, not including forest reserves, upon the certification of the Director of Forestry that said lands are better adapted and more valuable for agricultural than for forest purposes and not required by the public interests to be kept under forest, shall be declared by the Department Head to be agricultural lands.

[20] Act No. 2711. Took effect on 10 March 1917.

[21] *Sayco v. People*, 571 Phil. 73, 87-88 (2008). In this case, the Court ruled:

P.D. No. 1866 was later amended by R.A. No. 8294, which lowered the imposable penalties for illegal possession of firearm when no other crime is committed. However, neither law amended or repealed Section 879 of the 1917 Revised Administrative Code. Even Executive Order No. 292, otherwise known as the 1987 Administrative Code, left Section 879 untouched.

As matters stand, therefore, Section 879, as construed by this Court in *Mapa and Neri*, and reinforced by paragraph 6, Section 1 of P.D. No. 1866, as amended by R.A. No. 8294, is still the basic law on the issuance, possession and carrying of government-owned firearms.

Section 27. All laws, decrees, orders, rules and regulations, or portions thereof, inconsistent with this Code are hereby repealed or modified accordingly.

The authority of the Department Head under Section 1827 of the Revised Administrative Code of 1917 is merely to classify public forest lands as public agricultural lands. Agricultural lands of the public domain are, by themselves, not alienable and disposable. Section 1827 of the Revised Administrative Code of 1917 provides:

Section 1827. Assignment of Forest Land for Agricultural Purposes. – Lands in public forests, not including forest reserves, upon the certification of the Director of Forestry that said lands are better adapted and more valuable for agricultural than for forest purposes and not required by the public interests to be kept under forest, **shall be declared by the Department Head to be agricultural lands.** (Emphasis supplied)

There is nothing in Section 1827 that authorizes the Department Head to classify agricultural lands into alienable or disposable lands of the public domain. The power to classify public lands as agricultural lands is separate and distinct from the power to declare agricultural lands as alienable and disposable. The power to alienate agricultural lands of the public domain can never be inferred from the power to classify public lands as agricultural. Thus, public lands classified as agricultural and used by the Bureau of Plant Industry of the Department of Agriculture for plant research or plant propagation are not necessarily alienable and disposable lands of the public domain despite being classified as agricultural lands. For such agricultural lands to be alienable and disposable, there must be an express proclamation by the President declaring such agricultural lands as alienable and disposable.

Agricultural land, the only classification of land which may be classified as alienable and disposable under the 1987 Philippine Constitution, may still be reserved for public or quasi-public purposes which would prohibit the alienation or disposition of such land. Section 8 of CA No. 141 provides:

Section 8. **Only those lands shall be declared open to disposition or concession** which have been officially delimited and classified and, when practicable, surveyed, **and which have not been reserved for public or quasi-public uses,** nor appropriated by the Government, nor in any manner become private property, nor those on which a private right authorized and recognized by this Act or any other valid law may be claimed, or which, having been reserved or appropriated, have ceased to be so. **However, the President may, for reasons of public interest, declare lands of the public domain open to disposition before the same have had their boundaries established or been surveyed, or may, for the same reason, suspend their concession or disposition until they are again declared open to concession or disposition by proclamation duly published or by Act of the National Assembly**. (Emphasis supplied)

Thus, to be alienable and disposable, lands of the public domain must be expressly declared as alienable and disposable by executive or administrative proclamation pursuant to law or by an Act of Congress.

Even if the Department Head has the power to classify public forest lands as agricultural under Section 1827 of the Revised Administrative Code of 1917, this does not include the power to classify public agricultural lands as alienable and disposable lands of the public domain. The power to ***further*** classify agricultural lands as alienable and disposable has not been granted in any way to the Department Head under the Revised Administrative Code of 1917. This authority was given only to the Governor-General under Section 64 of the Revised Administrative Code of 1917, as superseded by Section 9 of Republic Act (RA) No. 2874 (Public Land Act of 1919), and as in turn further superseded by Section 6 of CA No. 141 (Public Land Act of 1936), which is the existing specific provision of law governing the classification of lands of the public domain into alienable and disposable lands of the public domain. This delegated power is a discretionary power, to be exercised based on the sound discretion of the President.

Under Section 64 of the Revised Administrative Code of 1917, the classification of lands of the public domain into alienable and disposable lands of the public domain could **only**

be made by the Governor-General. While Section 1827 of the Revised Administrative Code of 1917 gave to the Department Head the power to classify public forest lands as public agricultural lands, the very same law in its Section 64 expressly reserved to the Governor-General the power to declare for "**public sale x x x any of the public domain of the Philippines**." Section 64 of the Revised Administrative Code of 1917 provides:

Section 64. Particular powers and duties of Governor-General of the Philippines. – In addition to his general supervisory authority, the Governor-General of the Philippines shall have such specific powers and duties as are expressly conferred or imposed on him by law and also, in particular, the powers and duties set forth in this chapter.

Among such special powers and duties shall be:

(a) x x x x x x x x x

x x x x x x x x x

(d) **To reserve from settlement or *public sale* and for specific public uses any of the public domain of the (Philippine Islands) Philippines the use of which is not otherwise directed by law, the same thereafter remaining subject to the specific public uses indicated in the executive order by which such reservation is made, until otherwise provided by law or executive order**.

(e) To reserve from sale or other disposition and for specific public uses or service, any land belonging to the private domain of the Government of the (Philippine Islands) Philippines, the use of which is not otherwise directed by law; and thereafter such land shall not be subject to sale or other disposition and shall be used for the specific purposes directed by such executive order until otherwise provided by law.

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

Likewise, under Section 9 of RA No. 2874, the classification of lands of public domain into alienable and disposable lands could **only** be made by the Governor-General, thus:

Section 9. For the purposes of their government and disposition, the lands of the public domain alienable or open to disposition shall be

classified, according to the use or purposes to which such lands are destined, as follows:

(a) Agricultural

(b) Commercial, industrial, or for similar productive purposes.

(c) Educational, charitable, and other similar purposes.

(d) Reservations for town sites, and for public and quasi-public uses.

The Governor-General, upon recommendation by the Secretary of Agriculture and Natural Resources, shall from time to time make the classification provided for in this section, and may, at any time and in a similar manner, transfer lands from one class to another. (Emphasis supplied)

Similarly, under Section 6 of CA No. 141, the existing law on the matter, **only** the President can classify lands of the public domain into alienable or disposable lands, thus:

Section 6. **The President**, upon the recommendation of the Secretary of Agriculture and Commerce, **shall from time to time classify the lands of the public domain into —**

(a) Alienable or disposable,

(b) Timber, and

(c) Mineral lands,

and may at any time and in a like manner transfer such lands from one class to another, for the purposes of their administration and disposition. (Emphasis supplied)

Thus, under all laws during the American regime, from the Revised Administrative Code of 1917 up to and including CA No. 141, only the Governor-General or President could classify lands of the public domain into alienable and disposable lands. No other government official was empowered by statutory law during the American regime. Under the 1935,[22] 1973[23] and 1987[24]

---

[22] Section 3, Article XIII, 1935 Philippine Constitution reads: "The Congress of the Philippines may determine **by law** the size of private agricultural land which individuals, corporations or associations may acquire

Philippine Constitutions, the power to declare or classify lands of the public domain as alienable and disposable lands belonged to Congress. This legislative power is still delegated to the President under Section 6 of CA No. 141 since this Section 6 was never repealed by Congress despite successive amendments to CA No. 141 after the adoption of the 1935, 1973 and the 1987 Philippine Constitutions.[25]

Under Section 13 of PD No. 705, otherwise known as the Revised Forestry Code of the Philippines, the Department of Environment and Natural Resources (DENR) Secretary has been delegated by law the discretionary power to classify as alienable and disposable forest lands of the public domain no longer needed for forest reserves. Section 13 of the Revised Forestry Code of the Philippines, which was enacted on 19 May 1975, provides:

> Section 13. System of Land Classification. – The Department Head shall study, devise, determine and prescribe the criteria, guidelines and methods for the proper and accurate classification and survey of all lands of the public domain into agricultural, industrial or commercial, residential, resettlement, mineral, timber or forest, and grazing lands, and into such other classes as now or may hereafter be provided by law, rules and regulations.

---

and hold, subject to rights existing prior to the enactment of such law." (Emphasis supplied)

[23] Section 11, Article XIV, 1973 Philippine Constitution reads: "The Batasang Pambansa, taking into account conservation, ecological, and developmental requirements of the natural resources, shall determine **by law** the size of lands of the public domain which may be developed, held or acquired by, or leased to, any qualified individual, corporation or association, and conditions therefor. x x x." (Emphasis supplied)

[24] Section 3, Article XII, 1987 Philippine Constitution reads: "x x x. Agricultural lands of the public domain may be further classified **by law** according to the uses which they may be devoted. x x x." (Emphasis supplied)

[25] The amendments to CA No. 141 are: CA 292 (1938); CA 456 (1939); CA 615 (1941); RA 107 (1947); RA (1948); RA 436 (1950); RA 1172 (1954); RA 1240 (1955); RA 1242 (1955); RA 1273 (1955); RA (1957); RA 2061 (1958); RA 2694 (1960); RA 3106 (1961); RA 3872 (1964); RA 6236 (1964); RA 6516 (1972); PD 151 (1973); PD 152 (1973); PD 635 (1975); PD 763 (1975); PD 1073 (1977); PD 1361 (1978); BP 187 (1982); BP 205 (1982); BP 878 (1985); RA 6940 (1990); and RA 9176 (2002).

In the meantime, the Department Head shall simplify through inter-bureau action the present system of determining which of the unclassified lands of the public domain are needed for forest purposes and declare them as permanent forest to form part of the forest reserves. **He shall declare those classified and determined not to be needed for forest purposes as alienable and disposable lands**, the administrative jurisdiction and management of which shall be transferred to the Bureau of Lands: Provided, That mangrove and other swamps not needed for shore protection and suitable for fishpond purposes shall be released to, and be placed under the administrative jurisdiction and management of, the Bureau of Fisheries and Aquatic Resources. Those still to be classified under the present system shall continue to remain as part of the public forest. (Emphasis supplied)

Section 3, Article XII of the 1987 Philippine Constitution states: "x x x. Alienable lands of the public domain shall be limited to agricultural lands. x x x." Thus, the unclassified lands of the public domain, not needed for forest reserve purposes, must first be declared agricultural lands of the public domain before the DENR Secretary can declare them alienable and disposable. Under the foregoing Section 13 of PD No. 705, the DENR Secretary has no discretionary power to classify unclassified lands of the public domain, not needed for forest reserve purposes, into agricultural lands. However, the DENR Secretary can invoke his power under Section 1827 of the Revised Administrative Code of 1917 to classify forest lands into agricultural lands. Once so declared as agricultural lands of the public domain, the DENR Secretary can then invoke his delegated power under Section 13 of PD No. 705 to declare such agricultural lands as alienable and disposable lands of the public domain.

This Court has recognized in numerous cases the authority of the DENR Secretary to classify agricultural lands of the public domain as alienable and disposable lands of the public domain.[26]

---

[26] *Republic of the Philippines v. Heirs of Spouses Ocol*, *supra* note 13; *Republic of the Philippines v. Lualhati,* 757 Phil. 119 (2015); *Republic of the Philippines v. Sese*, 735 Phil. 108 (2014); *Spouses Fortuna v. Republic of the Philippines*, 728 Phil. 373 (2014); *Republic of the Philippines v. Remman Enterprises, Inc.*, 727 Phil. 608 (2014); *Republic of the Philippines*

As we declared in *Republic of the Philippines v. Heirs of Fabio*,[27] "the DENR Secretary is the only other public official empowered by law to approve a land classification and declare such land as alienable and disposable."

Consequently, as the President's and the DENR Secretary's discretionary power to classify land as alienable and disposable is merely delegated to them under CA No. 141 and PD No. 705, respectively, they may not redelegate the same to another office or officer. What has once been delegated by Congress can no longer be further delegated or redelegated by the original delegate to another, as expressed in the Latin maxim — *Delegata potestas non potest delegari*.[28] Thus, in *Aquino-Sarmiento v. Morato*,[29] this Court ruled:

> The power to classify motion pictures into categories such as "General Patronage" or "For Adults Only" is vested with the respondent Board itself and not with the Chairman thereof (Sec. 3 [e], PD 1986). As Chief Executive Officer, respondent Morato's function as Chairman of the Board calls for the implementation and execution, not modification or reversal, of the decisions or orders of the latter (Sec. 5 [a], *Ibid*.). **The power of classification having been reposed by law exclusively with the respondent Board, it has no choice but to exercise the same as mandated by law, *i.e.*, as a collegial body, and not transfer it elsewhere or discharge said power through the intervening mind of another. *Delegata potestas non potest delegari* — a delegated power cannot be delegated. And since the act of classification involves an exercise of the Board's discretionary power with more reason the Board cannot, by way of the assailed resolution, delegate said power for it is an established rule in administrative law that discretionary authority cannot be a subject of delegation.** (Emphasis supplied)

---

v. City of Parañaque, 691 Phil. 476 (2012); *Republic of the Philippines v. Heirs of Fabio*, 595 Phil. 664 (2008); *Republic of the Philippines v. T.A.N. Properties, Inc.*, 578 Phil. 441 (2008).

[27] 595 Phil. 664, 686 (2008).

[28] *Gonzales v. Philippine Amusement and Gaming Corporation*, 473 Phil. 582 (2004). See *Heirs of Santiago v. Lazaro*, 248 Phil. 593 (1988).

[29] 280 Phil. 560, 573-574 (1991).

Under the 1987 Philippine Constitution, the power to classify agricultural lands of the public domain into alienable and disposable lands of the public domain is exercised "by law" or through legislative enactment. In accordance with Section 6 of CA No. 141, this power is delegated to the President who may, based on his sound discretion, classify agricultural lands as alienable and disposable lands of the public domain. This delegated power to so classify public agricultural lands may no longer be redelegated by the President – what has once been delegated may no longer be delegated to another. Likewise, the same discretionary power has been delegated "by law" to the DENR Secretary who, of course, cannot redelegate the same to his subordinates.

As it is only the President or the DENR Secretary who may classify as alienable and disposable the lands of the public domain, an applicant for land registration must prove that the land sought to be registered has been declared by the President or DENR Secretary as alienable and disposable land of the public domain. To establish such character, jurisprudence has been clear on what an applicant must submit to clearly establish that the land forms part of the alienable and disposable lands of the public domain.

In *Republic of the Philippines v. T.A.N. Properties, Inc.*,[30] this Court has held that an applicant must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. Additionally, a certificate of land classification status issued by the Community Environment and Natural Resources Office (CENRO) or the Provincial Environment and Natural Resources Office (PENRO) of the DENR and approved by the DENR Secretary must also be presented to prove that the land subject of the application for registration is alienable and disposable, and that it falls within the approved area per

[30] 578 Phil. 441 (2008).

verification through survey by the PENRO or CENRO.[31] In *Republic of the Philippines v. Roche*,[32] we clearly stated:

> [T]he applicant bears the burden of proving the status of the land. In this connection, the Court has held that he must present a certificate of land classification status issued by the Community Environment and Natural Resources Office (CENRO) or the Provincial Environment and Natural Resources Office (PENRO) of the DENR. **He must also prove that the DENR Secretary had approved the land classification and released the land as alienable and disposable, and that it is within the approved area per verification through survey by the CENRO or PENRO.** Further, the applicant must present a copy of the original classification approved by the DENR Secretary and certified as true copy by the legal custodian of the official records. These facts must be established by the applicant to prove that the land is alienable and disposable.[33] (Emphasis supplied)

To repeat, there are two (2) documents which must be presented: *first,* a copy of the original classification approved by the Secretary of the DENR and certified as a true copy by the legal custodian of the official records, and *second*, a certificate of land classification status issued by the CENRO or the PENRO based on the land classification approved by the DENR Secretary. The requirement set by this Court in *Republic of the Philippines v. T.A.N. Properties*, *Inc.* that both these documents be based on the land classification approved by the DENR Secretary is not a mere superfluity. This requirement stems from the fact that the alienable and disposable classification of agricultural land may be made by the President or DENR Secretary. And while the DENR Secretary may perform this act in the regular course of business, this does not extend to the CENRO or PENRO – the DENR Secretary may no longer delegate the power to issue such certification as the power to classify lands of the public domain as alienable and disposable lands is in itself a delegated power under CA No. 141 and PD No. 705.

---

[31] *Supra* note 30.

[32] 638 Phil. 112 (2010).

[33] *Id*. at 117-118, citing *Republic of the Philippines v. T.A.N. Properties, Inc.*, *supra* note 30.

Moreover, we have repeatedly stated that a CENRO or PENRO certification is not enough to prove the alienable and disposable nature of the property sought to be registered because the **only** way to prove the classification of the land is through the original classification approved by the DENR Secretary or the President himself. This Court has clearly held:

> Further, it is not enough for the PENRO or CENRO to certify that a land is alienable and disposable. **The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable**, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable. Respondent failed to do so because the certifications presented by respondent do not, by themselves, prove that the land is alienable and disposable.[34] (Emphasis supplied)

A CENRO or PENRO certification is insufficient to prove the alienable and disposable nature of the land sought to be registered – it is the original classification by the DENR Secretary or the President which is essential to prove that the land is indeed alienable and disposable. This has been consistently upheld by this Court in subsequent land registration cases. Recently, in *Republic of the Philippines v. Nicolas*,[35] which cited *Republic of the Philippines v. Lualhati*,[36] the Court rejected the attempt of the applicant to prove the alienable and disposable character of the land through PENRO or CENRO certifications. The Court held:

---

[34] *Republic of the Philippines v. T.A.N. Properties, Inc., supra* note 30, at 452-453.

[35] G.R. No. 181435, 2 October 2017.

[36] 757 Phil. 119 (2015).

[N]one of the documents submitted by respondent to the trial court indicated that the subject property was agricultural or part of the alienable and disposable lands of the public domain. At most, the CENRO Report and Certification stated that the land was not covered by any kind of public land application. This was far from an adequate proof of the classification of the land. In fact, in *Republic v. Lualhati,* the Court rejected an attempt to prove the alienability of public land using similar evidence:

Here, respondent failed to establish, by the required evidence, that the land sought to be registered has been classified as alienable or disposable land of the public domain. The records of this case merely bear certifications from the DENR-CENRO, Region IV, Antipolo City, stating that no public land application or land patent covering the subject lots is pending nor are the lots embraced by any administrative title. Said CENRO certifications, however, do not even make any pronouncement as to the alienable character of the lands in question for they merely recognize the absence of any pending land patent application, administrative title, or government project being conducted thereon. **But even granting that they expressly declare that the subject lands form part of the alienable and disposable lands of the public domain, these certifications remain insufficient for purposes of granting respondent's application for registration. As constantly held by this Court, it is not enough for the CENRO to certify that a land is alienable and disposable. The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO.** Unfortunately for respondent, the evidence submitted clearly falls short of the requirements for original registration in order to show the alienable character of the lands subject herein. (Emphasis supplied)

In this case, Dumo failed to submit any of the documents required to prove that the land she seeks to register is alienable and disposable land of the public domain.

Response to the Concurring and Dissenting Opinion of Justice Caguioa

The Concurring and Dissenting Opinion of Justice Caguioa suggests that certifications of land classification status issued

by the CENRO and PENRO should be deemed sufficient to prove the alienable and disposable character of the property if these certifications bear references to the land classification maps and the original classification issued and signed by the DENR Secretary. This suggestion clearly undermines the requirements set by this Court in *Republic of the Philippines v. T.A.N. Properties, Inc.*[37] where the Court expressly stated that it is not enough for the CENRO or PENRO to certify that the land sought to be registered is alienable and disposable. What is required from the applicant in a land registration proceeding is to prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. Quite clearly, the Court definitively stated that to prove that the land is alienable and disposable, the applicant must present a certified true copy of the original classification approved by the DENR Secretary or the proclamation made by the President. Only the certified true copy of the original classification approved by the DENR Secretary or the President will prove to the courts that indeed, the land sought to be registered is alienable and disposable.

That the certifications of the CENRO or PENRO contain references to the original classification approved by the DENR Secretary is not enough to prove that the land is alienable and disposable. Mere references made in the certifications to the classification of land as approved by the DENR Secretary are simply insufficient. The trial court must be given a certified true copy of the classification made by the DENR Secretary or the President because it is the only acceptable and sufficient proof of the alienable and disposable character of the land. **In *Republic of the Philippines v. T.A.N. Properties, Inc.,*[38] the Court required the submission of the certified true copy of**

---

[37] *Supra* note 30.

[38] *Supra* note 30.

the land classification approved by the DENR Secretary precisely because mere references made by the CENRO and PENRO to the land classification were deemed insufficient. For instance, CENRO and PENRO may inadvertently make references to an original classification approved by the DENR Secretary which does not cover the land sought to be registered, or worse, to a non-existent original classification. This is the very evil that the ruling in *Republic of the Philippines v. T.A.N. Properties, Inc.*[39] seeks to avoid. Justice Caguioa's suggestion resurrects the very evil banished by this Court in *Republic of the Philippines v. T.A.N. Properties, Inc.*[40]

Decisions of this Court form part of the legal system of the Philippines[41] and thus the CENRO, PENRO, and the DENR must follow the decision made by this Court in *Republic of the Philippines v. T.A.N. Properties, Inc.*[42] **The ruling of this Court requiring the submission of the certified true copy of the original classification as approved by the DENR Secretary cannot be overturned or amended by the CENRO or PENRO or even by the DENR.** The DENR, CENRO, and PENRO must follow the law as laid down by this Court in *Republic of the Philippines v. T.A.N. Properties, Inc.*[43] It is not this Court that should amend its ruling in *Republic of the Philippines v. T.A.N. Properties, Inc.*[44] to conform to the administrative rules of the DENR, CENRO, or PENRO reversing the final ruling of this Court in *Republic of the Philippines v. T.A.N. Properties, Inc.*[45] The authority given by the Administrative Order of the DENR to the CENRO and PENRO to issue certifications of land classification status does not and cannot reverse the clear

---

[39] *Supra* note 30.

[40] *Supra* note 30.

[41] Article 8, Civil Code of the Philippines.

[42] *Supra* note 30.

[43] *Supra* note 30.

[44] *Supra* note 30.

[45] *Supra* note 30.

requirement laid down by the Court for applicants of land registration to submit the certified true copy of the original classification approved by the DENR Secretary to prove the alienable and disposable character of the land.

To repeat, in a judicial confirmation of imperfect title under Section 14(1) of PD No. 1529, the applicant has the burden of proving that the land sought to be registered is alienable and disposable land of the public domain. In turn, the best evidence of the alienable and disposable nature of the land is the certified true copy of the original proclamation made by the President or DENR Secretary, in accordance with CA No. 141 or PD No. 705. Submitting a mere certification by the CENRO or PENRO with references to the original classification made by the President or the DENR Secretary is sorely inadequate since it has no probative value as a public document to prove the alienable and disposable character of the public land.

Under Section 19, Rule 132 of the Rules of Court, public documents are:

> (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
>
> (b) Documents acknowledged before a notary public except last wills and testaments; and
>
> (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

In turn, for the record of public documents referred to in paragraph (a) of Section 19, Rule 132 to be admissible, it must be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy.[46] **Moreover, to be *prima facie* evidence of the facts stated in public documents, such documents must consist of entries in public records made in the performance**

---

[46] Section 24, Rule 132, Rules of Court.

of a duty by a public officer.[47] This requirement can be satisfied only if a certified true copy of the proclamation by the President or the order of the DENR Secretary classifying the land as alienable and disposable is presented to the trial court.

Quite clearly, certifications by the CENRO or PENRO do not comply with the conditions for admissibility of evidence. The CENRO or the PENRO is not the official repository or legal custodian of the issuances of the President or DENR Secretary classifying lands as alienable and disposable lands of the public domain. Thus, the certifications made by the CENRO or PENRO cannot prove the alienable and disposable character of the land, which can only be ascertained through the classification made by the President or DENR Secretary, the only public officials who may classify lands into alienable and disposable lands of the public domain. The Concurring and Dissenting Opinion alleges that the CENRO serves as a repository of the land classification maps, and as such, authorizes the CENRO to issue certified true copies of the approved land classification maps. While the CENRO may issue certified true copies of these land classification maps, these maps are not the required certified true copy of the original proclamation or order classifying the public land as alienable and disposable. Moreover, these maps are not in the possession of the officials who have custody of the original proclamation or order classifying the public land as alienable and disposable. Again, the best evidence of the alienable and disposable nature of the land is the certified true copy of the classification made by the President or the DENR Secretary – not the certified true copy issued by the CENRO of its land classification maps.

It is also worthy to note that in *Republic of the Philippines v. T.A.N. Properties, Inc.,*[48] we have already discussed the value of certifications issued by the CENRO or PENRO in land registration cases:

---

[47] Section 23, Rule 132, Rules of Court.

[48] *Supra* note 30.

The CENRO and Regional Technical Director, FMS-DENR, certifications do not fall within the class of public documents contemplated in the first sentence of Section 23 of Rule 132. The certifications do not reflect "entries in public records made in the performance of a duty by a public officer", such as entries made by the Civil Registrar in the books of registries, or by a ship captain in the ship's logbook. **The certifications are not the certified copies or authenticated reproductions of original official records in the legal custody of a government office. The certifications are not even records of public documents. The certifications are conclusions unsupported by adequate proof, and thus have no probative value. Certainly, the certifications cannot be considered *prima facie* evidence of the facts stated therein.**

The CENRO and Regional Technical Director, FMS-DENR, certifications do not prove that Lot 10705-B falls within the alienable and disposable land as proclaimed by the DENR Secretary. Such government certifications do not, by their mere issuance, prove the facts stated therein. Such government certifications may fall under the class of documents contemplated in the second sentence of Section 23 of Rule 132. As such, the certifications are *prima facie* evidence of their due execution and date of issuance but they do not constitute *prima facie* evidence of the facts stated therein.[49] (Emphasis supplied)

The certification issued by the CENRO or PENRO, by itself, does not prove the alienable and disposable character of the land sought to be registered. The certification should always be accompanied by the original or certified true copy of the original classification approved by the DENR Secretary or the President.

Substantial Compliance with the Requirements of Section 14(1)

Dumo argues that the Certification from the Regional Surveys Division, which was formally offered as Exhibit "A" and not opposed by the Republic, should be considered substantial compliance with the requirement that the applicant must submit the certified true copy of the original classification of the land as approved by the DENR Secretary.

---

[49] *Supra* note 30, at 454-455.

We do not agree.

The fact that the Republic did not oppose the formal offer of evidence of Dumo in the RTC does not have the effect of proving or impliedly admitting that the land is alienable and disposable. The alienable and disposable character of the land must be proven by clear and incontrovertible evidence. It may not be impliedly admitted, as Dumo vehemently argues. It was the duty of Dumo to prove that the land she sought to register is alienable and disposable land of the public domain. This burden would have been discharged by submitting the required documents – a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian thereof, and a certificate of land classification status issued by the CENRO or the PENRO based on the approved land classification by the DENR Secretary. Without these, the applicant simply fails to prove that the land sought to be registered forms part of the alienable and disposable lands of the public domain and thus, it may not be susceptible to private ownership. As correctly pointed out by the CA, the land is presumed to belong to the State as part of the public domain.

Another requirement under Section 14(1) of PD No. 1529 is to prove that the applicant and her predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the land under a *bona fide* claim of ownership since 12 June 1945 or earlier.

In this case, the CA found that Dumo and her predecessors-in-interest have been in possession of the land only from 1948, which is the earliest date of the tax declaration presented by Dumo. This fact is expressly admitted by Dumo. Thus, from this admission alone, it is clear that she failed to prove her and her predecessors-in-interest's possession and occupation of the land for the duration required by law – from 12 June 1945 or earlier.

Dumo, however, argues that it does not matter that her possession dates only back to 1948 because this Court has allegedly stated that even if the possession or occupation started after 12 June 1945, this does not bar the grant of an application for registration of land.

Again, we do not agree with Dumo.

To determine whether possession or occupation from 12 June 1945 or earlier is material, one has to distinguish if the application for the registration of land is being made under paragraph 1 or paragraph 2 of Section 14 of PD No. 1529. The relevant paragraphs provide:

> Section 14. *Who may apply*. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.
>
> (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.
>
> x x x x x x x x x

Thus, it is clear that if the applicant is applying for the registration of land under paragraph 1, possession and occupation of the alienable and disposable land of the public domain under a *bona fide* claim of ownership should have commenced from 12 June 1945 or earlier. If, however, the applicant is relying on the second paragraph of Section 14 to register the land, then it is true that a different set of requirements applies, and possession and occupation from 12 June 1945 or earlier are not required.

The reliance of Dumo on *Republic of the Philippines v. Court of Appeals*[50] is misplaced. The pronouncement of the Court in relation to the phrase "June 12, 1945 or earlier" was that the alienable and disposable classification of the land need not be from 12 June 1945 or earlier, and that as long as such land is classified as alienable and disposable when the application is filed, then the first requirement under the law is fulfilled. The Court held:

> Petitioner suggests an interpretation that the alienable and disposable character of the land should have already been established since June 12, 1945 or earlier. This is not borne out by the plain meaning of Section 14(1). "Since June 12, 1945," as used in the provision, qualifies its antecedent phrase "under a *bona fide* claim of ownership." Generally speaking, qualifying words restrict or modify only the words or phrases to which they are immediately associated, and not those distantly or remotely located. *Ad proximum antecedents fiat relation nisi impediatur sentencia.*
>
> Besides, we are mindful of the absurdity that would result if we adopt petitioner's position. Absent a legislative amendment, the rule would be, adopting the OSG's view, that all lands of the public domain which were not declared alienable or disposable before June 12, 1945 would not be susceptible to original registration, no matter the length of unchallenged possession by the occupant. Such interpretation renders paragraph (1) of Section 14 virtually inoperative and even precludes the government from giving it effect even as it decides to reclassify public agricultural lands as alienable and disposable. The unreasonableness of the situation would even be aggravated considering that before June 12, 1945, the Philippines was not yet even considered an independent state.
>
> Instead, the more reasonable interpretation of Section 14(1) is that it merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed. If the State, at the time the application is made, has not yet deemed it proper to release the property for alienation or disposition, the presumption is that the government is still reserving the right to utilize the property; hence, the need to preserve its ownership in the State irrespective of the length of adverse possession

---

[50] 489 Phil. 405 (2005).

even if in good faith. However, if the property has already been classified as alienable and disposable, as it is in this case, then there is already an intention on the part of the State to abdicate its exclusive prerogative over the property.[51]

Thus, it did not state that the possession and occupation from 12 June 1945 or earlier are no longer required. It merely clarified **when** the land should have been classified as alienable and disposable to meet the requirements of Section 14(1) of PD No. 1529. The property sought to be registered must be declared alienable and disposable at the time of the filing of the application for registration.[52] This does not require that the land be declared alienable and disposable from 12 June 1945 or earlier.

Registration of land under Section 14(2)

Dumo also argues that she has the right to register the land because she and her predecessors-in-interest have already acquired the land through prescription. She states that she and her predecessors-in-interest have been in possession and occupation of the land for fifty-six (56) years, and thus she has already acquired ownership of the land by prescription.

Again, we disagree.

It is true that under Section 14 of PD No. 1529, one may acquire ownership of the land by prescription. Particularly, paragraph 2 of Section 14 provides that "those who have acquired ownership of private lands by prescription under the provision of existing laws" may file an application for registration of title to land. The existing law mentioned in PD No. 1529 is the Civil Code of the Philippines. In *Heirs of Malabanan v. Republic of the Philippines*,[53] we applied the civil law concept of prescription as embodied in the Civil Code to interpret Section 14(2) of PD No. 1529. This Court held:

---

[51] *Id*. at 413-414.

[52] *Republic of the Philippines v. Estate of Santos*, *supra* note 12.

[53] 605 Phil. 244 (2009).

The second source is Section 14(2) of P.D. 1529 itself, at least by implication, as **it applies the rules on prescription under the Civil Code, particularly Article 1113 in relation to Article 1137**. Note that there are two kinds of prescription under the Civil Code – ordinary acquisitive prescription and extraordinary acquisitive prescription, which, under Article 1137, is completed "through uninterrupted adverse possession... for thirty years, without need of title or of good faith."[54] (Boldfacing and underscoring supplied)

Section 14(2) of PD No. 1529 puts into operation the entire regime of prescription under the Civil Code, particularly Article 1113 in relation to Article 1137.[55] Article 1113 provides that "[p]roperty of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription." Thus, it is clear that the land must be patrimonial before it may be susceptible of acquisitive prescription. Indeed, Section 14(2) of PD No. 1529 provides that one may acquire ownership of ***private lands*** by prescription.

Land of the public domain is converted into patrimonial property when there is an express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth.[56] Without such declaration, acquisitive prescription does not start to run, even if such land is alienable and disposable and the applicant is in possession and occupation thereof. We have held:

Accordingly, there must be an express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the public dominion, pursuant to Article 420(2), and thus incapable of acquisition by prescription. It is only when such alienable and disposable lands are expressly declared by the State to be no longer intended for public service or for the development of the national

---

[54] *Id*. at 276.

[55] *Id*. at 277.

[56] *Id*. at 285.

wealth that the period of acquisitive prescription can begin to run. Such declaration shall be in the form of a law duly enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law.[57]

Mere classification of agricultural land as alienable and disposable does not make such land patrimonial property of the State – an express declaration by the State that such land is no longer intended for public use, public service or the development of national wealth is imperative. This is because even with such classification, the land remains to be part of the lands of the public domain. In *Navy Officers' Village Association, Inc. v. Republic of the Philippines*,[58] we stated:

> Lands of the public domain classified as reservations for public or quasi-public uses are **non-alienable and shall not be subject to disposition, although they are, by the general classification under Section 6 of C.A. No. 141, alienable and disposable lands of the public domain**, **until declared open for disposition by proclamation of the President**. (Emphasis supplied)

Under CA No. 141, the power given to the President to classify lands as alienable and disposable extends only to ***lands of the public domain.*** Lands of the public domain are public lands intended for public use, or without being for public use, are intended for some public service or for the development of national wealth. Lands of the public domain, like alienable or disposable lands of the public domain, are not private lands. Article 420 of the Civil Code provides:

> Art. 420. The following things are property of public dominion:
>
> (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;
>
> (2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

---

[57] *Id*. at 279.

[58] 765 Phil. 429, 452 (2015).

Classifying lands as alienable and disposable does not take away from the fact that these lands still belong to the public domain. These lands belonged to the public domain before they were classified as alienable and disposable and they still remain to be lands of the public domain after such classification. **In fact, these lands are classified in Section 3, Article XII of the 1987 Philippine Constitution as "[a]lienable lands of the public domain."** The alienable and disposable character of the land merely gives the State the authority to alienate and dispose of such land if it deems that the land is no longer needed for public use, public service or the development of national wealth.

Alienable and disposable lands of the public domain are those that are to be disposed of to private individuals by sale or application, because their disposition to private individuals is for the development of the national wealth. Thus, homesteads, which are granted to individuals from alienable and disposable lands of the public domain, are for the development of agriculture which would redound to the development of national wealth. **However, until the lands are alienated or disposed of to private individuals, they remain "*alienable lands of the public domain*," as expressly classified by the 1987 Philippine Constitution.**

Lands of the public domain become patrimonial property only when they are no longer intended for public use or public service or the development of national wealth. Articles 421 and 422 of the Civil Code expressly provide:

> Article 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property
>
> Article 422. Property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State.

In turn, the intention that the property is no longer needed for public use, public service or the development of national wealth may only be ascertained through an express declaration by the State. We have clearly held:

Accordingly, there must be an express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial. **Without such express declaration, the property, even if classified as alienable or disposable, remains property of the public dominion, pursuant to Article 420(2), and thus incapable of acquisition by prescription.** It is only when such alienable and disposable lands are expressly declared by the State to be no longer intended for public service or for the development of the national wealth that the period of acquisitive prescription can begin to run. Such declaration shall be in the form of a law duly enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law.[59] (Emphasis supplied)

Without an express declaration that the land is no longer needed for public use, public service or the development of national wealth, it should be presumed that the lands of the public domain, whether alienable and disposable or not, remain belonging to the State under the Regalian Doctrine. We have already recognized that the classification of land as alienable and disposable does not make such property patrimonial. In *Dream Village Neighborhood Association, Inc. v. Bases Conversion Development Authority*,[60] the Court held:

One question laid before us is whether the area occupied by Dream Village is susceptible of acquisition by prescription. In *Heirs of Mario Malabanan v. Republic,* it was pointed out that from the moment R.A. No. 7227 was enacted, the subject military lands in Metro Manila became alienable and disposable. However, it was also clarified that the said lands did not thereby become patrimonial, since the BCDA law makes the express reservation that they are to be sold in order to raise funds for the conversion of the former American bases in Clark and Subic. The Court noted that the purpose of the law can be tied to either "public service" or "the development of national wealth" under Article 420(2) of the Civil Code, such that the lands remain

---

[59] *Heirs of Malabanan v. Republic of the Philippines*, *supra* note 53, at 279.

[60] 715 Phil. 211, 233-234 (2013).

property of the public dominion, albeit their status is now alienable and disposable. The Court then explained that **it is only upon their sale to a private person or entity as authorized by the BCDA law that they become private property and cease to be property of the public dominion**:

> For as long as the property belongs to the State, **although already classified as alienable or disposable, it remains property of the public dominion if x x x it is "intended for some public service or for the development of the national wealth**."

Thus, under Article 422 of the Civil Code, public domain lands become patrimonial property only if there is a declaration that these are alienable or disposable, together with an express government manifestation that the property is already patrimonial or no longer retained for public service or the development of national wealth. x x x. (Emphasis supplied)

The alienable and disposable character of public agricultural land does not convert the land to patrimonial property. It merely gives the State the authority to alienate or dispose the agricultural land, in accordance with law. It is only when (1) there is an express government manifestation that the land is already patrimonial or no longer intended for public use, public service or the development of national wealth, or (2) land which has been classified as alienable and disposable land is **actually alienated and disposed of by the State, that such land becomes patrimonial**.

In the present case, Dumo not only failed to prove that the land sought to be registered is alienable and disposable, but also utterly failed to submit any evidence to establish that such land has been converted into patrimonial property by an express declaration by the State. To repeat, acquisitive prescription only applies to ***private lands*** as expressly provided in Article 1113 of the Civil Code. To register land acquired by prescription under PD No. 1529 (in relation to the Civil Code of the Philippines), the applicant must prove that the land is not merely alienable and disposable, but that it has also been converted into patrimonial property of the State. Prescription will start

to run only from the time the land has become patrimonial.[61] Unless the alienable and disposable land of the public domain is expressly converted into patrimonial property, there is no way for acquisitive prescription to set in under Article 1113 of the Civil Code.

However, another mode of prescription specifically governs the acquisitive prescription of **alienable and disposable lands of the public domain**. CA No. 141 provides for the modes of disposing alienable and disposable agricultural lands of the public domain:

> Section 11. **Public lands** suitable for agricultural purposes can be disposed of only as follows, and not otherwise:
>
> (1) For homestead settlement;
>
> (2) By sale;
>
> (3) By lease; and
>
> (4) By confirmation of imperfect or incomplete titles:
>
> (a) By judicial legalization; or
>
> (b) By administrative legalization (free patent). (Emphasis supplied)

In turn, Section 48 of the same law provides for those who may apply for confirmation of their imperfect or incomplete title by judicial application:

> Section 48. The following-described citizens of the Philippines, occupying **lands of the public domain** or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:
>
> x x x x x x x x x

---

[61] *Heirs of Malabanan v. Republic of the Philippines*, *supra* note 53, at 285.

> (b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of **alienable and disposable lands of the public domain**, under a bona fide claim of acquisition of ownership, since June 12, 1945, or earlier, immediately preceding the filing of the applications for confirmation of title, except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter. (Emphasis supplied)

It is clear from the foregoing provisions that for lands of the public domain, one may apply for an administrative grant from the government, through homestead, sale, lease or free patent, or apply for the confirmation of their title in accordance with the conditions provided under Section 48(b) of CA No. 141. PD No. 1529 provides for the original registration procedure for the judicial confirmation of an imperfect or incomplete title. It must also be noted that the wording in Section 48(b) of CA No. 141 is similar to that found in Section 14(1) of PD No. 1529. The similarity in wording has already been explained by this Court when it recognized that Section 14(1) of PD No. 1529 works in relation to Section 48(b) of CA No. 141 in the registration of alienable and disposable lands of the public domain:

> It is clear that Section 48 of the Public Land Act is more descriptive of the nature of the right enjoyed by the possessor than Section 14 of the Property Registration Decree, which seems to presume the pre-existence of the right, rather than establishing the right itself for the first time. It is proper to assert that it is the Public Land Act, as amended by P.D. No. 1073 effective 25 January 1977, that has primarily established the right of a Filipino citizen who has been in "open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a *bona fide* claim of acquisition of ownership, since June 12, 1945" to perfect or complete his title by applying with the proper court for the confirmation of his ownership claim and the issuance of the corresponding certificate of title.

Section 48 can be viewed in conjunction with the afore-quoted Section 11 of the Public Land Act, which provides that public lands suitable for agricultural purposes may be disposed of by confirmation of imperfect or incomplete titles, and given the notion that both provisions declare that it is indeed the Public Land Act that primarily establishes the substantive ownership of the possessor who has been in possession of the property since 12 June 1945**. In turn, Section 14(a) of the Property Registration Decree recognizes the substantive right granted under Section 48(b) of the Public Land Act, as well as provides the corresponding original registration procedure for the judicial confirmation of an imperfect or incomplete title.**[62] (Emphasis supplied)

Thus, the applicant for registration of the alienable and disposable land of the public domain claims his right to register the land under Section 48(b) of CA No. 141 and the procedure for registration is found under Section 14(1) of PD No. 1529 which provides that "those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of **alienable and disposable lands of the public domain** under a *bona fide* claim of ownership since June 12, 1945, or earlier" may file in the proper court their application for land registration. The basis for application of judicial confirmation of title over alienable and disposable land of the public domain is not acquisitive prescription under the Civil Code, but rather, the fulfillment of the requirements under Section 48(b) of CA No. 141.

To summarize the discussion and reiterate the guidelines set by this Court in *Heirs of Malabanan v. Republic of the Philippines*,[63] we state:

1. If the applicant or his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the land sought to be registered under a *bona fide* claim of ownership **since 12 June 1945 or earlier**, the applicant must prove that the land has been classified by the

---

[62] *Heirs of Malabanan v. Republic of the Philippines*, *supra* note 53, at 267.

[63] *Supra* note 53.

Executive department as **alienable and disposable land of the public domain**. This is covered by Section 14(1) of PD No. 1529 in relation to Section 48(b) of CA No. 141.

While it is not necessary that the land has been alienable and disposable since 12 June 1945 or earlier, the applicant must prove that the President or DENR Secretary has classified the land as alienable and disposable land of the public domain at any time before the application was made.

2. If the occupation and possession of the land commenced at any time after 12 June 1945, the applicant may still register the land if he or his predecessors-in-interest have complied with the requirements of **acquisitive prescription** under the Civil Code **after** the land has been expressly declared as **patrimonial property** or no longer needed for public use, public service or the development of national wealth. This is governed by Section 14(2) of PD No. 1529 in relation to the Civil Code.

Under the Civil Code, acquisitive prescription, whether ordinary or extraordinary, applies only to private property. Thus, the applicant must prove **when** the land sought to be registered was **expressly declared** as patrimonial property because it is only from this time that the period for acquisitive prescription would start to run.

Based on the foregoing, we find that the CA committed no reversible error in finding that Dumo had no registerable title over the land she seeks to register. She failed to prove her right under either Section 14(1) or Section 14(2) of PD No. 1529. She failed to prove that the land she seeks to register was alienable and disposable land of the public domain. She failed to prove her and her predecessors-in-interest's possession and occupation since 12 June 1945 or earlier. Thus, she has no right under Section 14(1) of PD No. 1529. While she argues that she and her predecessors-in-interest have been in possession and occupation of the land for 56 years, she failed to prove that the land has been expressly declared as patrimonial property. Therefore, she also has no right under Section 14(2) of PD No. 1529.

WHEREFORE, the petition is **DENIED.** The assailed decision and resolution of the Court of Appeals are **AFFIRMED.**

SO ORDERED.

Peralta, Perlas-Bernabe, and *Reyes, Jr., JJ.,* concur.

Caguioa, J., see concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia* insofar as it resolves to deny the Petition due to Suprema Dumo's (Dumo) failure to establish that she, by herself and through her predecessors-in-interest, has been in possession of the disputed property in the manner and for the period required under Section 14, paragraphs 1 and 2 of PD 1529.

However, I respectfully disagree as to its: (i) reliance on *Republic v. TA.N. Properties*[1] (*T.A.N.*) with respect to the nature and burden of proof required to establish land classification status; and (ii) application of the second requirement for registration under Section 14(2) espoused in *Heirs of Mario Malabanan v. Republic*[2] (*Malabanan*).

I discuss these matters in sequence.

Certifications of land classification status as proof of alienability and disposability

On the basis of the Court's 2010 decision in *T.A.N.*, the *ponencia* holds that applicants must present the following in order to prove that the land subject of a registration proceeding has been classified as alienable and disposable: (i) a certificate of land classification status issued by the CENRO or PENRO

---

[1] 578 Phil. 441 (2008) [First Division, Per *J.* Carpio].

[2] 605 Phil. 244 (2009) [*En Banc*, Per *J.* Tinga].

of the DENR; and (ii) a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.[3]

I submit that the second requirement established in *T.A.N.* has been rendered superfluous and unnecessary by the issuance of DENR Administrative Order No. (DENR AO) 2012-09, which delegated unto the CENRO, PENRO and the NCR Regional Executive Director (RED-NCR) not only the authority to issue **certifications** on land classification status, but also **certified true copies of approved land classification maps**[4] (LC maps) with respect to lands falling within their respective jurisdictions.

DENR AO 2012-09 states:

> **In view of the thrust of the government to [make] public service more accessible to the public, the authority to sign and/or issue the following documents is hereby delegated to the [CENROs], except in the National Capital Region (NCR) where the same shall be vested upon the [RED-NCR]:**
>
> 1. **Certification on land classification status regardless of area based on existing approved [LC maps]; and**
> 2. Certified true copy of the approved [LC maps] **used as basis in the issuance of the certification on the land classification status of a particular parcel of land.** (Emphasis and underscoring supplied)

T.A.N. was decided under the regime of DENR AO 98-24. At that time, the CENRO did not have the authority to issue

---

[3] *Ponencia*, pp. 15-16.

[4] Under the *Guidelines for the Assessment and Delineation of Boundaries Between Forestlands, National Parks and Agricultural Lands* [DENR AO 2008-24, December 8, 2008], land classification maps are defined as those which show "the classification of lands of the public domain based on the land classification system undertaken by the then Department of Agriculture and Natural Resources, through the Bureau of Forestry, the Ministry of Natural Resources, through the Bureau of Forest Development, and the [DENR]." (DENR AO 2008-24, Sec. 4[h].)

certified true copies of approved LC Maps nor did the CENRO serve as repository of said copies.

Since the certification in question in *T.A.N.* was issued prior to DENR AO 2012-09, the Court's decision therein was correctly premised upon such lack of authority on the part of the CENRO. As well, the CENRO certificates in question in the cases of *Republic v. Lualhati*[5] (*Lualhati*) and *Republic v. Nicolas*,[6] (*Nicolas*) which apply the Court's ruling in *T.A.N.*, were also issued prior to the effectivity of DENR AO 2012-09, and thus, correctly anchored on the same premise. Notably however, this lack of authority no longer obtains at present.

On this score, I respectfully submit that in view of DENR AO 2012-09, certifications of land classification status issued by the CENRO, PENRO and the RED-NCR should be deemed already sufficient for purposes of proving the alienable and disposable character of property subject of land registration proceedings, ***provided*** that these certifications expressly bear references to: (i) the LC map; and (ii) the document through which the original classification had been effected, such as a Bureau of Forest Development Administrative Order[7] (BFDAO) issued and signed by the DENR Secretary. The BFDAO usually contains the following language:

---

[5] 757 Phil. 119 (2015) [Third Division, Per *J.* Peralta]. While the date of the CENRO certificate considered in *Lualhati* cannot be ascertained from the Court's decision, the fact that the same had been issued prior to the effectivity of DENR AO 2012-09 can be inferred from the date of the RTC and CA rulings assailed therein, that is, October 4, 2005 and March 31, 2008, respectively.

[6] G.R. No. 181435, October 2, 2017. [First Division, Per *C.J.* Sereno]. While the date of the CENRO certificate considered in *Nicolas* cannot be ascertained from the Court's decision, the fact that the same had been issued prior to the effectivity of DENR AO 2012-09 can be inferred from the date of the RTC and CA rulings assailed therein, that is, July 31, 2002 and August 23, 2007, respectively.

[7] BFDAOs declaring portions of the public forest as alienable and disposable are issued under the signature of the Secretary of Natural Resources upon the recommendation of the Director of the Bureau of Forest.

[*BFDAO*]

x x x Pursuant to Section 13 of PD 705,[8] otherwise known as the Revised Forestry Code of the Philippines, as amended, I hereby declare an aggregate area of [x x x] hectares, more or less, as alienable or disposable for cropland and other purposes and place the same under the control and management of the Bureau of Lands, for disposition pursuant to the provisions of the Public Land Act, **located in [x x x], shown and described in BFD Map [x x x], which is attached hereto and forms an integral part of this Order** x x x[.][9]

Precisely, the BFDAO (or any other issuance of the same tenor) constitutes the original classification required in *T.A.N.* (*i.e.*, a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records). As the language of the BFDAO quoted above indicates, it serves to: (i) confirm the State's intention to release the land identified therein from the public dominion and classify the same as alienable and disposable; and (ii) define the specific metes and bounds of the subject land by incorporating, through reference, the LC Map covering the same.

Hence, I submit that the presentation of the original classification and LC Map no longer serves any further purpose when references thereto already appear on the face of the CENRO, PENRO or RED-NCR certificate submitted by the applicant, since these references already provide the State with a way to verify the correctness of the certificate against said public documents which are, in turn, in the State's custody.

To note, CENRO, PENRO or RED-NCR certificates do not fall within the class of public documents which, under Section 23, Rule 132,[10]

---

[8] REVISING PRESIDENTIAL DECREE NO. 389, OTHERWISE KNOWN AS THE FORESTRY REFORM CODE OF THE PHILIPPINES, May 19, 1975.

[9] Based on BFDAO No. 4-2003 dated June 29, 1987.

[10] RULES OF COURT, Rule 132, Sec. 32 states:

SEC. 23. *Public documents as evidence*. — Documents consisting of entries in public records made in the performance of a duty by a public

constitute *prima facie* evidence of their contents. Like private documents, the authenticity of these certificates and the veracity of their contents remain subject to proof in the manner set forth under Section 20, Rule 132 of the Rules of Court:

> SEC. 20. *Proof of private document.* — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:
>
> (a) By anyone who saw the document executed or written; or
>
> (b) By evidence of the genuineness of the signature or handwriting of the maker.
>
> Any other private document need only be identified as that which it is claimed to be.

Pursuant to the foregoing, the submission of CENRO, PENRO or RED-NCR certificates as evidence of registrability entails the presentation of the testimony of the proper issuing officers before the trial court for the purpose of authenticating the certificates they have issued. Thus, any doubt as to the correctness of the references appearing on the face of these certificates can thus be dispelled through the exercise of the trial court's coercive *subpoena* powers. Once the certification in question is authenticated and verified by the proper officer, I submit that the burden of proof to establish that the land subject of the proceeding is unregistrable then shifts, as it should, to the State.

To my mind, the observance of the proper authentication and verification procedures and the State's participation (through the Office of the Solicitor General) in the trial process are sufficient safeguards against the grant of registration on the basis of falsified or inaccurate certifications. To allow the applicant to still carry the burden of proof to establish registrability despite presentation of duly authenticated documents showing the same unduly tips the scale in favor of

---

officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

the State, and compromises the efficiency and accessibility of public service.

Under Executive Order No. 192[11] (EO 192), the DENR is mandated to exercise supervision and control over forest lands [and] alienable and disposable lands.[12] To carry out this mandate, EO 192 vests the DENR Secretary with the power to "[e]stablish policies and standards for the efficient and effective operations of the [DENR] in accordance with the programs of the government"; [p]romulgate rules, regulations and other issuances necessary in carrying out the [DENR]'s mandate, objectives, policies, plans, programs and projects"; and "[d]elegate authority for the performance of any administrative or substantive function to subordinate officials of the [DENR]".[13]

The simplification of the requirements set forth in *T.A.N.* neither sanctions the amendment of judicial precedent, nor does it place primacy on administrative issuances. Such simplification merely aligns with the specific thrust of government underlying the issuance of DENR AO 98-24, that is, to make public service more accessible to the public; it is but a recognition of the DENR Secretary's powers under EO 192 to "[p]romulgate rules, regulations and other issuances necessary in carrying out the [DENR]'s mandate, objectives, policies, plans, programs and projects"; and "[d]elegate authority for the performance of any administrative or substantive function to subordinate officials of the [DENR]"[14] which issuances, in turn, carry the same force and effect of law.[15]

---

[11] PROVIDING FOR THE REORGANIZATION OF THE DEPARTMENT OF ENVIRONMENT, ENERGY AND NATURAL RESOURCES, RENAMING IT AS THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND FOR OTHER PURPOSES, June 10, 1987.

[12] See EO 192, Sec. 5(d).

[13] See *id*., Sec. 7(b), (c) and (e).

[14] *Id*., Sec. 7(c) and (e).

[15] EO 192 was issued by then President Corazon Aquino pursuant to her law-making powers prior to the convention of Congress on July 27, 1987. See generally *Philippine Association of Service Exporters, Inc. (PASEI) v. Torres*, 296-A Phil. 427 (1993) [*En Banc*, Per *J*. Bellosillo].

Nevertheless, references to: (i) the LC map; and (ii) the BFDAO remain necessary, for while the CENRO, PENRO and RED-NCR are vested with authority to issue certifications on land classification status, the actual power to classify lands of the public domain lies in the President, and later delegated by law solely unto the DENR Secretary through Section 13 of PD 705:

> SEC. 13. *System of Land Classification.* – The Department Head shall study, devise, determine and prescribe the criteria, guidelines and methods for the proper and accurate classification and survey of all lands of the public domain into agricultural, industrial or commercial, residential, resettlement, mineral, timber or forest, and grazing lands, and into such other classes as now or may hereafter be provided by law, rules and regulations.
>
> In the meantime, the Department Head shall simplify through inter-bureau action the present system of determining which of the unclassified lands of the public domain are needed for forest purposes and declare them as permanent forest to form part of the forest reserves. **He shall decree those classified and determined not to be needed for forest purposes as alienable and disposable lands, the administrative jurisdiction and management of which shall be transferred to the Bureau of Lands**: *Provided*, That mangrove and other swamps not needed for shore protection and suitable for fishpond purposes shall be released to, and be placed under the administrative jurisdiction and management of, the Bureau of Fisheries and Aquatic Resources. Those still to be classified under the Present system shall continue to remain as part of the public forest. (Emphasis supplied)

According to the *ponencia*, the references above do not suffice for purposes of proving alienability and disposability, since under "all laws during the American regime, from the Revised Administrative Code of 1917 [RAC] up to and including [Commonwealth Act No. 141], only the Governor-General or President could classify lands of the public domain into alienable and disposable lands."[16]

---

[16] *Ponencia*, p. 13.

I do not dispute that the power to classify lands of the public domain was delegated to the DENR Secretary only in 1975, particularly, through Section 13 of PD 705 quoted above. To be sure, the parameters proposed herein merely intend to streamline the requirements in TA.N. in view of the passage of DENR AO 2012-09. **As in *T.A.N.*, these proposed parameters are similarly premised on the DENR Secretary's *existing* authority, under PD 705, to classify land as alienable and disposable.**

Confirmation of title to property acquired through prescription

Citing *Malabanan*, the *ponencia* holds that Dumo failed to establish that the disputed property consists of private land susceptible of acquisitive prescription under the Civil Code, since she failed to submit any evidence of an express declaration made by the State converting the same to patrimonial property.[17]

Under *Malabanan*, the requirements for original registration under Section 14(2) are: (i) a declaration that the land subject of the application is alienable and disposable; (ii) **an express government manifestation that said land constitutes patrimonial property, or is "no longer retained" by the State for public use, public service, or the development of national wealth**; and (iii) proof of possession for the period and in the manner prescribed by the Civil Code for acquisitive prescription, reckoned from the moment the property subject of the application is released from the public dominion.

The second requirement above appears to proceed from the premise that all lands owned by the State, even if declared as alienable and disposable, still remain property of public dominion which cannot be subject of private ownership. *Malabanan* anchors this premise on the provisions of Republic Act No. 7227[18] (BCDA law) which declares certain portions of the public dominion as

---

[17] *Id.* at 29.

[18] BASES CONVERSION AND DEVELOPMENT ACT OF 1992, March 13, 1992.

alienable and disposable, and earmarks the same for disposition to fulfill a specific purpose.

I submit that this premise contemplates only the specific properties identified under the BCDA law. Thus, it is *not* meant to be adopted in absolute terms.

Section 3, Article XII of the 1987 Constitution classifies lands of the public domain into five (5) categories — agricultural lands, forest lands, timber lands, mineral lands, and national parks. The provision states:

> Section 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. **Alienable lands of the public domain shall be limited to agricultural lands.** x x x (Emphasis supplied)

Section 3 mandates that only lands classified as agricultural may be declared *alienable*, and thus susceptible of private ownership.

On the other hand, the Civil Code classifies property of the State into two (2) categories: (i) property of public dominion covered by Article 420; and (ii) patrimonial property covered by Articles 421 and 422, thus:

> ART. 420. The following things are property of public dominion:
>
> (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;
>
> (2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.
>
> ART. 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property.
>
> ART. 422. Property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State.

The Civil Code further classifies property of private ownership into three (3) categories: (i) patrimonial property of the State under Articles 421 and 422; (ii) patrimonial property of provinces, cities and municipalities as defined by Article 424; and (iii) property belonging to private individuals under Article 425, hence:

> ART. 424. Property for public use, in the provinces, cities, and municipalities, consist of the provincial roads, city streets, municipal streets, the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities, or municipalities.
>
> x x x x x x x x x
>
> ART. 425. Property of private ownership, besides the patrimonial property of the State, provinces, cities, and municipalities, consists of all property belonging to private persons, either individually or collectively.

Harmonizing the classification of land under the 1987 Constitution and the Civil Code, the Court, in its 2013 Resolution in *Malabanan*,[19] held:

> Land, which is an immovable property, may be classified as either of public dominion or of private ownership. Land is considered of public dominion if it either: (*a*) is intended for public use; or (*b*) belongs to the State, without being for public use, and is intended for some public service or for the development of the national wealth. **Land belonging to the State that is not of such character, or although of such character but no longer intended for public use or for public service forms part of the patrimonial property of the State.Land that is other than part of the patrimonial property of the State, provinces, cities and municipalities is of private ownership if it belongs to a private individual.**[20] (Emphasis supplied)

Verily, private ownership contemplates not only ownership by private persons, <u>but also ownership by the State, provinces, cities, and municipalities, in their private capacity</u>.[21]

---

[19] 717 Phil. 141 (2013) [*En Banc*, Per *J.* Bersamin].

[20] *Id*. at 160.

[21] See generally *Chavez v. Public Estates Authority*, 451 Phil. 1, 52-73 (2003) [Separate Opinion, Concurring and Dissenting, Per *J.* Bellosillo].

Proceeding therefrom, property of the State may either be: (i) property of public *dominion*, or those held by the State in its public capacity for public use, public service or the development of national wealth for the common and public welfare;[22] and (ii) patrimonial property, or those held by the State in its private capacity to attain economic ends.[23]

As the connotative terms suggest, the conversion of public land into alienable and disposable land of the public domain opens the latter to private ownership.[24] At this point, (*i.e.*, upon the declaration of alienability and disposability) the land ceases to be beyond the commerce of man, having assumed the nature of patrimonial property of the State, that is, property owned by the State in its private capacity.

Being private in nature, patrimonial property of the State are subject to alienation and disposition in the same way as properties of private individuals,[25] **and thus may be subject to prescription and be the object of ordinary contracts or agreements.**[26] Examples of patrimonial property of the State include those acquired by the government in execution sales and tax sales, friar lands, mangrove lands and mangrove swamps.[27]

In turn, patrimonial property of the State may be classified into two sub-categories:

---

[22] See 2 Arturo M. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines* 30 (1992); II Edgardo L. Paras, *Civil Code of the Philippines Annotated* 33-34 (10th ed. 1981).

[23] 2 Arturo M. Tolentino, *id*. at 37. See also II Edgardo L. Paras, *id*. at 47.

[24] Such as a patent, the latter being a contract between the State and the grantee.

[25] I Eduardo P. Caguioa, *Comments and Cases on Civil Law* 485 (1961).

[26] See CIVIL CODE, Art. 1113. See also I Eduardo P. Caguioa, *id*.; Ernesto L. Pineda, *Law on Property* 32-33 (2009).

[27] I Eduardo P. Caguioa, *id*. at 484-485, citing *Jacinto v. Director of Lands*, 49 Phil. 853 (1926) and *Commonwealth v. Gungun*, 70 Phil. 194 (1940).

(i) Those which are *not* property of public dominion or imbued with public purpose based on the State's current or intended use, and may thus be classified as patrimonial property "by nature", as covered or defined by Article 421; and

(ii) Those which previously assumed the nature of property of public dominion by virtue of the State's use, but which are no longer being used or intended for said purpose, and may thus be understood as "converted" patrimonial property, as provided by Article 422.

Thus, the proper interpretation of Article 422 in relation to Articles 420 and 421 is that "converted" patrimonial property can only come from property of public domain as defined under Article 420. Hence, "converted" patrimonial property should not be understood as a subset of patrimonial property "by nature" under Article 421.

There is no doubt that forest lands, timber lands, mineral lands, and national parks which are lands of the public domain under the Constitution all fall within the rubric of property of public dominion under Article 420(2) of the Civil Code. Agricultural lands also fall under Article 420(2). Clearly, therefore, public land that is classified as agricultural (and subject to the State's current or intended use) ***is*** property of public dominion. ***However***, these agricultural lands, **once declared as alienable and disposable lands of the public domain**, become "converted" patrimonial property of the State.[28]

Thus, as stated earlier, **it is the declaration of alienability and disposability which constitutes indubitable proof of the withdrawal of public agricultural land from the mass of the State's property of public dominion under Article 420(2), Civil Code, and its "conversion" to patrimonial property. In turn, the clear intention of this conversion is precisely to**

---

[28] See Oswaldo D. Agcaoili , *Property Registration Decree and Related Laws (Land Titles and Deeds)* 647 (2015). See also 2 Arturo M. Tolentino, supra note 22, at 38; *Chavez v. Public Estates Authority*, *supra* note 21.

open these agricultural lands to private acquisition or ownership.

Justice Edgardo L. Paras, distinguished civilist, explains:

> x x x [P]ublic agricultural lands before being made available to the general public should also be properties of public dominion for the development of the national wealth (and as such may not be acquired by prescription); **but after being made so *available*, they become *patrimonial* property of the [S]tate, and therefore subject to prescription. Moreover, once already acquired by private individuals they become private property** x x x.[29] (Emphasis supplied)

Once land of public dominion is classified by the State as *alienable*, it **immediately** becomes open to private acquisition, as "[a]lienable lands of the public domain x x x [form] part of the patrimonial propert[y] of the State."[30] **Thus, the operative act which converts property of public domain to patrimonial property is its classification as *alienable and disposable land of the public domain*, as this classification precisely serves as the manifestation of the State's lack of intent to retain the same for some public purpose.**

Inalienability is an inherent characteristic of property of the public dominion — a characteristic which necessarily clashes with a declaration of *alienability* and disposability; meaning, the declaration operates precisely to rid the subject property of its *inalienable* characteristic, thus opening the same to private acquisition. Hence, a ruling which holds that public land which had already been declared alienable and disposable remains inalienable until it is transferred in favor of a private person perpetuates a flawed notion that unwarrantedly and erroneously negates the concept of patrimonial property set forth in the Civil Code, and that of *alienable and disposable lands of the public domain* explicitly recognized by the Constitution.

---

[29] II Edgardo L. Paras, *supra* note 22, at 44.

[30] Oswaldo D. Agcaoili, *supra* note 28.

The case of *Sps. Modesto v. Urbina*[31] (*Modesto*) lends guidance. In *Modesto*, the Court was called upon to determine which of the parties therein had the better right to possess a particular parcel of land situated in Lower Bicutan, Taguig City. As proof of his right of possession, respondent therein presented, among others, a Miscellaneous Sales Application (MSA) and tax declarations issued in his name which, in turn, trace his possession back to 1966. Petitioners argued, however, that the disputed property had yet to be declared alienable and disposable at the time respondent filed his MSA and secured his tax declarations; thus, respondent could not have legally possessed the disputed property at that time. Ruling in favor of petitioners, the Court held that **private persons can only claim possessory rights over a particular property once it is declared alienable and disposable**, thus:

> Prefatorily, we observe that the subject property has not yet been titled, nor has it been the subject of a validly issued patent by the [Land Management Bureau (LMB)]. Therefore, the land remains part of the public domain, and neither Urbina nor the Modestos can legally claim ownership over it. This does not mean, however, that neither of the parties have the right to possess the property.
>
> Urbina alleged that he is the rightful possessor of the property since he has a pending [MSA], as well as tax declarations over the property. He also relied, to support his claim of a better right to possess the property, on the admission on the part of the Modestos that they negotiated with him for the sale of the lot in question.
>
> **On the other hand, the Modestos anchored their right to possess the same on their actual possession of the property. They also questioned the legality of Urbina's [MSA], and his tax declarations over the property, arguing that since these were obtained when the land was still not alienable and disposable, they could not be the source of any legal rights.**
>
> After reviewing the records of this case, we find the reasoning of the Modestos to be more in accord with applicable laws and jurisprudence.

---

[31] 647 Phil. 706 (2010) [Third Division, Per *J.* Brion].

x x x x x x x x x

From [the] LMB order, we consider the following facts established:

First, **the lot in question, situated in Barangay Lower Bicutan, was part of the Fort Bonifacio Military Reservation, and only became alienable and disposable after October 16, 1987**, pursuant to Proclamation No. 172. x x x

Second, the Modestos are *bona fide* residents of the lot in question, being the actual residents of the lot and having built a house and chapel on the property.

Third, the Modestos have a pending Insular Government Patent Sales Application over the lot in question, **filed *after* the property became alienable and disposable**.

Taking these facts into account, we now make a distinction, based on the corresponding legal effects, between: (a) possession of the property before October 16, 1987, when the land was still considered inalienable government land, and (b) possession of the property after October 16, 1987, when the land had already been declared alienable and disposable.

x x x x x x x x x

Unless a public land is shown to have been reclassified as alienable or actually alienated by the State to a private person, that piece of land remains part of the public domain, and its occupation in the concept of owner, no matter how long, cannot confer ownership or possessory rights. **It is only after the property has been declared alienable and disposable that private persons can legally claim possessory rights over it**.[32] (Emphasis and underscoring supplied)

The Court's ruling in *Modesto* is clear — **once property of public dominion is declared alienable and disposable, it becomes subject of private rights (*i.e.*, possessory claims), since such declaration operates to convert property of public dominion (*i.e.*, inalienable property) to patrimonial property of the State (that is, property held by the State in its private capacity).**

---

[32] *Id*. at 719, 724-725.

Despite the Court's unequivocal ruling in *Modesto*, the erroneous notion that a declaration of alienability and disposability does not, *ipso facto*, convert land to patrimonial property continues to persist, due to the Court's interpretation of the BCDA law in *Malabanan*, which, in turn, had been adopted in the subsequent case of *Dream Village Neighborhood Association, Inc. v. Bases Conversion Development Authority*[33] (*Dream Village*). Citing *Malabanan*, the Court, in *Dream Village*, held:

> One question laid before us is whether the area occupied by Dream Village is susceptible of acquisition by prescription. In [*Malabanan*], it was pointed out that from the moment R.A. No. 7227 was enacted, the subject military lands in Metro Manila became alienable and disposable. **However, it was also clarified that the said lands did not thereby become patrimonial, since the BCDA law makes the express reservation that they are to be sold in order to raise funds for the conversion of the former American bases in Clark and Subic. The Court noted that the purpose of the law can be tied to either "public service" or "the development of national wealth" under Article 420 (2) of the Civil Code, such that the lands remain property of the public dominion, *albeit* their status is now alienable and disposable. The Court then explained that it is only upon their sale to a private person or entity as authorized by the BCDA law that they become private property and cease to be property of the public dominion**:
>
> For as long as the property belongs to the State, although already classified as alienable or disposable, it remains property of the public dominion if [or] when it is "intended for some public service or for the development of the national wealth."[34] (Emphasis supplied)

I respectfully submit that the foregoing interpretation is confined only to the facts of that case, and contemplates the specific provisions found in the BCDA law which make the express reservation that the properties identified thereunder are to be sold in order to raise funds for the conversion of the former American bases in Clark and Subic. I submit that the ruling cannot be made to extend to situations

---

[33] 715 Phil. 211 (2013) [First Division, Per *J.* Reyes].

[34] *Id*. at 233-234.

or properties other than those envisioned or covered by the BCDA law.

To note, the relevant provision of the BCDA law provides:

SEC. 8. *Funding Scheme*. — The capital of the Conversion Authority shall come from the sales proceeds and/or transfer of certain Metro Manila military camps, including all lands covered by Proclamation No. 423 series of 1957, commonly known as Fort Bonifacio and Villamor (Nichols) Air Base, namely:

x x x x x x x x

The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable pursuant to the provisions of existing laws and regulations governing sales of government properties: *Provided*, That no sale or disposition of such lands will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with paragraph (b), Section 4, of this Act. However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines. x x x (Emphasis supplied)

The properties earmarked under Section 8 of the BCDA law constitute portions of Fort Bonifacio and Villamor Air Base, which formed part of the public dominion pursuant to Article 420(2) of the Civil Code. These properties were declared as alienable and disposable **for the specific purpose** of facilitating their sale and disposition in favor of private individuals **to raise capital for the Conversion Authority**. Such conversion was done precisely because the State is precluded from disposing *inalienable* lands of the public dominion. It is only in this factual milieu that the statement that "public lands only become private or patrimonial lands upon their sale or transfer to qualified private individuals" finds application.

To stress, properties owned by the State may either be alienable or inalienable in nature; properties of the State cannot assume the nature of both classes at the same time. Prior to their sale in favor of private individuals, the properties

declared as alienable and disposable under Section 8 of the BCDA law partake the nature of patrimonial property of the State; hence, it is erroneous to hold that these properties "remain property of the public dominion albeit their status as alienable and disposable." There is no provision in the BCDA law which retains the properties identified under Section 8 as part of public dominion.

Pursuant to the Regalian doctrine, all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. To overcome this presumption, an applicant seeking registration is bound to establish that the property subject of his application is alienable and disposable. Once this fact is established, the presumption of State ownership is overcome. As explained, what precludes the conversion of property of public dominion to patrimonial property is an *existing* intention to utilize the same for public purpose. **Where the property subject of the application had not been utilized by the State and the latter had not manifested any such intention, the burden to prove that the property is retained for public service or for the development of the national wealth, notwithstanding its classification as alienable and disposable, necessarily shifts to the State**.

In cases, however, where the property subject of the application had been previously utilized by the State for some public purpose, then there must be proof of the abandonment of State use in order for the land to be held as having been withdrawn from public dominion. In these cases (*i.e.*, where the property had been previously utilized for some public purpose), it is the applicant who has the burden of proving an express government manifestation that the land subject of his application has been withdrawn from public purpose/use so that it already constitutes "converted" patrimonial property. I submit that this is the correct understanding of Art. 422 of the Civil Code, and it is only within this context that the second requirement in *Malabanan* applies.

I am not unaware that this position is met with reservations, as it purportedly facilitates confirmation of title in favor of

informal settlers who take possession of unoccupied land without just title. However, it is well to recall that extraordinary prescription, that is, public, peaceful and uninterrupted possession of real property for 30 years **without need of title or of good faith**,[35] constitutes a mode of acquiring ownership under the Civil Code. Hence, to my mind, this interpretation neither grants informal settlers any additional right so as to promote their proliferation, nor does it validate unscrupulous and baseless claims. Rather, this interpretation merely harmonizes Section 14(2) of PD 1529 with the provisions governing prescription as a mode of acquisition under the Civil Code.

SECOND DIVISION

[G.R. No. 218413. June 6, 2018]

FELICIANO S. PASOK, JR., *petitioner, vs.* **OFFICE OF THE OMBUDSMAN-MINDANAO and REX Y. DUA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; PRESENT WHERE A LOWER COURT OR TRIBUNAL VIOLATES THE CONSTITUTION, THE LAW, OR EXISTING JURISPRUDENCE.— The Court has always adhered to the general rule upholding the non-interference by the courts in the exercise by the Office of the Ombudsman of its plenary investigative and prosecutorial powers. In *certiorari* proceedings under Rule 65, the Court's inquiry is limited to

---

[35] CIVIL CODE, Art. 1137.

determining whether the Office of the Ombudsman acted without or in excess of its jurisdiction, or with grave abuse of discretion. There is grave abuse of discretion when an act of a court or tribunal is whimsical, arbitrary, or capricious as to amount to an "an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility." Grave abuse of discretion was found in cases where a lower court or tribunal violates or contravenes the Constitution, the law, or existing jurisprudence.

2. POLITICAL LAW; 1987 CONSTITUTION; OFFICE OF THE OMBUDSMAN; HAS THE POWER TO INVESTIGATE ANY ACT OR OMMISSION OF ANY PUBLIC OFFICIAL, EMPLOYEE, OFFICE OR AGENCY WHICH APPEARS TO BE ILLEGAL, UNJUST, IMPROPER OR INEFFICIENT AND MAY REQUEST THE COMMISSION ON AUDIT (COA) FOR ASSISTANCE.— Section 13, Article XI of the Constitution enumerates the powers, functions, and duties of the Office of the Ombudsman. These powers, functions, and duties are also stated in Section 15 of Republic Act No. 6770 or the Ombudsman Act of 1989. Section 13, paragraphs (1) and (5), Article XI of the Constitution state: Section 13. The Office of the Ombudsman shall have the following powers, functions and duties: (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. (5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents. It is clear from Section 13(1), Article XI of the Constitution that the Office of the Ombudsman has the power to investigate on its own or on complaint, any act of a public official when the act appears to be illegal, unjust, improper, or inefficient. The Office of the Ombudsman may also ask for the assistance of a government agency, like the COA in this case, to carry out its duties.

APPEARANCES OF COUNSEL

Daryl Ritchie Valles for petitioner.
Elpidio Digaum for private respondent.

D E C I S I O N

CARPIO, *J.*:

This is a petition for certiorari[1] assailing the (1) Order[2] dated 3 January 2013 finding probable cause against petitioner Feliciano S. Pasok, Jr. and (2) Joint-Order[3] dated 13 April 2015 of the Office of the Ombudsman–Mindanao in Case No. OMB-M-C-06-0383-G for Malversation and violation of Section 3(e) of Republic Act No. 3019.

The Facts

Sometime in April 2005, then Municipal Mayor of Tandag, Surigao del Sur Alexander T. Pimentel issued a Memorandum dated 12 April 2005 directing private respondent Rex Y. Dua (Dua), in his capacity as Agricultural Technician II in the Office of the Municipal Agriculturist, to handle, monitor, evaluate, and submit monthly reports on the animal dispersal program and other agricultural programs of the municipality.

In the course of Dua's field inspection and investigation of the said programs, Dua allegedly found some irregularities in the implementation of the programs by petitioner Feliciano S. Pasok, Jr. (Pasok), the Municipal Agriculturist of Tandag.

Dua filed a Complaint[4] dated 28 July 2006 before the Office of the Ombudsman–Mindanao for Malversation of Public Funds and violations of Republic Act Nos. 3019[5] (RA 3019) and 6713[6]

---

[1] Under Rule 65 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 23-33.

[3] *Id.* at 34-41.

[4] *Id.* at 44-46.

[5] Anti-Graft and Corrupt Practices Act. Approved on 17 August 1960.

[6] An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, To Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and For Other Purposes. Approved on 20 February 1989.

against Pasok. In the complaint, Dua listed down the following irregularities:

(1) Non-remittance to the LGU Trust Fund of the ₱91,000 proceeds of the Emergency Assistance Certified Seeds/ Fertilizer Project of the FAO-UN, which recipient-farmers individually paid sometime in October 2004, to support the rehabilitation of the calamity-damaged farms in the municipality. To support the allegation, Dua presented a copy of the Certified Seeds/Fertilizer Releases by Municipality submitted by the Rice FAO Program Coordinator of the Province of Surigao del Sur.

(2) Non-remittance to the LGU Trust Fund of the ₱109,000 fund assistance sometime in 1998 from the Department of Agriculture (DA) for the Hybrid Pigs Projects to benefit the members of the Rural Improvement Club of Barangay Rosario, Tandag. The hybrid pigs cost ₱4,500 each and the recipients had an obligation to pay the municipality without interest. However, out of the total money released, the Office of the Municipal Agriculturist had collected ₱21,000 only without issuing any receipt. Dua presented a Certification issued by the Barangay Captain of Rosario that the collection of ₱21,000 was not immediately deposited in the LGU Trust Fund and it was only in April 2006 that the said amount was deposited.

(3) Non-delivery to the intended beneficiaries, sometime in 2004, of the free Bacterial Leaf Blit Fungicide (BLBF) with the so-called Gloria Rice at ₱1,200 per sack since only the Gloria Rice sacks were given to buyers and the free BLBFs were taken for the personal use of certain personnel of the Office of the Municipal Agriculturist in their rice crops.

(4) The taking of a water pump, sometime in 1997, by Pasok from Pablito Suazo, a recipient of a calamity assistance program by the DA extended to calamity-affected farmers in the municipality. The water pump was subsequently utilized by Pasok in his fishpond and rice mill in Barangay Buenavista.

(5) The manipulation of the award of one unit rice harvester equipment, which was part of the national government's Poverty Alleviation Fund from the DA in the amount of ₱80,000, in favor of a fictitious organization called the Tanabog Farmers Association headed by a certain Nelson Suarez, who turned out to be Pasok's tenant. The said association was not included in the list of accredited civil society organizations, non-governmental organizations and people's organizations. To substantiate the allegation, Dua submitted a Letter from Bernarda B. Pontevedra, the Barangay Captain of Rosario addressed to Mayor Pimentel informing the mayor that Pasok's tenant was the one using the rice harvester at Pasok's farm.

Pasok denied the charges against him. Pasok claimed that Dua was motivated by malice in filing the complaint since he did not accommodate Dua's promotion from Agricultural Technician II to Agricultural Technologist due to lack of civil service eligibility, having failed the civil service examination four times.

Pasok further claimed that:

(1) He was not in charge of the implementation of the emergency assistance certified seeds/fertilizer project nor was he involved in the safekeeping of the proceeds. Pasok added that under the approved project proposal submitted to DA-FAO, it was a certain Lynn V. Dequito, Agricultural Technologist, who was designated to "collect and disburse, deposit, distribute farm inputs, such as seeds, fertilizers and other related activities." As per records of the Municipal Treasurer, Dequito deposited the amount of ₱25,000 in the LGU Trust Fund.

(2) The livelihood project for the Rural Improvement Club of Barangay Rosario was covered by a Memorandum of Agreement and payments to the project recipients in the amount of ₱21,400 were properly accounted for. Pasok submitted certifications executed by the alleged beneficiaries to support the claim.

(3) He had no participation in the implementation of the Hybrid Rice Commercialization Program (Gloria Rice) and denied any knowledge of the missing BLBF. Pasok stated that the one in charge of the Gloria Rice program was Agricultural Technologist Dequito. In support of his claim, Pasok submitted a certification from Marcos M. Quico, Provincial Agriculturist, that Dequito received and recorded the payment of farmers' equity and turned over the payment to the SL-8H representative.

(4) There is no record that Pablito Suazo was a beneficiary of the Shallow Tube Well/Open Source Pump Project. Pasok denied owning a fishpond or rice mill in Brgy. Buenavista and submitted certifications from the Bureau of Fisheries and National Irrigation Administration to substantiate this.

In a Decision dated 10 March 2008, the Office of the Ombudsman- Mindanao found Pasok guilty of grave misconduct and serious dishonesty and imposed on him the penalty of dismissal from the service. The same office issued a Resolution dated 12 March 2008 which found probable cause against Pasok for violation of Section 3(e)[7] of RA 3019.

However, acting upon a Motion for Reconsideration filed by Pasok, the Office of the Ombudsman–Mindanao, in a Joint-Order[8] dated 29 September 2009, set aside without prejudice its 10 March 2008 Decision and 12 March 2008 Resolution

---

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

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.

[8] *Rollo*, pp. 58-76.

pending the submission of a report by the Commission on Audit (COA), Regional Office No. 13, Butuan City. The dispositive portion of the Joint-Order states:

> WHEREFORE, PREMISES CONSIDERED, the Commission on Audit, Regional Office No. 13, Butuan City, is hereby directed to conduct a fact-finding/audit investigation on the circumstances surrounding the procurement of the rice harvester, its eventual award to Tanabog Farmers Association, and the reasons for its non-repair or non-replacement and to submit to this Office the results thereof within five (5) days from its conclusion.
>
> The findings and rulings of this Office in the assailed Resolution dated 12 March 2008 which found probable cause that the respondent violated Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as well as the Decision dated 10 March 2008 which found him guilty of Grave Misconduct and Serious Dishonesty and thereby meting upon him the penalty of dismissal from the service are hereby SET ASIDE WITHOUT PREJUDICE to the results of the COA fact-finding/audit investigation.
>
> SO ORDERED.[9]

The COA-Regional Office No. 13 submitted its first Audit Report dated 2 September 2011 to the Office of the Ombudsman–Mindanao. Then on 14 March 2012, the same COA office submitted a Special Audit Report. As a result of the audit reports, the Office of the Ombudsman–Mindanao issued an Order[10] dated 3 January 2013 finding probable cause that Pasok violated Section 3(e) of RA 3019. The dispositive portion states:

> WHEREFORE, this Office finds PROBABLE CAUSE that Section 3(e) of Republic Act No. 3019 was violated in the instant case and respondent Feliciano S. Pasok, Jr. is PROBABLY GUILTY thereof. Let the attached Information be filed in the proper court.
>
> SO ORDERED.[11]

---

[9] *Id*. at 74.

[10] *Id*. at 23-33.

[11] *Id*. at 32.

Likewise, in an Order dated 4 January 2013, the Office of the Ombudsman–Mindanao found Pasok guilty of grave misconduct and serious dishonesty. The dispositive portion states:

> WHEREFORE, respondent Feliciano S. Pasok, Jr. is hereby found GUILTY of Grave Misconduct and Serious Dishonesty.
>
> Pursuant to Section 52 (A)(1), Section 52(A)(3) and Section 55 of Resolution No. 991936, otherwise known as the Uniform Rules on Administrative Cases in the Civil Service, as modified by the Revised Rules on Administrative Cases in the Civil Service, respondent Feliciano S. Pasok, Jr. is accordingly meted the penalty of DISMISSAL from the service together with all the accessory penalties and disabilities appurtenant thereto.
>
> SO ORDERED.[12]

Pasok filed motions for reconsideration of the Orders dated 3 January and 4 January 2013, as well as a supplemental motion for reconsideration dated 30 May 2014. The Office of the Ombudsman–Mindanao, in a Joint-Order[13] dated 13 April 2015, denied the motions.

Hence, the instant petition.

The Issue

Whether or not the Office of the Ombudsman–Mindanao acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it set aside its 29 September 2009 Joint-Order and found probable cause against Pasok on the basis of the COA fact-finding reports without furnishing Pasok a copy thereof or requiring him to comment thereon, thus, in violation of Pasok's right to due process.

The Court's Ruling

The petition lacks merit.

---

[12] *Id*. at 37.

[13] *Id*. at 34-41.

Petitioner Pasok contends that the Office of the Ombudsman–Mindanao abused its discretion when it reversed its own 29 September 2009 Joint-Order and found probable cause against him for the offense charged on the basis of the COA fact-finding reports without furnishing him a copy thereof or requiring him to comment thereon, thus, violating his right to due process.

Private respondent Dua, on the other hand, maintains that there is nothing in the Joint-Order dated 29 September 2009 which states that the Office of the Ombudsman-Mindanao reversed its 10 March 2008 Decision and exonerated Pasok from the charges of grave misconduct and dishonesty. Dua asserts that the Office of the Ombudsman-Mindanao has the discretion to dismiss without prejudice a preliminary investigation if it finds that the final decision of the COA is necessary for its investigation and the future prosecution of the case.

Likewise, public respondent Office of the Ombudsman–Mindanao asserts that Pasok's right to due process was not violated since Pasok was able to argue his case and explain the merits of his defense. The Office of the Ombudsman-Mindanao maintains that the Office of the Ombudsman's power to investigate and to prosecute is plenary and unqualified and that it has full discretion to file an information against a supposed offender. The Office of the Ombudsman-Mindanao explains that it set aside its earlier Resolution dated 12 March 2008 without prejudice to the results of the COA fact-finding investigation. Thus, after careful analysis of the reports which the COA submitted, the Office of the Ombudsman-Mindanao found sufficient basis to warrant the filing of an Information against petitioner for violation of Section 3(e) of RA 3019. Thus, the finding of probable cause was well substantiated and not tainted with grave abuse of discretion.

The Court has always adhered to the general rule upholding the non-interference by the courts in the exercise by the Office of the Ombudsman of its plenary investigative and prosecutorial powers.[14] In certiorari proceedings under Rule 65, the Court's

[14] *Angeles v. Gutierrez*, 685 Phil. 183, 193 (2012).

inquiry is limited to determining whether the Office of the Ombudsman acted without or in excess of its jurisdiction, or with grave abuse of discretion.

There is grave abuse of discretion when an act of a court or tribunal is whimsical, arbitrary, or capricious as to amount to an "an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility."[15] Grave abuse of discretion was found in cases where a lower court or tribunal violates or contravenes the Constitution, the law, or existing jurisprudence.[16]

In the present case, the Office of the Ombudsman-Mindanao received a complaint for malversation of public funds, and violations of the Anti-Graft and Corrupt Practices Act and the Code of Conduct and Ethical Standards for Public Officials and Employees. The complaint was filed by Rex Y. Dua against Feliciano S. Pasok, Jr. after Dua discovered some irregularities in the different agricultural programs of the Office of the Municipal Agriculturist in Tandag, Surigao del Sur. After conducting a preliminary investigation, the Office of the Ombudsman-Mindanao issued (1) a Decision dated 10 March 2008 finding Pasok guilty of grave misconduct and serious dishonesty, and (2) a Resolution dated 12 March 2008 finding probable cause against Pasok for violation of Section 3(e) of RA 3019. However, on 29 September 2009, the Office of the Ombudsman-Mindanao issued a Joint-Order setting aside its decision and resolution issued earlier pending further investigation by the COA. After submission of the fact-finding reports by the COA, the Office of the Ombudsman-Mindanao again issued the assailed orders finding probable cause against Pasok. Pasok now insists that his right to due process was violated.

---

[15] *Callo-Claridad v. Esteban*, 707 Phil. 172, 186 (2013).

[16] *Republic of the Philippines v. COCOFED*, 423 Phil. 735, 774 (2001).

Section 13, Article XI of the Constitution enumerates the powers, functions, and duties of the Office of the Ombudsman. These powers, functions, and duties are also stated in Section 15 of Republic Act No. 6770[17] or the Ombudsman Act of 1989. Section 13, paragraphs (1) and (5), Article XI of the Constitution state:

> Section 13. The Office of the Ombudsman shall have the following powers, functions and duties:
>
> (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient.
>
> (5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.

It is clear from Section 13(1), Article XI of the Constitution that the Office of the Ombudsman has the power to investigate on its own or on complaint, any act of a public official when the act appears to be illegal, unjust, improper, or inefficient. The Office of the Ombudsman may also ask for the assistance of a government agency, like the COA in this case, to carry out its duties.

In *Presidential Commission on Good Government v. Desierto,*[18] we held that the Office of the Ombudsman is "empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts." This determination is done by means of a preliminary investigation.

Here, when the Office of the Ombudsman-Mindanao initially conducted a preliminary investigation based on the complaint

---

[17] An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes. Approved on 17 November 1989.

[18] 553 Phil. 733, 742 (2007).

filed, the parties, Dua and Pasok, were each given a chance to submit their allegations and establish their claims. Dua and Pasok both submitted their pleadings, certifications and affidavits from different witnesses and offices, and relevant records and documents to prove and disprove their claims. Pasok was given the opportunity to address all the allegations that Dua presented in his complaint filed with the Office of the Ombudsman-Mindanao. Pasok cannot now assert that he has been deprived of his right to due process when he was given every opportunity to do so during the preliminary investigation.

The directive of the Office of the Ombudsman-Mindanao to the COA in its Joint-Order dated 29 September 2009 to "conduct a fact-finding [or] audit investigation on the circumstances surrounding the procurement of the rice harvester, its eventual award to Tanabog Farmers Association, and the reasons for its non-repair or non-replacement,"[19] as well as the setting aside by the Office of the Ombudsman-Mindanao of the decision and resolution it issued earlier, was issued without prejudice to the results of the COA fact-finding/audit investigation. Thus, it was still within the power of the Office of the Ombudsman-Mindanao to issue another directive, after evaluating the COA reports, that a criminal case should be filed despite setting aside the decision and resolution it issued earlier.

In *Dimayuga v. Office of the Ombudsman*,[20] we held that the Office of the Ombudsman may, for every particular investigation, decide how best to pursue each investigation. This power gives the Office of the Ombudsman the discretion to dismiss without prejudice a preliminary investigation if it finds that the final decision of the COA is necessary for its investigation and future prosecution of the case. It may also pursue the investigation because it realizes that the decision of the COA is irrelevant or unnecessary to the investigation and prosecution of the case. Since the Office of the Ombudsman is granted such latitude,

---

[19] *Rollo*, p. 74.

[20] 528 Phil. 42, 51 (2006).

its varying treatment of similarly situated investigations cannot by itself be considered a violation of any of the parties' rights to the equal protection of the laws. Nor in the present case, can it be considered a violation of petitioner's right to due process.

In sum, we defer to the findings of the Office of the Ombudsman-Mindanao and will not interfere with the exercise of its plenary power absent any showing that it committed grave abuse of discretion amounting to lack or excess of jurisdiction.

WHEREFORE, we **DISMISS** the petition. We **AFFIRM** the Order dated 3 January 2013 and Joint-Order dated 13 April 2015 of the Office of the Ombudsman–Mindanao in Case No. OMB-M-C-06-0383-G.

SO ORDERED.

Peralta, Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 222559. June 6, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JENNIFER GA-A *y* CORONADO,** *accused*, **AQUILA "PAYAT" ADOBAR,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS ACT; ELEMENTS.— RA 9165, otherwise known as the Comprehensive Dangerous Drugs Acts of 2002, being the law in place at the time of the commission of the offense and being more favorable to the accused than its successor, RA 10640,

shall apply in this case. Section 3(ii), Article I of RA 9165 defines "selling" as any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration. In the context of a buy-bust operation, its elements are 1) that the transaction or sale took place between the accused and the poseur buyer; and 2) that the dangerous drugs subject of the transaction or sale is presented in court as evidence of the *corpus delicti*. Anent the latter element, proof beyond reasonable doubt must be adduced in establishing the *corpus delicti* – the body of the crime whose core is the confiscated illicit drug. It is important that the State establish with moral certainty the integrity and identity of the illicit drugs sold as the same as those examined in the laboratory and subsequently presented in court as evidence. This rigorous requirement, known under RA 9165 as the chain of custody, performs the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.

2. ID.; ID.; CHAIN OF CUSTODY; NON-COMPLIANCE IN EXCEPTIONAL CASES; REQUISITES.— Section 21 of RA 9165 is a critical means to ensure the establishment of the chain of custody by providing for the procedures to be followed in the seizure, custody and disposition of confiscated, seized and/or surrendered drugs and/or drug paraphernalia. x x x In *People v. Dela Cruz*, it was explained that compliance with the chain of custody requirement provided by Section 21 ensures the integrity of confiscated drugs and related paraphernalia x x x Compliance with the requirements forecloses opportunities for planting, contaminating, or tampering of evidence in any manner. Non-compliance, on the other hand, is tantamount to failure in establishing the identity of *corpus delicti*, an essential element of the offense of illegal sale of dangerous drugs, thus, engendering the acquittal of an accused. [T]he law allows such non-compliance in **exceptional cases** 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. In these exceptional cases, the seizures and custody over the confiscated items shall not be rendered void and invalid. x x x On the first element, it has been emphasized that the prosecution must first recognize any lapses on the part of the apprehending officers

and thereafter explain the cited justifiable grounds. Moreover, the justifiable explanation given must be credible. Breaches of the procedure contained in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.

3. ID.; ID.; ID.; REQUIREMENT THAT IMMEDIATELY AFTER SEIZURE AND CONFISCATION, PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED ILLEGAL DRUGS BE DONE IN THE PRESENCE OF THE THREE WITNESSES; ELUCIDATED.— In no uncertain words, Section 21 requires the apprehending team to "immediately after seizure and confiscation, physically inventory and photograph [the seized illegal drugs] in the presence of the accused x x x or his representative or counsel, a representative from the media and the Department of Justice (DOJ) and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof." The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be **at the place of apprehension and/or seizure**. If this is not practicable, it may be done as soon as the apprehending team reaches the nearest police station or nearest office. x x x By the same intent of the law behind the mandate that the initial custody requirements be done "immediately after seizure and confiscation," the aforesaid witnesses must already be physically present at the time of apprehension and seizure. In other words, while the physical inventory and photographing is allowed to be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure," this does not dispense with the requirement of having the DOJ and media representative and the elected public official to be **physically present at the time of and at or near the place of apprehension and seizure so that they can be ready to witness the inventory and photographing of the seized drugs "immediately after seizure and confiscation."**

4. ID.; ID.; ID.; ID.; THE FLIGHT OF ACCUSED SERVES AS A WAIVER OF HIS RIGHT TO BE PRESENT DURING THE INITIAL CUSTODY REQUIREMENTS BUT DOES

NOT EXCUSE COMPLIANCE WITH THE PRESENCE OF THE THREE (3) INSULATING WITNESSES THEREIN.— The question arises: what if the person from whom the drugs were seized escaped? This obtains in the present case. From the prosecution's narration, Adobar successfully evaded arrest despite the efforts of the buy-bust team to apprehend him. x x x [T]he escape of accused Adobar serves as a waiver of his right to be present during the physical inventory and photographing of the drugs allegedly seized from him. The prosecution cannot be burdened by the accused's escape **provided that reasonable efforts were made to apprehend him**, as what appears in the present case. x x x [T]he prosecution is excused from complying with the requirement of Section 21 as to the presence of the accused during the initial custody requirements, *i.e.*, physical inventory and photographing of the seized drugs. However, it is not excused as to the presence of the three (3) insulating witnesses, *i.e.*, the DOJ and media representative and elected public official. The buy-bust team must still secure the presence of these insulating witnesses, and the prosecution must still prove such presence, not only during the inventory and photographing but likewise at the time of and at or near the intended place of confiscation and seizure of the subject drugs. In the same vein, the buy-bust team need not secure the presence of the accused during the marking of the seized drugs as his escape serves as a waiver of his right to witness the same.

5. **ID.; ID.; ID.; FOUR LINKS IN THE CHAIN OF CUSTODY; MARKING THE SEIZED DRUGS MUST BE IMMEDIATELY AFTER CONFISCATION.—** Section 21 requires establishing the four links in the chain of custody: First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. x x x Marking is the placing by the arresting officer or the poseur-buyer of his/her initials and signature on the items after they have been seized. In *People v. Beran*, the Court held that while the matter of marking of the seized illegal drugs in

warrantless seizures is not expressly specified in Section 21, **consistency with the chain of custody rule requires that such marking should be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation**, x x x It is vital that the seized contrabands are immediately marked because succeeding handlers of the specimens will use the markings as reference.

6. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT; FAILURE THEREOF, PRESUMPTION OF INNOCENCE PREVAILS.— Adobar's defense of denial is concededly weak and uncorroborated. This weakness, however, does not add strength to the prosecution's case as the evidence for the prosecution must stand or fall on its own weight. Well-entrenched in jurisprudence is the rule that the conviction of an accused must rest not on the weakness of the defense but on the strength of the evidence of the prosecution. x x x The prosecution failed to prove the *corpus delicti* of the crime due to the serious lapses in observing Section 21 of RA 9165 and the concomitant failure to trigger the saving clause. Anent the latter point, the prosecution utterly failed to acknowledge and credibly justify its procedural lapses and was unable to prove the integrity and evidentiary value of the seized drugs. Adobar's innocence, as presumed and protected by the Constitution, must stand in light of the reasonable doubt on his guilt.

PERALTA, *J., separate concurring opinion*:

CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY; THREE WITNESSES REQUIRED TO BE PRESENT DURING THE PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED ITEMS; NON-COMPLIANCE THEREOF MUST BE ADEQUATELY EXPLAINED.— [U]nder the original provision of Section 21 and its IRR, which is applicable at the time the appellant committed the crimes charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses**, namely: (a) a representative from the media, **and** (b) the DOJ, **and**; (c) any elected public official who shall be

> required to sign copies of the inventory and be given copy thereof. x x x The prosecution bears the burden of proving a 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 trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of 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. It should take note that 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 items. Its strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule to prevent incidents of planting, tampering or alteration of evidence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.:*

This is an Appeal[1] filed pursuant to Section 13, Rule 124 of the Rules of Court from the Decision[2] dated July 31, 2015 (assailed Decision) of the Court of Appeals, Twenty-Second (22nd) Division (CA) in CA-G.R. CR HC NO. 01192-MIN. The assailed Decision affirmed *in toto* the Judgment[3] dated July 25, 2013 rendered by the Regional Trial Court of Cagayan de Oro City, Branch 25 (trial court), in Criminal Case (CC) No. 2011-485,

---

[1] *Rollo*, pp. 31-32.

[2] *Id*. at 3-30. Penned by Associate Justice Rafael Antonio M. Santos with Associate Justices Edgardo A. Camello and Henri Jean Paul B. Inting, concurring.

[3] CA *rollo*, pp. 36-45. Penned by Judge Arthur L. Abundiente.

which found accused-appellant Aquila[4] "Payat" Adobar (Adobar) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."[6]

The accusatory portion of the Information[7] filed on June 1, 2011 against Adobar reads:

That on or about May 9, 2011[,] at about 11:00 in the morning, more or less, at 32nd Street, Ramonal Village, [Barangay] Camamanan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to sell, trade, dispense and give away any dangerous drugs, did then and there willfully, unlawfully and illegally sell, trade, dispense and give away to another one (1) heat-sealed transparent plastic sachet containing white crystalline substance, to PDEA Agent Naomie Siglos, who acted as poseur-buyer, which after a confirmatory test conducted by the PNP Crime Laboratory, said sachet is found positive of the presence of 0.03 grams of Methamphetamine Hydrochloride, a dangerous drug commonly known as shabu, in consideration of Five Hundred pesos (Php500.00) with Serial No. MR443620 which is recorded as marked money in a buy bust operation.

---

[4] Spelled as "Aquillo" and "Aquilo" in some parts of the Records.

[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. (Emphasis and italics in the original)

[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, § 21 (2002).

[7] Records (CC No. 2011-485), p. 3.

Contrary to and in Violation of Section 5 Article II of R.A. 9165.[8]

Adobar's co-accused, Jennifer Ga-a y Coronado (Ga-a), was charged on May 12, 2011 in two (2) other separate Informations for violation of Sections 11[9] and 15[10], respectively, both of Article II of RA 9165. On September 27, 2011, she pleaded not guilty[11] to both offenses charged and trial as against her commenced.

Meanwhile, Adobar remained at large until he was apprehended *via* an alias warrant of arrest[12] on February 13, 2012.[13] Upon his arraignment on April 2, 2012, Adobar entered a plea of "not guilty."[14]

---

[8] *Id*.

[9] The accusatory portion of the Information dated May 11, 2011 reads:

That on or about May 9, 2011, at about 11:30 in the morning, more or less, at 32nd St. Ramonal Village, Barangay Camaman-an, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there[,] wilfully, unlawfully and feloniously have in h[e]r possession, custody and control seventeen (17) pieces of heat-sealed transparent plastic sachet each containing Methamphetamine Hydrochloride (*Shabu*), [a] dangerous drug, accused knowing full well that [s]he is possessing x x x a dangerous drug, with a total net weight of 0.94 grams.

Contrary to [law] and in Violation of Section 11 Article II of RA No. 9165. Records (CC No. 2011-422), p. 3.

[10] The accusatory portion of the Information dated May 11, 2011 reads:

That on or about May 9, 2011, at about 11:30 in the morning, more or less, at 32nd, St. Ramonal Village, Barangay Camaman-an, Cagayan de Oro City, Philippines, and within the jurisidction of this Honorable Court, the above-named accused, [without being authorized by law,] did then and there[,] willfully, unlawfully and feloniously and criminally was found to be positive for the use of dangerous drug, after a confirmatory test.

Contrary to [law] and in Violation of Section 15 Article II of RA No. 9165. Records (CC No. 2011-423), p. 3.

[11] CA *rollo*, p. 38.

[12] Records (CC No. 2011-485) p. 17.

[13] *Id*. at 19.

[14] *Id*. at 24.

As the cases against both accused arose out of the same incident, the parties adopted in the present case (Criminal Case No. 2011-485) the testimonies of the witnesses already called to the stand in Criminal Case Nos. 2011-422 to 423 prior to Adobar's arrest. Thereafter, joint trial on the three (3) cases continued as to the remaining witnesses for both prosecution and defense.[15]

The Facts

Version of the Prosecution:

The prosecution presented the following witnesses: Philippine Drug Enforcement Agency (PDEA) Agents 1) IO1 Naomie Siglos (IO1 Siglos); 2) IO3 Alex Tablate (IO3 Tablate); and 3) IO1 Nestle Carin (IO1 Carin); 4) Police Chief Inspector (PCI) Erma Salvacion – Sampaga (PCI Sampaga); and 5) Punong Barangay Dometilo Acenas, Jr. (Punong Barangay Acenas).[16]

The prosecution dispensed with the testimony of PCI Sampaga, the forensic chemist,[17] after the defense stipulated on certain matters.[18]

---

[15] CA *rollo*, p. 38.

[16] *Rollo*, p 7.

[17] CA *rollo*, p. 39.

[18] Specifically:

1. That the witness is an expert witness being the forensic chemist of the PNP Crime Lab stationed at Camp Evangelista, Cagayan de Oro City[;]
2. That on May 9, 2011[,] she received a letter request for the laboratory examination of one heat-sealed transparent plastic sachet with markings "AMT-1 5/9/11" containing white crystalline substance and seventeen (17) heat-sealed transparent plastic sachets with markings "AMT-1 5/19/11 to AMT-17 5/9-11" containing white crystalline substance[;]
3. That she also received a letter request for the drug examination of the accused;
4. That she conducted [a] laboratory examination in accordance with the letter request[;]

The prosecution made the following narration of facts:

On May 9, 2011, at about 10:00 o'clock in the morning, a team of PDEA Regional Office X agents, Cagayan de Oro City (collectively, buy-bust team), organized a buy-bust operation against Adobar and his live-in partner based on information from a Confidential Informant (CI), who came to said office that morning, and from the National Bureau of Investigation (NBI) National Drug Information System watchlist of drug personalities which included Adobar.[19] In the meeting, assignments were made as follows: IO1 Siglos as poseur-buyer, IO3 Tablate as apprehending and investigating officer and the rest of the agents as back-up. IO1 Siglos was given a buy-bust money of one (1) piece of Five Hundred Pesos (₱ 500.00) bill.[20]

After the briefing, the buy-bust team proceeded to the residence of Adobar at 32nd St., Ramonal Village, Camaman-an, Cagayan de Oro City in two (2) unmarked service vehicles.[21] Upon arrival, at about 11:00 o'clock in the morning, they parked the vehicles about 20 to 30 meters away from Adobar's residence. IO1 Siglos and the CI alighted and walked towards Adobar's house, outside of which a man, identified by the CI as Adobar, was standing.

The CI introduced IO1 Siglos to Adobar as a friend who was interested to buy *shabu* (subject drugs). Adobar asked IO1 Siglos how much worth of *shabu* she wanted to buy and the latter answered ₱500.00, while handing the buy-bust money to Adobar. Upon receipt of the money, Adobar excused himself

---

5. That she reduced her findings into writing denominated as Chemistry Report No. D-156-2011 and Chemistry Report No. DTCRIM-160-2011[;]

6. That she brought with her today for identification and marking the specimens mentioned in the Chemistry Reports including the Chemistry Reports which are now marked by the prosecution. Records (CC No. 2011-423), p. 51.

[19] *Rollo,* pp. 7-8.

[20] Bearing serial numbers MR443620; duly recorded in the PDEA Blotter. Records (CC No. 2011-485) p. 6.

[21] CA *rollo*, p. 39.

to get the "item" inside the house. In less than a minute,[22] Adobar came back and handed to IO1 Siglos one heat-sealed transparent sachet containing white crystalline substance suspected to be *shabu*.[23] After examining the sachet, IO1 Siglos rubbed the back of her head, signaling her colleagues to respond to the scene.

Upon seeing the signal, IO3 Tablate, who earlier positioned himself about ten (10) meters away from the group of IO1 Siglos[24] and who witnessed the exchange between IO1 Siglos and Adobar,[25] alerted the rest of the team.[26] The team responded and rushed towards Adobar, with IO3 Tablate shouting "dapa, dapa[,] PDEA!"[27] Adobar ran inside his house and locked the front door behind him.[28] The buy-bust team forced open the door, cleared the ground floor then proceeded to the second floor where they found a small window through which they suspected Adobar to have escaped.[29] The buy-bust money was not recovered.

In another room on the same floor,[30] IO3 Tablate found Ga-a. Near her were seventeen (17) pieces of transparent sachets containing suspected *shabu* together with other drug paraphernalia on top of a table.[31] Upon inquiry, Ga-a introduced herself as Mecaelle, the live-in partner of Adobar, and claimed that the *shabu* on the table were from Adobar.[32]

---

[22] Records (CC No. 2011-485) p. 8.

[23] *Id*.

[24] Direct Examination of IO3 Tablate, TSN, March 20, 2012, p. 7.

[25] Records (CC No. 2011-485), p. 6.

[26] *Id*.

[27] *Id*. at 7.

[28] *Id*.

[29] Direct Examination of IO3 Tablate, TSN, March 20, 2012, p. 10.

[30] *Id*. at 11.

[31] Specifically: 1) two (2) packs of transparent empty sachets; 2) three (3) pieces of lighter; 3) one (1) piece of improvised tooter; 4) one (1) piece of aluminum foil strip. Records (CC No. 2011-423), p. 16.

[32] Direct Examination of IO3 Tablate, TSN, March 20, 2012, p 12.

Meanwhile, IO1 Siglos held custody of the subject drugs seized from Adobar until the same was turned over to IO3 Tablate for marking by the latter.

After "clearing" Adobar's house, IO3 Tablate called for Camaman-an Punong Barangay Acenas, media representative Rondie Cabrejas of Magnum Radyo[33] (media representative) and an unidentified representative from the Department of Justice (DOJ).[34] Thereafter, the sachets of suspected *shabu*, including the subject drugs, were marked[35] with IO3 Tablate's initials, "AMT."[36] After the marking, IO3 Tablate proceeded with the inventory of the seized items (including the subject drugs) on the table where the seventeen (17) sachets were found,[37] and prepared the *Inventory of Seized Items/Confiscated Non-Drugs* (Inventory)[38] in the presence of Ga-a.[39] Photographs[40] of the seized drugs, the room where they were found and the accomplishment of the Inventory were then taken.[41] It appears from the prosecution's submissions that among the three (3) witnesses summoned, only Punong Barangay Acenas and the media representative arrived at Adobar's house and witnessed[42] and signed the Inventory.[43]

The buy-bust team and Ga-a proceeded to the PDEA RO-10, with IO3 Tablate in possession of all seized items, including

---

[33] Records (CC No. 2011-423), p. 16.

[34] Direct Examination of IO3 Tablate, TSN, March 20, 2012, p. 12.

[35] *Id.*

[36] "AMT – A" for the subject drugs; "AMT – 1" to "AMT – 17" for the seventeen (17) sachets of shabu found inside the room with Ga-a. Records (CC No. 2011-423), p. 16.

[37] Records (CC No. 2011-485), p. 7.

[38] Records (CC No. 2011-423), p. 16.

[39] Direct Examination of IO3 Tablate, TSN, March 20, 2012, p. 21.

[40] Records (CC No. 2011-485) pp. 12-13.

[41] Direct Examination of IO3 Tablate, TSN dated March 20, 2012, p. 15.

[42] Records (CC No. 2011-423), p. 9.

[43] *Id.* at 16.

the subject drugs.[44] Upon arrival, IO3 Tablate prepared a request for the examination of the seized items with the Regional Crime Laboratory Office 10 (crime lab)[45] and personally delivered said items thereto.[46]

Version of the Defense

The defense called to the stand accused-appellant Adobar and accused Ga-a who narrated the following pertinent facts:

In the morning of May 9, 2011, Ga-a was alone cooking her lunch inside the house of Adobar where she was a tenant when she heard a loud pounding on the door.[47] Suddenly, about ten (10) armed persons entered the house. After introducing themselves as PDEA agents,[48] they proceeded to search the house[49] and destroyed Ga-a's belongings[50] while looking for a certain "Payat."[51] Ga-a was likewise bodily searched by a woman.[52] She was then invited to go to the PDEA office and as they were about to leave, the agents called for a barangay official.[53] Ga-a claimed that the evidences presented by the prosecution were "planted" by the PDEA agents.[54]

Adobar, on the other hand, testified that on May 9, 2011, he went to Opol at 5:00 o'clock in the morning to buy fish for vending.[55] He then took the same to Abellanosa St., Cagayan

---

[44] *Id*.

[45] In accordance with standard protocol, the same was signed by Lt. Col. Layese. *Id*. at 13.

[46] Direct Examination of I03 Tablate, TSN, March 20, 2012, p. 14.

[47] Direct Examination of Ga-a, TSN, March 25, 2013, p. 14.

[48] *Rollo*, p. 11.

[49] Direct Examination of Ga-a, TSN, March 25, 2013, p. 6.

[50] *Id*. at 5.

[51] *Id*.

[52] *Id*.

[53] *Id*. at 7.

[54] *Id*. at 11.

[55] Direct Examination of Adobar, TSN, April 8, 2013, p. 5.

de Oro City where he stayed until he went home at about 4:00 o'clock in the afternoon, when the fish were sold out.[56] When he arrived at his house, he noticed that the door was destroyed and the belongings inside were disarranged.[57] He was likewise informed by the neighbors that Ga-a was arrested by PDEA agents[58] but he did not think to report the incident to the police as he was unschooled.[59] On February 12, 2012, he was arrested while selling fish under the bridge in Abellanosa St.[60]

The Ruling of the trial court

In the Judgment dated July 25, 2013, the trial court found Adobar guilty beyond reasonable doubt of the offense charged and imposed upon him the penalty of Life Imprisonment with a fine of Five Hundred Thousand Pesos (₱500,000.00).

In a two-paragraph discussion, the trial court held that under the circumstances, there was probable cause to arrest Adobar. As between his and the prosecution's conflicting versions of facts, the latter's was more believable. No discussion was made on compliance by the PDEA team with the required procedures under relevant laws, rules and regulations particularly, Section 21, Article II of RA 9165, albeit such was raised as an issue by the defense.[61]

On the other hand, the trial court **acquitted accused Ga-a** in both Criminal Case Nos. 2011-422 and 2011-423, holding that the PDEA agents had no probable cause to search and arrest her. Moreover, the urine sample taken from Ga-a and the results of the chemical examination made thereon showing the same

---

[56] *Id*. at 5-6.

[57] *Id*. at 6.

[58] *Id*. at 11.

[59] *Id*.

[60] *Id*. at 6-7.

[61] *Comment/Opposition to Prosecution's Formal Offer of Exhibits* dated November 22, 2012, Records (CC No. 2011-485), pp. 67-68.

positive for Methamphetamine Hydrochloride are inadmissible in evidence, being fruits of the poisonous tree.[62]

The *Fallo* of the trial court Judgment reads:

WHEREFORE, premises considered, this Court finds that:

1. In Criminal Cases Nos. 2011-422 and 2011-423, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, JENNIFER C. GAA is hereby ACQUITTED of the offenses charged. The Warden of the BJMP having custody of JENNIFER C. GAA is hereby directed to immediately release her from detention unless she is accused of other crimes which will justify her continued incarceration.

2. In Criminal Case No. 2011-485, accused AQUILO ADOBAR a.k.a. "Payat" is GUILTY BEYOND REASONABLE DOUBT of the offense defined and penalized under Section 5, Article II of R.A. 9165 as charged in the Information, and hereby sentences him to suffer the penalty of Life Imprisonment and to pay the Fine in the amount of Five Hundred Thousand Pesos [₱500,000.00], without subsidiary penalty in case of non-payment of fine.

Let the penalty imposed on accused Adobar be a lesson and an example to all who have the criminal propensity, inclination and proclivity to commit the same forbidden act that crime does not pay, and that the pecuniary gain and benefit, as well as the perverse psychological well-being which one can derive from selling or manufacturing or trading drugs, or other illegal substance, or from using, or possessing, or just committing any other acts penalized under Republic Act 9165, cannot compensate for the penalty which one will suffer if ever he is prosecuted and penalized to the full extent of the law.

SO ORDERED.[63] (Emphasis in the original)

Adobar appealed to the CA *via Notice of Appeal*.[64] He filed his *Brief*[65] dated January 3, 2014, while the People, through

---

[62] CA *rollo*, pp. 43-44.

[63] *Id*. at 45.

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

[65] *Id*. at 24-35.

the Office of the Solicitor General (OSG), filed its *Brief*[66] dated April 28, 2014. In a Resolution[67] dated June 18, 2014, the CA considered Adobar to have waived his right to file a Reply Brief.

The Ruling of the CA

In the assailed Decision, the CA affirmed *in toto* the trial court Judgment as follows:

> IN VIEW OF THE FOREGOING, the appeal is hereby DENIED. The assailed Judgment dated July 25, 2013 of the Regional Trial Court, Branch 25, Cagayan de Oro City is hereby AFFIRMED *in toto*.[68]

The CA held that the prosecution adequately proved all the elements of the crime. It held that the prosecution sufficiently established all the links in the chain of custody as to remove doubt on the integrity of the subject drugs.

Anent the alleged failure of the PDEA agents to comply with Section 21, Article II of RA 9165 as the media and DOJ representatives, respectively, were not presented to testify on the Inventory which they supposedly witnessed, the CA held that this lapse did not render the subject drugs seized inadmissible because the prosecution had duly shown that its integrity and evidentiary value were preserved. According to the CA, substantial adherence – not strict adherence – to the requirements of Section 21 suffices and the same was satisfied by the PDEA agents.

Hence, this recourse.

In lieu of filing supplemental briefs, Adobar and the People filed separate *Manifestations* dated July 4, 2016[69] and June 16, 2016,[70]

---

[66] *Id*. at 52-66.

[67] *Id*. at 68.

[68] *Id*. at 29.

[69] *Id*. at 44-45.

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

respectively, foregoing their right to file supplemental briefs as they have exhausted their arguments in their respective *Briefs* filed before the CA.

Issue

The main question thrown to the Court for resolution is whether or not accused-appellant Adobar is guilty beyond reasonable doubt of sale of illegal drugs as defined and punished under Section 5, Article II of RA 9165.

The Court's Ruling

The Appeal has merit.

Adobar is charged with selling 0.03 gram of dangerous illegal drugs, in particular, Methamphetamine Hydrochloride colloquially known as *shabu*. At the outset, RA 9165, otherwise known as the Comprehensive Dangerous Drugs Acts of 2002, being the law in place at the time of the commission of the offense and being more favorable to the accused than its successor, RA 10640,[71] shall apply in this case.

---

[71] Promulgated on July 15, 2014 and entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165," Section 21 of RA 9165, as amended by RA 10640, **currently** reads:

"SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

"(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/ paraphernalia and/or laboratory equipment shall, **immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy**

Section 3(ii), Article I of RA 9165 defines "selling" as any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration. In the context of a buy-bust operation, its elements are 1) that the transaction or sale took place between the accused and the poseur buyer; and 2) that the dangerous drugs subject of the transaction or sale is presented in court as evidence of the *corpus delicti*.[72]

Anent the latter element, proof beyond reasonable doubt must be adduced in establishing the *corpus delicti* – the body of the crime whose core is the confiscated illicit drug.[73] It is important that the State establish with moral certainty the integrity and identity of the illicit drugs sold as the same as those examined in the laboratory and subsequently presented in court as evidence.[74]

---

thereof: *Provided,* That the physical inventory and photograph shall be conducted **at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures:** *Provided*, *finally*, That ***noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items*.**

"x x x x x x x x x

"(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided*, *however*, That a final certification shall be issued immediately upon completion of the said examination and certification; (Emphasis and additional italics supplied)

[72] *People v. Gonzales,* 708 Phil. 121, 127 (2013), citing *People v. Kamad*, 624 Phil. 289, 300 (2010).

[73] *People v. Cayas*, 789 Phil. 70, 76-77 (2016), citing *People v. Capuno,* 655 Phil. 226, 241 (2011).

[74] See *People v. Del Mundo*, G.R. No. 208095, September 20, 2017, p. 7, citing *People v. Gayoso*, G.R. No. 206590, March 27, 2017, p. 8 and *People v. Lorenzo*, 633 Phil. 393, 403 (2010).

This rigorous requirement, known under RA 9165 as the chain of custody,[75] performs the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.[76]

In turn, Section 21 of RA 9165 is a critical means to ensure the establishment of the chain of custody[77] by providing for the procedures to be followed in the seizure, custody and disposition of confiscated, seized and/or surrendered drugs and/or drug paraphernalia. Section 21 of RA 9165 provides:

SEC. 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the 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

---

[75] The definition of "chain of custody" can be found in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements RA 9165, thus:

x x x "Chain of custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plants sources of dangerous drugs or laboratory equipment at 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 dates and times when such transfers of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

[76] *People v. Dahil*, 750 Phil. 212, 226 (2015).

[77] *Id.* at 227.

(DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

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

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided*, *however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours; (Emphasis supplied and italics in the original)

Filling in the details as to where the physical inventory and photographing of the seized items should be made is Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR) which reads:

> (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;** x x x (Emphasis supplied)

The same likewise provides for a saving clause in case of non-compliance with the requirements of RA 9165 and the IRR, thus:

x x x **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)

The foregoing is echoed in Section 2(a) of the Dangerous Drugs Board (DDB) Regulation No. 1, Series of 2002, to wit:

a. The apprehending team having initial custody and control of dangerous drugs or controlled chemical or plant sources of dangerous drugs or laboratory equipment shall immediately, after the seizure and confiscation, physically inventory and photograph the same in the presence of:

(i) the person from whom such items were confiscated and/or seized or his/her representative or counsel;

(ii) a representative from the media;

(iii) a representative from the Department of Justice; and,

(iv) any elected public official;

who shall be required to sign copies of the inventory report covering the drugs/equipment and who shall 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 seizure without warrant; Provided further that non-compliance with these requirement under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team x x x.

In sum, the applicable law mandates the following to be observed as regards the time, witnesses and proof of inventory in the custody of seized dangerous illegal 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.

In *People v. Dela Cruz*,[78] it was explained that compliance with the chain of custody requirement provided by Section 21 ensures the integrity of confiscated drugs and related paraphernalia in four (4) respects: first, the nature of the substances or items seized; second, the quantity (*e.g.*, weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them.

Compliance with the requirements forecloses opportunities for planting, contaminating, or tampering of evidence in any manner. Non-compliance, on the other hand, is tantamount to failure in establishing the identity of *corpus delicti*, an essential element of the offense of illegal sale of dangerous drugs, thus, engendering the acquittal of an accused.[79]

---

[78] 744 Phil. 816, 829-830 (2014).

[79] See *id.* at 830.

However, the law allows such non-compliance in **exceptional cases** 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.[80] In these exceptional cases, the seizures and custody over the confiscated items shall not be rendered void and invalid.

Against the foregoing legal backdrop, the Court had exhaustively studied the records and is of the considered view that the integrity and identity of the *corpus delicti* are compromised.

The buy-bust team failed to comply with the requirements of Section 21 of RA 9165, particularly as to the presence of the three (3) witnesses immediately after seizure and confiscation of the illegal drugs.

In no uncertain words, Section 21 requires the apprehending team to "immediately after seizure and confiscation, physically inventory and photograph [the seized illegal drugs] in the presence of the accused x x x or his representative or counsel, a representative from the media and the Department of Justice (DOJ) and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof."

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be **at the place of apprehension and/or seizure**. If this is not practicable, it may be done as soon as the apprehending team reaches the nearest police station or nearest office.[81]

---

[80] COMPREHENSIVE DANGEROUS DRUGS ACT of 2002, as amended by RA 10640, § 21 (1).

[81] See IRR, Art. II, Sec. 21(a).

In all of these cases, the photographing and inventory are required to be done **in the presence of any elected public official and a representative from the media and the DOJ who shall be required to sign an inventory and given copies thereof.** By the same intent of the law behind the mandate that the initial custody requirements be done "immediately after seizure and confiscation," the aforesaid witnesses must already be physically present at the time of apprehension and seizure – a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its very nature, a planned activity. Simply put, the buy-bust team had enough time and opportunity to bring with them these witnesses.

In other words, while the physical inventory and photographing is allowed to be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure," this does not dispense with the requirement of having the DOJ and media representative and the elected public official to be **physically present at the time of and at or near the place of apprehension and seizure so that they can be ready to witness the inventory and photographing of the seized drugs "immediately after seizure and confiscation."**[82]

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 (3) witnesses is most needed. **It is their presence at that point that would insulate against the police practice of planting evidence.**[83] In *People v. Mendoza,*[84] the Court ruled:

---

[82] Emphasis supplied.

[83] As early as in the case of *People v. Cruz*, 301 Phil. 770, 774-775 (1994), the Court has taken judicial notice of the rather pervasive practice of planting evidence in anti-narcotics operations, holding that:

> Be that as it may, the Court is also cognizant of the fact that the practice of planting evidence for extortion, as a means to compel one to divulge information or merely to harass witnesses is not uncommon. By the very nature of anti-narcotics operations, with the need for entrapment procedures, the use of shady characters as

x x x Without the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the sachets of *shabu*, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti,* and thus adversely affected the trustworthiness of the incrimination of the accused. x x x[85] (Italics in the original)

In the present case, none of these three (3) witnesses under Section 21 were present at the time the subject drugs were allegedly confiscated from Adobar. Upon the other hand, only two (2) of the three (3) were summoned by the team and were actually present during the physical inventory and photographing of the seized items.

The testimony of Punong Barangay Acenas, which was, in fact, offered by the prosecution for the sole purpose of proving that he was present during the inventory and that he signed the inventory receipt,[86] supports the conclusion that he arrived only after the subject drugs were already confiscated, thus:

[ATTORNEY ECHANO:]

Q But, you will admit that [when] the PDEA went inside the house, you were not present?

A When I arrived at the area, all the agents were already in the second floor of the house.

Q **When did you receive the call from the PDEA agents?**

---

informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. x x x

[84] 736 Phil. 749 (2014).

[85] *Id*. at 764.

[86] Direct Examination of Punong Barangay Acenas, TSN, September 11, 2012, pp. 2-3.

A **Immediately after the arrest [of Ga-a] and seizure.**

Q **How many minutes did it take you before you arrived?**

A **About 15 minutes from our residence, Sir.**

x x x x x x x x x

[TRIAL COURT:]

Q In other words, Captain Acenas, when you arrived there, the accused [Ga-a] was already arrested?

A Yes, Your Honor.

Q The items were already on top of the aparador?

A Yes, Your Honor.

Q Was the Inventory already prepared ready for your signature or the Inventory was prepared when you were there already?

A **When I arrived, they started the Inventory, Your Honor**.[87] (Emphasis supplied)

To recall the prosecution's narrative, Ga-a was arrested after the buy-bust was made against Adobar, *i.e.*, after the subject drugs were taken from him by IO1 Siglos. Clearly, Punong Barangay Acenas was summoned only sometime **after** the attempted arrest of Adobar and the alleged confiscation of the subject drugs from his person. According to Punong Barangay Acenas, he arrived at the scene about fifteen (15) minutes from such call, when the agents were already settled on the second floor of Adobar's home, ready for inventory. This is confirmed by IO3 Tablate who testified that he phoned in the witnesses only after "clearing" the alleged crime scene, thus:

[PROSECUTOR VICENTE:]

x x x x x x x x x

Q What did you do with the drugs on the table?

---

[87] *Id* at 4-5.

A **After clearing,** before I actually made the markings[,] **we called up the barangay captain or one of the members of the team, the barangay captain, member from the media and also the representative from the DOJ and upon their arrival it was the time when I actually made the markings to the evidence.**

x x x x x x x x x

Q And then what else after marking, labelling the sachets of shabu and the paraphernalia, what happened next, Mr. Witness?

A **After the inventory was signed by the witnesses,** upon arrival of (*sic)* the office after the booking I also prepared a request for the crime lab and then I myself was the one who delivered the evidence to the crime lab.[88] (Emphasis supplied)

Notably, while IO3 Tablate testified that all three (3) insulating witnesses came, observed and signed the inventory, this testimony is contradicted by the records which reveal that only the signatures of Punong Barangay Acenas and the media representative actually appear on the inventory document.[89] In this regard it should also be noted that only Punong Barangay Acenas was presented in court to testify.

Other than the above quoted testimony of IO3 Tablate, no sign of the presence of the DOJ representative appears on record. In fact, the Affidavit[90] dated May 10, 2011 of IO3 Tablate belies the presence of a DOJ Representative even during the inventory, thus:

I, **INTELLIGENCE OFFICER-3 ALEX M. TABLATE,** x x x do hereby depose and say:

x x x x x x x x x

---

[88] Direct Examination of IO3 Tablate, TSN, March 20, 2012, pp. 12-14.

[89] Records (CC No. 2011-423), p. 16.

[90] *Id* at 8-9.

That **during the inventory of** the seized items/evidence recovered, which I, IO-3 TABLATE myself conducted in the very table itself where said items were found in plain view in the 2nd floor of the house of the suspects, **the same were witnessed by the Barangay Captain himself of Brgy. Camaman-an and by a representative from the media through Magnum Radio.**[91] (Additional emphasis supplied)

To reiterate, the three (3) insulating witnesses must be present at the time of seizure of the drugs such that they must be at or near the intended place of arrest so they can be ready to witness the inventory and photographing of the seized items "immediately after seizure and confiscation." These witnesses must sign the inventory and be given copies thereof. **In the present case, from the evidence of the prosecution itself, none of the witnesses were present during the seizure and confiscation of the subject drugs**. **Moreover**, only two (2) of them – the punong barangay and the media representative – witnessed the photographing and signed the inventory.

On this note, considering that at the point of seizure, *i.e.*, the first link in the "chain of custody," irregularities were already attendant, it becomes futile to prove the the rest of the links in the chain. Simply put, since "planting" of the drugs was already made possible at the point of seizure because of the absence of all three (3) insulating witnesses, proving the chain after such point merely proves the chain of custody of planted drugs.

Adobar's flight serves as a waiver of his right to be present during the initial custody requirements of Section 21 of RA 9165, but does not excuse compliance by the buy-bust team with the presence of the three (3) insulating witnesses therein.

Apart from the three (3) insulating witnesses, Section 21 requires that the physical inventory and photographing of the seized drugs by the apprehending team immediately after

---

[91] *Id.*

confiscation and seizure be likewise made in the presence of, **"the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel."**[92]

The question arises: what if the person from whom the drugs were seized escaped? This obtains in the present case. From the prosecution's narration, Adobar successfully evaded arrest despite the efforts of the buy-bust team to apprehend him.[93] He remained at large until his subsequent apprehension on February 13, 2012 *via* an alias warrant of arrest.

If the story of the prosecution is to be believed, the escape of accused Adobar serves as a waiver of his right to be present during the physical inventory and photographing of the drugs allegedly seized from him. The prosecution cannot be burdened by the accused's escape **provided that reasonable efforts were made to apprehend him**, as what appears in the present case. The buy-bust team cannot be reasonably expected to secure the presence of the accused's representative or counsel at the time of confiscation and during the buy-bust operation, considering the clandestine nature of such operations. In the same vein, after such escape, it should be difficult, if not impossible, for the buy-bust team to find a counsel or representative for the accused before the initial custody requirements which Section 21 mandates to be performed "immediately after" the confiscation.

As such, the prosecution is excused from complying with the requirement of Section 21 as to the presence of the accused during the initial custody requirements, *i.e.*, physical inventory and photographing of the seized drugs. However, it is not excused as to the presence of the three (3) insulating witnesses, *i.e.*, the DOJ and media representative and elected public official. The buy-bust team must still secure the presence of these insulating witnesses, and the prosecution must still prove such presence, not only during the inventory and photographing but likewise

---

[92] Emphasis supplied.

[93] Direct Examination of IO3 Tablate, TSN, March 20, 2012, pp. 18-19.

at the time of and at or near the intended place of confiscation and seizure of the subject drugs.

In the same vein, the buy-bust team need not secure the presence of the accused during the marking of the seized drugs as his escape serves as a waiver of his right to witness the same. As will be extensively discussed below, although Section 21 is silent as to the matter of marking of seized drugs, jurisprudence[94] teaches that consistency with the chain of custody rule requires the same to be done in the presence of the accused.

The prosecution failed to trigger the saving clause under the IRR of RA 9165. Its noncompliance with Section 21 cannot be excused; the identity of the corpus delicti is not established.

To be sure, strict compliance with the prescribed procedure under Section 21 is required as a rule.[95] The exception to this rule is found in the saving clause under Section 21 (a), Article II of the IRR of RA 9165[96] which requires the following: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and evidentiary value of the seized items are properly preserved by the apprehending team.[97]

If these two (2) requisites are present and the saving clause is successfully triggered, the confiscated items shall not be

---

[94] See *People v. Beran*, 724 Phil. 788 (2014) where the Court held that the marking shall be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation.

[95] *People v. Cayas*, *supra* note 73, at 79; *People v. Havana*, 776 Phil. 462, 475 (2016).

[96] States:

x x x **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)

[97] COMPREHENSIVE DANGEROUS DRUGS ACT of 2002, as amended by RA 10640, § 21 (1).

rendered void and invalid. This allows the prosecution to establish the identity of the *corpus delicti* despite failure of the apprehending team to physically inventory and photograph the drugs at the place of arrest and/or to have the DOJ and media representative and elected public official witness the same.

On the first element, it has been emphasized that the prosecution must first recognize any lapses on the part of the apprehending officers and thereafter explain the cited justifiable grounds.[98] Moreover, the justifiable explanation given must be credible.[99] Breaches of the procedure contained in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.[100]

Hence, to successfully trigger the saving clause, the prosecution must satisfy its two-pronged requirement: first, acknowledge and credibly justify the non-compliance, and second, show that the integrity and evidentiary value of the seized item were properly preserved. The Court held in *Valencia v. People*: [101]

> Although the Court has ruled that non-compliance with the directives of Section 21, Article II of R.A. No. 9165 is not necessarily fatal to the prosecution's case, the prosecution must still prove that (a) there is a justifiable ground for the non-compliance, and (b) the integrity and evidentiary value of the seized items were properly preserved. Further, the non-compliance with the procedures must be justified by the State's agents themselves. The arresting officers are under obligation, should they be unable to comply with the procedures laid down under Section 21, Article II of R.A. No. 9165, to explain why the procedure was not followed and prove that the reason provided a justifiable ground. Otherwise, the requisites under the law would

---

[98] *People v. Cayas*, *supra* note 73, at 80.

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

[100] *Id.*; see *People v. Sumili*, 753 Phil. 342, 352 (2015).

[101] 725 Phil. 268 (2014).

merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience.[102]

In this case, the prosecution did not acknowledge the lapses, much less offer a credible and justifiable ground for the failure of the buy-bust team to comply with Section 21. No explanation was advanced as to why none of the insulating witnesses was present at the time of seizure and confiscation of the subject illegal drugs. Neither do the records show any justification as to why no DOJ representative was secured to witness the photographing and physical inventory of the seized drugs. Worse, the prosecution did not even concede such lapses. The affidavit of IO3 Tablate shows the indifference of the prosecution on its failure to comply with Section 21, thus:

> That IO-1 SIGLOS turned over to me, IO-3 TABLATE the one (1) piece of heat-sealed transparent sachet containing white crystalline substance also suspected to be shabu, which was the subject of the buy-bust earlier transacted.
>
> That during the inventory of the seized items/evidence recovered, which I, IO-3 TABLATE myself conducted in the very table itself where said items were found in plain view in the 2nd floor of the house of the suspects, the same were witnessed by the Barangay Captain himself of Brgy. Camaman-an and by a representative from the media through Magnum Radio.
>
> That at the PDEA Regional Office– 10, the arrested female suspect formally identified herself as **Jennifer C. Ga-a,** 22 years old, single and a resident of Ramonal Village, Brgy. Camaman-an, Cagayan de Oro City while the other suspect who was able to elude arrest despite earnest effort to apprehend him was formally identified as **Aquilo Adobar,** 48 years old, married and a resident of the same barangay. The latter suspect is a target-listed personality as per PDEA National Drugs Information System (NDIS).[103] (Emphasis in the original)

Hence, considering the prosecution neither acknowledged nor explained its noncompliance with Section 21, the first prong was not satisfied, thus leading to the inevitable conclusion that the

---

[102] *Id*. at 286.

[103] Records (CC No. 2011-423), p. 9.

saving clause was not triggered. Accordingly, there is no point anymore in determining if the second prong had been satisfied – *i.e.*, proving the integrity and evidentiary value of the seized illegal drugs.

To be sure, from the records, outside the non-compliance with Section 21, the integrity and evidentiary value of the seized illegal drugs are heavily tainted. The second prong, even if the Court allows proof of such despite failure to prove the first prong, seems difficult if not impossible to establish in light of the serious irregularities in the transfer of custody of the seized illegal drugs.

Proving the second prong of the saving clause — the integrity of the seized illegal drugs — despite non-compliance with Section 21 requires establishing the four links in the chain of custody: First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[104]

In the present case, there was failure to mark the seized illegal drugs *immediately* after confiscation due to the palpable gap between the confiscation of the drugs to its subsequent marking which the prosecution utterly failed to explain.

Marking is the placing by the arresting officer or the poseur-buyer of his/her initials and signature on the items after they have been seized. In *People v. Beran*,[105] the Court held that while the matter of marking of the seized illegal drugs in warrantless seizures is not expressly specified in Section 21, **consistency with the chain of custody rule requires that such marking should be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation**, to wit:

---

[104] *People v. Nandi,* 639 Phil. 134, 144-145 (2010).

[105] *Supra* note 94, at 788.

What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. Consistency with the "chain of custody" rule requires that the "marking" of the seized items – to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence– should be done (1) **in the presence of the apprehended violator (2) immediately upon confiscation.** This step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence under Section 29 and on allegations of robbery or theft. x x x[106] (Emphasis in the original)

It is vital that the seized contrabands are immediately marked because succeeding handlers of the specimens will use the markings as reference. The Court has held:

Crucial in proving [the] chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus it is **vital that the seized contraband[s] are immediately marked** because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating[,] switching, "planting," or contamination of evidence.

Long before Congress passed RA 9165, this Court has consistently held that failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties, the doctrinal fallback of every drug-related prosecution.[107] (Additional emphasis supplied)

In the present case, a considerable period of time intervened between the confiscation of the subject drugs and its subsequent

---

[106] *Id*. at 819-820.

[107] *People v. Umipang*, 686 Phil. 1024, 1049-1050 (2012).

marking — which was unaccounted for by the prosecution. This gaping hiatus is brought about by the failure of the poseur buyer, IO1 Siglos, to credibly account for her whereabouts and the handling of the subject drugs from the time she confiscated the same from Adobar to the time she turned it over to IO3 Tablate for marking. The marked inconsistencies in her testimonies taken on April 23, 2012 and November 6, 2012 fail the test of credibility.

On April 23, 2012, IO1 Siglos testified that when her colleagues responded to the scene, she inspected the area with them and then, without much delay, followed IO3 Tablate upstairs for the marking, thus:

[PROSECUTOR VICENTE:]

x x x x x x x x x

Q And then after you made that pre-arranged signal of rubbing your back head, what happened?

A After a few minutes[,] the back up team rushed up.

Q What happened next?

A **And then when they arrived we checked the area and then after we checked the area I followed them and then I went up stairs to give the buy-bust evidence to the arresting officer, Sir.**

x x x x x x x x x

Q You said that after you touched your head the arresting officer arrived, and then Tablate went upstairs?

A Yes, Sir.

Q **How many minutes after Tablate went upstairs, how many minutes you followed Tablate?**

A **About 3-4 minutes, Sir**[108] (Emphasis supplied)

This is in contrast to her testimony on November 6, 2012 where she stated under oath that when the back-up team arrived, she proceeded to the team's service vehicle, about 10-15 meters

---

[108] Direct Examination of IO1 Siglos, TSN, April 23, 2012, pp. 6-8.

away, and therein waited for a considerable time while the back-up team chased after Adobar and searched the premises. She only went back to the house and handed the subject drugs to IO3 Tablate when it was time for the physical inventory, thus:

[PROSECUTOR VICENTE:]

x x x x x x x x x

Q After you rubbed the back part of your head, what happened next?

A I noticed that the operatives rushed up to the area, Sir.

x x x x x x x x x

Q So[,] when the operatives arrived, what did Aquillo (*sic)* Adobar do?

A He went upstairs, Sir.

Q He run?

A Yes, Sir.

Q And he was chased by the operatives?

A Yes, Sir.

x x x x x x x x x

Q What did you do?

A **I went outside going to our service vehicle, Sir.**

Q **How far was the service vehicle parked from the house?**

A **More or less 10-15 meters, Sir.**

x x x x x x x x x

Q Why you did not go with them when they chased the accused?

A Because my tasked (*sic)* is only a [poseur] buyer, Sir.

Q You said that the accused handed to you the sachet of shabu, what did you do with it?

A I handed to the arresting officer, IO3 Tablate during the inventory, Sir.

Q **But you said you went to the vehicle?**

A **Yes, Sir.**

Q **You waited there?**

A **Yes, Sir.**

Q **And then, when did your team conduct an inventory?**

A **After the searched (*sic*), Sir.**

Q **So[,] after you went to the vehicle, you went back to the house?**

A **Yes, Sir.**[109] (Emphasis supplied)

The significance of this contradiction in IO1 Siglos' testimony cannot be overemphasized. Being the first custodian in the chain and having held onto the then unmarked seized drugs for a considerable lapse of time, IO1 Siglos must clearly and convincingly account for her handling and care of the subject drugs before turning them over to IO3 Tablate for marking. In this, she failed, thus, effectively creating an obvious but unexplained break in the chain. Hence, assuming that the illegal drugs which went into the chain are actually the same drugs seized from Adobar's person, *i.e.*, assuming the same were not planted at the point of seizure, there remains that great possibility of switching while the same were in IO1 Siglos' custody.

The foregoing conflicting narrations, seemingly trivial when viewed in isolation, cast very serious doubts on the veracity of the prosecution's overall narrative when juxtaposed against the procedural lapses of the buy-bust team and its abject failure to justify said lapses.

Courts must be extra vigilant in trying drugs cases.

Unfortunately, the CA and the trial court glossed over these obvious irregularities which attended the present buy-bust operation and the resulting confiscation of the subject drugs.

---

[109] *Id.*, TSN, November 6, 2012, pp. 7-10.

The CA, while seemingly recognizing the lapses in observing Section 21,[110] simply dismissed the same "because it was shown by the prosecution that the integrity and evidentiary value of the specimens were properly preserved by the buy-bust team."[111] In other words, the CA excused the failure of the buy-bust team to comply with Section 21 on the basis of the second prong of the saving clause (that the integrity and evidentiary value of the subject drugs are established) **but ignoring altogether the first prong (absence of justifiable reasons for the procedural lapses)**. The CA justifies its decision to excuse this non-observance of Section 21 by ruling that only substantial adherence thereto is required.[112]

This position taken by the CA is mistaken. To reiterate, the procedure enshrined in Section 21 is a matter of substantive law and cannot be brushed aside as a simple procedural technicality.[113] Substantive law requires strict observance of these procedural safeguards.[114] Courts, in resolving drugs cases must keep in mind this mandate and the peculiar nature of buy-bust operations being susceptible to police abuse as discussed by the Court, thus:

> x x x a buy-bust operation has a significant downside that has not escaped the attention of the framers of the law. It is susceptible to police abuse, the most notorious of which is its use as a tool for extortion. In *People v. Tan*, this Court itself recognized that "*by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great*. x x x[115] (Italics in the original)

---

[110] *Rollo*, p. 26.

[111] *Id*.

[112] *Id*.

[113] See *People v. Umipang*, *supra* note 107, at 1038.

[114] *Id*. at 1033.

[115] *People v. Garcia*, 599 Phil. 416, 427 (2009).

For this, the Court has instructed lower courts to exercise extra vigilance in trying drugs cases "lest an innocent person be made to suffer the unusually severe penalties for drug offenses."[116] The presumption that regular duty was performed by the arresting officers simply cannot prevail over the presumption of innocence granted to the accused by the Constitution. It is thus incumbent upon the prosecution to prove that the accused is indeed guilty beyond reasonable doubt.[117]

At this point, it is well to emphasize that this case involves a meager 0.03 gram of *shabu*. Courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs as they can be readily planted and tampered with.[118] Consistent with this, in *People v. Segundo*[119] involving the same amount of drugs as the case at hand (0.03 gram), the Court emphasized the extra caution that law enforcers must observe in preserving the integrity of small amounts of seized drugs, thus:

> **To sum, "[l]aw enforcers should not trifle with the legal requirement to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia." Thus, "[t]his is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused."**
>
> Although the miniscule quantity of confiscated illicit drugs is solely by itself not a reason for acquittal, this instance accentuates the importance of conformity to Section 21 that the law enforcers in this case miserably failed to do so. If initially there were already significant lapses on the marking, inventory, and photographing of the alleged seized items, a doubt on the integrity of the *corpus delicti* concomittantly exists. x x x[120] (Emphasis supplied)

---

[116] *Valdez v. People*, 563 Phil. 934, 956 (2007).

[117] *People v. Pagaura*, 334 Phil. 683, 690 (1997).

[118] *People v. Arposeple*, G.R. No. 205787, November 22, 2017, p. 22.

[119] G.R. No. 205614, July 26, 2017.

[120] *Id*. at 22.

Adobar's defense of denial is concededly weak and uncorroborated. This weakness, however, does not add strength to the prosecution's case as the evidence for the prosecution must stand or fall on its own weight. Well-entrenched in jurisprudence is the rule that the conviction of an accused must rest not on the weakness of the defense but on the strength of the evidence of the prosecution.[121]

Based on the foregoing and following the Court's precedents as discussed above, the Court is constrained to reverse Adobar's conviction.

The prosecution failed to prove the *corpus delicti* of the crime due to the serious lapses in observing Section 21 of RA 9165 and the concomitant failure to trigger the saving clause. Anent the latter point, the prosecution utterly failed to acknowledge and credibly justify its procedural lapses and was unable to prove the integrity and evidentiary value of the seized drugs. Adobar's innocence, as presumed and protected by the Constitution, must stand in light of the reasonable doubt on his guilt.

To conclude, the Court issues anew a reminder: The prosecution arm of the government has the duty to prove, beyond reasonable doubt, each and every element of the crime charged. In illegal drugs cases, this includes proving faithful compliance with Section 21 of RA 9165, being fundamental to establishing the element of *corpus delicti*. **In the course of proving such compliance before the trial courts, prosecutors must have the initiative to not only acknowledge, but also justify, any perceived deviations from the procedural requirements of Section 21**.[122]

As no less than the liberty of an accused is at stake, appellate courts, this Court included, must, in turn, sift the records to determine if, indeed, the apprehending team observed Section 21 and if not, if the same is justified under the circumstances. This, regardless if issues thereon were ever

---

[121] *Macayan, Jr. v. People*, 756 Phil. 202, 214 (2015).

[122] See *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

raised or threshed out in the lower court/s, consistent with the doctrine that appeal in criminal cases throws the whole case open for review and the appellate court must correct errors in the appealed judgment whether they are assigned or not.[123] If, from such full examination of the records, there appears unjustified failure to comply with Section 21, it becomes the appellate court's bounded duty to acquit the accused, and perforce, overturn a conviction.[124]

WHEREFORE, premises considered, the Decision dated July 31, 2015 of the CA in CA-G.R. CR HC No. 01192-MIN is **REVERSED** and **SET ASIDE**. Accused-appellant Aquila "Payat" Adobar 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, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Decision, the action he has taken. Copies shall also be furnished to the Director General of the Philippine Drug Enforcement Agency for his information.

SO ORDERED.

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

Peralta, J., see separate concurring opinion

SEPARATE CONCURRING OPINION

PERALTA, *J.*:

I concur with the *ponencia* in acquitting accused-appellant Aquila "Payat" Adobar of the charge of illegal sale of dangerous

---

[123] *People v. Dahil*, *supra* note 76, at 225.

[124] See *People v. Jugo*, *supra* note 122.

drugs or violation of Section 5, Article II of R.A. No. 9165.[1] As aptly noted by the *ponencia*, none of the three (3) witnesses under Section 21[2] of R.A. No. 9165 were present at the time the subject drugs were confiscated from appellant, and no justifiable reason was proffered on why only two (2) of the three witnesses a *barangay* captain and a representative from the media—summoned by the buy-bust team were actually present during the physical inventory and photographing of the seized items, *sans* the presence of a representative from the Department of Justice (*DOJ*). Be that as it may, I would like to emphasize on important matters relative to Section 21 of R.A. No. 9165, as amended.

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and added a saving clause in case the procedure is not followed:[3]

---

[1] "*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*"

[2] 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;

[3] *People v. Ramirez*, G.R. No. 225690, January 17, 2018.

(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**.

It bears emphasis that R.A. No. 10640,[4] which amended Section 21 of R.A. No. 9165, now only requires **two (2) witnesses** to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; **and** (b) either a representative from the National Prosecution Service **or** the media.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe conceded 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 the increasing drug addiction and also, in the conflicting decisions of the courts."[5] Senator Poe stressed the necessity for the amendment of Section 21 based on the public hearing that the Senate Committee on Public Order and Dangerous Drugs had conducted, which revealed

---

[4] "*AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002*" Approved on July 15, 2014.

[5] Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all comers of the Philippines, especially in the remote areas. For another there were instances where elected *barangay* officials themselves were involved in the punishable acts apprehended and thus, it is difficult to get the most grassroot-elected public official to be a witness as required by law."[6]

In his Co-sponsorship speech, Senator Vicente C. Sotto III said that in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of prosecutors and 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.[7] Senator Sotto explained why the said provision should be amended:

> 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 the seized illegal drugs.
>
> x x x x x x x x x
>
> Section 21(a) of RA 9165 need 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

---

[6] *Id*.

[7] *Id*.

of seizure of illegal drugs or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances where 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.[8]

However, under the original provision of Section 21 and its IRR, which is applicable at the time the appellant committed the crimes charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses**, namely: (a) a representative from the media, **and** (b) the DOJ, **and**; (c) any elected public official who shall be required to sign copies of the inventory and be given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[9]

The prosecution bears the burden of proving a 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 trial proceedings, it must initiate in acknowledging and justifying

---

[8] *Id.* at 349-350.

[9] *People v. Sagana*, G.R. No. 208471, August 2, 2017.

any perceived deviations from the requirements of law.[10] 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. It should take note that 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 items.[11] Its strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule to prevent incidents of planting, tampering or alteration of evidence.[12] Here, the prosecution failed to discharge its burden.

With respect to the presence of all the required witnesses under Section 21 of R.A. No. 9165, the prosecution never alleged and proved any of the following reasons, such as: (1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125**[13] **of the Revised Penal Code prove futile through**

---

[10] *People v. Miranda*, G.R. No. 229671, January 31, 2018; *People v. Paz*, G.R. No. 229512, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018.

[11] *People v. Saragena*, G.R. No. 210677, August 23, 2017.

[12] *Id*.

[13] Art. 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.

no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape**.

Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellant's conviction. 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 flawed because the lapses themselves are affirmative proofs of irregularity.[14] 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 found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.[15]

At this point, it is not amiss to express my position regarding the issue of which between the Congress and the Judiciary has jurisdiction to determine sufficiency of compliance with the rule on chain of custody, which essentially boils down to the application of procedural rules on admissibility of evidence. In this regard, I agree with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam*[16] that "if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to inadmissibility that would automatically destroy the prosecution's case but rather to the weight of evidence presented for each particular case." As aptly pointed out by

---

[14] *People v. Ramirez, supra* note 3.

[15] *People v. Gajo*, G.R. No. 217026, January 22, 2018.

[16] G.R. No. 202206, March 5, 2018.

Justice Leonardo-De Castro, the Court's power to promulgate judicial rules, including rules of evidence, is no longer shared by the Court with Congress.

I subscribe to the view of Justice Leonardo-De Castro that the chain of custody rule is a matter of evidence and a rule of procedure, and that the Court has the last say regarding the appreciation of evidence. Evidentiary matters are indeed well within the powers of courts to appreciate and rule upon, and so, when the courts find appropriate, substantial compliance with the chain of custody rule as long as the integrity and evidentiary value of the seized items have been preserved may warrant the conviction of the accused.

I further submit that **the requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance. Violation of such procedure may even merit penalty under R.A. No. 9165**, to wit:

> **Section 29.** *Criminal Liability for Planting of Evidence.*— Any person who is found guilty of uplanting" any dangerous drug and/or controlled precursor and essential chemical, regardless of quantity and purity, shall suffer the penalty of death.
>
> **Section 32.** *Liability to a Person Violating Any Regulation Issued by the Board.* — The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person found violating any regulation duly issued by the Board pursuant to this Act, in addition to the administrative sanctions imposed by the Board.

However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence.

FIRST DIVISION

[G.R. No. 223141. June 6, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAY SUAREZ *y* CABUSO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND POSSESSION OF DANGEROUS DRUGS; IT IS ESSENTIAL TO SHOW THAT THE IDENTITY OF THE SEIZED DRUGS HAVE BEEN PRESERVED.— For prosecutions involving dangerous drugs, we have consistently held that "the dangerous drug itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt." In other words, "the identity of the dangerous drug [must] be established beyond reasonable doubt." "Such proof requires an unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that [was] seized from him." However, "the presentation of evidence establishing the elements of the offenses of illegal sale and possession of dangerous drugs *alone* is insufficient to secure or sustain a conviction under RA 9165." Given the unique characteristics of dangerous drugs which render them *not readily identifiable,* it is essential to show that the identity and integrity of the seized drugs have been preserved.

2. ID.; ID.; CHAIN OF CUSTODY; REQUIREMENT THAT THE PHYSICAL INVENTORY AND PHOTOGRAPH SHALL BE CONDUCTED AT THE NEAREST POLICE STATION; VIOLATED IN CASE AT BAR.— Section 21, Article II of RA 9165 provides the procedural safeguards that the apprehending team should observe in the handling of seized illegal drugs in order to preserve their identity and integrity as evidence. "As indicated by their *mandatory terms,* strict compliance with the prescribed procedure is essential and the prosecution must show compliance in every case." The procedure under Section 21, par. 1 of RA 9165, as amended by RA 10640,[provides] x x x **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: x x x After a thorough review of the records, we find that the buy-bust team failed to *strictly* comply with the prescribed procedure under Section 21, par. 1. While the amendment of RA 9165 by RA 10640 now allows the conduct of physical inventory at the *nearest police station,* the buy-bust team, in this case, brought the appellant and the seized items to Police Station A instead of Police Station 5 which was the closest police station to the place of arrest, per the instruction of their team leader.

3. ID.; ID.; ID.; FOUR LINKS THAT MUST BE ESTABLISHED; SEIZURE AND MARKING OF THE ILLEGAL DRUG; FAILURE THEREOF RAISES REASONABLE DOUBT ON THE AUTHENTICITY OF THE *CORPUS DELICTI*.— Although it is true that "non-compliance with the prescribed procedures under Section 21, par. 1, does not, as it should not, *automatically* result in an accused's acquittal," the **saving mechanism** provided in the last sentence of Section 21, par. 1, Article II of RA 9165, as amended, only operates "under justifiable grounds, and as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team." It is therefore incumbent upon the prosecution to: a) recognize and explain the lapse or lapses committed by the apprehending team; and b) demonstrate that the integrity and evidentiary value of the evidence seized had been preserved, despite the failure to follow the procedural safeguards under RA 9165. x x x Thus, the following links must be established by the prosecution: *"**[first**,]* the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; ***[second,]*** the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***[third,]*** the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***[fourth,]*** the turnover and submission of the marked illegal drug seized from the forensic chemist to the court." x x x It is settled that "the failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties."

Such presumption, too, cannot arise in cases where the questioned official acts are ***patently*** **irregular**.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this appeal is the March 23, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR. HC No. 06120 which affirmed the March 7, 2013 Decision[2] of the Regional Trial Court (RTC), Branch 75, Olongapo City, finding appellant Jay Suarez *y* Cabuso guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The Antecedent Facts

Appellant was charged with the illegal sale and possession of dangerous drugs under Sections 5 and 11, Article II of RA 9165 in two Informations[3] dated March 4, 2010 which read:

Criminal Case No. 76-2010

That on or about the [t]hird (3rd) day of March, 2010, in the City of Olongapo. Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being positive of and under the influence of illegal drug[s,] particularly[,] [m]ethamphetamine and THC metabolites, did then and there willfully, unlawfully and knowingly have in his possession and control [e]leven (11) heat[-] sealed transparent plastic sachets of marijuana fruiting tops with a

---

[1] *Rollo,* pp. 2-24; penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Rodil V. Zalameda and Pedro B. Corales.

[2] CA *rollo,* pp. 63-68; penned by Judge Raymond C. Viray.

[3] Records, pp. 1 and 17.

total weight of 31.677 grams which are dangerous drugs, said accused not having the corresponding license, prescription and/or authority to possess said dangerous drug.

Criminal Case No. 75-2010

That on or about the [t]hird (3rd) day of March 2010, in the of [sic] City of Olongapo, Philippines and within the jurisdiction of this Honorable Court. the above-named accused, without being lawfully authorized, did then and there wil[l]fully, unlawfully and knowingly deliver and sell to another person Php200.00 (SN-DK150982 and KJ229484) worth of marijuana fruiting tops which is a dangerous drug in one (1) heat-sealed transparent plastic sachet containing marijuana fruiting tops with an approximate weight of 2.714 grams.

During his arraignment on March 23, 2010, appellant entered a plea of not guilty.[4] Trial thereafter ensued.

Version of the Prosecution

The prosecution's version of the incident is as follows:

On March 3, 2010, at around 6:00 p.m., the City Anti-Illegal Drugs Special Operations Team of Olongapo City, in coordination with the Philippine Drug Enforcement Agency (PDEA),[5] conducted a buy-bust operation against appellant along Pepsi Road corner Manggahan Street, Sta. Rita, Olongapo City.[6]

The buy-bust team was composed of seven members including P/Sr. Inspector Julius A. Javier (PSI Javier) as team leader,[7] SPO2 Allan Delos Reyes (SPO2 Delos Reyes) as case investigator,[8] PO1 Sherwin Tan (PO1 Tan) as poseur-buyer, and PO1 Zaira Mateo (PO1 Mateo) as immediate back-up.[9]

---

[4] *Id.* at 38.

[5] *Id.* at 154 and 156.

[6] *Rollo,* pp. 3-4.

[7] TSN, September 21, 2010, p. 16.

[8] CA *rollo*, unpaginated between pp. 64 and 65.

[9] *Rollo,* p. 4.

Upon reaching the target area, a confidential agent introduced PO1 Tan to appellant as a marijuana user. Appellant then engaged PO1 Tan in a short conversation about his name and other personal circumstances before offering to sell a sachet of marijuana worth ₱200.00. PO1 Tan readily agreed to appellant's offer and accepted the sachet of suspected marijuana. In return, he handed to appellant two pieces of marked ₱100.00 bills. Once the exchange was completed, PO1 Tan placed his hands on his waist which served as the pre-arranged signal that the transaction had already been consummated.[10]

The other members of the buy-bust team immediately rushed to the scene. PO1 Tan arrested appellant and introduced himself as a police officer. PO1 Mateo conducted a body search on appellant which yielded the marked money from the latter's right pocket and 11 sachets of suspected marijuana from the left pocket.[11]

The buy-bust team then decided to bring appellant to the police station due to a commotion at the place of arrest.[12]

At the police station, PO1 Tan marked the sachet that was the subject of the buy-bust sale with his initials " S.T." and turned it over to SPO2 Delos Reyes who placed his initials "ADR" thereon. PO1 Mateo also marked the 11 sachets she confiscated from appellant during the body search with her initials "Z.M." and handed them over to SPO2 Delos Reyes who, again, placed his initials "ADR" on said sachets.[13]

SPO2 Delos Reyes thereafter prepared an Inventory Receipt and Chain of Custody[14] and a Letter Request for Laboratory Examination and Drug Test.[15] Photographs[16] of the marked money

---

[10] *Id*.

[11] *Id*.

[12] *Id*.

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

[14] Records, p. 157.

[15] *Id*. at 158 and 160.

[16] *Id*. at 162.

and confiscated items were also taken. Later, SPO2 Delos Reyes personally turned over the seized items to the Regional Crime Laboratory in Olongapo City.[17]

On March 4, 2010, Forensic Chemist Arlyn Dascil (Forensic Chemist Dascil) conducted a qualitative examination on the subject specimens to determine the presence of dangerous drugs. Based on Chemistry Report No. D-013-2010-OCCLO,[18] the seized items tested positive for the presence of marijuana, a dangerous drug.

Version of the Defense

Appellant raised the defenses of denial and frame-up. He narrated that, while waiting for his companion at the corner of Manggahan Street, some men alighted from a van and asked for the whereabouts of a certain "Bunso." When he answered that he did not know "Bunso," he was handcuffed and brought to the police station where he was told that he was arrested for using and selling marijuana.[19]

Ruling of the Regional Trial Court

In its Decision dated March 7, 2013, the RTC found appellant guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165. It held that:

> All the elements of the two crimes have been established. The evidence of the prosecution clearly shows that the sale of the dangerous drugs actually took place and that the marijuana subject of the charge was bought from the accused and the same marijuana was later identified in Court. x x x The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction. x x x[20]
>
> x x x x x x x x x

---

[17] *Rollo,* p. 5.

[18] Records, p. 159.

[19] *Rollo,* pp. 5-6.

[20] CA *rollo,* p. 65.

Moreover, the result of the laboratory examination confirmed the presence of marijuana on the plastic sachet sold by the accused and those recovered from his possession after his arrest.[21]

The RTC also ruled that "the chain of custody of the seized drugs was continuous and unbroken,"[22] since "[t]he key persons who came in direct contact with the [marijuana] we represented in court and corroborated each other's testimony on how the seized drugs changed hands establishing an unbroken chain of custody."[23]

Accordingly, the RTC sentenced appellant to suffer the penalties of: a) life imprisonment and a fine of ₱500,000.00 for violation of Section 5, Article II of RA 9165 in Criminal Case No. 75-2010; and b) imprisonment from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and a fine of ₱300,000.00 for violation of Section 11, Article II of RA 9165 in Criminal Case No. 76-2010.[24]

Appellant thereafter appealed the RTC Decision before the CA.

Ruling of the Court of Appeals

In its Decision dated March 23, 2015, the CA affirmed the assailed RTC Decision *in toto.* It upheld the RTC's findings that the prosecution was able to sufficiently establish all the elements of the crimes charged.[25]

The CA noted, too, that the chain of custody over the seized marijuana was sufficiently established by the prosecution, *viz.:*

Certainly, the links in the case at bar were duly established. ***First,*** PO1 Tan seized the marijuana from appellant. ***Second,*** PO1 Tan and

---

[21] *Id.* at 66.

[22] *Id.* at 67.

[23] *Id.*

[24] *Id.* at 68.

[25] *Rollo,* p. 23.

PO1 Mateo testified that they personally marked the plastic sachets of marijuana they confiscated before handing the same to their lead investigator, SPO2 delos Reyes. ***Third*****,** SPO[2] delos Reyes rendered his testimony to establish the third link in the chain of custody when he testified that he prepared a request for laboratory examination. ***Fourth,*** Forensic Chemist, Arlyn Dascil, testified that she is the forensic chemist assigned to the PNP Crime Laboratory, Olongapo City. She examined the specimens subject of the instant case which yielded positive result for marijuana and x x x that upon request of the Office of the Prosecutor, the specimens subject of the instant case were handed by the evidence custodian of the PNP Crime Laboratory, Olongapo City to the Office of the Prosecutor.[26]

Aggrieved, appellant filed the present appeal.

The Issues

Appellant raises the following issues for the Court's resolution:

First, whether the CA committed an error when it disregarded the inconsistency in the testimonies of the prosecution's witnesses as to the place of marking of the seized items;[27]

Second, whether the integrity and evidentiary value of the confiscated drugs had been preserved, considering the arresting officers' failure to mark the seized items immediately at the place of arrest;[28]

And *third,* whether the chain of custody over the seized items was sufficiently established, given the prosecution's failure to present a detailed account as regards the handling of said items from the time they were confiscated up to their presentation in court during the trial.[29]

The Court's Ruling

For prosecutions involving dangerous drugs, we have consistently held that "the dangerous drug itself constitutes the

---

[26] *Id*. at 18. Emphasis in the original.

[27] CA *rollo,* p. 53.

[28] *Id*. at 57.

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

corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt."[30] In other words, "the identity of the dangerous drug [must] be established beyond reasonable doubt."[31] "Such proof requires an unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that [was] seized from him."[32]

However, "the presentation of evidence establishing the elements of the offenses of illegal sale and possession of dangerous drugs *alone* is insufficient to secure or sustain a conviction under RA 9165."[33] Given the unique characteristics of dangerous drugs which render them *not readily identifiable,* it is essential to show that the identity and integrity of the seized drugs have been preserved. Thus, we explained in *People v. Denoman*[34] that:

> A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime: the identities of the buyer and seller, the transaction or sale of the illegal drug and the existence of the *corpus delicti*. In securing or sustaining a conviction under RA No. 9165, the intrinsic worth of these pieces of evidence, especially the identity and integrity of the *corpus delicti,* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. **Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under RA No. 9165 fails.**[35] (Emphasis supplied)

---

[30] *Derilo v. People,* 784 Phil. 679, 686 (2016).

[31] *People v. Bartolini,* 791 Phil. 626, 634 (2016).

[32] *People v. De Guzman,* G.R. No. 219955, February 5, 2018.

[33] *Id*.

[34] 612 Phil. 1165 (2009).

[35] *Id*. at 1175.

Section 21, Article II of RA 9165 provides the procedural safeguards that the apprehending team should observe in the handling of seized illegal drugs in order to preserve their identity and integrity as evidence. "As indicated by their *mandatory terms,* strict compliance with the prescribed procedure is essential and the prosecution must show compliance in every case."[36]

The procedure under Section 21, par. 1 of RA 9165, as amended by RA 10640,[37] is as follows:

> Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the dangerous drugs, x x x shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof; *Provided,* T**hat the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures:** *Provided, finally,* That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. (Emphasis supplied)

---

[36] *Id*. Italics supplied.

[37] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002". Approved July 15, 2014.

After a thorough review of the records, we find that the buy-bust team failed to *strictly* comply with the prescribed procedure under Section 21, par. 1. While the amendment of RA 9165 by RA 10640 now allows the conduct of physical inventory at the *nearest police station,* the buy-bust team, in this case, brought the appellant and the seized items to Police Station A[38] instead of Police Station 5 which was the closest police station to the place of arrest,[39] per the instruction of their team leader, PSI Javier.[40]

Although it is true that "non-compliance with the prescribed procedures under Section 21, par. 1, does not, as it should not, *automatically* result in an accused's acquittal,"[41] the **saving mechanism** provided in the last sentence of Section 21, par. 1, Article II of RA 9165, as amended, only operates "under justifiable grounds, and as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team."[42]

It is therefore incumbent upon the prosecution to: a) recognize and explain the lapse or lapses committed by the apprehending team; and b) demonstrate that the integrity and evidentiary value of the evidence seized had been preserved, despite the failure to follow the procedural safeguards under RA 9165.[43]

Unfortunately, the prosecution failed not only to recognize and explain the buy-bust team's non-compliance with Section 21, particularly on the immediate marking of the seized items, but also to adduce evidence establishing the chain of custody over said items that would unequivocally demonstrate that the illegal drugs presented in court were the same illegal drugs actually recovered from appellant during the buy-bust operation.

---

[38] TSN, September 21, 2010, p. 7. See also TSN, April 28, 2011, p. 7.

[39] TSN, April 28, 2011, p. 18.

[40] TSN, September 21, 2010, p. 16.

[41] See *People v. De Guzman, supra* note 32.

[42] *People v. Prudencio,* G.R. No. 205148, November 16, 2016, 809 SCRA 204, 217.

[43] *People v. Denoman, supra* note 34 at 1178.

In *People v. Bartolini,*[44] we strongly emphasized the prosecution's duty to show an unbroken chain of custody over the seized items to ensure that unnecessary doubts on the identity of the evidence – the dangerous drugs – are removed, *viz.:*

> x x x The prosecution has the duty to prove every link in the chain, from the moment the dangerous drug was seized from the accused until the time it is offered in court as evidence. **The marking of the seized item, the first link in the chain of custody, is crucial in proving an unbroken chain of custody as it is the starting point in the custodial link that succeeding handlers of the evidence will use as a reference point.** The succeeding links in the chain are the different processes the seized item will go through under the possession of different persons. This is why it is vital that each link is sufficiently proven to be unbroken – to obviate switching, planting, or contaminating the evidence.[45] (Emphasis supplied)

Thus, the following links must be established by the prosecution: *"**[first,]*** the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; ***[second,]*** the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***[third,]*** the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***[fourth,]*** the turnover and submission of the marked illegal drug seized from the forensic chemist to the court."[46]

In this case, we find that the prosecution failed to establish the **first link** in the chain of custody. As previously discussed, there was a failure to mark the drugs *immediately* after they were allegedly seized from appellant. The items were marked only at Police Station A, and the prosecution offered no reasonable explanation as to *(a)* why the items were not immediately marked after seizure – PO1 Mateo merely stated in passing that there was a commotion because it was a public place;[47] and *(b)* why

---

[44] *Supra* note 31.

[45] *Id*. at 634-635.

[46] See *Derilo v. People, supra* note 30 at 687.

[47] TSN, April 28, 2011, p. 7.

the buy-bust team brought the seized items to Police Station A instead of Police Station 5 which was closer to the place of arrest.

We consider, too, the *contradictory* statements given by PO1 Tan, PO1 Mateo and SPO2 Delos Reyes as regards the place of marking of the seized items which, regrettably, were not clarified by the prosecution – both PO1 Tan and PO1 Mateo testified that the marking had been done at Police Station A,[48] while SPO2 Delos Reyes stated during his cross-examination that the seized items were marked and turned over to him by PO1 Tan and PO1 Mateo "while still at the scene."[49]

The prosecution's evidence relating to the **third link** in the chain of custody also has loopholes. The pertinent portion of SPO2 Delos Reyes' direct testimony is as follows:

[FISCAL M. F. BAÑARES]

Q: Mr. Witness[,] who turned over the sachets of marijuana to the PNP Crime Laboratory?
A: I am the one who turned [them] over.

Q: And what is your proof that it was you who delivered them to the PNP Crime Lab?
A: The stamp receipt made by the PNP Clime Lab and the copy of the request[,] ma['']am.

Q: Were you referring to this stamp receipt here in this request for laboratory examination?
A: Yes[,] ma['']am[.][T]his one.

[FISCAL M. F. BAÑARES]

> I moved [sic] that the stamp receipt here in this request for laboratory examination be mark[ed] as [E]xhibit E-1. I am through your honor.[50]

The records show that said request for laboratory examination and the subject specimens were supposedly received by a certain

---

[48] TSN, September 21, 2010, pp. 14-15; TSN, April 28, 2011, pp. 8-9.

[49] TSN, April 17, 2012, pp. 8-9.

[50] *Id*. at 7-8.

"PO3 Macabitas" at the PNP Crime Laboratory.[51] However, neither SPO2 Delos Reyes nor "PO3 Macabitas" testified in this regard. Clearly, the prosecution failed to disclose the identities of: *(a)* the person who had custody of the seized items after its turnover by SPO2 Delos Reyes, *(b)* the person who turned over the items to Forensic Chemist Dascil, and *(c)* the person who had custody thereof after they were examined by the forensic chemist and before they were presented in court.[52]

We note further the *unexplained delay* in the turnover of the seized items from the investigating officer to the forensic chemist. Per the records, it appears that SPO2 Delos Reyes submitted the Request for Drug Test[53] and urine sample of appellant to the PNP Crime Laboratory on March 3, 2010, at 7:10 p.m,[54] but he only turned over the seized drugs to the PNP Crime Laboratory the following morning, at 11:15 a.m.[55] In this regard, the prosecution also failed to disclose the person who had custody of the seized items after they were inventoried and photographed on the night of March 3, 2010 up to the time they were turned over to the PNP Crime Laboratory.

The **fourth link** in the chain of custody likewise presents a highly irregular circumstance in the prosecution's evidence. For clarity and precision, the forensic chemist's testimony, as stipulated by the prosecution and the defense, is quoted below:

1. That Arlyn Dascil is a Forensic Chemist assigned to the PNP Crime Laboratory, Olongapo City;
2. That she examined the specimen subject matter of these cases;
3. That based on her examination[,] the specimen subject matter of these cases all turned positive for marijuana as shown by the Chemistry Report;

---

[51] Records. p. 158.

[52] See *People v. De Guzman, supra* note 32.

[53] Records, p. 160.

[54] *Id*. at 161.

[55] *Id*. at 159.

> **4. That upon the request of the Prosecutor['s] Office(,) the specimen subject matter of these cases were turned over by the Evidence Custodian of the PNP Crime Laboratory, Olongapo City to the Prosecutor['s] Office.**[56] (Emphasis supplied)

In *People v. De Guzman.*[57] we ruled that the City Prosecutor's Office has no authority to take custody of dangerous drugs before they are brought before the court, *viz.*:

> It appears, based on the prosecution's evidence no less, that for reasons unknown, the PNP Crime Laboratory agreed to turn over custody of the seized items to an *unnamed* receiving person at the City Prosecutor's Office *before* they were submitted as evidence to the trial court. **It should be emphasized that the City Prosecutor's Office is not, nor has it ever been, a part of the chain of custody of seized dangerous drugs. It has absolutely no business in taking custody of dangerous drugs before they are brought before the court.** (Emphasis supplied)

At this point, the chain of custody was obviously *broken,* not only because of the PNP Crime Laboratory's flagrant deviation from the prescribed procedure in turning over the seized items to the City Prosecutor's Office, but also due to the dire lack of information as to the handling and safe-keeping of the said items from the time they were received by a certain "Ligaya Lopez," the receiving clerk in the City Prosecutor's Office,[58] up to the time they were presented in court.

It is settled that "the failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties."[59] Such

---

[56] *Id*. at 104.

[57] *Supra* note 32.

[58] Records, p. 159.

[59] See *People v. Bartolini, supra* note 31 at 635. Italics in the original.

presumption, too, cannot arise in cases where the questioned official acts are ***patently*** **irregular**.[60]

Clearly, the lower courts committed a grave error in applying the presumption of regularity in the performance of official duties in the prosecution's favor, given the *unexplained* procedural lapses committed by the police in handling and safe-keeping of the seized marijuana and the *serious* evidentiary gaps in the chain of its custody.

The totality of these circumstances leads us to inevitably conclude that the prosecution fell short in proving beyond reasonable doubt that appellant was indeed guilty of the crimes charged.

WHEREFORE, premises considered, the appeal is **GRANTED**. The March 23, 2015 Decision of the Court of Appeals in CA-G.R. CR. HC No. 06120 is **REVERSED** and **SET ASIDE**. Appellant Jay Suarez *y* Cabuso is hereby **ACQUITTED** of the charges of violation of Sections 5 and 11, Article II of Republic Act No. 9165, for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED** immediately released from detention unless he is being held for another lawful cause.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation, who is then also directed to report to this Court the action he has taken within five days from his receipt of this Decision.

SO ORDERED.

Carpio,[*] *Leonardo-de Castro*[**] (*Acting Chairperson*), and *Gesmundo,*[***] *JJ.,* concur.

Tijam, J., on official leave.

---

[60] See *People v. Kamad,* 624 Phil. 289, 311 (2010). Emphasis and italics supplied.

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

[**] Per Special Order No. 2559 dated May 11, 2018.

[***] Per Special Order No. 2560 dated May 11, 2018.

SECOND DIVISION

[G.R. No. 224849. June 6, 2018]

HEIRS OF ERNESTO MORALES, namely: ROSARIO M. DANGSALAN, EVELYN M. SANGALANG, NENITA M. SALES, ERNESTO JOSE MORALES, JR., RAYMOND MORALES, and MELANIE MORALES, *petitioners, vs.* **ASTRID MORALES AGUSTIN, represented by her Attorney-in-fact, EDGARDO TORRES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; REGARDLESS OF THE NATURE OF ACTION, PROPER SERVICE OF SUMMONS IS IMPERATIVE.—** The partition of real estate is an action quasi *in rem*. Jurisprudence is replete with pronouncements that, for the court to acquire jurisdiction in actions quasi *in rem*, it is necessary only that it has jurisdiction over the *res.* In the case of *Macasaet vs. Co, Jr.,* the Court stated that "[j]urisdiction over the defendant in an action *in rem* or quasi *in rem* is not required, and the court acquires jurisdiction over an action as long as it acquires jurisdiction over the *res* that is the subject matter of the action." In the case of *De Pedro v. Romansan Development Corporation*, the Court clarified that while this is so, "to satisfy the requirements of due process, jurisdiction over the parties in *in rem* and quasi *in rem* actions is required." Thus, regardless of the nature of the action, proper service of summons is imperative and that a decision rendered without proper service of summons suffers a defect in jurisdiction.

2. **ID.; ID.; SUMMARY JUDGMENT; REQUIRES THE LACK OF GENUINE ISSUE AND A MOTION FOR ITS APPLICATION.—** A summary judgment in this jurisdiction is allowed by Rule 35 of the Rules of Court. x x x [I]n the application of the rules on summary judgments, the proper inquiry would be whether the affirmative defenses offered by herein petitioners before the trial court constitute genuine issues of fact requiring a full-blown trial. x x x More, the propriety of

issuing a summary judgment springs not only from the lack of a genuine issue which is raised by either party, but also from the observance of the procedural guidelines for the rendition of such judgment. Thus, in *Caridao*, the Court nullified the summary judgment issued by the trial court when the rules on summary judgment was applied despite the absence of a motion from the respondent asking for the application thereof. x x x [Here,] when the petitioners herein asserted that the respondent has "no more right of participation" over the subject property because the successional rights of the respondent's parents over the same has already been conveyed to the petitioners' father, the petitioners tendered a genuine issue. x x x Thus, that the trial court rendered a summary judgment despite the absence of any motion calling for its application was in clear contravention of the established rules of procedure.

3. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; SUCCESSION; PARTITION OF INHERITANCE, DISCUSSED.— Generally, an action for partition may be seen to simultaneously present two issues: first, there is the issue of whether the plaintiff is indeed a co-owner of the property sought to be partitioned; and second, assuming that the plaintiff successfully hurdles the first issue, there is the secondary issue of how the property is to be divided between the plaintiff and defendants, *i.e.*, what portion should go to which co-owner. The Court must emphasize, however, that this definition does not take into account the difference between (1) an action of partition based on the successional rights of the heirs of a decedent, and (2) an ordinary action of partition among co-owners. While oftentimes interchanged with one another, and although in many ways similar, these two partitions draw legal basis from two different sets of legal provisions in the Civil Code of the Philippines (Civil Code). To begin with, the laws governing the partition of inheritance draws basis from Article 777 of the Civil Code, which states that the rights to the succession are transmitted from the moment of the death of the decedent. As such, from that moment, the heirs, legatees, and devisees' successional rights are vested, and they are considered to own in common the inheritance left by the decedent. Under the law, partition of the inheritance may only be effected by (1) the heirs themselves extrajudicially, (2) by the court in an ordinary action for partition, or in the course of administration

proceedings, (3) by the testator himself, and (4) by the third person designated by the testator. A reading of the enumeration set above would reveal instances when the appointment of an executor or administrator is dispensed with. One is through the execution of a public instrument by the heirs in an extrajudicial settlement of the estate. Another, which is the focal point of this case, is through the ordinary action of partition.

4. REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF THE ESTATE OF DECEASED PERSONS; PARTITION OF THE ESTATE OF THE DECEASED.— According to Rule 74 of the Rules of Court, the heirs may resort to an ordinary action of partition of the estate of the deceased if they disagree as to the exact division of the estate, and *only* "[i]f the decedent left no will and no debts and the heirs are all of age, or minors are represented by their judicial or legal representatives duly authorized for the purpose." The ordinary action for partition therefore is meant to take the place of the special proceeding on the settlement of the estate. The reason is that, if the deceased dies without pending obligations, there is no necessity for the appointment of an administrator to administer the estate for the heirs and the creditors, much less, the necessity to deprive the real owners of their possession to which they are immediately entitled. Thus, an action for partition with regard to the inheritance of the heirs should conform to the law governing the partition and distribution of the estate, and not only to the law governing ordinary partition. These pertinent provisions of the law could be found in Title IV (Succession), Chapter 4 (Provisions Common to Testate and Intestate Successions), Section 6 (Partition and Distribution of the Estate) of the Civil Code. Particularly, according to Article 1078 of the Civil Code, where there are two or more heirs, the whole estate of the decedent is owned in common by such heirs, subject to the payment of debts of the deceased. Partition, the Civil Code adds, is the separation, division and assignment of a thing held in common among those to whom it may belong. Thus, every act which is intended to put an end to indivision among co-heirs and legatees or devisees is deemed to be a partition, although it should purport to be a sale, an exchange, a compromise, or any other transaction. In addition, and on account of this partition, Article 1061 of the Civil Code requires the parties to collate the properties of the decedent which they

may have received by way of gratuitous title prior to the former's death.

APPEARANCES OF COUNSEL

Joel P. Dadis for petitioners.
Daniel B. Rubio for respondent.

D E C I S I O N

REYES, JR., *J.*:

While the Court could not hold the bonds of familial relationships together through force, it could hope to deter any further degradation of this sacred tie through law.

The Case

Challenged before the Court *via* this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 101991, promulgated on August 13, 2015, which affirmed the Decision[2] of the Regional Trial Court (RTC), Branch 12 of Laoag City, in Civil Case No. 14438-12, dated November 22, 2013. Likewise challenged is the subsequent Resolution[3] of the CA promulgated on April 21, 2016, which upheld the earlier decision.

The Facts

The respondent, Astrid Morales Agustin, is a grandchild of Jayme Morales (Jayme), who was the registered owner of a parcel of land with improvements, designated as Lot No. 9217-A, and located at Barangay Sto. Tomas, Laoag City.[4] The subject

---

[1] Penned by Justice Magdangal M. De Leon, and concurred in by Justices Elihu A. Ybañez and Victoria Isabel A. Paredes; *rollo*, pp. 49-64.

[2] Penned by Presiding Judge Charles A. Aguilar; *id*. at 65-78.

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

[4] *Id*. at 65.

property is covered by Transfer Certificate of Title (TCT) No. T-37139, more particularly described as follows:

> A parcel of land (Lot 9217-A, Psd-01-062563, being a portion of Lot 9217, Cad. 195, Laoag Cadastre, L.R.C. Rec. No. 1212), situated at Brgy. Sto. Tomas, City of Laoag, Prov. of Ilocos Norte, Island of Luzon. Bounded on the SE., along Line 1-2 by A.M. Regidor St. (8.00 m.w.); on the SW., along line 2-3 by Provincial Road (15.00 m.w.); on the NW., along line 3-4 by Lot 9217-B of the subd. plan; on the NE., along line 4-1 by Lot 9218, Cad. 195, Laoag Cadastre. Beginning at a point marked "1" of Lot 9217-A on plan, being N. 51 deg. 18' E., 154.84 m. from BLIM No. 2, Cad. 195, Laoag Cadastre.[5]

The respondent initiated the instant complaint, originally together with Lydia Morales,[6] another one of Jayme's grandchildren and the respondent's cousin, for the partition of Jayme's property. They alleged that they, together with the petitioners and their other cousins, were co-owners of the subject property by virtue of their successional rights as heirs of Jayme.

For clarity of the discussion, the heirs of Jayme and his wife, Telesfora Garzon, who both died intestate, were their four (4) children:

1. Vicente Morales, who was survived by his children: (a) herein deceased defendant Ernesto Morales (substituted by his heirs who are now petitioners herein); (b) Abraham Morales (also deceased); (c) former plaintiff and, eventually, defendant Lydia Morales (now also deceased); and (d) original defendant Angelita Ragasa;
2. Simeon Morales, who was survived by his children: (a) herein respondent Astrid Morales Agustin; (b) Leonides Morales; (c) Geraldine Morales-Gaspar; and (d) Odessa Morales;
3. Jose Morales, who was survived by his children: (a) Victoria Geron; (b) Vicente Morales; (c); Gloria

---

[5] *Id.* at 222.

[6] Lydia Morales was later dropped as plaintiff and named as defendant pursuant to the Addendum Order issued by the RTC; *id.* at 71.

Villasenor; (d) Amalia Alejo; (e) Juliet Manuel; (f) Rommel Morales; and (g) Virgilio Morales (now deceased);

4. Martina Morales-Enriquez, who was survived by her children: (a) Evelina Lopez; (b) Emeterio Enriquez; (c) Elizabeth Somera; and (d) Bernardita Alojipan.[7]

In response to the respondent's complaint, the heirs of Jose Morales filed an answer, which admitted the allegations in the complaint, and interposed no objection to the partition, "provided that their present positions on the subject property are respected."[8]

On the other hand, Ernesto Morales, as one of the heirs of Vicente Morales, filed an Answer with Motion to Dismiss and Compulsory Counter-claims. He alleged that herein respondent has no cause of action against the petitioners because: (1) the proper remedy should not be a complaint for partition but an action for the settlement of the intestate estate of Jayme and his wife; and (2) herein respondent has no more right of participation over the subject property because the same has long been conveyed to Ernesto Morales (as substituted by herein petitioners) by the respondent's parents, Simeon and Leonila Morales.[9]

Meanwhile, per the Order of the RTC dated April 22, 2009, summons to the heirs of Martina Morales-Enriquez, who were at that time residing abroad, were allowed to be served personally.[10] They were subsequently declared to be in default.[11] In response, one of Martina Morales-Enriquez's heirs, Emeterio Enriquez, filed a Motion to Dismiss and alleged that the RTC did not acquire jurisdiction over his person because he was not furnished with a copy of the Amended Complaint.[12]

---

[7] *Id*. at 12.

[8] *Id*. at 52.

[9] *Id*. at 163-164.

[10] *Id* at 71.

[11] *Id*. at 14.

[12] *Id*. at 15.

In the hearing dated February 8, 2012, the RTC heard the testimony of the respondent. There being no other witnesses to be presented, the respondent manifested that she was ready to submit her formal offer of exhibits.[13]

After a protracted hearing on motions and other incidents of the case, the RTC rendered its decision on November 22, 2013 *via* a summary judgment in favor of herein respondent, the dispositive portion of which reads:

WHEREFORE, IN VIEW OF ALL THE FOREGOING DISQUISITIONS, the Court finds preponderance of evidence in favor of the plaintiffs and judgment is hereby rendered:

(1) Decreeing the partition of Lot No. 9217-A above-stated in the following mannfer (sic) and proportion of one-fourth (1/4) share each each (sic) of the direct heirs of the late spouses Jayme Morales and Telesfora Garzon, namely: (1) Vicente Morales, who was succeeded by right of representation by his children Ernesto Morales (duly substituted by his heirs), Abraham Morales, Angelina Ragasa and Lydia Morales; (2) Simeon Morales, who was succeeded by right of representation by his children Odessa A. Morales, Geraldine Morales Gaspar, Leonides A. Morales and Astrid A. Morales-Agustin; (3) Jose Morales who was succeeded by right of representation by his children, Ronnel Morales, Morales, (sic) Victoria Morales, Vicente Morales, Manuel Morales, Gloria Morales, Virgilio Morales, Amelia Morales and Juliet Morales; (4) Martina Morales, who was succeeded by right of representation by her children, Emeterio Morales-Enriquez, Evelina Morales Enriquez-Lopez, Elizabeth Morales Enriquez-Somera and Bernardita Morales Enriquez-Alojipan;

(2) Adjudicating in favor of the above-named heirs by right representation (sic) their respective one-fourth (1/4) share each of the group of heirs by right of representation over the above-stated Lot No. 9217-A; and

(3) Ordering the parties to submit their common project of partition of the subject lot with utmost dispatch for approval by the Court;

---

[13] *Id*. at 14.

(4) To pay the cost of the suit.

SO ORDERED.[14]

The RTC ruled that: (1) the estate of a deceased who died intestate may be partitioned without need of any settlement or administration proceeding;[15] and (2) the RTC properly and lawfully rendered summary judgment despite the absence of any motion from any of the parties praying for the application of the rules thereon.[16]

Aggrieved, the petitioners elevated the case to the CA, which thereafter dismissed the appeal and affirmed the RTC Decision on August 13, 2015.

The CA opined that the settlement of the entire estate of the late spouses Jayme and Telesfora is "of no moment in the instant case of partition"[17] because the respondent was "asserting her right as a co-owner of the subject property by virtue of her successional right from her deceased father Simeon Morales, who was once a co-owner of the said property, and not from Jayme and Telesfora Morales."[18]

Further, the CA ruled that an action for partition under Rule 69 of the Rules of Court is an action quasi *in rem*, and thus, "jurisdiction over the impleaded defendants-heirs is not required since the trial court has jurisdiction over the *res* or the subject property which is the subject matter of the action for partition."[19]

Finally, the CA ruled that summary judgment in this case is proper despite the absence of any motion from any of the parties. In support hereto, the CA ratiocinated that the parties prayed for resolution of all "pending motions/incidents" during the

---

[14] *Id*. at 77-78.

[15] *Id*. at 75.

[16] *Id*. at 76.

[17] *Id*. at 59.

[18] *Id*.

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

hearing on September 18, 2013, and acceded to the RTC pronouncement therein that its resolution "shall be considered as a decision in the said case for partition."[20]

The *fallo* of the CA decision reads:

> WHEREFORE, the instant appeal is DISMISSED. The *Decision* of the Regional Trial Court, Branch 12, Laoag City dated November 22, 2013 is AFFIRMED.

Despite the petitioners' motion for reconsideration, the CA affirmed its decision *via* a Resolution dated April 21, 2016.[21]

Hence, this petition.

The Issues

The petitioners anchor their prayer for the reversal of the CA decision and resolution based on the following grounds:

(1) THE [CA] SERIOUSLY ERRED IN NOT FINDING THAT THE PROCEEDINGS IN THE TRIAL COURT WERE VOID CONSIDERING THAT NOT ALL THE DEFENDANTS WHO ARE INDISPENSABLE PARTIES WERE EVER SERVED WITH SUMMONS IN VIOLATION OF DUE PROCESS.

(2) THE [CA] MANIFESTLY ERRED IN FAILING TO CONSIDER THE NECESSITY OF HAVING THE ESTATE OF THE PARTIES' INTESTATE PREDECESSORS (i.e. SPOUSES JAYME AND TELESFORA MORALES) BE DETERMINED AND SETTLED FIRST BEFORE THE DISTRIBUTION AND/OR PARTITION OF ANY OF THE PROPERTIES WHICH FORM PART OF SAID ESTATE.

(3) THE [CA] MOST UTTERLY ERRED IN UPHOLDING THE SUMMARY JUDGMENT OF THE TRIAL COURT ALTHOUGH IT WAS UNDISPUTABLY

---

[20] *Id*. at 62.

[21] *Id*. at 93-95.

> RENDERED WITHOUT ANY PRIOR MOTION AND HEARING THEREFOR, AND IN THE FACE OF PENDING INCIDENTS WHICH INCLUDE THE: (a) MOTION TO DISMISS OF DEFENDANT EMITERIO ENRIQUEZ ON THE GROUND OF LACK OF JURISDICTION OVER HIS PERSON ROOTED ON THE LACK OF SUMMONS SERVED UPON HIM, (b) THE NON-SERVICE OF SUMMONS TO DEFENDANT ANGELITA RAGASA, AND (c) THE MOTION TO WITHDRAW AS COUNSEL FOR THE PLAINTIFF (HEREIN RESPONDENT).[22]

In essence, the Court is called upon to rule on the following issues: (1) whether or not the partition of the subject property is proper despite the absence of the settlement of the estate of the deceased registered owner thereof; (2) whether or not the RTC could *motu proprio* apply the rule on Summary Judgment; and (3) whether or not the RTC could validly render a decision even in the absence of proof of proper service of summons to some of the real parties in interest in a quasi *in rem* proceeding.

The Court's Ruling

After a careful perusal of the arguments presented and the evidence submitted, the Court finds partial merit in the petition.

First, on the Procedural Issue of Improper Service of Summons

The petitioners question the acquisition by the RTC of the jurisdiction to decide on the instant case. After a judicious study of the relevant factual antecedents, the Court rules against the petitioner and in favor of the findings of the RTC and the CA.

The partition of real estate is an action quasi *in rem*.[23] Jurisprudence is replete with pronouncements that, for the court to acquire jurisdiction in actions quasi *in rem*, it is necessary only that it has jurisdiction over the *res*. In the case of *Macasaet*

---

[22] *Id.* at 21.

[23] *Valmonte v. Court of Appeals*, 322 Phil. 96, 106 (1996).

vs. Co, Jr.,[24] the Court stated that "[j]urisdiction over the defendant in an action *in rem* or quasi *in rem* is not required, and the court acquires jurisdiction over an action as long as it acquires jurisdiction over the *res* that is the subject matter of the action."[25]

In the case of *De Pedro v. Romansan Development Corporation*,[26] the Court clarified that while this is so, "to satisfy the requirements of due process, jurisdiction over the parties in *in rem* and quasi *in rem* actions is required."[27] Thus, regardless of the nature of the action, proper service of summons is imperative and that a decision rendered without proper service of summons suffers a defect in jurisdiction.[28]

According to *De Pedro,* the court may acquire jurisdiction over the thing by actually or constructively seizing or placing it under the court's custody.[29] In the landmark case of *El Banco Español Filipino vs. Palanca*,[30] the Court has already ruled that:

> Jurisdiction over the property which is the subject of the litigation may result either from a seizure of the property under legal process, whereby it is brought into the actual custody of the law, or **it may result from the institution of legal proceedings wherein, under special provisions of law, the power of the court over the property is recognized and made effective**. (Emphasis supplied)

In this case, the filing of the complaint before the RTC which sought to partition the subject property effectively placed the latter under the power of the court. On this front, none of the parties challenged the RTC's jurisdiction.

---

[24] 710 Phil. 167 (2013).

[25] *Id*. at 177.

[26] 748 Phil. 706 (2014).

[27] *Id*. at 725.

[28] *Id*. at 727.

[29] See *Biaco v. Philippine Countryside Rural Bank*, 544 Phil. 45, 55 (2007); *Regner v. Logarta*, 562 Phil. 862, 873 (2007).

[30] 37 Phil. 921, 927 (1918).

But more than this, in compliance with *De Pedro*, there is in this case proper service of summons to the defendants. In no uncertain terms, the CA found that: (1) the heirs of Vicente Morales received summons, filed an Answer, and actively participated in the trial; (2) the heirs of Jose Morales filed their Answer and admitted to the allegations in the complaint; and (3) the heirs of Martina Morales were duly served with summons, copies of the complaint, and actively participated in the trial.[31]

Even the trial court authoritatively concluded the same in saying that:

> As borne out from the record of the case, Summons and a copy of the Complaint was served upon and received by defendant Emeterio Enriquez in Virginia Beach on June 25, 2009 as per verified Affidavit of Service of one Nancy G. Wood. Defendant Bernardita Alojipan in Trenton, MI received on July 4, 2009 a copy each of Summons and Complaint as per verified Affidavit of Service of one Herb Alexander. Defendant Elizabeth Somera received in Hanover Dirk, Illinois on June 27, 2009 a copy each of the Summons and of the Complaint as per verified Affidavit of Service of one George Pierce and defendant Evelina Lopez received in Trenton, Michigan on July 4, 2009 a copy each of Summons and Complaint as per verified Affidavit of Service issued by Herb Alexander.[32]

None of the petitioners' submissions are sufficient to justify the Court's deviation from these factual findings by the CA, which affirmed the jurisdiction of the RTC. By necessary implication, therefore, the Court must perforce rule against the petitioners on this ground.

Second, on the Issue of Summary Judgment

A summary judgment in this jurisdiction is allowed by Rule 35 of the Rules of Court.[33] According to the case of *Wood*

---

[31] *Rollo*, p. 61.

[32] *Id.* at 71.

[33] RULE 35 Summary Judgments

SECTION 1. Summary judgment for claimant. — A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory

Technology Corporation, *et al. vs. Equitable Banking Corporation*,[34] it is a procedure aimed at weeding out sham claims or defenses at an early stage of the litigation. It is granted to settle expeditiously a case if, on motion of either party, there appears from the pleadings, depositions, admissions, and affidavits that no important issues of fact are involved, except the amount of damages.[35] Thus, said the Court in the case of *Viajar vs. Judge Estenzo*,[36] as cited in *Caridao, etc., et al. vs. Hon. Estenzo, etc., et al.:*[37]

> **Relief by summary judgment is intended to expedite or promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits.** But if there be a doubt as to such facts and there be an issue or issues of fact joined by the parties, neither one of them can pray for a summary judgment. Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial.[38] (Emphasis and underscoring supplied)

A reading of the foregoing would reveal that, in the application of the rules on summary judgments, the proper inquiry would be whether the affirmative defenses offered by herein petitioners before the trial court constitute genuine issues of fact requiring

---

relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof. (1a, R34)

SECTION 2. Summary judgment for defending party. — A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought may, at any time, move with supporting affidavits depositions or admissions for a summary judgment in his favor as to all or any part thereof. (2a, R34)

[34] 492 Phil. 106, 115 (2005).

[35] *Cotabato Timberland Co., Inc. v. C. Alcantara and Sons, Inc.*, 474 Phil. 259, 266 (2004).

[36] 178 Phil. 561, 572-573 (1979).

[37] 217 Phil. 93 (1984).

[38] *Id*. at 100.

a full-blown trial.[39] In other words, the crucial question is: are the issues raised by petitioners not genuine so as to justify a summary judgment?[40]

In *Evangelista vs. Mercator Finance Corp.*,[41] the Court has already defined a genuine issue as an issue of fact which calls for the presentation of evidence, as distinguished from an issue which is fictitious or contrived,[42] set up in bad faith and patently unsubstantial so as not to constitute a genuine issue for trial.[43] According to *Spouses Pascual vs. First Consolidated Rural Bank (Bohol), Inc.*,[44] where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial.

More, the propriety of issuing a summary judgment springs not only from the lack of a genuine issue which is raised by either party, but also from the observance of the procedural guidelines for the rendition of such judgment. Thus, in *Caridao*, the Court nullified the summary judgment issued by the trial court when the rules on summary judgment was applied despite the absence of a motion from the respondent asking for the application thereof. The Court said:

> And that is not all, The (sic) nullity of the assailed Summary Judgment stems not only from the circumstances that such kind of a judgment is not proper under the state of pleadings obtaining in

---

[39] *Wood Technology Corporation, et al. v. Equitable Banking Corporation*, *supra* note 34, at 116, citing *Evangelista v. Mercator Finance Corp.*, 456 Phil. 695, 703 (2003).

[40] *Supra*, citing *Narra Integrated Corporation v. Court of Appeals*, 398 Phil. 733, 741 (2000).

[41] 456 Phil. 695 (2003).

[42] *Id.* at 703.

[43] *Spouses Pascual v. First Consolidated Rural Bank (Bohol), Inc.*, G.R. No. 202597, February 8, 2017.

[44] *Supra*; *See* also *Excelsa Industries, Inc. v. Court of Appeals*, 317 Phil. 664, 671 (1995), citing *Paz v. Court of Appeals*, 260 Phil. 31, 36 (1990); *Caridao, etc., et al. v. Hon. Estenzo*, *etc., et al.*, *supra* note 37, at 100.

the instant case, but also from the failure to comply with the procedural guidelines for the rendition of such a judgment. **Contrary to the requirements prescribed by the Rules, no motion for a summary judgment was filed by private respondent.** Consequently, no notice or hearing for the purpose was ever conducted by the trial court. The trial court merely required the parties to submit their affidavits and exhibits, together with their respective memoranda, and without conducting any hearing, although the parties presented opposing claims of ownership and possession, hastily rendered a Summary Judgment. **The trial court was decidedly in error in cursorily issuing the said Judgment**.[45] (Emphasis supplied, citations omitted)

Still, in the more recent case of *Calubaquib et al. vs. Republic of the Phils.*,[46] the Court once more was asked to determine the propriety of the summary judgment rendered by the trial court judge in the absence of any motion filed by the parties for that purpose. In that case, the trial court judge opined that "the basic facts of the case were undisputed"[47] and that, even after the parties' refusal to file a motion for summary judgment, the trial court rendered a judgment *sans* trial. In ruling for the nullity of such issued judgment, the Court said that:

The filing of a motion and the conduct of a hearing on the motion are therefore important because these enable the court to determine if the parties' pleadings, affidavits and exhibits in support of, or against, the motion are sufficient to overcome the opposing papers and adequately justify the finding that, as a matter of law, the claim is clearly meritorious or there is no defense to the action.[48] (Emphasis and underscoring supplied)

Even in the pre-trial stage of a case, a **motion** for the application of summary judgment is **necessary.** In the recent

---

[45] *Supra* note 37, at 102.

[46] 667 Phil. 653 (2011).

[47] *Id*. at 658.

[48] *Id*. at 663, citing *Estrada v. Consolacion*, 163 Phil. 540, 550 (1976).

case of *Spouses Pascual vs. First Consolidated Rural Bank (BOHOL), Inc.*,[49] Justice Bersamin pointed out that:

> To be clear, the rule only spells out that unless the motion for such judgment has earlier been filed, **the pre-trial *may be* the occasion in which the court considers the propriety of rendering judgment on the pleadings or summary judgment. If no such motion was earlier filed, the pre-trial judge may then indicate to the proper party to initiate the rendition of such judgment *by filing the necessary motion.*** Indeed, such motion is required by either Rule 34 *(Judgment on the Pleadings)* or Rule 35 *(Summary Judgment)* of the *Rules of Court.* **The pre-trial judge cannot *motu proprio* render the judgment on the pleadings or summary judgment.** In the case of the motion for summary judgment, the adverse party is entitled to counter the motion.[50] (Emphasis and underscoring supplied, citations omitted)

Indeed, *Calubaquib* even proceeded further in saying that the "non-observance of the procedural requirements of filing a motion and conducting a hearing on the said motion warrants the setting aside of the summary judgment."[51]

On the basis of the foregoing disquisitions, the Court now focuses its attention to the factual milieu surrounding the present case. To begin with, the Court is of the opinion that the petitioners, from the beginning of the proceedings, have already submitted an issue of fact that definitively calls for the presentation of evidence. They have, for all intents and purposes, presented a genuine issue that should have foreclosed the rendition of a summary judgment.

Particularly, while the petitioners have not questioned the fact that the subject property belonged to their progenitor, Jayme, they have, however, asserted that herein respondent has "no more right of participation" over the same.[52] The Answer with

---

[49] *Supra* note 43.

[50] *Id.*

[51] *Supra* note 46, at 663.

[52] *Rollo*, p. 163.

Motion to Dismiss and Compulsory Counter-Claims claimed that:

7.4 *Astrid Morales Agustin has no more right or participation –*

Plaintiff's supposed share in the property, together with her siblings, have long been conveyed to herein defendant Ernesto Morales by said plaintiff's own parents, the late Simeon Morales and Leonila Morales. Thus, plaintiff has no more footing to demand partition of the lot for her benefit. x x x.[53]

In fact, the original respondent in this case, the father of herein petitioners, attached in his pleading "several handwritten receipts showing payment of their share to the property, then called 'camarin.'"[54]

In the RTC decision, the trial judge hastily dismissed this argument and asserted that:

The alleged written documents of debt of plaintiffs' parents Simeon Morales and Leonila Albano Morales are not genuine issue of material facts because these documents have no effect on the partition of the subject lot, not debts of the intestate estate of the spouses Jayme Morales and Telesfora Garzon and they are not binding upon the plaintiffs herein.[55]

In affirming this decision, the CA even opined that the issue raised by herein petitioners is "of no moment in the instant case of partition"[56] because the respondent was "asserting her right as a co-owner of the subject property by virtue of her successional right from her deceased father Simeon Morales, who was once a co-owner of the said property, and not from Jayme and Telesfora Morales."[57]

---

[53] *Id*. at 164.

[54] *Id*. at 165.

[55] *Id*. at 76.

[56] *Id*. at 59.

[57] *Id*.

These opinions, however, are reversible errors on the part of both the trial court and the CA. The question of who shall inherit which part of the property and in what proportion is in the province of the partition of the estate of a deceased. That an heir disposed of his/her aliquot portion in favor of another heir is a matter that should be fully litigated on in a partition proceeding—as in this case.

In the case of *Intestate Estate of Josefa Tangco, et al. vs. De Borja*,[58] the Court has already ruled that an heir to an inheritance could dispose of his/her hereditary rights to whomever he/she chooses. This is because:

> [A]s a hereditary share in a decedent's estate is transmitted or vested immediately from the moment of the death of such *causante* or predecessor in interest, there is no legal bar to a successor (with requisite contracting capacity) disposing of her or his hereditary share immediately after such death, even if the actual extent of such share is not determined until the subsequent liquidation of the estate.[59]

Further, still according to *Intestate Estate of Josefa Tangco*, this alienation by the heirs of their aliquot portion of the inheritance is recognized by no less than the Civil Code, *viz:*

> [A]nd as already shown, that eventual share she owned from the time of Francisco's death and the Court of Nueva Ecija could not bar her selling it. As owner of her undivided hereditary share, Tasiana could dispose of it in favor of whomsoever she chose. Such alienation is expressly recognized and provided for by article 1088 of the present Civil Code:
>
> Art. 1088. Should any of the heirs sell his hereditary rights to a stranger before the partition, any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided they do so within the period of one month from the time they were notified in writing of the sale of the vendor.

---

[58] 150-B Phil. 486 (1972).

[59] *Id*. at 498.

If a sale of a hereditary right can be made to a stranger, then *a fortiori* sale thereof to a coheir could not be forbidden."[60] (Emphasis and underscoring supplied)

In yet another case, *Alejandrino vs. Court of Appeals*,[61] the Court has ruled that "when a co-owner sells his inchoate right in the co-ownership, he expresses his intention to 'put an end to indivision among (his) co-heirs.' Partition among co-owners may thus be evidenced by the overt act of a co-owner of renouncing his right over the property regardless of the form it takes."[62] The Court based this assertion on Article 1082 of the Civil Code, which states that:

> Art. 1082. Every act which is intended to put an end to indivision among co-heirs and legatees or devisees is deemed to be a partition, although it **should purport to be a sale, an exchange, a compromise, or any other transaction.** (Emphasis and underscoring supplied)

Thus, when the petitioners herein asserted that the respondent has "no more right of participation" over the subject property because the successional rights of the respondent's parents over the same has already been conveyed to the petitioners' father, the petitioners tendered a genuine issue. They were in fact stating that the respondent's parents exercised their right to sell, exchange, or compromise their undivided inchoate share of their inheritance from Jayme, and, as the Court ruled in *Alejandrino*, the respondent's parents intended a partition of the property as defined in Article 1079 of the Civil Code.[63]

The truthfulness of this allegation, however, could only be ascertained through the presentation of evidence during trial, and not in a summary judgment.

---

[60] *Id*. at 501.

[61] 356 Phil. 851 (1998).

[62] *Id*. at 866.

[63] Article 1079. Partition, in general, is the separation, division and assignment of a thing held in common among those to whom it may belong. The thing itself may be divided, or its value. (n).

More, the RTC did not only commit reversible error by rendering a summary judgment despite the presence of a genuine issue, it also committed reversible error by applying the rules on summary judgment despite the absence of any motion from any of the parties that prayed for the rule's application.

In their Motion for Reconsideration on the RTC decision, the petitioners argued that none of the parties prayed for the issuance of a summary judgment. They further averred that the **"unilateral declaration** of the trial court that the resolution supposedly on the pending motions/incidents will also be considered as the resolution of the partition case cannot take the place of the required motion and hearing."[64] In fact, they were adamant in clarifying that:

> 12.3. The supposed reiteration by the trial Court of its declaration that the "pending motions/incidents" were considered submitted for resolution as embodied in its Order dated October 29, 2013 could not have warranted the *motu proprio* summary judgment. To begin with, the appellee herself in her Appellee's Brief, concedes that what were submitted for resolution during the October 29, 2013 hearing were the same pending motions as stated earlier, and could not have been the case of partition itself. It can be culled even from the assailed Decision of the trial Court itself that what were submitted for resolution were the then pending incidents and not the main case for partition itself.[65] (Citations omitted)

In their petition, the petitioners reiterated this assertion, *to wit:*

> 27. To the clear understanding of the parties including Atty. Cortes, **the pending incidents at the time were the *Motion to Dismiss*** filed by defendant Emeterio Enriquez questioning the jurisdiction of the trial court over him for lack of service of summons; **the *Opposition* thereto** filed by herein respondent; the *Reply* of Emeterio Enriquez to the opposition of the appellee; **the *Rejoinder* to the reply;** and **the *Motion to Withdraw* filed by therein counsel of herein respondent.**

---

[64] *Rollo*, p. 87.

[65] *Id*. at 88.

28. Unpredictably and beyond the expectation of the defendants including herein petitioners, the trial court rendered a summary judgment as embodied in its Decision dated 22 November 2013. The presiding judge and *ponente* of said decision soon retired on March 2014.[66]

Even the respondent did not deny the petitioners' allegation that no motion was filed to apply the rules on summary judgment. In addition, in its decision, the trial court itself admitted to having issued the same *motu proprio*, as none of the parties herein moved for such summary judgment. It stated that:

> x x x [S]ummary judgment maybe (sic) rendered in this case upon the own initiative of the Court as **none of the parties moved for such summary judgment to be rendered in this instant case** despite the glaring and apparent existence of no genuine issue on material facts, sham defenses had been put by the defense or mere general denial of the cause of action for partition judicially demanded by the plaintiffs had been alleged by the defendants.[67] (Emphasis supplied)

Thus, that the trial court rendered a summary judgment despite the absence of any motion calling for its application was in clear contravention of the established rules of procedure. To be sure, on the strength of the Court's unequivocal pronouncements in *Caridao*,[68] *Viajar*,[69] *Calubaquib*,[70] and *Pascual,*[71] which require the observance of the procedural guidelines for the rendition of summary judgments, the RTC committed reversible error, and the RTC and CA decisions must perforce be annulled and set aside.

On the Issue of Partition and the Settlement of Estate

On the basis of the discourse above, there should have been no further necessity to discuss the final issue herein presented.

---

[66] *Id.* at 17.

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

[68] *Caridao, etc., et al. v. Hon. Estenzo, etc., et al.*, *supra* note 37.

[69] *Viajar v. Judge Estenzo*, *supra* note 36.

[70] *Calubaquib, et al. v. Republic of the Phils.*, *supra* note 46.

[71] *Pascual v. First Consolidated Rural Bank (BOHOL), Inc., supra* note 49.

Nonetheless, for the guidance of the RTC in resolving the instant case, a discussion of the nature of the partition is in order.

The petitioners argue that an administration proceeding for the settlement of the estate of the deceased is a condition that has to be met before any partition of the estate and any distribution thereof to the heirs could be effected.

While the Court does not agree with this assertion by the petitioners, the Court, nonetheless, agrees that the trial court should have collated Jayme's other properties, if any, prior to the promulgation of any judgment of partition in accordance with the laws on Succession.

Generally, an action for partition may be seen to simultaneously present two issues: first, there is the issue of whether the plaintiff is indeed a co-owner of the property sought to be partitioned; and second, assuming that the plaintiff successfully hurdles the first issue, there is the secondary issue of how the property is to be divided between the plaintiff and defendants, *i.e.,* what portion should go to which co-owner.[72]

The Court must emphasize, however, that this definition does not take into account the difference between (1) an action of partition based on the successional rights of the heirs of a decedent, and (2) an ordinary action of partition among co-owners. While oftentimes interchanged with one another, and although in many ways similar, these two partitions draw legal basis from two different sets of legal provisions in the Civil Code of the Philippines (Civil Code).[73]

To begin with, the laws governing the partition of inheritance draws basis from Article 777 of the Civil Code, which states that the rights to the succession are transmitted from the moment of the death of the decedent. As such, from that moment, the heirs, legatees, and devisees' successional rights are vested, and they are considered to own in common the inheritance left by the decedent.

---

[72] *Roque v. Intermediate Appellate Court*, 247-A Phil. 203, 211 (1988).

[73] Rep. Act. 386 (1950).

Under the law, partition of the inheritance may only be effected by (1) the heirs themselves extrajudicially, (2) by the court in an ordinary action for partition, or in the course of administration proceedings, (3) by the testator himself, and (4) by the third person designated by the testator.[74]

A reading of the enumeration set above would reveal instances when the appointment of an executor or administrator is dispensed with. One is through the execution of a public instrument by the heirs in an extrajudicial settlement of the estate.[75] Another, which is the focal point of this case, is through the ordinary action of partition.[76]

According to Rule 74 of the Rules of Court, the heirs may resort to an ordinary action of partition of the estate of the deceased if they disagree as to the exact division of the estate, and *only* "[i]f the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose."[77]

The ordinary action for partition therefore is meant to take the place of the special proceeding on the settlement of the estate. The reason is that, if the deceased dies without pending obligations, there is no necessity for the appointment of an administrator to administer the estate for the heirs and the creditors, much less, the necessity to deprive the real owners of their possession to which they are immediately entitled.[78]

Thus, an action for partition with regard to the inheritance of the heirs should conform to the law governing the partition and distribution of the estate, and not only to the law governing ordinary partition. These pertinent provisions of the law could

---

[74] *Alejandrino v. Court of Appeals*, *supra* note 59, at 865.

[75] Rules of Court, Rule 74, Sec. 1.

[76] *Id*.

[77] *Supra* note 75.

[78] See *Guico v. Bautista*, 110 Phil. 584, 586 (1960), citing *Bondad v. Bondad*, 34 Phil. 232, 235 (1916); *Fule v. Fule*, 46 Phil. 317, 323 (1924); *Macalinao v. Valdez, et al.*, 95 Phil. 318, 320 (1954); 50 Off. Gaz., 3041; *Intestate Estate of Rufina Mercado v. Magtibay, et al.*, 96 Phil. 383, 386 (1954).

be found in Title IV (Succession), Chapter 4 (Provisions Common to Testate and Intestate Successions), Section 6 (Partition and Distribution of the Estate) of the Civil Code.[79]

Particularly, according to Article 1078 of the Civil Code, where there are two or more heirs, the whole estate of the decedent is owned in common by such heirs, subject to the payment of debts of the deceased.[80] Partition, the Civil Code adds, is the separation, division and assignment of a thing held in common among those to whom it may belong.[81] Thus, every act which is intended to put an end to indivision among co-heirs and legatees or devisees is deemed to be a partition, although it should purport to be a sale, an exchange, a compromise, or any other transaction.[82]

In addition, and on account of this partition, Article 1061 of the Civil Code requires the parties to collate the properties of the decedent which they may have received by way of gratuitous title prior to the former's death, to wit:

> Article 1061. Every compulsory heir, who succeeds with other compulsory heirs, must **bring into the mass of the estate any property or right** which he may have received from the decedent, during the lifetime of the latter, by way of donation, or any other gratuitous title, in order that it may be computed in the determination of the legitime of each heir, and **in the account of the partition.** (1035a) (Emphasis supplied)

On the procedural aspect, the partition of the estate based on the successional rights of the heirs, as herein mentioned, is required by Rule 74 of the Rules of Court (Summary Settlement of Estate) to follow the rules on "ordinary action of partition." This pertains to Rule 69 (Partition), Section 13 of the same rules, which states that:

> Section 13. *Partition of personal property*. — **The provisions of this Rule shall apply to partitions of <u>estates</u>** composed of personal

---

[79] Rep. Act 386 (1950).

[80] Civil Code, Art. 1078.

[81] *Id*., Art. 1079.

[82] *Id*., Art. 1082.

property, or of both real and personal property, in so far as the same may be applicable. (13) (Emphasis supplied)

Once legally partitioned, each heir is conferred with the exclusive ownership of the property, which was adjudicated to him/her.[83]

In contrast, an ordinary partition of co-owned property, specifically of real property, is governed by Title III of the Civil Code on Co-ownership.

Article 484 of the Civil Code provides that there is co-ownership whenever the ownership of an undivided thing or right belongs to different persons.[84] It further provides that no co-owner shall be obliged to remain in the co-ownership; each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.[85] This partition may be made by agreement between the parties, or by judicial proceedings,[86] which, like the procedural aspect of the partition by virtue of successional rights, is governed by Rule 69 of the Rules of Court.

Thus, while both partitions make use of Rule 69 as the procedural rule that would govern the *manner* of partition, the foregoing disquisitions explicitly elaborate that the *bases* of the ownership are different, and the *subject matters* concerned are also different—one speaks of the partition of the *estate* to distribute the inheritance to the heirs, legatees, or devisees, whereas the other speaks of partition of *any undivided thing or right* to distribute to the co-owners thereof.

In the case at hand, the parties are the heirs of the late Jayme Morales. The land being sought to be divided was a property duly registered under Jayme's name. Necessarily, therefore, the partition invoked by the respondents is the partition of the estate of the deceased Jayme.

---

[83] *Id*., Art. 1091.

[84] *Id*., Art. 484.

[85] *Id*., Art. 494.

[86] *Id*., Art. 496.

As such, when the petitioners alleged in their answer that there is yet another property that needs to be partitioned among the parties, they were actually invoking the Civil Code provisions, not on Co-ownership, but on Succession, which necessarily includes Article 1061 of the Civil Code—the provision on collation. It is therefore proper for the trial court to have delved into this issue presented by the petitioner instead of disregarding the same and limiting itself only to that singular property submitted by the respondent for partition. As the case of *Gulang vs. Court of Appeals*[87] said:

> **In case the defendants assert in their Answer exclusive title in themselves adversely to the plaintiff, the court should not dismiss the plaintiff's action for partition** but, on the contrary and in the exercise of its general jurisdiction, resolve the question of whether the plaintiff is co-owner or not.[88] (Emphasis and underscoring supplied)

Nonetheless, lest it be misunderstood, the law does not prohibit partial partition. In fact, the Court, in administration proceedings, have allowed partition for special instances. But the Court should caution that this power should be exercised sparingly. **This is because a partial partition and distribution of the estate does not put to rest the question of the division of the entire estate.** In the case of *Gatmaitan vs. Medina*,[89] Justice J.B.L. Reyes warned:

> The lower court, we believe, erred in rendering the order appealed from. **A partial distribution of the decedent's estate pending the final termination of the testate or intestate proceedings should as much as possible be discouraged by the courts and, unless in extreme cases, such form of advances of inheritance should not be countenanced.** The reason for this strict rule is obvious — courts should guard with utmost zeal and jealousy the estate of the decedent to the end that the creditors thereof be adequately protected and all the rightful heirs assured of their shares in the inheritance.[90] (Emphasis supplied)

---

[87] 360 Phil. 435 (1998).

[88] *Id.* at 451.

[89] 109 Phil. 108 (1960).

In this case, the Court is of the opinion that there is no cogent reason to render the partition of one of Jayme's properties and totally ignore the others, if any. Absent any circumstance that would warrant the partial partition and distribution of Jayme's estate, the prudent remedy is to settle the entirety of the estate in the partition proceedings in the court *a quo.* Besides, as stated by the Court in *Gulang*, it is quite unnecessary to require the plaintiff to file another action, separate and independent from that of partition originally instituted.[91] This would entail wastage of additional time and resources, which could already be avoided through consolidated proceedings in the court *a quo.*

In sum, the factual milieu of this case presents questions of facts which are crucial in the complete resolution of the controversy. The Court finds sufficiency in the trial court's decision with regard to the summons directed against the warring heirs—as submitted by the respondent, but also finds error in the trial court's refusal to delve into the genuine issue concerning the partition of the subject property—as submitted by the petitioners. In the end, only a full-blown trial on the merits of each of the parties' claims—and not a mere summary judgment—could write *finis* on this family drama.

WHEREFORE, premises considered, the Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 101991 dated August 13, 2015 and April 21, 2016, respectively, are hereby **REVERSED and SET ASIDE.** The case is **ORDERED REMANDED** to the Regional Trial Court, Branch 12, of Laoag City for further proceedings. The trial court judge is **ORDERED** to hear the case with dispatch.

SO ORDERED.

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

---

[90] *Id*. at 111.

[91] *Id*.

[*] Designated Additional member per Raffled dated May 2, 2018.

SECOND DIVISION

[G.R. No. 225125. June 6, 2018]

MARLON L. ARCILLA, *petitioner, vs.* **ZULISIBS, INC., PIANDRE SALON, and ROSALINDA FRANCISCO,** *respondents.*

SYLLABUS

REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF LABOR TRIBUNALS, GENERALLY RESPECTED; EXCEPTIONS; CONTRADICTING CONCLUSIONS WITH THOSE OF THE COURT OF APPEALS.— Dismissals under the Labor Code have two facets: the legality of the act of dismissal, which constitutes substantive due process; and the legality of the manner of dismissal, which constitutes procedural due process. x x x [T]he only issue to be resolved is the legality of the act of dismissal by re-examining the facts and evidence on record. Given that this Court is not a trier of facts, and the scope of its authority under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact, which are for labor tribunals to resolve, one of the recognized exceptions to the rule is when the factual findings and conclusion of the labor tribunals are contradictory or inconsistent with those of the Court of Appeals.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.

David Casino Escoto Gozon and Dela Serna-Teves for respondents.

RESOLUTION

CARPIO, *J.*:

The Case

This is a petition for review to set aside the 10 February 2016 Decision[1] of the Court of Appeals in CA-G.R. SP No. 141953 which affirmed with modifications the Resolutions dated 30 April 2015[2] and 26 June 2015[3] of the National Labor Relations Commission (NLRC), Third Division, in NLRC LAC No. 04-001028-15/NLRC NCR No. 10-12582-14.

The Facts

Respondent Zulisibs, Inc. (Zulisibs) is a corporation organized and existing under Philippine laws with respondent Rosalinda Francisco (Francisco) as its President and Chief Executive Officer. Zulisibs operates respondent Piandre Salon (Piandre), an establishment engaged in the operation of beauty salons.

Petitioner Marlon L. Arcilla (Marlon) was hired by Piandre on 8 February 2000 and was assigned to the Alabang, Muntinlupa City branch. Maricel Arcilla (Maricel), Marlon's wife, was hired on 12 November 2000 and was assigned to the Salcedo Village, Makati City branch. After several years, both Marlon and Maricel were promoted as senior hair stylists earning a monthly salary of ₱11,672.00 plus commissions from customers and sale of products.

Sometime in September 2014, Zulisibs, through its officers, received information that Marlon was establishing a beauty salon somewhere in Daang Hari, Alabang, Muntinlupa City, near the Piandre Salon where Marlon was working.

---

[1] *Rollo,* pp. 213-224. Penned by Associate Justice Franchito N. Diamante, with Associate Justices Japar B. Dimaampao and Carmelita Salandanan Manahan concurring.

[2] *Id*. at 185-189. Penned by Commissioner Pablo C. Espiritu, Jr., with Presiding Commissioner Alex A. Lopez concurring.

[3] *Id*. at 202-203.

On 6 September 2014, Marlon received a notice from Piandre and Francisco placing Marlon under preventive suspension from 6 to 14 September 2014 and requiring him to appear on 12 September 2014 at Francisco's office in Sta. Ana, Manila.

During the 12 September 2014 investigative hearing, Marlon was accused of, among other things, being involved in the opening of a salon near Piandre Alabang. Marlon denied that he had an agreement or contract with the owner of the salon along Daang Hari, Alabang. However, he admitted the following: (1) that he extended help to the salon owner who happens to be his brother-in-law; (2) that he called up two former employees of Piandre and recommended them to his brother-in-law; and (3) that he gave ₱50,000.00 to the salon owner which amount was a portion of the ₱250,000.00 loan he borrowed from the employees' cooperative of Piandre.[4]

Further investigation revealed that Marlon was often absent from work and whenever he was working, he would entertain phone calls, thus, disrupting his work. He would be absent on days when he would be the only stylist available. Francisco and other supervisors of Piandre verified the existence of a new salon along Daang Hari, Alabang and alleged that "the interiors of said salon, already with equipment, mirrors and chairs, [sic] all set to operate, with towels folded and presented the 'Piandre' way."[5] They also learned from neighboring establishments that the salon was set to open on 8 September 2014.

On 11 September 2014, Maricel received a notice from Piandre and Francisco, asking her to explain her alleged involvement with her husband, Marlon, in setting up a salon along Daang Hari, Alabang and requiring her to appear on 13 September 2014 at the Sta. Ana office. On 14 September 2014, Maricel received a notice placing her under preventive suspension from 14 September to 13 October 2014.

---

[4] *Id.* at 215.

[5] *Id.* at 215-216.

Marlon received a copy of his notice of termination on 14 September 2014. Maricel received her notice of termination on 26 September 2014. Both were found guilty of violating Piandre's Code of Discipline 3F No. 2: *Pagkawala ng tiwala dahil sa ginawang masama.*

Subsequently, Marlon and Maricel filed two separate complaints[6] for illegal dismissal, underpayment of wages, non-payment of overtime pay, service incentive leave, 13th month pay, Emergency Cost of Living Allowance, and separation pay, and illegal suspension, with prayer for moral and exemplary damages, and attorney's fees.

The Ruling of the Labor Arbiter

On 9 March 2015, the Labor Arbiter rendered a Decision[7] dismissing Marlon and Maricel's complaints for lack of merit. The Labor Arbiter held that:

> WHEREFORE, the complaint[s] for illegal dismissal and x x x money claims [are] DISMISSED for lack of merit.[8]

The Ruling of the NLRC

On 30 April 2015, the NLRC denied Marlon and Maricel's appeal and affirmed the Labor Arbiter's decision. The NLRC held that:

> WHEREFORE, premises considered, Complainants-Appellants' appeal is hereby DENIED. The March 9, 2015 Decision of Labor Arbiter Gaudencio P. Demaisip, Jr. is hereby AFFIRMED.[9]

On 26 June 2015, Marlon and Maricel's Motion for Reconsideration[10] was denied by the NLRC for lack of merit,

---

[6] *Id*. at 56-58.

[7] *Id*. at 132-147.

[8] *Id*. at 145.

[9] *Id*. at 189.

[10] *Id*. at 202-203.

holding that "The resolution of [the] Commission dated April 30, 2015 STANDS undisturbed."[11]

The Ruling of the Court of Appeals

On 10 February 2016, Marlon and Maricel's petition for certiorari under Rule 65 was partially granted. Marlon's termination was held to be valid. As to Maricel, the Court of Appeals held that the NLRC and the Labor Arbiter erred in upholding the legality of her dismissal. The dispositive portion of the Decision[12] reads:

> WHEREFORE, the petition is PARTIALLY GRANTED. The Resolutions dated April 30, 2015 and June 26, 2015 of public respondent National Labor Relations Commission, Third Division, in NLRC LAC No. 04-001028-15/NLRC NCR No. 10-12582-14 are hereby AFFIRMED with MODIFICATIONS, in that the private respondents are ORDERED to pay MARICEL ARCILLA the following:
>
> 1) Backwages and all other benefits from September 26, 2014 until finality of this Decision;
>
> 2) Separation pay equivalent to one (1) month salary for every year of service;
>
> 3) Moral and exemplary damages in the amount of Php ₱50,000.00
>
> 4) Attorney's fees equivalent to ten percent (10%) of the total monetary award; and
>
> 5) Legal interest of six percent (6%) *per annum* on the total monetary awards from the finality of this Decision until full payment thereof.
>
> The appropriate Computation Division of the National Labor Relations Commission is hereby ordered to COMPUTE and UPDATE the award as herein determined WITH DISPATCH.
>
> All other aspects of the assailed Resolutions STAND.

---

[11] *Id*. at 202.

[12] *Id*. at 213-224.

SO ORDERED.[13]

The Issues

Marlon presents the following issues:

1. Whether the Court of Appeals erred in upholding the two resolutions of the NLRC, finding Marlon's dismissal to be valid and for just cause, and effected after due notice and hearing; and

2. Whether the Court of Appeals gravely erred in upholding the two resolutions of the NLRC, finding that Marlon was not entitled to his money claims.

The Ruling of this Court

We deny the petition.

Dismissals under the Labor Code have two facets: the legality of the act of dismissal, which constitutes substantive due process; and the legality of the manner of dismissal, which constitutes procedural due process.[14]

In this case, we do not dispute the findings of the Labor Arbiter, the NLRC, and the Court of Appeals that the manner of Marlon's dismissal was legal and in accordance with law.[15]

---

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

[14] *NDC Tagum Foundation, Inc. v. Sumakote*, 787 Phil. 67 (2016), citing *Lopez v. Alturas Group of Companies and/or Uy*, 663 Phil. 121, 127 (2011).

[15] Section 5.1, Rule 1-A of Department Order No. 147-15 (Amending the Implementing Rules and Regulations of Book VI of the Labor Code of the Philippines, as amended) reads:

> As defined in Article 297 of the Labor Code, as amended, the requirement of two written notices served on the employee shall observe the following:
>
> (a) The first written notice should contain:
>
> 1. The specific causes or grounds for termination as provided for under Article 297 of the Labor Code, as amended, and company policies, if any;
>
> 2. Detailed narration of the facts and circumstances that will serve as basis for the charge against the employee. A general description

The requirement of procedural due process was met when Marlon was served with a first written notice containing the specific causes or grounds for his termination, when Marlon was called to attend an investigative hearing to explain his side, and when Marlon was served with a second written notice containing the justification for his termination.

Thus, the only issue to be resolved is the legality of the act of dismissal by re-examining the facts and evidence on record. Given that this Court is not a trier of facts, and the scope of its authority under Rule 45 of the Rules of Court is confined only

---

of the charge will not suffice; and

3. A directive that the employee is given opportunity to submit a written explanation within a reasonable period.

"Reasonable period" should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employee an opportunity to study the accusation, consult or be represented by a lawyer or union officer, gather data and evidence, and decide on the defenses against the complaint.

(b) After serving the first notice, the employer should afford the employee ample opportunity to be heard and to defend himself/herself with the assistance of his/her representative if he/she so desires, as provided in Article 292 (b) of the Labor Code, as amended.

"Ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him/her and submit evidence in support of his/her defense, whether in a hearing, conference or some other fair, just and reasonable way. A formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.

(c) After determining that termination of employment is justified, the employer shall serve the employee a written notice of termination indicating that: (1) all circumstances involving the charge against the employee have been considered; and (2) the grounds have been established to justify the severance of [his/her] employment.

The foregoing notices shall be served personally to the employer or the employee's last known address.

to errors of law and does not extend to questions of fact, which are for labor tribunals to resolve, one of the recognized exceptions to the rule is when the factual findings and conclusion of the labor tribunals are contradictory or inconsistent with those of the Court of Appeals.[16] In this case, however, the factual findings and conclusion of the labor tribunals and the Court of Appeals regarding Marlon's dismissal are consistent and one. As to Maricel, the decision in her favor was not appealed to us anymore. Thus, the decision of the Court of Appeals insofar as Maricel is concerned is final and executory.

Respondents Zulisibs, Francisco, and Piandre alleged that Marlon committed serious misconduct or willful disobedience of the company's lawful orders, and of fraud or willful breach of the trust reposed in him by the company when he helped his brother-in-law open a salon along Daang Hari, Alabang. They justified Marlon's dismissal by citing paragraphs (a) and (c), Article 297 of the Labor Code.[17] The provision reads:

> Article 297. *TERMINATION BY EMPLOYER.* An employer may terminate an employee for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work.
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

The Labor Arbiter, the NLRC, and the Court of Appeals all held that the respondents presented substantial evidence to justify Marlon's dismissal. We affirm all the rulings. We adopt *in toto* the Court of Appeals' decision with regard to Marlon's dismissal. It held:

---

[16] *Sy v. Neat, Inc.*, G.R. No. 213748, 27 November 2017, citing *Raza v. Daikoku Electronics Phils. Inc.,* 765 Phil. 61, 75 (2015) and *Philippine Long Distance Telephone Company v. Estrañero,* 745 Phil. 543, 550 (2014).

[17] Formerly numbered as Article 282 of the Labor Code.

From the facts and circumstances obtaining with respect to petitioner Marlon Arcilla, there exists a valid cause in terminating his employment. It was clearly stated in paragraph 8 of the Agreement or "*Kasunduan*" signed by petitioners that they are prohibited from setting up or being involved in a business similar to that of private respondents' during the course of their employment. Considering that the petitioners have neither controverted nor denied the existence of the *Kasunduan,* they are therefore bound by the terms and conditions thereof. Petitioners cannot likewise deny the existence of the Code of Discipline and feign ignorance of the offense they committed and its corresponding penalty by holding that the private respondents did not present a copy of said Code in the proceedings below. They are deemed to have acknowledged the existence of said Code and presumed to have understood the provisions contained therein when they signed the *Kasunduan* and agreed to abide by the Code of Discipline and the rules and regulations of the company in paragraph 2 of their agreement. **As private respondents' trusted Senior Hairstylists for quite a number of years, it is incumbent upon them to have read and understood its provisions and be fully aware of the prohibitions and penalties imposed upon erring employees.**

Collorarily, as briefly summed up by the public respondent, petitioners were later discovered to be involved in setting up another salon near the private respondents' salon in Alabang, albeit the involvement was only indirect by means of extending a Php50,000.00 financial assistance to the owner of the new salon who happens to be the brother-in-law of Marlon or his wife Maricel's brother. We agree with public respondent that it is immaterial whether the new salon was under the petitioners' name or not, or that they established a salon of their own. **The important fact remains that petitioner Marlon made an admission that he gave funds to his brother-in-law for the new salon in Alabang which directly competes with the business of his employer. It is not disputed that the new beauty salon is located less than a kilometer away from Piandre Salon in Alabang.**

Furthermore, Marlon's admission susbtantially proves two things: 1) that a new salon has indeed been established; and 2) that he willfully disobeyed his contract of employment with the private respondents. **His involvement in setting up a competing salon, which albeit indirect, constitutes serious misconduct because of his blatant**

disregard [of] the terms and conditions of his contract/agreement with the private respondents. His act of allowing himself to be involved with his brother-in-law's business displays an act of disloyalty to the company which is likewise sufficient to warrant his dismissal for loss of trust and confidence. To our mind, his apology in his written letter to private respondent Francisco [was] a mere afterthought after realizing the gravity of his offense after he became the subject of an investigation by the private respondents. Substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is a sufficient basis for the imposition of any disciplinary action upon the employee. The standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct that renders the latter unworthy of the trust and confidence demanded by his or her position.[18] (Emphasis supplied)

All told, there is sufficient basis to dismiss Marlon on the grounds of serious misconduct or willful disobedience of the company's lawful orders, and of fraud or willful breach of the trust reposed in him by the company when he helped his brother-in-law open a salon along Daang Hari, Alabang. The Court of Appeals acted in accordance with the evidence on record and case law when it affirmed and upheld the resolutions of the NLRC.

WHEREFORE, the petition is **DENIED** for lack of merit.

SO ORDERED.

Peralta, Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

---

[18] *Rollo,* pp. 218-220.

SPECIAL FIRST DIVISION

[G.R. No. 226485. June 6, 2018]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BERNIE DELOCIEMBRE *y* ANDALES and DHATS ADAM *y* DANGA,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; AN APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW AND IT IS THE DUTY OF THE REVIEWING TRIBUNAL TO CORRECT, CITE, AND APPRECIATE ERRORS IN THE APPEALED JUDGMENT WHETHER THEY ARE ASSIGNED OR UNASSIGNED.— At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; THE PROSECUTION MUST BE ABLE TO ACCOUNT FOR EACH LINK OF THE CHAIN OF CUSTODY FROM THE MOMENT THE ILLEGAL DRUGS ARE SEIZED UP TO THEIR PRESENTATION IN COURT AS EVIDENCE OF THE CRIME.— In this case, accused-appellants were charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. Case law states that in every prosecution for Illegal Sale of Dangerous Drugs, the following elements must be proven with moral certainty: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment. Moreover, it is likewise essential that the identity of the prohibited drugs be established beyond

reasonable doubt, considering that the prohibited drug itself forms an integral part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain of custody from the moment the illegal drugs are seized up to their presentation in court as evidence of the crime.

3. ID.; ID.; SECTION 21, ARTICLE II THEREOF; PROCEDURAL REQUIREMENTS IN THE HANDLING OF THE SEIZED DRUGS IN ORDER TO PRESERVE THEIR INTEGRITY AND EVIDENTIARY VALUE; DISCUSSED.— [S]ection 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. Under the said section, prior to its amendment by RA 10640, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media *and* the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination. In the case of *People v. Mendoza*, the Court stressed that **"[w]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence** that had tainted the buy-busts conducted under the regime of [RA] 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.** Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."

4. ID.; ID.; ID.; ID.; THE FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE PROCEDURE LAID OUT IN SECTION 21, ARTICLE II OF RA 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS AS VOID AND INVALID, PROVIDED THAT THE PROSECUTION SATISFACTORILY PROVES THAT THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.— The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provides that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165, – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**. In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, **the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved**. Also, in *People v. De Guzman*, it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist**. In this case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the

items purportedly seized from accused-appellants. An examination of the records reveals that while the requisite inventory of the seized drugs was conducted in the presence of accused-appellants and an elected public official, the same was not done in the presence of the representatives from the media and the DOJ. More significantly, the apprehending officers failed to proffer a plausible explanation therefor.

5. ID.; ID.; ID.; ID.; ID.; UNACKNOWLEDGED AND UNEXPLAINED PROCEDURAL LAPSES COMMITTED BY THE POLICE OFFICERS, MILITATE AGAINST A FINDING OF GUILT BEYOND REASONABLE DOUBT AGAINST THE ACCUSED, AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* HAD BEEN COMPROMISED. — Without a doubt, procedural lapses committed by the police officers, which were unfortunately unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised. The procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. As such, since the prosecution in this case failed to provide justifiable grounds for non-compliance with Section 21, Article II of RA 9165, the acquittal of accused-appellants is perforce in order.

6. ID.; ID.; ID.; ID.; THE FACT THAT ANY ISSUE REGARDING THE COMPLIANCE WITH THE MANDATORY PROCEDURE IN THE HANDLING OF THE SEIZED DRUGS WAS NOT RAISED, OR EVEN THRESHED OUT IN THE COURT/S BELOW, WOULD NOT PRECLUDE THE APPELLATE COURT, INCLUDING THE SUPREME COURT, FROM FULLY EXAMINING THE RECORDS OF THE CASE IF ONLY TO ASCERTAIN WHETHER THE PROCEDURE HAD BEEN COMPLETELY COMPLIED WITH, AND IF NOT, WHETHER JUSTIFIABLE REASONS EXIST TO EXCUSE ANY DEVIATION.— [T]he Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter: The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict

this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions. Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. [For indeed,] [o]rder is too high a price for the loss of liberty. x x x. "In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21[, Article II] of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court**. Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction."

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court is a Motion for Reconsideration[1] filed by accused-appellants Bernie Delociembre *y* Andales (Bernie) and

[1] Dated July 20, 2017; *rollo*, pp. 32-38.

Dhats Adam *y* Danga (Dhats; collectively, accused-appellants) assailing the Resolution[2] dated April 17, 2017 of the Court, which affirmed the Decision[3] dated March 31, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07231 finding accused-appellants guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as "The Comprehensive Dangerous Drugs Act of 2002."

The Facts

The instant case stemmed from an Information[5] filed before the Regional Trial Court of Quezon City, Branch 78 (RTC), docketed as Crim. Case No. Q-10-163376, charging accused-appellants of the crime of Illegal Sale of Dangerous Drugs, the accusatory portion of which states:

> That on or about the 7th day of April, 2010, in Quezon City, Philippines, the said accused, conspiring, confederating and mutually helping each other, without lawful authority did then and there willfully 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: Five (5) pieces of transparent heat sealed plastic sachet marked as "EXH-A-1 MPA 4/7/2010, EXH-A-2 MPA 4/7/2010, EXH-A-3 MPA 4/7/2010, EXH-A-4 MPA 4/7/2010["] and "EXH-A-5 MPA 4/7/2010" with twenty one point forty one twenty nine (21.4129) grams of white crystalline substance containing Methylamphetamine Hydrochloride also known as "*shabu*", a dangerous drug.
>
> CONTRARY TO LAW.[6]

---

[2] *Id* at 30-31. Signed by Division Clerk of Court Edgar O. Aricheta.

[3] *Id*. at 2-11. Penned by Associate Justice Francisco P. Acosta with Associate Justices Noel G. Tijam (now a member of the Court) and Eduardo B. Peralta, Jr. concurring.

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

[5] Dated April 12, 2010. Records, pp. 1-2.

[6] *Id*. at 1.

The prosecution alleged that on April 7, 2010, a buy-bust team composed of Senior Officer II Christopher Macairap[7] (SOII Macairap), Inspector Officer I Junef Avenido (IO1 Avenido), and IO1 Renata Reyes (IO1 Reyes) was organized to conduct an entrapment operation against Bernie, alias "Axe," who was reportedly "operating" within the area of Quezon City.[8] Accordingly, SOII Macairap instructed their informant to purchase twenty-five (25) grams of *shabu* worth ₱150,000.00 from Bernie and arrange a meeting with him, to which the latter agreed. Thus, at around 2:30 in the afternoon, the buy-bust team, together with the informant, proceeded to the target area in NIA Road, Quezon City. Upon arriving, the informant introduced IO1 Avenido, the designated poseur-buyer, to Bernie and his companion, Dhats. Dhats then handed over a folded cardboard paper with a Lotto 6/49 logo containing a white crystalline substance to IO1 Avenido, who, in turn, paid Bernie using the marked money. As Bernie was about to count the money, IO1 Avenido executed the pre-arranged signal by taking off his cap, and consequently, accused-appellants were apprehended. Shortly after, the team left the area and proceeded to the Philippine Drug Enforcement Agency (PDEA) office. Thereat, the requisite marking and inventory were done in the presence of Barangay Kagawad Jose Ruiz, Jr. and accused-appellants, while SOII Macairap took pictures of the same. Subsequently, IO1 Avenido delivered the seized drugs to the PDEA laboratory where they were received by Forensic Chemical Officer Jappeth Santiago (FCO Santiago) who confirmed that they tested positive for *methamphetamine hydrochloride* and *meferonex*, a dangerous drug. Consequently, FCO Santiago turned over the said items to the custody of the trial court.[9]

---

[7] "Macalrap" in some parts of the records.

[8] TSN dated November 9, 2010, pp. 4-5. See also *rollo*, p. 3.

[9] See records, pp. 318-322. See also *rollo*, pp. 3-4; and Chemistry Report No. PDEA-DD010-130 dated April 8, 2010, records, p. 96 (including dorsal portion).

For their part, accused-appellants raised the defenses of denial and alibi. Bernie claimed that at around twelve (12) o'clock in the afternoon of April 7, 2010, while he was at home preparing his son for school, he noticed that PDEA agents Renato Reyes and Roy Allan, the alleged bosses of his brother "Axe," were knocking at the latter's door. When asked about the whereabouts of "Axe," Bernie told them that "Axe" left for Aklan to visit his wife. Subsequently, they left but came back shortly to invite Bernie to the PDEA office. After joining the agents in the PDEA office, Bernie was again asked of "Axe's" whereabouts. In the interim, he noticed some illegal drugs placed on the table and saw Dhats for the first time. After being questioned, Bernie was purportedly taken to the city hall for inquest.[10]

Meanwhile, Dhats maintained that at around twelve (12) o'clock in the afternoon of even date, he and his wife were having lunch at their house when six (6) armed men suddenly arrived in search of "Axe," whom he allegedly knew by name. He was then handcuffed and brought to the PDEA office where he was joined by Bernie. Thereafter, he was taken to Camp Crame for medical examination. According to Dhats, IO1 Avenido demanded the amount of ₱100,000.00 for his release, but since he could not produce the same, he was brought to the city hall for inquest.[11]

The RTC Ruling

In a Judgment[12] dated December 12, 2014, the RTC found accused- appellants guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165, sentencing each of them to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.[13] It held that the prosecution proved all the elements of the crime charged, as it was able to show that: (*a*) an illegal

---

[10] See *rollo*, pp. 4-5.

[11] See *id*. at 5.

[12] Records, pp. 317-328. Penned by Presiding Judge Fernando T. Sagun, Jr.

[13] See *id*. at 327-328.

sale of *shabu* actually took place during a valid buy-bust operation; (*b*) accused-appellants were positively identified in open court as the malefactors; and (*c*) the forensic examination of the seized drugs yielded positive results for the presence of *methamphetamine hydrochloride* and *meferonex*. Moreover, it ruled that accused-appellants' unsubstantiated defense of denial and alibi could not prevail over the positive testimonies of the prosecution witnesses who had no ill-motive to testify against them.[14]

Aggrieved, accused-appellants appealed[15] to the CA.

The CA Ruling

In a Decision[16] dated March 31, 2016, the CA affirmed *in toto* the Judgment of the RTC.[17] It found, among others, that while certain requirements under Section 21 of RA 9165 were not complied with, the prosecution nevertheless established an unbroken chain of custody of the seized drugs, which were preserved from the time of seizure to receipt by the forensic laboratory to safekeeping up to presentation in court. Besides, the arresting officers provided justifiable reasons why the marking could not be done at the place of arrest, *i.e.* a Muslim compound, since the same was – at that time – already getting crowded, and because one of the suspects allegedly belonged to a Muslim clan. Further, the absence of a DOJ representative had already become a trivial matter, considering that there was an elected local official present during the inventory.[18]

Undaunted, accused-appellants elevated[19] the matter to the Court.

---

[14] See *id*. at 325-327.

[15] See Notice of Appeal dated January 9, 2015; *id*. at 336.

[16] *Rollo*, pp. 2-11.

[17] *Id*. at 10.

[18] See *id*. at 8-10.

[19] See Notice of Appeal dated April 26, 2016; *id*. at 12-14.

The Proceedings Before the Court

In a Resolution[20] dated April 17, 2017, the Court upheld the CA's conviction of accused-appellants finding them guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165.[21]

Dissatisfied, accused-appellants moved for reconsideration,[22] arguing, among others, that the police officers failed to comply with the mandatory procedures in the handling and disposition of the seized drugs as provided under Section 21, Article II of RA 9165.[23]

The Court's Ruling

The Court grants the motion for reconsideration.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[24] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[25]

In this case, accused-appellants were charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. Case law states that in every prosecution for Illegal Sale of Dangerous Drugs, the following elements must be proven with moral certainty: (*a*) the identity

---

[20] See Notice of Resolution dated April 17, 2017 signed by Division Clerk of Court Edgar O. Aricheta.

[21] *Id*. at 30.

[22] Dated July 20, 2017. *Id*. at 32-38.

[23] See *id*. at 34-37.

[24] See *People v. Dahil*, 150 Phil. 212, 225 (2015).

[25] *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.[26] Moreover, it is likewise essential that the identity of the prohibited drugs be established beyond reasonable doubt, considering that the prohibited drug itself forms an integral part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain of custody from the moment the illegal drugs are seized up to their presentation in court as evidence of the crime.[27]

In this regard, Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.[28] Under the said section, prior to its amendment by RA 10640,[29] the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media *and* the Department of Justice [DOJ], and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.[30] In the case of

---

[26] *People v. Sumili*, 153 Phil. 342, 348 (2015).

[27] See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[28] See *People v. Sumili*, *supra* note 23, at 349, 350.

[29] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,"' approved on July 15, 2014.

[30] See Section 21 (1) and (2), Article II of RA 9165.

People v. Mendoza,[31] the Court stressed that **"[w]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence** that had tainted the buy-busts conducted under the regime of [RA] 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.** Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."[32]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible.[33] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640[34] – provides that the said inventory and photography

---

[31] 736 Phil. 749 (2014).

[32] *Id*. at 764; emphases and underscoring supplied.

[33] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[34] Section 1 of RA 10640 provides:

Section 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," is hereby amended to read as follows:

"SEC. 21. *Custody and Disposition of Confiscated.— Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

"(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/ paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and

may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165, – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**.[35] In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.[36] In *People v. Almorfe*,[37] **the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved**.[38] Also, in *People v. De Guzman*,[39] it was

---

photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

x x x x x x x x x"

[35] See also Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

[36] See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252; citation omitted.

[37] 631 Phil. 51 (2010).

[38] *Id*. at 60.

[39] 630 Phil. 637 (2010).

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**.[40]

In this case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items purportedly seized from accused-appellants.

An examination of the records reveals that while the requisite inventory of the seized drugs was conducted in the presence of accused-appellants and an elected public official, the same was not done in the presence of the representatives from the media and the DOJ. More significantly, the apprehending officers failed to proffer a plausible explanation therefor.

During his cross-examination, IO1 Avenido admitted that the DOJ office is near the place of arrest, as in fact, it was only a five (5) minute walk therefrom. However, when asked if he bothered to pass by it to secure a DOJ representative, he did not provide a categorical answer, and instead, disavowed responsibility therefor, claiming that there were other members of the buy-bust team who were assigned to accomplish such task, to wit:

Q: The arrest allegedly happened at NIA Agham, correct?

A: Yes, sir.

Q: The DOJ agency building is right there, correct?

A: Yes, sir.

Q: About 5 minutes walk?

A: Yes, sir.

Q: Did you bother to pass the DOJ Building to get a DOJ representative?

---

[40] *Id*. at 649.

A: We have other team members assigned to that, sir but I don't remember why they haven't brought any DOJ representative at that time. sir.

Q: Did you bother to get Public Attorney from the Public Attorney's Office which was also located at the DOJ Agency Building at Agham NIA Road?

A: I don't clearly remember, sir but we have the public elected official as a witness.

x x x x x x x x x

Q: I was referring to the counsel of the accused. Did you furnish them of counsel of their own choice or a counsel from the government?

A: Yes, sir. During that time we appraise their rights. The other members because we have a designation in our team I think they are the one who contacted the witnesses for the accused. I think they only brought the Kagawad, sir.

x x x x x x x x x[41] (Underscoring supplied)

Similarly, IO1 Reyes disclaimed liability but maintained that it was their team leader, SOII Macairap, who was specifically assigned to contact the representatives from the media and DOJ, *viz*:

Q: Did you contact a DOJ representative to witness the inventory taking?

A: From what I recall, **it was our team leader who assigned the persons who would call the DOJ representative and the media representative**, sir.

Q: Do you have any evidence that they were actually called?

A: The Kagawad that they called came together with our team leader, sir.

Q: How about the media man, do you have any evidence that he was contacted?

---

[41] TSN, February 28, 2012, pp. 6-7.

A: I could not recall anything about it, it is the team leader who can answer it, sir.

x x x x x x x x x

Q: And considering that you actually know those rights, did you get a counsel for the herein accused during their custody?

A: Actually, nobody came. It was the duty of our team leader to task a personnel who would make the call **but when the Barangay Kagawad came, our team leader decided to conduct the inventory, sir**.

Q: Even without counsel?

A: Yes, sir, **probably so that we would not exceed the allowable time as provided in Section 21 as to the handling of the evidence**, sir.

x x x x x x x x x[42] (Emphases and underscoring supplied)

Verily, apart from the unsubstantiated allegations of the prosecution witnesses, there was no showing that the apprehending officers attempted to contact and secure the presence of representatives from the media and the DOJ. Furthermore, no plausible reasons were given as to why their presence could not be easily secured. Neither would IO1 Reyes's claim – that SOII Macairap decided to immediately conduct the inventory despite the absence of the other witnesses in order "not to exceed the allowable time as provided in Section 21 as to the handling of the evidence" – have any credence, considering that SOII Macairap himself was never presented in court to corroborate it. Besides, the fact that it would take someone only five (5) minutes of walk to reach the DOJ building from the place of arrest clearly repudiates such claim.

Without a doubt, procedural lapses committed by the police officers, which were unfortunately unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused, as the integrity

---

[42] TSN, June 18, 2013, pp. 8-10.

and evidentiary value of the *corpus delicti* had been compromised.[43] The procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[44] As such, since the prosecution in this case failed to provide justifiable grounds for non-compliance with Section 21, Article II of RA 9165, the acquittal of accused-appellants is perforce in order.

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

> The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.
>
> Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. [For indeed,] [o]rder is too high a price for the loss of liberty. x x x.[45]

"In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21 [, Article II] of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court**. Since compliance with this procedure is determinative of the

---

[43] See *People v. Sumili*, *supra* note 23, at 352.

[44] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

[45] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction."[46]

WHEREFORE, the motion for reconsideration is **GRANTED**. The Resolution dated April 17, 2017 of the Court affirming the Decision dated March 31, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07231 is hereby **REVERSED** and **SET ASIDE**. A new one is **ENTERED ACQUITTING** accused-appellants Bernie Delociembre *y* Andales and Dhats Adam *y* Danga of the crime charged. The Director of the Bureau of Corrections is ordered to cause their immediate release, unless they are being lawfully held in custody for any other reason.

SO ORDERED.

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

---

[46] See *People v. Miranda*, G.R. No. 229671, January 31, 2018.

* Designated Additional Member per Raffle dated June 6, 2018.

SECOND DIVISION

[G.R. No. 227394. June 6, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NORJANA SOOD *y* AMATONDIN**, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165), SECTION 21, ARTICLE II THEREOF; MANDATORY PROCEDURE IN THE SEIZURE, CUSTODY, AND HANDLING OF CONFISCATED ILLEGAL DRUGS AND/OR PARAPHERNALIA; REQUIREMENTS OF INVENTORY AND PHOTOGRAPHING OF THE SEIZED DRUGS; THREE-WITNESS RULE; NOT COMPLIED WITH.— Section 21, Article II of RA 9165 states the procedure to be followed by a buy-bust team in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia. This section was amended by RA 10640 which imposed less stringent requirements in the procedure; but the amendment was approved only on July 15, 2014. As the crime in this case was committed on January 28, 2009, the original version of Section 21 is applicable x x x. Here, it is undisputed, as was found by both the RTC and the CA that the prosecution failed to comply with Section 21 of RA 9165. x x x [T]he prosecution failed to prove that the three required witnesses were present during the inventory and photographing of the seized drugs. As the RTC itself found, only the barangay official and media representative were present during the inventory, and they were called in only after the arrest and seizure had already happened—which may have been at the barangay hall or at the police station. x x x. A reading of the testimonies of SPO1 Regato and PO1 Hega shows that they were completely silent as to whether there were any witnesses during the photographing of the seized drugs. The plain import of Section 21 of RA 9165 is that the buy-bust team is to **conduct the physical inventory and photographing** of the seized items **immediately after seizure** and confiscation **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. And only if this is not practicable, can the inventory and photographing be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. Here, the buy-bust team admittedly failed to comply with the foregoing requirements.

2. **ID.; ID.; ID.; ID.; PURPOSE OF THE THREE-WITNESS RULE.—** The Court again takes this opportunity to emphasize that the presence of the three witnesses required by Section 21 is precisely to protect and guard against the pernicious practice of policemen in planting evidence. Without the insulating presence of the three witnesses 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 seized drugs that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of accused-appellant. It is truly disconcerting how the members of the buy-bust team have different testimonies on the place where the inventory was conducted. This is not, by any means, a "minor inconsistency," as erroneously held by the CA. This inconsistency goes into the very heart of whether or not there really was a buy-bust operation that had been conducted.

3. **ID.; ID.; ID.; NON-COMPLIANCE WITH THE PROCEDURE FOR INVENTORY AND PHOTOGRAPHING, 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 THE SEIZURES OF AND CUSTODY OVER SAID ITEMS.—** Supplementing RA 9165, Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR) states that in cases of non-compliance with the procedure for inventory and photographing, the IRR imposed the twin requirements of, *first,* there should be justifiable grounds for the non-compliance, and *second*, the integrity and the evidentiary value of the seized items should be properly preserved. Failure to show these **two conditions**

renders void and invalid the seizure of and custody of the seized drugs, thus: 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[.]** Here, the prosecution's reason for not conducting the inventory in the place of seizure was that they supposedly wanted to avoid any commotion at the area because there would be vehicular traffic. x x x The foregoing reason hardly qualifies as sufficient justification for not complying with the requirements of Section 21 as to the conduct of the inventory and photographing at the place of seizure. As buy-bust operations are planned, the team could have easily ensured that the conduct of the inventory and photographing would cause minimal disruption to the area. x x x. Further, and more importantly, the records fail to show any reason for the prosecution's failure to comply with the presence of the three witnesses during the inventory and photographing of the seized drugs.

4. ID.; ID.; ID.; UNBROKEN CHAIN OF CUSTODY NOT ESTABLISHED; THE 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.— 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. Here, **there are serious gaps in the *chain of custody* of the seized drugs** which create reasonable doubt as to its identity and integrity. *First*, the glaring inconsistencies in the testimonies of the buy-bust team members make it unclear as to whether the buy-bust team went directly to the police station after the seizure of the drugs or whether they still went to the barangay hall and then proceeded to the police station. *Second*, although there was testimony as to the turnover of the seized drugs from

the buy-bust team to the laboratory, there was no testimony on the safekeeping of the seized items after the laboratory testing. *Last*, there was no testimony as to the retrieval of the seized drugs from the laboratory for presentation in court as evidence. Thus, contrary to the findings of the RTC and CA, the prosecution actually failed to establish the unbroken *chain of custody*. The 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.

5. **ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF THE POLICE OFFICERS' DUTY DOES NOT APPLY IN A PROSECUTION UNDER RA 9165, AS ALL THE REQUIREMENTS OF SECTION 21 THEREOF SHOULD BE PROVEN.—** The prosecution cannot find cover in the presumption of regularity in the performance of the police officers' duty, and the RTC erred in applying this presumption as against compliance with Section 21 of RA 9165. In a prosecution under RA 9165, all the requirements of Section 21 thereof should be proven; there is no presumption that a buy-bust team has complied with the requirements of this section. The Court reiterates its reminder in *People v. Mamangon*, where it held that: In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21 of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court**. Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. **If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused and, perforce, overturn a conviction**.

PERALTA, *J., separate concurring opinion*:

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); SECTION 21, ARTICLE II THEREOF; MANDATORY PROCEDURE IN THE CUSTODY AND DISPOSITION OF CONFISCATED DRUGS; REQUIREMENTS OF PHYSICAL INVENTORY AND PHOTOGRAPH OF THE SEIZED DRUGS; THREE-WITNESS RULE; PURPOSE THEREOF.— To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and added a saving clause in case the procedure is not followed x x x. It bears emphasis that R.A. No. 10640, which amended Section 21 of R.A. No. 9165, now only requires **two (2) witnesses** to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; **and** (b) either a representative from the National Prosecution Service **or** the media. x x x However, under the original provision of Section 21 and its IRR, which is applicable at the time the appellant committed the crimes charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses**, namely: (a) a representative from the media, **and** (b) the DOJ, **and**; (c) any elected public official who shall be required to sign copies of the inventory and be given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."

2. ID.; ID.; ID.; ID.; THE FAILURE OF THE PROSECUTION TO FOLLOW THE MANDATED PROCEDURE MUST BE ADEQUATELY EXPLAINED, AND MUST BE PROVEN AS A FACT IN ACCORDANCE WITH THE RULES ON EVIDENCE.— The prosecution bears the burden of proving a 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 trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of 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. It should take note that 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 items. Its strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule to prevent incidents of planting, tampering or alteration of evidence. Here, the prosecution failed to discharge its burden.

3. **ID.; ID.; ID.; ID.; REASONS FOR NON-COMPLIANCE WITH THE THREE-WITNESS RULE; NOT PROVED.—** With respect to the presence of all the required witnesses under Section 21 of R.A. No. 9165, the prosecution never alleged and proved any of the following reasons, such as: (1) **their attendance was impossible because the place of arrest was a remote area;** (2) t**heir safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or** (5) t**ime constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**

4. **ID.; ID.; ID.; ID.; THE PRESUMPTION THAT THE POLICE OFFICERS REGULARLY PERFORMED THEIR OFFICIAL DUTY MAY ONLY ARISE WHEN THERE IS A SHOWING THAT THE APPREHENDING OFFICER/TEAM FOLLOWED THE REQUIREMENTS OF SECTION 21 OR WHEN THE SAVING CLAUSE FOUND IN THE IMPLEMENTING RULES AND REGULATIONS IS**

SUCCESSFULLY TRIGGERED; THE LAPSES IN THE PROCEDURES UNDERTAKEN BY THE AGENTS OF THE LAW ARE AFFIRMATIVE PROOFS OF IRREGULARITY.— Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellant's conviction. 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 flawed because the lapses themselves are affirmative proofs of irregularity. 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 found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.

5. ID.; ID.; ID.; ID.; EVIDENTIARY MATTERS ARE INDEED WELL WITHIN THE POWERS OF COURTS TO APPRECIATE AND RULE UPON, AND SO, WHEN THE COURTS FIND APPROPRIATE, SUBSTANTIAL COMPLIANCE WITH THE CHAIN OF CUSTODY RULE AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS HAVE BEEN PRESERVED MAY WARRANT THE CONVICTION OF THE ACCUSED.— x x x [T]he chain of custody rule is a matter of evidence and a rule of procedure, and that the Court has the last say regarding the appreciation of evidence. Evidentiary matters are indeed well within the powers of courts to appreciate and rule upon, and so, when the courts find appropriate, substantial compliance with the chain of custody rule as long as the integrity and evidentiary value of the seized items have been preserved may warrant the conviction of the accused.

6. ID.; ID.; ID.; ID.; THE REQUIREMENTS OF MARKING THE SEIZED ITEMS, CONDUCT OF INVENTORY AND TAKING PHOTOGRAPH ARE POLICE INVESTIGATION PROCEDURES WHICH CALL FOR ADMINISTRATIVE SANCTIONS IN CASE OF NON-COMPLIANCE, BUT THE NON-OBSERVANCE THEREOF SHOULD NOT AFFECT THE VALIDITY OF THE SEIZURE OF THE EVIDENCE, BECAUSE THE ISSUE OF CHAIN OF

CUSTODY IS ULTIMATELY ANCHORED ON THE ADMISSIBILITY OF EVIDENCE, WHICH IS EXCLUSIVELY WITHIN THE PREROGATIVE OF THE COURTS TO DECIDE IN ACCORDANCE WITH THE RULES ON EVIDENCE.— [T]he requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance. Violation of such procedure may even merit penalty under R.A. No. 9165 x x x. However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

This is an Appeal[1] under Section 13, Rule 124 of the Rules of Court from the Decision[2] dated September 18, 2015 of the Court of Appeals, Special Eleventh Division (CA), in CA-G.R. CR-HC No. 06285. The CA Decision affirmed the Decision[3] dated January 24, 2013 rendered by the Regional Trial Court of Quezon City, Branch 99 (RTC), in Criminal Case No. Q-09-156944,

---

[1] CA *rollo*, pp. 144-146.

[2] *Rollo*, pp. 2-15. Penned by Associate Justice Rodil V. Zalameda, with Associate Justices Stephen C. Cruz and Pedro B. Corales concurring.

[3] CA *rollo*, pp. 63-71. Penned by Acting Presiding Judge Maria Amifaith S. Fider-Reyes.

which found accused-appellant Norjana Sood *y* Amatondin (accused-appellant) guilty of violating Section 5, Article II of Republic Act No. (RA) 9165.

Facts

The Information against accused-appellant for violating Section 5, Article II of RA 9165 states:

> The undersigned accuses NORJANA SOOD y AMATONDIN for Violation of Section 5, Art. II, R.A. 9165, Comprehensive Dangerous Drugs Act of 2002, committed as follows:
>
> That on or about 28th day of January, 2009 in Quezon City, accused without lawful authority did then and there willfully 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:
>
> five point eighty five (5.85) grams of Methylamphetamine Hydrochloride (Shabu)
>
> CONTRARY TO LAW.[4]

The version of the prosecution is as follows:

> On 28 January 2009, a certain "Florence" was apprehended in a buy-bust operation conducted by police operatives belonging to the Station Anti-Illegal Drugs-Special Operation Task Group, Kamuning Police Station (PS-10), Quezon City Police District. Upon their return to the police station, they were informed by the confidential informant that the dealer of the alleged drugs, accused-appellant, was due to arrive from Caloocan City that afternoon.
>
> Police Senior Inspector Christopher N. Luyun, the Chief of SAID-SOTG, thereafter allowed the continuous police operation for the arrest of accused-appellant. After a briefing for accused-appellant's apprehension, the CI called the latter through a mobile phone on loudspeaker. Pretending to be Florence, the CI asked accused-appellant, "Norjana, pwede ako ulit magconsign ng isang bulto?" Accused-appellant replied: "Sige bigyan kita responde pero ang remittance ay next week" to which the CI answered: "ok, text ka na lang pag

[4] Records, p. 1.

malapit ka na para pasundo kita." The CI and accused-appellant agreed to meet later that day at the place where they usually do their drug transactions.

The police operatives and the CI proceeded to the target area. When the CI saw accused-appellant, she pointed the latter to SPO1 Regato. SPO1 Regato then approached accused-appellant and asked her: "ikaw ba si Norjana, pinapasundo ka pala ni Florence." Accused-appellant replied in the affirmative and added, "ah sige, kuya puwede kayo na magbigay kay Ate Florence kasi nagmamadali ako." She then took from her right pocket two (2) transparent plastic sachets containing white crystalline substance believed to be methylamphetamine hydrochloride, commonly known as "shabu" and handed them to SPO1 Regato, who thereafter introduced himself as a police officer. Accused-appellant was then arrested and apprised of her constitutional rights. Before leaving the target area, SPO1 Regato placed the markings "AR1-28 JAN09" and AR2-28 JAN09" on the plastic sachets.

Accused-appellant was then taken to the barangay hall. SPO1 Regato prepared the Inventory of Seized Properties/Items and the inventory was conducted before Kgd. Manette P. Salazar and Rey Argana, a media representative. Both Kgd. Salazar and Argana signed the certificate of inventory for the two (2) transparent plastic sachets. Afterwards, accused-appellant was brought to the police station. SPO1 Regato turned over the confiscated items to their investigator, PO3 Cortes, who prepared a Request for Laboratory Examination of the subject specimens. Thereafter, SPO1 Regato submitted the evidence to the crime laboratory for examination, which gave positive results to the tests for shabu.[5]

On the other hand, the defense evidence is as follows:

Accused-appellant vehemently denied the prosecution's version of the events which occurred on 28 January 2009. She testified that on the same day, she was laying out her merchandise on the Luzon Overpass, being a sidewalk vendor, when she was apprehended by two (2) men who she thought were officers of the Metro Manila Development Authority. She was taken to the police station where allegedly, the apprehending officers demanded thirty-five thousand

---

[5] *Rollo*, pp. 4-6.

(₱35,000.00) pesos for her release, but she did not file any case against them. Accused-appellant denied selling shabu at the time of her arrest.[6]

The RTC convicted accused-appellant in its Decision dated January 24, 2013, the dispositive portion of which states:

PREMISES GIVEN, the Court orders the following:

i. x x x NORJANA SOOD Y AMATONDIN is found GUILTY under SECTION 5, R.A. 9165 and shall be punished with Life Imprisonment.

ii. the FINE is fixed at Five Hundred Thousand (PHP500,000.00) Pesos.

She shall be credited with the period that she has served in detention.

SO ORDERED.[7]

The RTC found that Section 21 of RA 9165 was not complied with when the inventory was not conducted on site, but excused the same on the ground that the police officers were able to explain or justify the lapses.[8] The RTC likewise ruled that the defense evidence failed to overcome the presumption of regularity in the performance of official duty on the part of the police officers.[9]

Accused-appellant then notified the RTC of her intention to appeal to the CA.[10]

On appeal, the CA affirmed the RTC's conviction in its Decision dated September 18, 2015, the dispositive portion of which states:

WHEREFORE, the instant Appeal is **DENIED**. Accordingly, the Decision of the Regional Trial Court, Branch 99, Quezon City, dated 24 January 2013 is hereby **AFFIRMED *in toto***.

---

[6] *Id*. at 6.

[7] CA *rollo*, pp. 70-71.

[8] *Id*. at 67.

[9] *Id*. at 68.

[10] Records, p. 108.

SO ORDERED.[11]

The CA likewise found that there was non-compliance with Section 21 of RA 9165 but still held that there was "substantial compliance" with the law because the integrity and evidentiary value of the drugs seized were preserved.[12] The CA also found that there were inconsistencies in the testimonies of the buy-bust team as to the place of inventory, but decided to treat them as "minor inconsistencies" that did not affect the credibility of the witnesses.[13]

Accused-appellant then notified the CA that she is appealing the Decision to the Court.[14] Hence, this Appeal.

Issue

The principal issue is whether accused-appellant's guilt was proven beyond reasonable doubt for violating Section 5, Article II of RA 9165.

The Court's Ruling

The Court acquits accused-appellant.

Compliance with Section 21 of RA No. 9165 mandatory

Section 21, Article II of RA 9165 states the procedure to be followed by a buy-bust team in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia. This section was amended by RA 10640[15] which imposed less stringent requirements in the procedure; but the amendment was approved only on July 15, 2014. As the crime in this case

---

[11] *Rollo*, p. 14.

[12] *Id*. at 10.

[13] *Id*. at 11.

[14] *Id*. at 16-18.

[15] 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."

was committed on January 28, 2009, the original version of Section 21 is applicable, thus:

> 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[.]

Here, it is undisputed, as was found by both the RTC and the CA that the prosecution failed to comply with Section 21 of RA 9165. To be sure, the findings of the CA show an utter failure on the part of the police to conduct the inventory at the place of seizure of the drugs. In this regard, the CA pointedly observed that the testimonies of the police officers were conflicting as to whether the purported inventory was conducted, whether at the barangay office or at the police station. SPO1 Regato (SPO1 Regato) testified that the inventory was done in the barangay hall while PO1 Andrew B. Hega (PO1 Hega) testified that the documentation after accused-appellant's arrest was done in the police station:

> Relative thereto, accused-appellant likewise points out that SPO1 Regato and PO1 Hega gave conflicting testimonies. **SPO1 Regato testified that the marking and inventory of the specimens were done in the barangay hall immediately after accused-appellant's apprehension. PO1 Hega, on the other hand, testified that after**

the arrest, they immediately proceeded to the police station for proper documentation and did not mention that the same were done in the area of arrest nor at the barangay hall.

Evidently, the law itself lays down exceptions to its requirements. Thus, noncompliance with the regulations is not necessarily fatal as to render an accused's arrest illegal or the items confiscated from him inadmissible as evidence of his guilt, for what is of the utmost importance is the preservation of the integrity and the evidentiary value of the confiscated items that will be utilized in the determination of his guilt or innocence. Such that, when there is a failure to follow strictly the said procedure, the crime can still be proven, *i.e.*, that the noncompliance was under justifiable grounds or that the shabu taken is the same one presented in court by proof of "chain of custody."

In the case at bar, there was substantial compliance with the law; the integrity and evidentiary value of the drugs seized being preserved. The chain of custody of the drugs subject matter of the case was established by the testimonies of the witnesses as not to have been broken. The factual milieu of the case reveals that after SPO1 Regato had obtained the prohibited drug from the accused-appellant, the latter was immediately arrested. Before leaving the target area SPO1 Regato marked the seized sachets. The accused-appellant was first taken to the barangay hall in order for SPO1 Regato to conduct an inventory of the seized items. The corresponding certificate of inventory was signed accordingly by both the barangay and media representative. Thereafter, the plastic sachets were brought to the crime laboratory to determine the presence of any prohibited drug on the specimens submitted. And as per Chemistry Report No. D-34-09, the specimens submitted contained shabu, a dangerous drug.

While there were conflicting testimonies as to where the inventory was made, it has been held in People vs. Alcala that noncompliance with Section 21 of RA 9165, particularly the making of the inventory and the photographing of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence. The chain of custody of the drug subject matter of the instant case was shown not to have been broken. SPO1 Regato even explained the reason why the inventory of the seized items was done at the barangay hall instead of the place of arrest.

Jurisprudence dictates that minor inconsistencies do not affect the credibility of the witness. We have held that "discrepancies and

inconsistencies in the testimonies of witnesses referring to minor details, and not in actuality touching upon the central fact of the crime, do not impair their credibility. Testimonies of witnesses need only corroborate each other on important and relevant details concerning the principal occurrence. In fact, such minor inconsistencies may even serve to strengthen the witnesses' credibility as they negate any suspicion that the testimonies have been rehearsed."

In reiteration, the arrest of an accused will not be invalidated and the items seized from him rendered inadmissible on the sole ground of noncompliance with Section 21, Article II of RA 9165.[16] (Emphasis and underscoring supplied)

In addition, SPO1 Regato admitted that, at the time of the arrest, there were no witnesses, and that, according to him, this was the reason the inventory was conducted in the barangay hall instead of at the place of arrest of accused-appellant, thus:

Q - Why did you not prepare the Inventory at the area of recovery and arrest of accused?

A - It is so much better to prepare it to (sic) the Barangay so that we will have witnesses for that.[17]

He likewise admitted that the photographing was also conducted in the police station instead of the place of arrest, specifically at the investigation room of the police station:

Q - Before you brought the accused for inquest, what else transpired in your Station in connection with the investigation?

A - The investigator took pictures.

Q - Where was it taken?

A - At the investigation room.

Q - And why not it (sic) was taken at the area of arrest and recover (sic)?

---

[16] *Rollo*, pp. 10-11.

[17] TSN, March 16, 2010, p. 13.

A - We do not have a camera at that time.[18]

Unquestionably, the prosecution failed to prove that the three required witnesses were present during the inventory and photographing of the seized drugs. As the RTC itself found, only the barangay official and media representative were present during the inventory, and they were called in only after the arrest and seizure had already happened — which may have been at the barangay hall or at the police station:

> This Court is convinced, that, whatever lapses may be detected in the compliance with SECTION 21, these have been explained or justified by the Police Officers concerned.
>
> SPO1 ARMADO REGATO in his direct testimony narrated how, through the confidential informant who had posed as a certain "Florence," the Police Officers who were part of the operation, had contacted the Accused NORJANA SOOD Y AMATONDIN. The cell phone was on speaker mode. (TSN, ARACELI P. BONIFACIO, March 16, 2010; pp. 6 to 8.)
>
> SPO1 ARMADO REGATO himself had approached the Accused NORJANA SOOD Y AMATONDIN. She herself handed the two (2) pieces of subject sachet specimen (marked as EXHIBIT C, C-1 and D, D-1) to the same Police Officer. SPO1 ARMADO REGATO identified the Accused NORJANA SOOD Y AMATONDIN as well as EXHIBITS C, C-1 and D, D-1 during his testimony on March 16, 2010.
>
> Admittedly however, there was no sale. No money was exchanged from the Police Officer/Poseur and the Accused NORJANA SOOD Y AMATONDIN. The two (2) pieces of heat sealed plastic sachet were for purposes of delivery to a certain "Florence."
>
> Even if the inventory was conducted at the Barangay Office and not on site, the Police Officer, SPO1 ARMADO REGATO was consistent in pointing out that he has custody of the recovered specimen (EXHIBITS C, C-1, D, D-1) from the area of operation all the way up to the Barangay Hall. (TSN, ARACELI P. BONIFACIO, March 16, 2010, pp. 12 to 13.) In fact, the same Police Officer had prepared the Inventory in the presence of Witnesses. The same Police officer

---

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

also prepared the request the Laboratory Examination and brought the specimen to the Crime Laboratory. (TSN, ARACELI P. BONIFACIO, March 16, 2010, p. 16.)

As Witnesses during the Inventory, there was a Barangay Kagawad and a media representative. (TSN, ARACELI P. BONIFACIO, March 16, 2010, p. 14; pp. 29 to 31.)

On cross examination, SPO1 ARMADO REGATO was able to maintain that "Florence" was another target person, one among others that operate in the area. (TSN, ARACELI P. BONIFACIO, March 16, 2010, p. 22.)[19] (Emphasis and underscoring supplied)

A reading of the testimonies of SPO1 Regato and PO1 Hega shows that they were completely silent as to whether there were any witnesses during the photographing of the seized drugs.

The plain import of Section 21 of RA 9165 is that the buy-bust team is to **conduct the physical inventory and photographing** of the seized items **immediately after seizure** and confiscation **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. And only if this is not practicable, can the inventory and photographing be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.

Here, the buy-bust team admittedly failed to comply with the foregoing requirements. *First*, the conduct of the inventory was not conducted immediately at the place of seizure and apprehension; indeed, the police officers even contradicted each other as to where the inventory was supposedly conducted. This creates a very serious doubt in the Court's mind as to whether an inventory was actually even conducted. If the members of the buy-bust team have markedly different versions of what transpired after the seizure of the items, the Court cannot rely on their testimonies on the conduct of the inventory and photographing.

---

[19] CA *rollo*, pp. 67-68.

Second, even assuming an inventory had been conducted, the prosecution failed to comply with the requirement that the photographing be also done at the place of arrest. The prosecution's excuse of not having a camera is flimsy as they had planned the operation. In the 1999 Philippine National Police Drug Enforcement Manual,[20] the buy-bust team is required to bring a camera in the conduct of buy-bust operations:

ANTI-DRUG OPERATIONAL PROCEDURES

x x x x x x x x x

V. SPECIFIC RULES

A. Planning and Preparation:

x x x x x x x x x

2. After identifying the suspect/s, determining their movements and activities, and establishing their locations, the following must be prepared/undertaken:

a. Buy-Bust Operations

1. Pre-operation Order indicating the name of the suspect/s, address and area of operations, description and quantity of drugs subject of the offense and the team leader and members of operating team/s, signed by the Chief of Unit/Office or his duly authorized subordinate officer.

2. The poseur-buyer and the buy-bust money and request for dusting (ultra-violet powder) if necessary. The buy-bust money shall be covered by a receipt indicating therein the denominations and respective serial numbers of the genuine bills received. (If dusting is necessary, the poseur-buyer must be the one to deliver the buy-bust money to the PNP CLG for dusting together with appropriate request);

3. Handcuffs, ropes and other gadgets to secure the suspect/s and bags/containers to secure and preserve the evidence;

4. Vehicles, communications-electronics equipment, **camera,** weighing scale, indelible marking pens, firearms and other appropriate equipment/gadgets.

---

[20] PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

The reason that the buy-bust team did not have a camera is thus exposed to be nothing more than a convenient excuse that is belied by the foregoing requirements that the team ought to have followed. What makes this reason to be more incredible is that in 2009, mobile phones with cameras were already widely available. Thus, the buy-bust team's failure to even take photographs of the seized drugs at the scene of their seizure gives credence to the assertions of the accused-appellant that no buy-bust had actually taken place, and that the charge against her was completely fabricated.

Finally, and most revealing as to whether or not a buy-bust actually took place is the prosecution's abject and complete failure to comply with the requirement of bringing along the required three witnesses — from the media, the DOJ, and any elected public official. To be certain, these witnesses should already have been present at the time of apprehension and the drugs' seizure, as this is a requirement the buy-bust team could easily have complied with given the nature of a buy-bust operation as a planned activity.

The Court again takes this opportunity to emphasize that the presence of the three witnesses required by Section 21 is precisely to protect and guard against the pernicious practice of policemen in planting evidence. Without the insulating presence of the three witnesses 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 seized drugs that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of accused-appellant.[21]

It is truly disconcerting how the members of the buy-bust team have different testimonies on the place where the inventory was conducted. This is not, by any means, a "minor inconsistency,"

---

[21] *People v. Mendoza*, 736 Phil. 749, 764 (2014).

as erroneously held by the CA. This inconsistency goes into the very heart of whether or not there really was a buy-bust operation that had been conducted.

Failure to show justifiable grounds for non-compliance and establish the chain of custody of the seized drugs

Supplementing RA 9165, Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR) states that in cases of non-compliance with the procedure for inventory and photographing, the IRR imposed the twin requirements of, *first,* there should be justifiable grounds for the non-compliance, and *second*, the integrity and the evidentiary value of the seized items should be properly preserved. Failure to show these **two conditions** renders void and invalid the seizure of and custody of the seized drugs, thus:

> 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[.]**

Here, the prosecution's reason for not conducting the inventory in the place of seizure was that they supposedly wanted to avoid any commotion at the area because there would be vehicular traffic. PO2 Hega testified during his re-direct examination:

> Q - You claimed that the Inventory was made not at the place of arrest Sood?
>
> A - Yes, sir.
>
> Q - What could be reason why it was made in the Station and not in the place of arrest?
>
> A - According to our team leader to avoid any commotion at the area because there will be a vehicular traffic, we will

> proceed to our Station because it is the nearest Station and also we invite thru cellphone the Barangay Kagawad of Roxas District to witness the Inventory.[22]

The foregoing reason hardly qualifies as sufficient justification for not complying with the requirements of Section 21 as to the conduct of the inventory and photographing at the place of seizure. As buy-bust operations are planned, the team could have easily ensured that the conduct of the inventory and photographing would cause minimal disruption to the area. Similarly, in *People v. Mola*,[23] the Court considered the following excuse as hollow: the apprehending officer conducted the inventory at the nearest police station because he was the only one in the area and that there were many persons there. Also, in *People v. Cornel*,[24] the Court ruled that the buy-bust team's excuse of the existence of a commotion was not a justifiable reason for failing to conduct the inventory at the place of seizure. The Court there ruled that seven armed members of the buy-bust team could have easily contained any commotion, thus they should have been able to conduct the marking and inventory at the place of seizure.

Further, and more importantly, the records fail to show any reason for the prosecution's failure to comply with the presence of the three witnesses during the inventory and photographing of the seized drugs.

In light of the foregoing, it is no longer necessary to determine the second requirement of whether the prosecution had been able to prove that the evidentiary value of the seized items had been properly preserved. Nonetheless, and if only to highlight the grave errors of the buy-bust team, the Court will show that even the evidentiary value of the seized items had not been preserved.

---

[22] TSN, January 27, 2011, p. 26.

[23] G.R. No. 226481, April 18, 2018, p. 9.

[24] G.R. No. 229047, April 16, 2018, pp. 9-10.

In *People v. Alviz*,[25] 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)

Given that narcotic substances are not readily identifiable, the Court in *Mallillin v. People*[26] ruled that a more exacting standard compared to other object evidence that are readily identifiable is required to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with. Thus:

> 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

---

[25] 703 Phil. 58, 73 (2013).

[26] 576 Phil. 576 (2008).

render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[27]

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.

Here, **there are serious gaps in the *chain of custody* of the seized drugs** which create reasonable doubt as to its identity and integrity.

First, the glaring inconsistencies in the testimonies of the buy-bust team members make it unclear as to whether the buy-bust team went directly to the police station after the seizure of the drugs or whether they still went to the barangay hall and then proceeded to the police station. *Second*, although there was testimony as to the turnover of the seized drugs from the buy-bust team to the laboratory, there was no testimony on the safekeeping of the seized items after the laboratory testing. *Last*, there was no testimony as to the retrieval of the seized drugs from the laboratory for presentation in court as evidence.

Thus, contrary to the findings of the RTC and CA, the prosecution actually failed to establish the unbroken *chain of custody*. The 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.

The prosecution cannot find cover in the presumption of regularity in the performance of the police officers' duty, and the RTC erred in applying this presumption as against compliance with Section 21 of RA 9165. In a prosecution under RA 9165, all the requirements of Section 21 thereof should be proven; there is no presumption that a buy-bust team has complied with the requirements of this section. The Court reiterates its reminder in *People v. Mamangon*,[28] where it held that:

---

[27] *Id*. at 588-589.

[28] G.R. No. 229102, January 29, 2018.

In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21 of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court**. Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. **If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused and, perforce, overturn a conviction**.[29] (Additional emphasis and underscoring supplied)

The Court supports the State's drive against illegal drugs. But such drive should strictly comply with the law and the Constitution. Although the amount of drugs involved in this case is not insubstantial, this alone does not warrant a relaxation of the rules. In fact, the procedure outlined in Section 21 is straightforward and easy to comply with; and the prosecution should account for and explain any deviations from the mandatory procedure outlined in Section 21. As shown above, the prosecution failed to comply with Section 21 or justifiably explain the deviations from it. Given this, the Constitutional right of accused-appellant to be presumed innocent stands.[30]

WHEREFORE, premises considered, the Appeal is hereby **GRANTED.** The Decision of the Court of Appeals dated September 18, 2015 in CA-G.R. CR-HC No. 06285 is hereby **SET ASIDE**. Accused-appellant Norjana Sood *y* Amatondin is hereby **ACQUITTED** and ordered immediately **RELEASED** from detention unless she is confined for any other lawful cause.

---

[29] *Id*. at 9.

[30] See *People v. Jugo*, G.R. No. 231792, January 29, 2018, pp. 9-10.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections for immediate implementation, and is directed to report to the Court, within five (5) days from receipt of this Decision, the action he has taken.

SO ORDERED.

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

Peralta, J., see separate concurring opinion.

SEPARATE CONCURRING OPINION

PERALTA, *J.*:

I concur with the *ponencia* in acquitting accused-appellant Norjana Sood *y* Amatondin of the charge of illegal sale of dangerous drugs or violation of Section 5, Article II of Republic Act No. (*R.A. No.*) 9165.[1] As aptly noted by the *ponencia*, the testimonies of the police officers were conflicting as to whether the purported inventory was conducted at the *barangay* office of the police station. Significantly, only the *barangay* official and media representative were present during the inventory and the photographing of the seized drugs *sans* a representative from the Department of Justice (*DOJ*), while the reason proffered by the prosecution as to the non-observance of Section 21[2] of

---

[1] "*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*"

[2] 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:

R.A. No. 9165, i.e., "to avoid any commotion at the area because there will be vehicular traffic" is hollow and unjustifiable. Be that as it may, I would like to emphasize on important matters relative to Section 21 of R.A. No. 9165, as amended.

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and added a saving clause in case the procedure is not followed:[3]

> (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.**

It bears emphasis that R.A. No. 10640,[4] which amended Section 21 of R.A. No. 9165, now only requires **two (2) witnesses**

---

(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;

[3] *People v. Ramirez*, G.R. No. 225690, January 17, 2018. (Emphasis ours)

[4] "*AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21*

to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; **and** (b) either a representative from the National Prosecution Service **or** the media.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe conceded 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 the increasing drug addiction and also, in the conflicting decisions of the courts."[5] Senator Poe stressed the necessity for the amendment of Section 21 based on the public hearing that the Senate Committee on Public Order and Dangerous Drugs had conducted, which revealed 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 the remote areas. For another there were instances where elected *barangay* officials themselves were involved in the punishable acts apprehended and thus, it is difficult to get the most grassroot-elected public official to be a witness as required by law."[6]

In his Co-sponsorship speech, Senator Vicente C. Sotto III said that in view of a substantial number of acquittals in drug-related cases due to the varying interpretations of prosecutors and 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."[7] Senator Sotto explained why the said provision should be amended:

OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002" Approved on July 15, 2014.

[5] Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

[6] *Id*.

[7] *Id.*

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 the seized illegal drugs.

x x x x x x x x x

Section 21(a) of RA 9165 need 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 of illegal drugs or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances where 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.[8]

---

[8] *Id.* at 349-350.

However, under the original provision of Section 21 and its IRR, which is applicable at the time the appellant committed the crimes charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses**, namely: (a) a representative from the media, **and** (b) the DOJ, **and**; (c) any elected public official who shall be required to sign copies of the inventory and be given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[9]

The prosecution bears the burden of proving a 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 trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law.[10] 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. It should take note that 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 items.[11] Its strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule to prevent incidents of planting, tampering or alteration of evidence.[12] Here, the prosecution failed to discharge its burden.

---

[9] *People v. Sagana*, G.R. No. 208471, August 2, 2017.

[10] *People v. Miranda*, G.R. No. 229671, January 31, 2018; *People v. Paz*, G.R. No. 229512, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018.

[11] *People v. Saragena*, G.R. No. 210677, August 23, 2017.

[12] *Id.*

With respect to the presence of all the required witnesses under Section 21 of R.A. No. 9165, the prosecution never alleged and proved any of the following reasons, such as: (1) **their attendance was impossible because the place of arrest was a remote area**; (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf**; (3) **the elected official themselves were involved in the punishable acts sought to be apprehended**; (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125**[13] **of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention**; or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape**.

Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellant's conviction. 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 flawed because the lapses themselves are affirmative proofs of irregularity.[14] The

---

[13] Art. 125. ***Delay in the delivery of detained persons to tile 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.

[14] *People v. Ramirez*, *supra* note 3.

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 found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.[15]

At this point, it is not amiss to express my position regarding the issue of which between the Congress and the Judiciary has jurisdiction to determine sufficiency of compliance with the rule on chain of custody, which essentially boils down to the application of procedural rules on admissibility of evidence. In this regard, I agree with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam*[16] that "if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to inadmissibility that would automatically destroy the prosecution's case but rather to the weight of evidence presented for each particular case." As aptly pointed out by Justice Leonardo-De Castro, the Court's power to promulgate judicial rules, including rules of evidence, is no longer shared by the Court with Congress.

I subscribe to the view of Justice Leonardo-De Castro that the chain of custody rule is a matter of evidence and a rule of procedure, and that the Court has the last say regarding the appreciation of evidence. Evidentiary matters are indeed well within the powers of courts to appreciate and rule upon, and so, when the courts find appropriate, substantial compliance with the chain of custody rule as long as the integrity and evidentiary value of the seized items have been preserved may warrant the conviction of the accused.

I further submit that **the requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ**

---

[15] *People v. Gajo*, G.R. No. 217026, January 22, 2018.

[16] G.R. No. 202206, March 5, 2018.

and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance. Violation of such procedure may even merit penalty under R.A. No. 9165, to wit:

Section 29. *Criminal Liability for Planting of Evidence*. — Any person who is found guilty of "planting" any dangerous drug and/or controlled precursor and essential chemical, regardless of quantity and purity, shall suffer the penalty of death.

Section 32. *Liability to a Person Violating Any Regulation Issued by the Board*. – The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person found violating any regulation duly issued by the Board pursuant to this Act, in addition to the administrative sanctions imposed by the Board.

However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence.

SECOND DIVISION

[G.R. No. 227427. June 6, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DELIA CALLEJO *y* TADEJA and SILVERA ANTOQUE *y* MOYA @ "Inday",** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; AS THE DRUG ITSELF IS THE *CORPUS DELICTI* OF THE OFFENSE, IT IS OF PARAMOUNT IMPORTANCE THAT THE IDENTITY AND INTEGRITY OF THE SEIZED DRUGS ARE PRESERVED.—** 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. On the other hand, a successful prosecution for the crime of illegal possession of dangerous drugs under Section 11 of RA 9165 requires sufficient proof that: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. In 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 preserved. Each link in the chain of custody of the seized drugs must be established.

2. **ID.; ID.; CHAIN OF CUSTODY; ALL REQUIREMENTS MUST BE COMPLIED WITH; ANY DEVIATION MAY BE ALLOWED ONLY IN THE PRESENCE OF JUSTIFIABLE GROUNDS AND THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS WERE PROPERLY PRESERVED BY THE APPREHENDING TEAM.—** Section 21, Article II of RA 9165 prescribes the procedure to be followed by the apprehending officers in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia. RA 9165 was later amended by RA 10640, which was approved on July 15, 2014. Since the offenses subject of this appeal were allegedly committed on August 13, 2010, the *original* version of Section 21 applies. x x x Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR) filled in the details as to the prescribed place of inventory and photographing. The provision also added a saving clause in case of non-compliance with the

requirements under justifiable grounds, x x x All the requirements must be complied with for a successful prosecution for the crime of illegal sale and possession of drugs under Sections 5 and 11 of RA 9165. Any deviation in the mandatory procedure must be satisfactorily justified by the apprehending officers. Under Section 21 of the IRR, the Court may allow deviation from the procedure only where the following requisites concur: (a) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (b) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. If these two elements are present, the seizure and custody over the confiscated items shall not be rendered void and invalid.

3. ID.; ID.; ID.; THREE-WITNESS RULE; THE THREE REQUIRED WITNESSES SHOULD ALREADY BE PRESENT AT THE TIME OF APPREHENSION.— 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.** x x x **By the same token, 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**.

4. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF INNOCENCE OF THE ACCUSED PREVAILS AS AGAINST THE PRESUMPTION OF REGULAR PERFORMANCE OF OFFICIAL DUTIES WITH LAPSES.— 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. 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. x x x The presumption of

regularity cannot overcome the stronger 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. Verily, strict compliance with Section 21 of RA 9165 and the IRR is **mandated** under the 2010 PNP Manual on Anti-Illegal Drugs Operation and Investigation (2010 AIDSOTF Manual) which was then applicable.

PERALTA, *J., separate concurring opinion*:

CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY; THREE WITNESSES REQUIRED TO BE PRESENT DURING THE PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED ITEMS; NON-COMPLIANCE THEREOF MUST BE ADEQUATELY EXPLAINED.— [U]nder the original provision of Section 21 and its IRR, which is applicable at the time the appellants committed the crimes charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses**, namely: (a) a representative from the media, **and** (b) the DOJ, **and**; (c) any elected public official who shall be required to sign copies of the inventory and be given copy thereof. x x x The prosecution bears the burden of proving a 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 trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of 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. It should take note that 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 items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.

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

CAGUIOA, *J.*:

The Case

This is an appeal[1] filed pursuant to Section 13(c), Rule 124 of the Rules of Court (Rules) from the Decision[2] dated February 11, 2016 (Assailed Decision) rendered by the Court of Appeals (CA) Ninth Division in CA-G.R. CR-H.C. No. 05455.

The Assailed Decision affirms the Decision[3] dated November 29, 2011 issued by the Regional Trial Court of Makati, Branch 65 (RTC) in Criminal Case Nos. 10-1555 to 10-1556 finding:

(i) Appellants Delia Callejo y Tadeja (Callejo) and Silvera Antoque y Moya (Antoque) (collectively, appellants) guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. (RA) 9165;[4] and

(ii) Appellant Callejo guilty beyond reasonable doubt for violation of Section 11, Article II of RA 9165.

The Facts

The appellants were charged under two (2) separate Informations, the accusatory portion of which reads:

---

[1] *Rollo,* pp. 13-15.

[2] *Id.* at 2-12. Penned by Associate Justice Melchor Q.C. Sadang, with Associate Justices Celia C. Librea-Leagogo and Amy C. Lazaro-Javier concurring.

[3] Records, pp. 169-176. Penned by Presiding Judge Edgardo M. Caldona.

[4] 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, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002".

[Criminal Case No. 10-1555 (Section 5 charge)]

On or about the 13th day of August, 2010, in the city of Makati, the Philippines, [Callejo and Antoque], conspiring and confederating together and mutually helping and aiding one another, did then and there willfully, unlawfully, and feloniously **sell, deliver and distribute**, without being authorized by law, **zero point zero eighty (0.080) gram of methamphetamine hydrochloride, a dangerous drug**, in consideration of [Php500.00].

CONTRARY TO LAW.[5] (Emphasis supplied)

[Criminal Case No. 10-1556 (Section 11 charge)]

On or about the 13th day of August 2010 in the city of Makati, the Philippines, [Callejo], not being lawfully authorized to possess any dangerous drugs and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously **have in her possession, direct custody, and control zero point zero ten (0.010) gram of methamphetamine hydrochloride**, a dangerous drug.

CONTRARY TO LAW.[6] (Emphasis supplied)

At the arraignment, both appellants pleaded not guilty.[7]

During the preliminary conference, the parties stipulated upon the existence of specific pieces of object and documentary evidence identified therein.[8] The parties also stipulated on the

---

[5] Records, p. 2.

[6] *Id.* at 6.

[7] *Rollo,* p. 3.

[8] The Minutes of the Preliminary Conference detail the following object and documentary evidence stipulated upon by the parties: (i) Coordination Form dated August 13, 2010; (ii) Certificate of Coordination; (iii) Petty Cash Voucher; (iv) One (1) Php500.00 bill; **(v) Inventory Receipt**; (vi) Photographs; (vii) Temporary Medical Certificate of Callejo; (viii) Temporary Medical Certificate of Antoque; (ix) Spot Report; (x) Joint Affidavit of Arrest; (xi) Affidavit of Undertaking executed by PO3 Castillo; (xii) Case Referral; (xiii) Request for Laboratory Examination; (xiv) Small Brown Envelope; (xv) Two (2) heat-sealed plastic sachets containing white crystalline substance with markings "DTC-1" and "DTC-2"; **(xvi) Physical Science Report No. "D-287-10s"**; (xvii) Request for Drug Test; and (xviii) Drug Test Results. (Emphasis supplied) See records, p. 46.

subject matter of the testimonies of police investigator PO3 Rafael Castillo (PO3 Castillo), forensic chemist Police Senior Inspector Anamelisa Bacani (PSI Bacani), and Dr. Ian Ezpeleta, the physician who conducted the medical and physical examination on the person of the appellants.[9]

Thereafter, trial ensued.

To bolster its case, the prosecution presented the testimonies of PO3 Eric T. Ramos (PO3 Ramos) and PO1 Michelle V. Gimena (PO1 Gimena) of the Station Anti-Illegal Drugs Special Operations Task Group (SAID-SOTG), and Barangay Kagawad Miguelito P. Bernal, Jr. (Kagawad Bernal).

Their testimonies were summarized by the CA, as follows:

> x x x [O]n August 13, 2010, at around 3:10 PM, PO3 Ramos was at the [SAID-SOTG] office of the Makati City Police Station with other police officers. They received a report from their confidential informant about an on-going illegal drug activity in Araro [Street], Barangay Palanan, Makati City. After PO3 Ramos prepared a Coordination Form (Exh. "A") for submission to the Philippine Drug Enforcement Agency (PDEA), the police officers planned a buy-bust operation against one "Delia Callejo" and "alias *Bitoy*" to be led by Police Chief Inspector Jonathan B. Villamor [PCI Villamor]. **PO3 Ramos was designated as poseur-buyer and [PO1 Gimena] as his immediate back-up**. PCI Villamor gave PO3 Ramos a [Php500.00] bill (Exh. "D") to be used in the operation. PO3 Ramos marked the bill by putting his initials "ER" above the serial number thereof. Together with the informant, the police team proceeded to the target area at Araro [Street]. Arriving at the place, PO3 Ramos and the informant walked towards an alley, PO1 Gimena trailing them by about 15 meters. PO3 Ramos and the informant then saw their target person, later identified as Callejo, talking with another woman, later identified as Antoque. **Callejo and Antoque knew the informant and Antoque approached and talked to him saying, "*[m]ay ibibigay ako sa'yo*."** The informant introduced PO3 Ramos to the two women. **Antoque offered the dangerous drug to PO3 Ramos. After PO3 Ramos handed the marked [Php500.00] bill to Antoque, Callejo gave him a plastic sachet containing shabu.**

---

[9] Records, p. 47.

PO3 Ramos lit a cigarette as a signal to his companions that the transaction had been completed. He introduced himself to the two women as a police officer and arrested and apprised them of their constitutional rights. Antoque tried to escape but was prevented by [PO1 Gimena]. **PO3 Ramos confiscated the marked money from Antoque and took custody of the plastic sachet (Exh. "N") subject of the sale. PO1 Gimena recovered another plastic sachet (Exh. "O") from Callejo**. At the place of arrest, PO3 Ramos marked the two sachets with Callejo's initials "DTC-1" and "DTC-2." A member of the back-up team went to see Kagawad Bernal to ask him to assist in the inventory of the confiscated items. The accused and the seized items were presented to Bernal who later watched as PO3 Ramos prepared the Inventory Receipt (Exh. "E"). Bernal signed the Inventory Receipt after ascertaining that the items listed were the items actually shown to him. The entire process was photographed by PO1 Gimena. PO3 Ramos then turned over the items and the Inventory Receipt to PO3 Rafael Castillo [PO3 Castillo], the Investigator on Case. PO3 Castillo prepared a request for laboratory examination (Exh. "L") of the subject specimens and a request for drug test (Exh. "Q") on the person of the two suspects. PO1 Gimena delivered the requests and the specimens to the PNP Crime Laboratory in Makati City between 7:20 PM and 7:25 PM of August 13, 2010. The specimens delivered were found positive for shabu.[10] (Emphasis supplied)

The appellants denied the prosecution's allegations and claimed that the charges filed against them were completely fabricated. The CA summarized the appellants' testimonies, as follows:

x x x Callejo testified that at 2:30 PM of [August 13, 2010], she was taking a bath in her house at Araro [Street]. Her brother's girlfriend, Rowena, was also in the house. Thereafter, she left the house and went to an alley to do laundry work for a neighbor. She chanced upon PO3 Ramos who was in civilian clothes. PO3 Ramos suddenly grabbed her hand and told her, "*Ilabas mo na*." She told [PO3 Ramos] that she does not know what he was looking for. He slapped her on the face, handcuffed her, pointed his short firearm at her, and arrested her. She did not say anything or ask why she was arrested. It was only Rowena who had witnessed the incident. As she and PO3 Ramos

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

were going out of the alley, she saw Antoque talking with PO1 Gimena, also in civilian clothes. Antoque was also in handcuffs. Shortly thereafter, she and Antoque were shown plastic containers which were on top of a table in front of a store. PO3 Ramos told her that the items were recovered from her house. She was surprised because she did not see any police operative enter her house. The police officers called Kagawad Bernal and made him sign a document. She and Antoque were then boarded inside a van and brought to the police station where they were detained.

x x x x x x x x x

Antoque denied having sold illegal drugs. She claimed that on August 13, 2010, at 3 PM, she was in the house of her neighbor, Apple, at Araro Street watching TV with Apple's children, Kulit and Ryan[,] while Apple was doing laundry. Suddenly, [PO1 Gimena] approached her from behind and told her that she will ask her some questions. However, PO1 Gimena did not ask questions and instead grabbed her, searched the left back pocket of her short pants, and handcuffed her. PO1 Gimena did not get anything from Antoque's pocket or placed anything in it. Antoque asked PO1 Gimena why she handcuffed her but she was told to keep quiet. x x x Antoque and PO1 Gimena then walked out of the alley and headed to a store nearby and there she saw "plastics" being placed on a table. She saw Callejo for the first time on that day when PO3 Ramos and Callejo chanced upon her at the alley. She and Callejo were made to sit in front of the table. Kagawad Bernal asked them what happened and they told him that they do not know but they were suddenly handcuffed and brought before him. Thereafter, they were boarded in a van and brought to the SAID-SOTG office. x x x[11]

In a Decision dated November 29, 2011, the RTC found appellants guilty beyond reasonable doubt, thus:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

> In Criminal Case No. 10-1555, the [RTC] finds the accused, DELIA CALLEJO y TADEJA and SILVERA ANTOQUE y MOYA, GUILTY, beyond reasonable doubt of the charge for **violation of Section 5[,] Article II, [RA] 9165** and sentences

[11] *Id*. at 5-6.

them to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos [Php]500,000.00 each;

In Criminal Case No. 10-1556, the [RTC] finds the accused DELIA CALLEJO y TADEJA, GUILTY beyond reasonable doubt of the charge for **violation of Section 11[,] Article II, [RA] 9165** and sentences her to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum and to pay a fine [of] Three Hundred Thousand Pesos [Php]300,000.00[.]

x x x x x x x x x

SO ORDERED.[12] (Emphasis supplied)

On the Section 5 charge, the RTC ruled that sufficient evidence exists on record to establish that the buy-bust operation conducted by the SAID-SOTG was valid.[13] Further, the RTC held that the prosecution successfully established the identity of the *corpus delicti* in the present case, as the integrity and evidentiary value of the plastic sachet marked as "DTC-1" which was purchased from Callejo had been "well safeguarded as to be reliable."[14]

On the Section 11 charge, the RTC held that the prosecution sufficiently proved that the plastic sachet marked as "DTC-2" containing *shabu* had been recovered from Callejo's possession, and that the latter possessed the same freely and consciously, without proper authority.[15]

The RTC rejected the appellants' defense of frame-up. In essence, the RTC held that the presumption of regularity in the performance of official duties stand in the absence of clear and convincing evidence showing any ill motive on the part of the SAID-SOTG operatives.[16] For this reason, the RTC ascribed

---

[12] Records, pp. 175-176.

[13] *Id*. at 172.

[14] *Id*. at 173.

[15] *Id*. at 174.

[16] *Id*.

credence to the testimonial evidence presented by the prosecution, having found no reason to doubt the same.[17]

CA Proceedings

On December 2, 2011, the appellants filed a Notice of Appeal[18] which was given due course in the RTC's Order[19] dated December 21, 2011. Thereafter, the parties filed their respective briefs.[20]

In the Brief for the Accused-Appellants[21] dated November 23, 2012, appellants averred that the RTC gravely erred when it found them guilty of the offenses charged despite the broken chain of custody in the seizure and handling of the alleged *corpus delicti*.[22] In particular, appellants raised the following gaps in the chain:

(i) The testimony of investigating officer PO3 Castillo was not presented to **confirm that he received the seized items from apprehending officers** PO3 Ramos and PO1 Gimena;[23] and

(ii) The testimony of forensic chemist PSI Bacani was not presented **to explain how the seized items were placed in her custody**, and affirm the veracity of the findings in her Physical Science Report purportedly confirming that the sachets seized from the appellants contain methylamphetamine hydrochloride.[24]

---

[17] *Id*. at 174-175.

[18] CA *rollo,* p. 26.

[19] *Id*. at 27.

[20] Brief for the Accused-Appellants dated November 23, 2012 and Brief for the Appellee dated April 10, 2013. See *id*. at 43-56 and 75-87.

[21] CA *rollo,* pp. 43-56.

[22] *Id*. at 49.

[23] See *id*. at 50-52.

[24] See *id*. at 52.

In the Brief for the Plaintiff-Appellee[25] dated April 10, 2013, the Office of the Solicitor General[26] (OSG) emphasized that the parties had already stipulated upon the subject matter of PO3 Castillo and PSI Bacani's testimonies, and it is precisely because of this reason that their presentation in open court had been dispensed with.[27] The OSG further averred that in any case, there is nothing in RA 9165 or its implementing rules which requires each and everyone who came in contact with the seized drugs to testify in court, as long as the chain of custody of the seized drugs is clearly established to be unbroken.[28]

On the basis of the foregoing submissions, the CA rendered the Assailed Decision affirming the RTC Decision. The dispositive portion of said Decision reads:

WHEREFORE, the appeal is **DENIED**. The November 29, 2011 Decision of the [RTC] in Criminal Case Nos. 10-1555 and 10-1556 is **AFFIRMED.**

SO ORDERED.[29]

Aggrieved, the appellants filed their Notice of Appeal[30] dated March 8, 2016 on even date. Appellants' Notice of Appeal was given due course by the CA through its Resolution[31] dated April 5, 2016.

On December 5, 2016, the Court issued a Resolution[32] requiring the parties to file their respective supplemental briefs within thirty (30) days from notice.

---

[25] *Id*. at 73-87.

[26] For and on behalf of the People of the Philippines.

[27] CA *rollo,* p. 82.

[28] *Id*. at 83.

[29] *Rollo*, p. 12.

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

[31] *Id*. at 16.

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

The OSG and the appellants filed their respective manifestations[33] dated April 19, 2017 and May 5, 2017 stating that they will no longer file supplemental briefs.

The Issues

The Court is now called upon to determine whether the CA committed reversible error in sustaining:

(i) Callejo and Antoque's conviction for violation of Section 5, Article II of RA 9165; and

(ii) Callejo's conviction for violation of Section 11, Article II of RA 9165.

The Court's Ruling

The appeal is meritorious.

After a very thorough review of the records, the Court resolves to acquit appellants Antoque and Callejo as the prosecution utterly failed to prove that the SAID-SOTG complied with the mandatory requirements of Section 21 of RA 9165, and establish the unbroken chain of custody of the seized items.

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.[34]

On the other hand, a successful prosecution for the crime of illegal possession of dangerous drugs under Section 11 of RA 9165 requires sufficient proof that: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.[35]

---

[33] Manifestation and Motion dated April 19, 2017 filed by the OSG and Manifestation (In Lieu of Supplemental Brief) dated May 5, 2017 filed by the appellants. See *rollo,* pp. 26-30 and 21-25.

[34] *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 251.

[35] *People v. Ceralde*, G.R. No. 228894, August 7, 2017, p. 5.

In cases involving dangerous drugs, the drug itself constitutes the *corpus delicti* of the offense.[36] 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.

Notably, while the present appeal involves two separate charges for sale and possession of dangerous drugs, both charges stem from a single buy-bust operation, and in turn, a single chain of custody.

The requirements of paragraph 1, Section 21, Article II of RA 9165

Section 21, Article II of RA 9165 prescribes the procedure to be followed by the apprehending officers in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia. RA 9165 was later amended by RA 10640,[37] which was approved on July 15, 2014. Since the offenses subject of this appeal were allegedly committed on August 13, 2010, the *original* version of Section 21 applies. Said original version reads:

> SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically**

---

[36] *People v. Suan*, 627 Phil. 174, 179 and 188 (2010).

[37] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, otherwise known as the "COMPREHENSIVE DANGEROUS DRUGS ACT of 2002."

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 the prescribed place of inventory and photographing. The provision also 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 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[.]

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:

(i) The initial custody requirements must be done immediately after seizure or confiscation;

(ii) 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 Department of Justice (DOJ); and

d. any elected public official.

(iii) The conduct of the physical inventory and photograph shall be done at the:

a. place where the search warrant is served; or

b. 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 and possession of drugs under Sections 5 and 11 of RA 9165. Any deviation in the mandatory procedure must be satisfactorily justified by the apprehending officers. Under Section 21 of the IRR, the Court may allow deviation from the procedure only where the following requisites concur: (a) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (b) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. If these two elements are present, the seizure and custody over the confiscated items shall not be rendered void and invalid.[38]

---

[38] See *People v. Cayas*, 789 Phil. 70, 79-80 (2016).

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.[39] 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.[40]

In this case, the SAID-SOTG committed patent procedural lapses in the seizure, initial custody, and handling of the seized drug that create **reasonable doubt** as to the identity and integrity of the drugs and consequently, reasonable doubt as to the guilt of the appellants.

The SAID-SOTG 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 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, does the IRR allow that the inventory and photographing 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, this also means that the three required witnesses should already be physically present at the time of apprehension**

---

[39] *Gamboa v. People*, G.R. No. 220333, November 14, 2016, 808 SCRA 624, 637, citing *People v. Umipang*, 686 Phil. 1024, 1038-1039 (2012).

[40] *Id*. at 637-638.

— 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 SAID-SOTG failed to comply with the three-witness rule.

As confirmed by the testimonies presented by the prosecution, Kagawad Bernal was called to the place of arrest only *after* the apprehension of the appellants and the alleged seizure of drugs from their possession. In fact, Kagawad Bernal averred that he was surprised when he was summoned by the SAID-SOTG while he was cooking lunch in his home, which, in turn, happened to be near the place of arrest. It thus becomes evident that the enlistment of Kagawad Bernal's participation came as a mere afterthought, as a means to secure his signature on the Inventory Receipt prepared by poseur-buyer PO3 Ramos.

Kagawad Bernal testified:

CROSS-EXAMINATION [OF KAGAWAD BERNAL] BY [ATTY. PHILOMEL FRANCISCO[41] (ATTY. FRANCISCO)]

x x x x x x x x x

Q: Mr. Witness, I would like to ask you, where were you on August 13, 2010 at around 3:10 in the afternoon?

A: I was at home, sir.

Q: Where in particular?

A: 4494 Araro Street, Palanan, Makati City.

Q: What were you doing, if any, during that time?

A: That time, sir, I was cooking.

Q: **So, is it correct to say, Mr. Witness, that during this time, you did not witness the alleged arrest upon the person of the two (2) accused?**

---

[41] Counsel for appellants.

A: **Yes.**

Q: **And is it also correct to say that you did not witness the alleged seizure of the items as indicated in this Inventory Receipt when you signed them?**

A : **Yes.**

Q: During the time that they were arrested?

A: Yes, sir.

Q: **And [were you] just surprised that a police officer went to your house and requested you to sign an Inventory Receipt with respect to this case?**

A: **Yes, sir.**

x x x x x x x x x

Q: So, Mr. Witness, do you agree with me that you have no personal knowledge as to the alleged arrest upon the person of these two accused?

A: ...What...

Q: **You have no personal knowledge as to the circumstances surrounding the arrest upon the person of these two x x x accused?**

A: **Yes, sir.**

Q: **And also, you have no personal knowledge as to the seizure of these items as indicated in the Inventory Receipt from the two accused?**

A: **Yes, sir, I wasn't there.**[42] (Emphasis supplied.)

As to the absence of witnesses from the DOJ and the media, PO1 Gimena testified:

[Cross-examination of PO1 Gimena by Atty. Francisco:]

Q: Was there any representative from the [DOJ] during the inventory?

---

[42] TSN, May 10, 2011, pp. 11-12; records, pp. 290-291.

A: None, sir.

Q: How about any media personnel?

A: None also, sir. [43]

The above testimonies glaringly show that SAID-SOTG's lone witness, Kagawad Bernal, was not called to be present near or at the place of arrest. **In fact, Kagawad Bernal himself confirmed that he did not even have prior knowledge of the buy-bust operation and that he was even taken by surprise when he was summoned to witness the physical inventory and sign the Inventory Receipt thereafter**.

Further, no explanation was offered as to the absence of the two other insulating witnesses from the DOJ and the media. The submissions of the prosecution do not indicate that the SAID-SOTG exerted genuine effort in order to secure their presence at the time of apprehension.

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*,[44] 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 sachets that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.[45]

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the

---

[43] *Id*. at 24-25; *id*. at 249-250.

[44] 736 Phil. 749 (2014).

[45] *Id*. at 764.

buy-bust arrest. It is at this point when 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 insulating 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.

As stated earlier, there is a saving clause in Section 21 of the IRR, which states: "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 *People v. Alviz*,[46] 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.

---

[46] 703 Phil. 58, 73 (2013).

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 this case, gaps exist in the chain of custody of the seized items which creates reasonable doubt as to the identity and integrity thereof.

To recall, the appellants allege that the prosecution's failure to offer the testimonies of PO3 Castillo and PSI Bacani in open court left two gaps in the chain of custody of the seized items. According to the appellants, such failure also renders the statements in PO3 Castillo's Inventory Receipt and PSI Bacani's Physical Science Report inadmissible due to lack of proper authentication. The OSG contends, however, that the subject matter of the testimonies of PO3 Castillo and PSI Bacani, as well as the veracity of the statements in the Inventory Receipt and Physical Science Report, can no longer be assailed since they had been stipulated upon by the parties during the preliminary conference.

In this respect, the Court finds that while the parties indeed made the stipulations in question, such stipulations do not relate to or do not cover the specific manner through which the seized items were handled while in their possession. Further, they do not indicate how such items were subsequently turned over to the next responsible party.

PO3 Ramos testified that he turned over the seized items to PO3 Castillo for investigation and referral after physical

inventory and photographing.[47] **Notably, however, no other testimony was offered to explain how the seized items were passed on and placed in the hands of PO3 Castillo and PSI Bacani, or how the integrity of said items were preserved while they remained in their custody.**

The Court's ruling in *People v. Sanchez*[48] (*Sanchez*) lends guidance. In *Sanchez,* the trial court dispensed with the testimony of the forensic chemist therein after the parties stipulated that "the items allegedly confiscated from the accused were submitted to the crime laboratory for examination and the findings were put into writing."[49] As a result, only the sole testimony of the poseur-buyer was presented to attest to the chain of custody of the seized items therein. The Court held:

> x x x [The sole testimony presented by the prosecution] failed to disclose the identities of the desk officer and the investigator to whom the custody of the drugs was given, and how the latter handled these materials. No reference was ever made to the person who submitted the seized specimen to the PNP Crime Laboratory for examination. Likewise, no one testified on how the specimen was handled after the chemical analysis by the forensic chemist. **While we are aware that the RTC's Order of August 6, 2003 dispensed with the testimony of the forensic chemist because of the stipulations of the parties, we view the stipulation to be confined to the handling of the specimen at the forensic laboratory and to the analytical results obtained. The stipulation does not cover the manner the specimen was handled before it came to the possession of the forensic chemist and after it left his possession**. To be sure, personnel within the police hierarchy (as SPO2 Sevilla's testimony casually mentions) must have handled the drugs but evidence of how this was done, *i.e.*, how it was managed, stored, preserved, labeled and recorded from the time of its seizure, to its receipt by the forensic laboratory, up until it was presented in court and subsequently destroyed — is absent from the evidence adduced during the trial. x x x

---

[47] TSN, February 22, 2011, pp. 14-15; records, pp. 197-198.

[48] 590 Phil. 214 (2008).

[49] *Id*. at 225.

The recent case of *Lopez v. People* is particularly instructive on how we expect the chain of custody or "movement" of the seized evidence to be maintained and why this must be shown by evidence:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same**.[50] (Emphasis supplied)

In turn, the importance of establishing the chain of custody in drugs cases was explained in *Mallillin v. People*[51]:

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.[52]

---

[50] *Id*. at 237-238.

[51] 576 Phil. 576 (2008).

[52] *Id*. at 588-589.

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.

As in *Sanchez,* the scope of the stipulations made by the parties in this case were similarly narrow:

MINUTES OF THE PRELIMINARY CONFERENCE

x x x The prosecution offered for stipulation the **existence** of the following documentary and object evidence, to which the defense was amenable:

x x x x x x x x x

5. Inventory Receipt

x x x x x x x x x

16. Physical Science Report No. "D-287-10s"

x x x x x x x x x

The prosecution and the defense likewise stipulated on **the subject matter** of the testimonies of the following witnesses: [PO3 Castillo], the police investigator on [the] case; [PSI Bacani] the forensic chemist who conducted the laboratory examination on the items allegedly taken from the accused and on the urine sample x x x. Hence, their testimonies in open court were already dispensed with.[53] (Emphasis supplied)

Considering the limited scope of the foregoing stipulations, as well as the lack of any other evidence to supplement the same, the Court finds that the prosecution failed to establish each link in the chain of custody as required by Section 21. Such failure casts doubt on the identity and integrity of the seized items which cannot be excused through the expedience of invoking presumption of regularity.

The apprehending officers' testimonies are plagued with material inconsistencies.

---

[53] Records, pp. 46-47.

The narrative presented by the SAID-SOTG anent the identity of their confidential informant is marred with inconsistencies. During the course of their respective examinations in open court, both PO3 Ramos and PO1 Gimena refused to reveal the identity of their confidential informant on the premise of confidentiality and secrecy. On cross-examination, however, both officers admitted that said informant was known to the appellants and had openly assisted in brokering the sale between PO3 Ramos and Callejo during the buy-bust operation.

PO3 Ramos and PO1 Gimena testified:

CROSS-EXAMINATION [OF PO3 RAMOS] BY ATTY. FRANCISCO:

Q: According to your Affidavit of Arrest, Mr. Witness, you mentioned that a regular confidential informant called your office, what do you mean by a "regular confidential informant"?

A: It means, sir, that said confidential informant had given us two or more information.

x x x x x x x x x

Q: Can you give us the name of this confidential informant?

A: No, sir, it's confidential.

Q: **You cannot give the name of this informant but yet, he was with you during the operation, is that correct?**

A: **Yes, sir.**

Q: Will it not compromise the security and identity when he was with you all along during the operation?

A: During that time, sir, he was wearing a cap and his mouth was covered by a handkerchief, to establish another identity, we just want him to pinpoint the drug pushers.

x x x x x x x x x

THE COURT:

x x x x x x x x x

Q: Was the informant known to the two accused?

A: Yes, sir.

Q: And yet, according to you, the informant has to wear a face mask?

A: Our informant was known to them, that's why they gave us the shabu, they knew the informant, sir.

Q: **Yes, but then again, according to you, your informant has to wear this mask on his face. Why did he have to do that when he was already acquainted with the two (2) accused?**

A: **What I know, your Honor, [is] that's his style.**

Q: Whose style was that?

A: That's the style of the informant, your Honor, because he has to avoid someone in that place.

Q: **But don't you think by wearing a mask could give somewhat an alert on the part of the two (2) accused that something wrong could happen?**

A: Our transaction, your Honor, was[:] the informant was in need, then this Inday [Antoque] approached me and said, "may ibibigay ako sa'yo". That's how easy it is to buy from them.[54] (Emphasis supplied)

CROSS-EXAMINATION [OF PO1 GIMENA] BY ATTY. FRANCISCO:

x x x x x x x x x

Q: Madam Witness, you indicated in your Joint Affidavit of Arrest, particularly in item number 1 that prior to the suspect's arrest, your attention was called upon thru a report of a regular confidential informant, is that correct?

A: Yes, sir.

x x x x x x x x x

Q: And what's the name of this confidential informant?

---

[54] TSN, February 22, 2011, pp. 15-16, 18-19; records, pp. 198-199, 201-202.

A: I am sorry, sir, I cannot indicate the name of the asset, sir.

Q: **And the reason is?**

A: **For confidentiality, sir.**

Q: Of course, you cannot divulge the name or disclose the name of this confidential informant to this honorable Court because according to you, number one it is confidential, number 2 to protect the identity of this person from the accused, correct?

A: Yes, sir.

x x x x x x x x x

THE COURT:

x x x x x x x x x

Q: How did PO3 Ramos established (sic); meaning transact with the two (2) accused?

A: He was assisted by the asset, your Honor, to the suspect.

x x x x x x x x x

Q: And PO3 Ramos knew the confidential informant?

A: Yes, your Honor.

x x x x x x x x x

Q: PO3 Ramos knows the informant, the two (2) accused knows (sic) the informant and of course as you said the informant was present during the buy-bust operation?

A: Yes, your Honor.

x x x x x x x x x

Q: So, it's only Fiscal, the defense counsel as well as the court who are in the dark regarding the identity of the informant because as you said, he is already known to the two (2) accused as well as the other police officers?

A: Yes, your Honor.

Q: **And yet, although he is already known to the two (2) accused you still believe that by not divulging his name you will be able to protect his security?**

A: **Yes, your Honor**.[55] (Emphasis supplied)

The foregoing testimonies are nonsensical and are simply not worthy of belief. The apprehending officers' inability to sufficiently explain why the confidential informant was permitted to openly participate with a mask on his face or handkerchief covering his mouth in the buy-bust operation despite the proclaimed need to preserve his identity for security purposes casts a cloud of doubt over the SAID-SOTG's narrative.

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.[56] The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged.[57]

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.[58] In *People v. Enriquez*,[59] 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*."[60] (Emphasis supplied)

---

[55] TSN, April 12, 2011, pp. 15-19; *id*. at 240-244.

[56] 1987 Constitution, Art. III, Sec. 14(2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

[57] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[58] *People v. Mendoza*, *supra* note 44, at 770.

[59] 718 Phil. 352 (2013).

[60] *Id*. at 366.

The presumption of regularity cannot overcome the stronger presumption of innocence in favor of the accused.[61] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[62] Trial courts have been directed by the Court to apply this differentiation.[63]

Verily, strict compliance with Section 21 of RA 9165 and the IRR is **mandated** under the 2010 PNP Manual on Anti-Illegal Drugs Operation and Investigation (2010 AIDSOTF Manual) which was then applicable[64]:

Section 13. Handling, Custody and Disposition of Drug Evidence

a. **In the handling, custody and disposition of the evidence, the provision of Section 21, RA 9165 and its IRR shall be strictly observed.**

b. Photographs of the pieces of evidence must be taken upon discovery without moving or altering its position in the place where it is situated, kept or hidden, including the process of recording the inventory and the weighing of dangerous drugs, and if possible under existing conditions, with the registered weight of the evidence on the scale focused by the camera, in the presence of persons required, as provided under Section 21, Art II, RA 9165.

c. The seizing officer must mark the evidence with his initials indicating therein the date, time and place where the evidence was found and seized. The seizing officer shall secure and preserve the evidence in a suitable evidence bag or in an appropriate container for further laboratory examinations.

d. Where the situation requires urgent action, suspected drug evidence acquired may be "field-tested" using a drug test kit. If the result is positive this will be the basis of the seizure and the conduct of further drug analysis.

---

[61] *People v. Mendoza*, *supra* note 44, at 770.

[62] *Id.*

[63] *Id.*

[64] Pursuant to National Police Commission Resolution No. 2010-094, February 26, 2010.

e. Containers, packaging, equipment, etc., suspected of containing trace amounts of drugs including controlled precursors and essential chemicals will be considered drug evidence and shall be submitted for analysis.

f. In every negation operation, a "seizing officer" shall be designated who shall be responsible for the inventory and initial custody of all drug and non-drug evidence during the anti-drug operations. These will later be turned over to the investigation officer or any member of the apprehending team, as the case may be, up to the Crime Laboratory for laboratory examination and proper disposition.

g. Cellphones, Computers/laptops or any other electronic equipment or gadgets shall be properly preserved for evidentiary purposes and technical exploitation.

A – Drug Evidence

a. Upon seizure or confiscation of the dangerous drugs or controlled precursors and/or essential chemicals (CPECs), laboratory equipment, apparatus and paraphernalia, the operating unit's seizing officer/ inventory officer must conduct the physical inventory, markings and photograph the same in the place of operation in the presence of:

a. The suspect/s or the person/s from whom such items were confiscated and/or seized or his/her representative or counsel.

b. A representative from the media.

c. A representative from the Department of Justice; and

d. Any elected public official who shall affix their signatures and who shall be given copies of the inventory.

x x x x x x x x x

d. If the said procedures in the inventory, markings and taking of photographs of the seized items were not observed, (Section 21, RA 9165), the law enforcers must present an explanation to justify non-observance of prescribed procedures and "must prove that the integrity and evidentiary value of the seized items are not tainted."

x x x x x x x x x

f. Within the same period, the seizing/ inventory officer shall prepare a list of inventory receipt of confiscation/ seizure to include but not limited to the following:

1. Time, date and place of occurrence/seizure.
2. Identity of person/s arrested.
3. Identity of the seizing officer and all persons present.
4. Circumstances in which seizure took place.
5. Description of a vehicle, vessel, place or person searched where the substance was found.
6. Description of packaging, seals and other identifying features.
7. Description of quantity, volume and units and the measurement method employed.
8. Description of the substance found.
9. Description of any preliminary identification test (test kit) used and results.

g. Within 24 hours upon confiscation/ seizure when practicable, all seized drugs and/ or CPECs shall be submitted to the PNP Crime Laboratory for examination and proper disposition.

h. All pieces of drug evidence shall be turned over by the seizing officer to the investigator on case who will subsequently turnover the same to the PNP Crime Laboratory for examination. **Receipts shall be required in every phase of this turn-over.**

i. The seizing officer shall accomplish the Chain of Custody Form with the affixed signatures which shall accompany the evidence turned over to the investigator-on-case or the Crime Laboratory as the case may be.[65] (Emphasis supplied)

In this case, the presumption of regularity cannot stand due to the glaring disregard by the SAID-SOTG of the established procedure under Section 21 of RA 9165, its IRR, **and the 2010 AIDSOTF Manual.**

---

[65] 2010 AIDSOTF Manual, Rule II, Sec. 13.

The prosecution's failure to prove the *corpus delicti* of the offenses of sale and possession of illegal drugs due to unexplained breaches of procedure committed by the SAID-SOTG, as well as the material inconsistencies in the apprehending officers' testimonies on the confidentiality of their informant's identity, taken together, cast reasonable doubt over appellants' guilt. Verily, the prosecution failed to overcome the presumption of innocence ascribed to the appellants.

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 the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.
>
> Those who are supposed to enforce the law are not justified in disregarding the right[s] 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[66]

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

---

[66] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

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.[67]

WHEREFORE, premises considered, the Decision dated February 11, 2016 rendered by the Court of Appeals in CA-G.R. CR-H.C. 05455 is **REVERSED** and **SET ASIDE**. Thus:

1. Appellants Delia Callejo *y* Tadeja and Silvera Antoque *y* Moya @ "Inday" are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165; and

2. Appellant Delia Callejo *y* Tadeja is hereby **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt for violation of Section 11, Article II of Republic Act No. 9165.

Appellants are ordered immediately **RELEASED** from detention, unless they are confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Decision, the action he has taken. A copy shall also be furnished to the Director General of Philippine National Police for his information.

SO ORDERED.

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

Peralta, J., see separate concurring opinion.

---

[67] *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

SEPARATE CONCURRING OPINION

PERALTA, *J.*:

I concur with the *ponencia* in acquitting accused-appellants Delia Callejo *y* Tejada and Silvera Antoque *y* Moya of the separate charges of illegal sale and illegal possession of dangerous drugs, or violation of Section 5 and 11, Article II of Republic Act No. 9165 (*R.A. No. 9165*),[1] respectively. Indeed, the prosecution failed to prove the *corpus delicti* of the said offenses due to the unexplained branches of procedure committed by the buy-bust team, as well as the material inconsistencies in the apprehending officers' testimonies on the confidentiality of their informant's identity. I also agree that despite the non-observance of the three-witness rule Section 21[2] of R.A. No. 9165, no justifiable reason was proffered by the prosecution as to (1) why the elected public official was called to the place of arrest only after the arrest of the appellants and the seizure of drugs from their possession; and (2) why representatives from the media and from the Department of Justice were not present during the inventory of the seized items. At any rate, I would

---

[1] "*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*"

[2] 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;

like to emphasize on important matters relative to Section 21 of R.A. No. 9165, as amended.

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and added a saving clause in case the procedure is not followed:[3]

> (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.**

It bears emphasis that R.A. No. 10640,[4] which amended Section 21 of R.A. No. 9165, now only requires **two (2) witnesses** to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; **and** (b) either a representative from the National Prosecution Service **or** the media.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe conceded

---

[3] *People v. Ramirez*, G.R. No. 225690, January 17, 2018.

[4] "*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*."

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 the increasing drug addiction and also, in the conflicting decisions of the courts."[5] Senator Poe stressed the necessity for the amendment of Section 21 based on the public hearing that the Senate Committee on Public Order and Dangerous Drugs had conducted, which revealed that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all coners of the Philippines, especially in the remote areas. For another there were instances where elected *barangay* officials themselves were involved in the punishable acts apprehended and thus, it is difficult to get the most grassroot-elected public official to be a witness as required by law."[6]

In his Co-sponsorship speech, Senator Vicente C. Sotto III said that in view of a substantial number of acquittals in drug-related cases due to the varying interpretations of prosecutors and 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."[7] Senator Sotto explained why the said provision should be amended:

> 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 the seized illegal drugs.
>
> x x x x x x x x x

---

[5] Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

[6] *Id*.

[7] *Id*.

Section 21(a) of RA 9165 need 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 of illegal drugs or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances where 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.[8]

However, under the original provision of Section 21 and its IRR, which is applicable at the time the appellant committed the crime charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses**, namely: (a) a representative from the media, **and** (b) the DOJ, **and**; (c) any elected public official who shall be required to sign copies of the inventory and be

---

[8] *Id*. at 349-350.

given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[9]

The prosecution bears the burden of proving a 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 trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law.[10] 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. It should take note that 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 items.[11] Strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.[12]

In this case, the prosecution never alleged and proved that the presence of all the required witnesses was not obtained for any of the following reasons, such as: (1) **their attendance was impossible because the place of arrest was a remote area**; (2) **their safety during the inventory and photograph of the seized drugs were threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf**; (3) **the elected official themselves were involved in the punishable acts sought to be apprehended**; (4) **earnest efforts to secure the presence of a DOJ or media**

---

[9] *People v. Sagana*, G.R. No. 208471, August 2, 2017.

[10] *People v. Miranda*, G.R. No. 229671, January 31, 2018; *People v. Paz,* G.R. No. 229512, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018.

[11] *People v. Saragena*, G.R. No. 210677, August 23, 2017.

[12] *Id*.

representative and an elected public official within the period required under Article 125[13] **of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention**; or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape**.

Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellant's conviction. 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 flawed because the lapses themselves are affirmative proofs of irregularity.[14] 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 found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.[15]

At this point, it is not amiss to express my position regarding the issue of which between the Congress and the Judiciary has jurisdiction to determine sufficiency of compliance with the rule on chain of custody, which essentially boils down to the application of procedural rules on admissibility of evidence.

---

[13] Art. 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.

[14] *People v. Ramirez*, *supra* note 3.

[15] *People v. Gajo*, G.R. No. 217026, January 22, 2018.

In this regard, I agree with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam*[16] that "if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to inadmissibility that would automatically destroy the prosecution's case but rather to the weight of evidence presented for each particular case." As aptly pointed out by Justice Leonardo-De Castro, the Court's power to promulgate judicial rules, including rules of evidence, is no longer shared by the Court with Congress.

I subscribe to the view of Justice Leonardo-De Castro that the chain of custody rule is a matter of evidence and a rule of procedure, and that the Court has the last say regarding the appreciation of evidence. Evidentiary matters are indeed well within the powers of courts to appreciate and rule upon, and so, when the courts find appropriate, substantial compliance with the chain of custody rule as long as the integrity and evidentiary value of the seized items have been preserved may warrant the conviction of the accused.

I further submit that **the requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance. Violation of such procedure may even merit penalty under R.A. No. 9165**, to wit:

> **Section 29.** *Criminal Liability for Planting of Evidence.* — Any person who is found guilty of "planting" any dangerous drug and/or controlled precursor and essential chemical, regardless of quantity and purity, shall suffer the penalty of death.
>
> **Section 32.** *Liability to a Person Violating Any Regulation Issued by the Board.* — The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person found violating any regulation

[16] G.R. No. 202206, March 5, 2018.

duly issued by the Board pursuant to this Act, in addition to the administrative sanctions imposed by the Board.

However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence.

SECOND DIVISION

[G.R. No. 228504. June 6, 2018]

PHILSYNERGY MARITIME, INC. and/or TRIMURTI SHIPMANAGEMENT LTD., *petitioners, vs.* **COLUMBANO PAGUNSAN GALLANO, JR.**, *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC); SEAFARER; THE EMPLOYER IS LIABLE FOR DISABILITY BENEFITS WHEN THE SEAFARER SUFFERS FROM A WORK-RELATED INJURY OR ILLNESS DURING THE TERM OF HIS CONTRACT, BUT THE SEAFARER IS MANDATED TO DISCLOSE ALL HIS PRE-EXISTING ILLNESSES IN HIS PRE-EMPLOYMENT MEDICAL EXAMINATION (PEME), FAILING IN WHICH, HE SHALL BE DISQUALIFIED FROM RECEIVING THE SAME.— It is settled that the entitlement of a seafarer on overseas employment to disability

benefits is governed by law, by the parties' contracts, and by the medical findings. By law, the relevant statutory provisions are Articles 197 to 199 (formerly Articles 191 to 193) of the Labor Code in relation to Section 2 (a), Rule X of the Amended Rules on Employee Compensation (AREC). By contract, the material contracts are the POEA-SEC, the parties' Collective Bargaining Agreement, if any, and the employment agreement between the seafarer and the employer. In this case, respondent executed his employment contract with petitioners during the effectivity of the 2010 POEA-SEC; hence, its provisions are applicable and should govern their relations. Pursuant to Section 20 (A) of the 2010 POEA-SEC, the employer is liable for disability benefits when the seafarer suffers from a work-related injury or illness during the term of his contract. In this regard, Section 20 (E) thereof mandates the seafarer to disclose all his pre-existing illnesses in his PEME, failing in which, he shall be disqualified from receiving the same.

2. ID.; ID.; ID.; ILLNESS WHEN CONSIDERED AS PRE-EXISTING; NOT PRESENT.— Pursuant to the 2010 POEA-SEC, an illness shall be ***considered as pre-existing*** if prior to the processing of the POEA contract, *any* of the following conditions is present: (*a*) the **advice of a medical doctor on treatment** was given for such continuing illness or condition; or (*b*) the seafarer had been **diagnosed and has knowledge** of such illness or condition but failed to disclose the same during the PEME, and such cannot be diagnosed during the PEME. In this case, the evidence on record is devoid of any indication that any of the conditions is present.

3. ID.; ID.; ID.; OCCUPATIONAL DISEASE AND THE RESULTING DISABILITY OR DEATH, CONDITIONS FOR COMPENSABILITY; PRESENT.— Section 20 (A) of the 2010 POEA-SEC provides that a seafarer shall be entitled to compensation if he suffers from a work-related injury or illness during the term of his contract. A work-related illness is defined as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." Section 32-A of the 2010 POEA-SEC reads: SECTION 32-A. OCCUPATIONAL DISEASES For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied: 1. The seafarer's work must involve the risks described herein;

2. The disease was contracted as a result of the seafarer's exposure to the described risks; 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and 4. There was no notorious negligence on the part of the seafarer. x x x During the term of his contract and while in the performance of his duties as a Ship Master, respondent undeniably suffered from brain stroke, a CVA, and hypertension – both of which are found listed under Section 32-A, and therefore, deemed work-related. x x x. [R]ecords show that respondent's brain stroke was brought about by his hypertension which occurred only while in the performance of his duties as a Ship Master on board M.V. Pearl Halo. [T]here was no indication that respondent was known to be previously suffering from hypertension, and considering further that his last PEME showed normal blood pressure, chest x-ray and ECG results, his illnesses and the resulting disability were correctly declared to be compensable.

4. ID.; ID.; ID.; THE SEAFARER'S NON-COMPLIANCE WITH THE CONFLICT RESOLUTION PROCEDURE RESULTS IN THE AFFIRMANCE OF THE FIT-TO WORK CERTIFICATION OF THE COMPANY-DESIGNATED PHYSICIAN, PROVIDED THE SEAFARER RECEIVES A VALID FINAL AND DEFINITIVE ASSESSMENT AS TO HIS FITNESS OR UNFITNESS TO WORK WITHIN THE 120/240-DAY PERIODS.— The conflict-resolution procedure invoked by petitioners is found in Section 20 (A) of the 2010 POEA-SEC x x x [W]hen a seafarer suffers a work-related injury or illness while on board the vessel, his fitness or degree of disability shall be initially determined by the company-designated physician. However, the seafarer is not absolutely bound by the findings of the company-designated physician as he is allowed 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 private physician, the parties shall jointly agree to refer the matter to a third doctor whose findings shall be final and binding on both. In *Philippine Hammonia Ship Agency, Inc. v. Dumadag*, the Court held that the seafarer's non-compliance with the foregoing conflict-resolution procedure results in the affirmance of the fit-to work certification of the company-designated physician. However, it bears to note that "[a] seafarer's compliance with such procedure presupposes that the company-

designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods" provided for by law. Thus, in *Kestrel Shipping Co., Inc. v. Munar*, the Court emphasized that: x x x . Alternatively put, **absent a certification from the company-designated physician, the seafarer has nothing to contest and the law steps in to conclusively characterize his disability as total and permanent**. In this case, *there is no showing that respondent received a timely conclusive and definitive assessment of his ailment*. x x x . Absent the required certification from the company-designated physician, the seafarer has therefore nothing to contest and perforce, negates the need for him to comply with the third-doctor referral provision under Section 20 (A) (3) of the 2010 POEA-SEC. As case law states, without a valid final and definitive assessment from the company designated physician within the 120/240-day periods, the law already steps in to consider seafarer's disability as total and permanent.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* FROM THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) TO THE COURT OF APPEALS; CONFINED TO THE DETERMINATION OF THE EXISTENCE OF GRAVE ABUSE OF DISCRETION ON THE PART OF THE NLRC, WHERE ITS FINDINGS AND CONCLUSIONS REACHED ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.— In petitions for *certiorari* brought before the CA, it must be highlighted that the latter's parameter of analysis in cases elevated to it from the NLRC is the existence of grave abuse of discretion which may be ascribed to the NLRC when, *inter alia*, its findings and conclusions reached are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. Given that the NLRC's ruling was amply supported by the evidence on record and current jurisprudence on the subject matter, the CA cannot be faulted in not finding grave abuse of discretion on the part of the NLRC granting respondent's total and permanent disability benefits.

6. LABOR AND SOCIAL LEGISLATION; THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC);

SEAFARER; THE RESPONDENT IS ENTITLED TO TOTAL AND PERMANENT DISABILITY BENEFITS IN ACCORDANCE WITH THE 2010 POEA-SEC.— [T]he Court clarifies that respondent's disability benefits should be awarded pursuant to the provisions of the 2010 POEA-SEC, and not the CBA as held by the NLRC and the CA. To be entitled to compensation in accordance with Appendix 3 (Compensation Payments) of the CBA, a seafarer must suffer an injury as a result of an accident, which is defined in jurisprudence as "an unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated; an unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct. Accident is that which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual and unforeseen." Here, respondent was suffering from an occupational disease; hence, it cannot be said that respondent figured into an accident. Accordingly, respondent is entitled to the total disability compensation under the 2010 POEA-SEC in the amount of US$60,000.00. Nevertheless, the CA correctly granted the award of attorney's fees equivalent to ten percent (10%) of the award, as the same is in accord with law and jurisprudence.

APPEARANCES OF COUNSEL

Retoriano & Olalia-Retoriano Law Offices for petitioners.
Arthur Amansec for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated June 21, 2016 and the Resolution[3] dated

---

[1] *Rollo*, pp. 3-58.

[2] *Id*. at 61-73. Penned by Associate Justice Carmelita Salandanan Manahan with Associate Justices Japar B. Dimaampao and Franchito N. Diamante, concurring.

[3] *Id*. at 75-76.

November 9, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 136970 which affirmed the Decision[4] dated May 8, 2014 and the Resolution[5] dated June 30, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC No. OFW (M)-01-000095-14, granting respondent Columbano Pagunsan Gallano, Jr.'s (respondent) claim for permanent total disability benefits in accordance with the IBF JSU/PSU-IMMAJ Collective Agreement (CBA), as well as ten percent (10%) attorney's fees.

The Facts

Respondent was employed by petitioner Philsynergy Maritime, Inc. (Philsynergy), for and in behalf of petitioner Trimurti Shipmanagement Ltd. (Trimurti; collectively, petitioners), as Master (or Ship Master) on board the vessel M.V. Pearl Halo under a six (6)-month employment contract[6] that was signed on September 21, 2012, with a basic monthly salary of US$1,847.00, among others, and covered by a CBA.[7]After undergoing the required pre-employment medical examination (PEME) where the company-designated physician declared him fit for sea duty,[8] respondent, who was then 62 years old, boarded the vessel on October 5, 2012.[9]

On October 10, 2012, at around 10:00 in the evening and while in the performance of his duties, respondent felt a sudden numbness on the left side of his body and noticed that his speech was slurred. He was immediately provided first aid and his condition allegedly improved after taking an Isordil[10] tablet

---

[4] *Id*. at 336-346. Penned by Presiding Commissioner Herminio V. Suelo with Commissioner Numeriano D. Villena, concurring and Commissioner Angelo Ang Palana, dissenting.

[5] *Id*. at 358-363.

[6] *Id*. at 131.

[7] See IBF JSU/PSU-IMMAJ CA; *id*. at 132-166.

[8] *Id*. at 130.

[9] *Id*. at 167.

[10] "Isodril" in some parts of the records.

which respondent had personally brought to the vessel.[11] On the next day, his symptoms recurred, but which did not improve despite taking another dose of Isordil. Thus, respondent was brought to a local hospital in Poro, New Caledonia, where he was confined for eleven (11) days and underwent physical therapy from October 15 to 21, 2012.[12] His CT scan (computed tomography scan) revealed "middle cerebral artery deep right infarct without associated hemorrhagic alteration," while his MRI (magnetic resonance imaging) showed "ischemic cerebrovascular accident stroke ischemique, right middle deep lobe."[13]

As a result, respondent was repatriated on October 23, 2012 for further medical treatment and referred to a company-designated physician, who diagnosed him to be suffering from "Cerebrovascular Infarct Middle Cerebral Artery, Right [and] Hypertension."[14]The foregoing illnesses were declared by the company-designated physician to be not work-related, ratiocinating that the risk factors for cerebrovascular infarct (brain stroke or cerebrovascular accident [CVA]) were hypertension, Diabetes Mellitus, smoking, lifestyle, dyslipidemia, family history, age[,] and sex, while the cause for hypertension was multifactorial in origin which included "genetic predisposition, poor lifestyle, high salt intake, smoking, Diabetes Mellitus, age[,] and increased sympathetic activity."[15]

After series of follow-up check-ups, the company-designated physician, in a Medical Report[16] dated March 9, 2013, noted that respondent's treadmill stress test already showed normal results and his blood pressure controlled. In addition, the company-designated physician opined that his cardiovascular

---

[11] See *rollo*, pp. 63 and 337-338.

[12] See *id*.

[13] *Id*. at 175.

[14] *Id*. at 175-176.

[15] See Medical Report dated October 30, 2012; *id*. at 177.

[16] *Id*. at 186.

condition has stabilized, but nonetheless advised him to continue home exercises/rehabilitation and medication. Thus, respondent was directed to undergo a repeat laboratory examination in time for his next follow-up session on April 4, 2013.[17] Records, however, are bereft of showing that the foregoing directives were complied with.

Meanwhile, the company-designated Cardiologist, in a letter[18] dated March 6, 2013 addressed to the company-designated physician, explicated that the medicine (Isordil) brought by respondent on board the vessel is a medication used to treat patients with angina (chest pain), and that while the latter denied taking any maintenance medications, the company-designated Cardiologist opined that possession of the same suggests that "he [(respondent)] may be experiencing some symptoms for which he was given that medications previously."

On the other hand, claiming that his physical condition did not improve after having suffered a brain stroke on board M.V. Pearl Halo while in the performance of his duties, and that more than 120 days had lapsed from the time he was repatriated, respondent sought for the payment of total disability benefits from petitioners, which the latter refused.[19] Thus, on April 24, 2013, respondent filed a complaint[20] for total permanent disability benefits, sickness allowance, damages, and attorney's fees against petitioners and Philsynergy's President, Capt. Reynold L. Torres, before the NLRC, docketed as NLRC Case No. (M) NCR-04-06135-13.

In their defense,[21] petitioners denied respondent's claim for disability benefits, averring in the main that the latter fraudulently concealed a previously diagnosed medical condition for which

---

[17] See *id*.

[18] *Id*. at 185.

[19] *Id*. at 210-211.

[20] *Id*. at 127-129.

[21] See petitioners' Position Paper dated June 3, 2013; *id*. at 102-124.

he was prescribed medication (Isordil), and which he failed to disclose during his PEME; hence, he was disqualified to receive any compensation and benefits provided under Section 20 (E)[22] of the 2010 Philippine Overseas Employment Administration Standard Employment Contract[23] (2010 POEA-SEC).[24] They likewise contended that even on the assumption that there was no concealment, petitioners were not liable under the CBA since respondent's disability did not result from an accident,[25] adding too that his illnesses, Cerebrovascular Infarct Middle Cerebral Artery, Right and Hypertension, were declared by the company-designated physician as not work-related, and therefore, not compensable.[26] Moreover, they averred that his claim for reimbursement of medical expenses had already been paid,[27] while the moral and exemplary damages, as well as attorney's fees, were without factual and legal bases.[28]

In the interim, respondent sought the opinion of an independent physician, Dr. Efren R. Vicaldo, a Cardiologist from the Philippine Heart Center, who, in a Medical Certificate[29] dated July 1, 2013, declared his illnesses, hypertensive cardiovascular disease and cerebrovascular disease, to be work aggravated/

---

[22] SECTION 20. COMPENSATION AND BENEFITS

E. A seafarer who knowingly conceals a pre-existing illness or condition in the Pre-Employment Medical Examination (PEME) shall be liable for misrepresentation and shall be disqualified from any compensation and benefits. This is likewise a just cause for termination of employment and imposition of the appropriate administrative sanctions.

[23] POEA Memorandum Circular No. 10, Series of 2010, entitled "AMENDED STANDARD TERMS AND CONDITIONS GOVERNING THE OVERSEAS EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING SHIPS" dated October 26, 2010.

[24] See *rollo*, pp. 108-115.

[25] See *id*. at 115-116.

[26] See *id*. at 116-122.

[27] See *id*. at 121-122.

[28] See *id*. at 122-123.

[29] *Id*. at 257-258.

related, and assessed his health and resulting disability as Impediment Grade VII (41.80%), on the justification that respondent was required maintenance medication to control his hypertension and to prevent future cardiovascular complications, as well as change in his lifestyle. Thus, the independent physician declared him unfit to resume work as seaman in any capacity.

The Labor Arbiter's Ruling

In a Decision[30] dated October 31, 2013, the Labor Arbiter (LA) ruled in favor of respondent and ordered petitioners to pay the latter US$60,000.00 in accordance with the 2010 POEA-SEC, as well as ten percent (10%) attorney's fees.[31]

The LA held that the provision of the CBA on disability benefits that was incorporated in respondent's employment contract was inapplicable since it covered only those disabilities resulting from accidental injury.[32] It likewise ruled out fraudulent concealment on the part of respondent for lack of proof showing that he was already suffering from high blood pressure that triggered his brain stroke or that he was aware of the same at the time he boarded the vessel. In fact, respondent's PEME showed a normal blood pressure reading which only proved that the latter did not have a pre-existing medical condition at the time he boarded the vessel. Even on the assumption that respondent's illness was a pre-existing condition given that he carried on board medication to address the same (*i.e.*, Isordil), such was not conclusive proof that he has suffered or was suffering from an elevated blood pressure since he may have carried them as a handy security in case of an unforeseen instance of elevated blood pressure.[33] The LA likewise ruled that respondent's diagnosed hypertension was work-related since it is listed as an occupational disease under Section 32-B of

---

[30] CA *rollo*, pp. 72-81. Penned by Labor Arbiter Veneranda C. Guerrero.

[31] *Id.* at 81.

[32] *Id.* at 78.

[33] See *id.* at 78-79.

the 2010 POEA-SEC, and that it was not capable of partial disability assessment.[34] Thus, the LA awarded respondent total disability benefits notwithstanding the Grade VII impediment rating given by respondent's independent physician, pointing out that the latter has also declared the former unfit to resume work as a seafarer in any capacity.[35] Lastly, the LA ordered petitioners to pay respondent attorney's fees for having been compelled to litigate to protect his rights and interests, while the latter's claim for moral and exemplary damages were denied for lack of factual and legal bases.[36]

Aggrieved, petitioners appealed to the NLRC.

The NLRC Ruling

In a Decision[37] dated May 8, 2014, the NLRC affirmed the LA ruling with modification ordering petitioners to solidarily pay respondent US$151,470.00 representing total and permanent disability compensation benefits in accordance with Appendix 3 (Compensation Payments) of the CBA.[38]

The NLRC agreed with the LA that there was no concealment on the part of respondent since his PEME showed fitness for work and normal blood pressure with no heart problem. It also ruled that his possession of Isordil did not *ipso facto* mean that he was hypertensive and under medical maintenance, and that even if respondent's hypertension pre-existed his employment, such would not bar him from claiming disability compensation as he was clearly asymptomatic of any cerebrovascular events before he boarded the vessel and that its symptoms only manifested at the time he was subjected to the strains of work and while in the performance of his duties.[39] The NLRC gave

---

[34] *Id*. at 80.

[35] See *id*. at 80-81.

[36] See *id*. at 81.

[37] *Rollo*, pp. 336-346.

[38] *Id*. at 345.

[39] See *id*. at 341-342.

more weight to the "unfit to work" findings of respondent's independent physician given that even the company-designated physician failed to declare respondent fit to work as evidenced by his last medical report which showed the latter's need for continued rehabilitation and medication.[40] Lastly, it pointed out that the CBA contemplates all kinds of accident or unforeseen events that cause physical harm or injury to the body, and that the illness suffered by respondent was an unforeseen event that physically injured the brain.[41]

In a Resolution[42] dated June 30, 2014, the NLRC denied petitioners' motion for reconsideration and granted respondent's motion ordering petitioners to pay respondent attorney's fees.[43] Hence, the matter was elevated to the CA via a petition for *certiorari.*[44]

The CA Ruling

In a Decision[45] dated June 21, 2016, the CA found no grave abuse of discretion on the part of the NLRC in awarding total and permanent disability benefits in favor of respondent pursuant to the CBA. The CA agreed that respondent's brain stroke was work-aggravated/related which rendered him incapacitated to work. It noted the lack of showing that respondent suffered from any form of ailment prior to his cardiovascular accident, and that petitioners failed to refute the latter's claim that the nature of his work constantly exposed him to varying circumstances, such as extreme hot and cold temperature, harsh weather conditions, and the mental stress associated with his work as Ship Master. It likewise observed that the company-designated physician failed to declare respondent fit to work

---

[40] See *id*. at 344.

[41] See *id*. at 344-345.

[42] *Id*. at 358-363.

[43] *Id*. at 362.

[44] Dated August 6, 2014. *Id*. at 370-420.

[45] *Id*. at 61-73.

despite the lapse of 120/240 days, rendering his disability as total and permanent. Finally, the CA sustained the award of attorney's fees as respondent was clearly compelled to litigate to protect his interests.[46]

Undaunted, petitioners moved for reconsideration[47] but the same was denied in a Resolution[48] dated November 9, 2016; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in upholding the NLRC's findings that respondent is entitled to total and permanent disability benefits under the CBA.

The Court's Ruling

The petition is denied.

I.

It is settled that the entitlement of a seafarer on overseas employment to disability benefits is governed by law, by the parties' contracts, and by the medical findings. By law, the relevant statutory provisions are Articles 197 to 199[49] (formerly

---

[46] See *id*. at 70-72.

[47] See petitioners' motion for reconsideration dated July 5, 2016; *id*. at 77-97.

[48] *Id*. at 75-76.

[49] **ART. 197. [191] Temporary Total Disability** – (a) Under such regulations as the Commission may approve, any employee under this Title who sustains an injury or contracts sickness resulting in temporary total disability shall, for each day of such a disability or fraction thereof, be paid by the System an income benefit equivalent to ninety percent of his average daily salary credit, subject to the following conditions: **the daily income benefit shall not be** less than Ten Pesos nor more than Ninety Pesos, nor **paid for a continuous period longer than one hundred twenty days**, except as otherwise provided for in the Rules, and the System shall be notified of the injury or sickness.

x x x x x x x x x

Articles 191 to 193) of the Labor Code[50] in relation to Section 2 (a), Rule X[51] of the Amended Rules on Employee Compensation

---

ART. 198. [192] Permanent Total Disability – (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in his permanent total disability shall, for each month until his death, be paid by the System during such a disability, an amount equivalent to the monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution: *Provided*, That the monthly income benefit shall be the new amount of the monthly benefit for all covered pensioners, effective upon approval of this Decree.

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 for in the Rules**;

x x x x x x x x x

ART. 199. [193] Permanent Partial Disability – (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains **an injury resulting in permanent partial disability shall**, for each month not exceeding the period designated herein, **be paid by the System during such a disability an income benefit for permanent total disability**.

x x x x x x x x x (Emphases and underscoring supplied)

[50] Department Advisory No. 1, Series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED" dated July 21, 2015.

[51]
Rule X
Temporary Total Disability

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

x x x x x x x x x (Emphases supplied)

(AREC).[52] By contract, the material contracts are the POEA-SEC, the parties' Collective Bargaining Agreement, if any, and the employment agreement between the seafarer and the employer. In this case, respondent executed his employment contract with petitioners during the effectivity of the 2010 POEA-SEC; hence, its provisions are applicable and should govern their relations.

Pursuant to Section 20 (A) of the 2010 POEA-SEC, the employer is liable for disability benefits when the seafarer suffers from a work-related injury or illness during the term of his contract. In this regard, Section 20 (E) thereof mandates the seafarer to disclose all his pre-existing illnesses in his PEME, failing in which, he shall be disqualified from receiving the same, to wit:

> E. A seafarer who knowingly conceals a pre-existing illness or condition in the Pre-Employment Medical Examination (PEME) shall be liable for misrepresentation and shall be disqualified from any compensation and benefits. This is likewise a just cause for termination of employment and imposition of appropriate administrative sanctions.

In this case, petitioners claim that there was willful concealment of a pre-existing medical condition (*i.e.*, hypertension or heart condition) on the part of respondent, which thus disqualified him from claiming disability benefits under the 2010 POEA-SEC. Petitioners anchor their contention on the fact that respondent personally carried on board Isordil, a medication used to treat people with chest pain, which he failed to disclose during his PEME. In this relation, petitioners submitted the opinion of their specialist that while respondent denied taking any maintenance medications, the fact that the latter had with him Isordil *suggests* that "he may be experiencing some symptoms for which he was given that medications previously."[53]

---

[52] (July 21, 1987).

[53] *Rollo*, p. 185.

The argument is untenable.

Pursuant to the 2010 POEA-SEC, an illness shall be ***considered as pre-existing*** if prior to the processing of the POEA contract, *any* of the following conditions is present: (*a*) the **advice of a medical doctor on treatment** was given for such continuing illness or condition; or (*b*) the seafarer had been **diagnosed and has knowledge** of such illness or condition but failed to disclose the same during the PEME, and such cannot be diagnosed during the PEME.[54] In this case, the evidence on record is devoid of any indication that any of the conditions is present.

Isordil (*isosorbide dinitrate*) tablets are taken for the prevention of angina pectoris or chest pain due to coronary artery diseases.[55] It is, however, *not a medication directly used for hypertension*, which illness petitioners claim respondent to be suffering from prior to his engagement, as well as the reason for his repatriation. Hypertension refers to persistently high blood pressure, regardless of the cause, and because it usually does not cause symptoms for many years – until a vital organ is damaged – high blood pressure has been called the silent killer.[56] To properly determine whether a person suffers from hypertension, it is imperative that he or she undergoes medical check-ups, and consequently, procures a diagnosis from a medical doctor. In this case, no such diagnosis was presented by petitioners. Moreover, there was no clear showing that respondent was taking Isordil as maintenance medication for his hypertension or that it was the appropriate medication for his condition that gave rise to his brain stroke. At the most, petitioners submitted the opinion of a specialist, claiming that respondent *may* have previously experienced some symptoms of hypertension for the bare reason that he had with him Isordil. Clearly, this opinion deserves scant consideration as the same is clearly tentative

---

[54] Item No. 11 (a) and (b), Definition of Terms, 2010 POEA-SEC.

[55] <https://www.rxlist.com/isordil-drug.htm#indications_dosage> and <https://www.rxlist.com/isordil-drug/patient-images-side-effects.htm#whatis> (visited May 21, 2018).

[56] <https://www.msdmanuals.com/home/heart-and-blood-vessel-disorders/high-blood-pressure/high-blood-pressure> (visited May 21, 2018).

and speculative in nature. In the final analysis, petitioners failed to demonstrate that respondent's act of carrying Isordil *per se* conclusively established the fact he had actual knowledge of his medical condition, and consequently, concealed the same in his PEME. At any rate, it is well to note that had respondent been suffering from a pre-existing hypertension at the time of his PEME, the same could have been easily detected by standard/routine tests conducted during the said examination, *i.e.*, blood pressure test, electrocardiogram, chest x-ray, and/or blood chemistry.[57] However, respondent's PEME showed normal blood pressure with no heart problem, which led the company-designated physician to declare him fit for sea duty.[58]

Accordingly, no error can be imputed against the CA in sustaining the finding that there was no concealment on the part of respondent that would have effectively barred him from claiming disability compensation.

II.

Section 20 (A) of the 2010 POEA-SEC provides that a seafarer shall be entitled to compensation if he suffers from a work-related injury or illness during the term of his contract. A work-related illness is defined as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."[59] Section 32-A of the 2010 POEA-SEC reads:

SECTION 32-A. OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;

---

[57] *C.F. Sharp Crew Management, Inc. v. Legal Heirs of the Late Repiso*, G.R. No. 190534, February 10, 2016, 783 SCRA 516, 543.

[58] See *rollo*, p. 130.

[59] Item No. 16, Definition of Terms, 2010 POEA-SEC.

3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and

4. There was no notorious negligence on the part of the seafarer.

x x x x x x x x x (Underscoring supplied)

During the term of his contract and while in the performance of his duties as a Ship Master, respondent undeniably suffered from brain stroke, a CVA, and hypertension – both of which are found listed under Section 32-A, and therefore, deemed work-related.

For CVA to be considered as a compensable occupational disease, Sub-item Number 12, Section 32-A of the 2010 POEA-SEC requires all of the following conditions to be met:

12. CEREBROVASCULAR EVENTS

All of the following conditions must be met:

a. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by an unusual strain by reasons of the nature of his work.

b. The strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute causal relationship.

c. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.

d. If a person known hypertensive or diabetic, he should show compliance with prescribed maintenance and doctor-recommended lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1 (A) paragraph 5.

e. In a patient not known to have hypertension or diabetes, as indicated on his last PEME[.]

Similarly, for hypertension to be compensable, Sub-item Number 13 of Section 32-A provides:

> 13. END ORGAN DAMAGE RESULTING FROM UNCONTROLLED HYPERTENSION
>
> Impairment of function of the organs such as kidneys, heart, eyes and brain under the following conditions are considered compensable:
>
> a. If a person is a known hypertensive or diabetic, he should show compliance with prescribed maintenance medications and doctor-recommended lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1(A) paragraph 5.
>
> b. In [sic] a patient not known to have hypertension has the following on his last PEME: normal BP, normal CXR and ECG/treadmill[.] (underscoring supplied)

In this case, records show that respondent's brain stroke was brought about by his hypertension which occurred only while in the performance of his duties as a Ship Master on board M.V. Pearl Halo. As discussed, there was no indication that respondent was known to be previously suffering from hypertension, and considering further that his last PEME showed normal blood pressure, chest x-ray and ECG results, his illnesses and the resulting disability were correctly declared to be compensable.

III.

For another, petitioners assert that respondent's disability claim remains dismissible since he filed the complaint for recovery of benefits without resort to the joint appointment of a third doctor.[60]

The conflict-resolution procedure invoked by petitioners is found in Section 20 (A) of the 2010 POEA-SEC which states:

---

[60] See *rollo*, pp. 35-45.

SEC. 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:

x x x x x x x x x

2. 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 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.

x x x x x x x x x

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.

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

From the foregoing, it is clear that when a seafarer suffers a work-related injury or illness while on board the vessel, his fitness or degree of disability shall be initially determined by the company-designated physician. However, the seafarer is not absolutely bound by the findings of the company-designated physician as he is allowed 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 private physician, the parties shall jointly agree to refer the matter to a third doctor whose findings shall be final and binding on both.

In *Philippine Hammonia Ship Agency, Inc. v. Dumadag*,[61] the Court held that the seafarer's non-compliance with the foregoing conflict-resolution procedure results in the affirmance of the fit-to work certification of the company-designated physician. However, it bears to note that "[a] seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods"[62] provided for by law. Thus, in *Kestrel Shipping Co., Inc. v. Munar*,[63] the Court emphasized that:

A seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods. Alternatively put, **absent a certification from the company-designated physician, the seafarer has nothing to contest and the law steps in to conclusively characterize his disability as total and permanent**. [64] (Emphasis supplied)

---

[61] See 712 Phil. 507, 521-523 (2013).

[62] *Kestrel Shipping Co., Inc. v. Munar*, 702 Phil. 717, 737-738 (2013).

[63] *Id*.

[64] *Id*. See also Section 2, Rule VII of the AREC, which provides:

Section 2. Disability – (a) A total disability is temporary if as a result of the injury or sickness the employee is unable to perform any gainful

In this case, *there is no showing that respondent received a timely conclusive and definitive assessment of his ailment*. As borne from the records, the company-designated physician's last medical report was issued on March 9, 2013,[65] or way beyond the 120-day period reckoned from the time of respondent's repatriation on October 23, 2012. The said report also failed to provide a definite assessment of respondent's fitness to work or disability. While respondent's cardiovascular condition has stabilized, the company-designated physician nonetheless still advised the latter to continue his home exercises/rehabilitation and medications indefinitely with no clear indication as to what kind of rehabilitation is still needed for his further treatment. The same holds true for the previous medical report dated February 7, 2013[66] issued by the company-designated physician which, other than the advice to continue rehabilitation and medications, failed to show that further medical treatment was necessary to address respondent's temporary total disability, thus further discounting the justification to extend the 120-day period to 240 days.

Absent the required certification from the company-designated physician, the seafarer has therefore nothing to contest and perforce, negates the need for him to comply with the third-doctor referral provision under Section 20 (A) (3) of the 2010 POEA-SEC. As case law states, without a valid final and definitive assessment from the company designated physician within the 120/240-day periods, the law already steps in to consider seafarer's disability as total and permanent.[67]

In petitions for *certiorari* brought before the CA, it must be highlighted that the latter's parameter of analysis in cases elevated to it from the NLRC is the existence of grave abuse of discretion

---

occupation for a continuous period not exceeding 120 days, except as otherwise provided in Rule X of these Rules.

[65] *Rollo*, p. 186.

[66] *Id*. at 183.

[67] See *Talaroc v. Arpaphil Shipping Corporation*, G.R. No. 223731, August 30, 2017.

which may be ascribed to the NLRC when, *inter alia*, its findings and conclusions reached are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[68] Given that the NLRC's ruling was amply supported by the evidence on record and current jurisprudence on the subject matter, the CA cannot be faulted in not finding grave abuse of discretion on the part of the NLRC granting respondent's total and permanent disability benefits.

IV.

The foregoing notwithstanding, the Court clarifies that respondent's disability benefits should be awarded pursuant to the provisions of the 2010 POEA-SEC, and not the CBA as held by the NLRC and the CA. To be entitled to compensation in accordance with Appendix 3 (Compensation Payments) of the CBA,[69] a seafarer must suffer an injury as a result of an accident, which is defined in jurisprudence as "an unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated; an unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct. Accident is that which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual and unforeseen."[70] Here, respondent was suffering from an occupational disease; hence, it cannot be said that respondent figured into an accident. Accordingly, respondent is entitled to the total disability compensation under the 2010 POEA-SEC in the amount of US$60,000.00. Nevertheless, the CA correctly granted the award of attorney's fees equivalent to ten percent (10%) of the award, as the same is in accord with law and jurisprudence.[71]

---

[68] See *Racelis v. United Philippine Lines, Inc.* 746 Phil. 758, 780 (2014).

[69] *Rollo*, pp. 157-158.

[70] *C.F. Sharp Crew Management, Inc. v. Perez*, 752 Phil. 46, 57 (2015).

[71] See *Philippine Transmarine Carriers, Inc. v. Tallafer*, G.R. No. 219923, June 5, 2017.

WHEREFORE, the petition is **DENIED**. The Decision dated June 21, 2016 and the Resolution dated November 9, 2016 of the Court of Appeals in CA-G.R. SP No. 136970 are hereby **AFFIRMED WITH MODIFICATION** ordering petitioners Philsynergy Maritime, Inc. and/or Trimurti Shipmanagement Ltd. to jointly and severally pay respondent Columbano Pagunsan Gallano, Jr. the amount of US$60,000 or its equivalent amount in Philippine Currency at the time of payment, representing total and permanent disability benefits in accordance with the 2010 Philippine Overseas Employment Administration Standard Employment Contract, as well as ten percent (10%) thereof, as attorney's fees.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 229380. June 6, 2018]

LENIZA REYES *y* CAPISTRANO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; AN APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW AND, THUS, IT IS THE DUTY OF THE REVIEWING TRIBUNAL TO CORRECT, CITE, AND APPRECIATE ERRORS IN THE APPEALED JUDGMENT WHETHER THEY ARE ASSIGNED OR UNASSIGNED.— [I]t must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing

tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

2. POLITICAL LAW;CONSTITUTIONAL LAW; THE 1987 CONSTITUTION; BILL OF RIGHTS; A SEARCH AND SEIZURE MUST BE CARRIED OUT THROUGH OR ON THE STRENGTH OF A JUDICIAL WARRANT PREDICATED UPON THE EXISTENCE OF PROBABLE CAUSE, ABSENT WHICH, SUCH SEARCH AND SEIZURE BECOME 'UNREASONABLE', AND ANY EVIDENCE OBTAINED FROM UNREASONABLE SEARCHES AND SEIZURES SHALL BE INADMISSIBLE IN EVIDENCE FOR ANY PURPOSE IN ANY PROCEEDING; EXCEPTION.— "Section 2, Article III of the 1987 Constitution mandates that **a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure [become] 'unreasonable' within the meaning of said constitutional provision**. To protect the people from unreasonable searches and seizures, Section 3 (2), Article III of the 1987 Constitution provides that **evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.** In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. One of the recognized exceptions to the need [of] a warrant before a search may be [e]ffected is a search incidental to a lawful arrest. **In this instance, the law requires that there first be a lawful arrest before a search can be made – the process cannot be reversed.**

3. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; ARREST WITHOUT WARRANT, WHEN LAWFUL.— A lawful arrest may be effected with or without a warrant. With respect to the latter, the parameters of Section 5, Rule 113 of the Revised Rules of Criminal Procedure should – as a general rule – be complied with x x x. The aforementioned provision identifies three (3) instances when warrantless arrests may be

lawfully effected. These are: (*a*) an arrest of a suspect *in flagrante delicto*; (*b*) an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; and (*c*) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.

4. ID.; ID.; ID.; WARRANTLESS ARREST; SECTIONS (A) AND (B) OF RULE 113 OF THE REVISED RULES OF CRIMINAL PROCEDURE, ELEMENTS; A WARRANTLESS ARREST IS INVALID ABSENT AN OVERT ACT SHOWING THE COMMISSION OF A CRIME.— In warrantless arrests made pursuant to Section 5 (a), Rule 113, two (2) elements must concur, namely: (*a*) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (*b*) such overt act is done in the presence or within the view of the arresting officer. On the other hand, Section 5 (b), Rule 113 requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it. **In both instances, the officer's personal knowledge of the fact of the commission of an offense is essential.** [The scenario under] Section 5 (a), Rule 113 of the Revised Rules of Criminal Procedure [contemplates that] the officer himself witnesses the crime; while in Section 5 (b) of the same, [the officer] knows for a fact that a crime has just been committed." Essentially, the validity of this warrantless arrest requires compliance with the overt act test, showing that "**the accused x x x exhibit an overt act within the view of the police officers suggesting that [she] was in possession of illegal drugs at the time [she] was apprehended**." Absent any overt act showing the commission of a crime, the warrantless arrest is rendered invalid, as in a case where a person was apprehended for merely carrying a bag and traveling aboard a jeepney without acting suspiciously. Similarly, in *People v. Racho*, a search based solely on a tip describing one of the passengers of a bus was declared illegal, since at the time of apprehension, the said accused was not "committing a crime in the presence of the police officers," nor did he commit a crime or was about to commit one.

5. ID.; ID.; ID.; ID.; ABSENT AN OVERT ACT THAT COULD BE PROPERLY ATTRIBUTED TO THE ACCUSED AS TO ROUSE SUSPICION IN THE MIND OF THE ARRESTING OFFICER THAT SHE HAD JUST COMMITTED, WAS COMMITTING, OR WAS ABOUT TO COMMIT A CRIME, THE ARREST WITHOUT A WARRANT IS BEREFT OF ANY LEGAL BASIS; THE ACT OF WALKING WHILE REEKING OF LIQUOR *PER SE* CANNOT BE CONSIDERED A CRIMINAL ACT.— [T]he Court finds that no lawful arrest was made on Reyes. PO1 Monteras himself admitted that Reyes passed by them without acting suspiciously or doing anything wrong, except that she smelled of liquor. As no other overt act could be properly attributed to Reyes as to rouse suspicion in the mind of PO1 Monteras that she had just committed, was committing, or was about to commit a crime, the arrest is bereft of any legal basis. As case law demonstrates, the act of walking while reeking of liquor *per se* cannot be considered a criminal act.

6. ID.; ID.; ID.; ID.; A HEARSAY TIP BY ITSELF DOES NOT JUSTIFY A WARRANTLESS ARREST, AS LAW ENFORCERS MUST HAVE PERSONAL KNOWLEDGE OF FACTS, BASED ON THEIR OBSERVATION, THAT THE PERSON SOUGHT TO BE ARRESTED HAS JUST COMMITTED A CRIME.— Neither has the prosecution established the conditions set forth in Section 5 (b), Rule 113, particularly, that the arresting officer had personal knowledge of any fact or circumstance indicating that the accused had just committed a crime. "Personal knowledge" is determined from the testimony of the witnesses that there exist reasonable grounds to believe that a crime was committed by the accused. As ruled by the Court, "[a] hearsay tip by itself does not justify a warrantless arrest. Law enforcers must have personal knowledge of facts, based on their observation, that the person sought to be arrested has just committed a crime." In this case, records failed to show that PO1 Monteras had any personal knowledge that a crime had been committed by Reyes, as in fact, he even admitted that he merely relied on the two (2) teenagers' tip and that, everything happened by "chance." Surely, to interpret "personal knowledge" as to encompass unverified tips from strangers would create a dangerous precedent and unnecessarily stretch the authority and power of police officers to effect

warrantless arrests, rendering nugatory the rigorous requisites under Section 5 (b), Rule 113.

7. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; IT IS CONTRARY TO ORDINARY HUMAN EXPERIENCE FOR A PERSON TO WILLFULLY EXHIBIT INCRIMINATING EVIDENCE WHICH WOULD RESULT IN HIS OR HER CONVICTION FOR A CRIME, ABSENT ANY IMPELLING CIRCUMSTANCE WHICH WOULD PROMPT HIM OR HER TO DO SO.— [T]he Court finds the version of the prosecution regarding the seizure of the subject item as lacking in credence. To recapitulate, the prosecution, through the testimony of PO1 Monteras, claimed that when the police officers asked Reyes if she purchased *shabu,* she turned her back and voluntarily showed the plastic sachet containing the same which she retrieved from her brassiere. According to jurisprudence, the issue of credibility of a witness's testimony is determined by its conformity with knowledge and consistency with the common experience of mankind. As the Court observes, it is rather contrary to ordinary human experience for a person to willfully exhibit incriminating evidence which would result in his or her conviction for a crime, absent any impelling circumstance which would prompt him or her to do so.

8. ID.; CRIMINAL PROCEDURE; ARREST; SEARCH INCIDENTAL TO A LAWFUL ARREST; IN ORDER TO DEEM AS VALID A CONSENSUAL SEARCH, IT IS REQUIRED THAT THE POLICE AUTHORITIES EXPRESSLY ASK, AND IN NO UNCERTAIN TERMS, OBTAIN THE CONSENT OF THE ACCUSED TO BE SEARCHED AND THE CONSENT THEREOF ESTABLISHED BY CLEAR AND POSITIVE PROOF.— [T]he Court notes the inconsistencies in the claim of the Office of the Solicitor General (OSG) that Reyes consented to the search when she voluntarily showed the sachet of *shabu* to the police officers. In their Comment, the OSG stated that at the time of arrest, Reyes was so intoxicated that she "simply let her senses down" and showed the *shabu* to PO1 Monteras; but later, in the same Comment, the OSG argued that Reyes was actually "in her right senses when she reminded the police officers" that they were not allowed to frisk a woman. These material inconsistencies clearly render suspect the search conducted on Reyes's person and likewise, destroy the credibility

of the police officers who testified against Reyes. In order to deem as valid a consensual search, it is required that the police authorities expressly ask, and in no uncertain terms, **obtain the consent of the accused to be searched and the consent thereof established by clear and positive proof**, which were not shown in this case.

9. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); SECTION 21, ARTICLE II THEREOF; CHAIN OF CUSTODY RULE; UNJUSTIFIED NON-COMPLIANCE WITH THE CHAIN OF CUSTODY PROCEDURE WOULD RESULT IN THE ACQUITTAL OF THE ACCUSED.— [T]he Court finds the police officers to have committed unjustified deviations from the prescribed chain of custody rule under Section 21, Article II of RA 9165, through their admission that only the Barangay Captain was present during the marking and inventory of the seized items. Records are further bereft of any showing that efforts were made by the police officers to secure the presence of the other necessary personalities under the law or provide any justification for their absence, which could have excused their leniency in strictly complying with the said procedure. Section 21, Article II of RA 9165, prior to its amendment by RA 10640, requires, among others, that the apprehending team shall **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination. It is well-settled that unjustified non-compliance with the chain of custody procedure would result in the acquittal of the accused, as in this case.

APPEARANCES OF COUNSEL

Office of the Solicitor General for respondent.
Public Attorney's Office for petitioner.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by petitioner Leniza Reyes *y* Capistrano (Reyes) assailing the Decision[2] dated May 20, 2016 and the Resolution[3] dated January 11, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 36821, which affirmed the Decision[4] dated June 16, 2014 of the Regional Trial Court of Binangonan, Rizal, Branch 67 (RTC) in Crim. Case No. 12-0627 finding Reyes guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[6] filed before the RTC charging Reyes with Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165, the accusatory portion of which states:

> That on or about the 6th day of [November] 2012 in the Municipality of Cardona, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did, then and there willfully, unlawfully and knowingly possess and have in her custody and control 0.04 gram of white crystalline substance contained in one (1) heat-sealed

---

[1] *Rollo*, pp. 11-29.

[2] *Id.* at 33-46. Penned by Associate Justice Danton Q. Bueser with Associate Justices Apolinario D. Bruselas, Jr. and Renato C. Francisco concurring.

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

[4] *Id*. at 68-69. Penned by Presiding Judge Dennis Patrick Z. Perez.

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

[6] Records, p. 1-2.

transparent plastic sachet which substance was found positive to the test for Methamphetamine Hydrochloride, which is a dangerous drug, in violation of the above cited law.

CONTRARY TO LAW.[7]

The prosecution alleged that at around eight (8) o'clock in the evening of November 6, 2012, a group of police officers from Cardona, Rizal, including Police Officer 1 (PO1) Jefferson Monteras (PO1 Monteras), was patrolling the diversion road of Barangay Looc, Cardona, Rizal when two (2) teenagers approached and informed them that a woman with long hair and a dragon tattoo on her left arm had just bought *shabu* in Barangay Mambog. After a few minutes, a woman, later identified to be Reyes, who matched the said description and smelled like liquor passed by the police officers. The latter asked if she bought *shabu* and ordered her to bring it out. Reyes answered, "*Di ba bawal kayong magkapkap ng babae?*" and at that point, turned her back, pulled something out from her breast area and held a small plastic sachet on her right hand.[8] PO1 Monteras immediately confiscated the sachet and brought it to the police station where he marked it with "LRC-1." Thereat, he prepared the necessary documents, conducted the inventory and photography before Barangay Captain Manolito Angeles.[9] Thereafter, PO1 Monteras proceeded to the Rizal Provincial Crime Laboratory and turned over the seized item for examination to Police Senior Inspector Beaune Villaraza (PSI Villaraza), who confirmed[10] that the substance inside the sachet tested positive for 0.04 gram of methamphetamine hydrochloride or *shabu*, a dangerous drug.[11]

---

[7] *Id.* at 1.

[8] See TSN September 4, 2013, pp. 4-6.

[9] See *id*. at 6-10.

[10] See Chemistry Report Number: D-521-12 dated November 6, 2016; records, p. 11.

[11] See *rollo*, pp. 35-36.

For her part, Reyes denied the charges, claiming that the incident happened on November 5, 2012 and not November 6. On said date, she came from a drinking spree and was about to board a jeepney, when a man approached and asked if she knew a certain person. After answering in the negative, she rode the jeepney until it was blocked by two (2) civilian men in motorcycles whom she identified to be one PO1 Dimacali. The latter ordered her to alight and bring out the *shabu* in her possession which she denied having. She was then brought to the police station where the police officers extorted from her the amount of ₱35,000.00 in exchange for her freedom. But since she failed to give the money, the police officers took her to Taytay for inquest proceedings.[12]

The RTC Ruling

In a Decision[13] dated June 16, 2014, the RTC found Reyes guilty beyond reasonable doubt of illegal possession of 0.11 gram of *shabu* defined and penalized under Section 11, Article II of RA 9165. Accordingly, she was sentenced to suffer the penalty of imprisonment for an indeterminate term of twelve (12) years and one (1) day, as minimum, to thirteen (13) years, as maximum, and to pay a fine of ₱300,000.00, with an order for her immediate arrest.[14]

The RTC ruled that the prosecution was able to prove that Reyes was validly arrested and thereupon, found to be in possession of *shabu*, which she voluntarily surrendered to the police officers upon her arrest. Likewise, it observed that the chain of custody of the seized item was sufficiently established through the testimony of PO1 Monteras, which was not ill-motivated.[15]

Aggrieved, Reyes appealed[16] to the CA.

---

[12] See *id*. at 36-37.

[13] *Id*. at 68-69.

[14] *Id*. at 69.

[15] See *id*.

[16] See Notice of Appeal dated July 9, 2014; records, p. 174.

The CA Ruling

In a Decision[17] dated May 20, 2016, the CA affirmed Reyes's conviction for the crime charged.[18] It held that the search made on Reyes's person yielding the sachet of *shabu* was valid as she was caught *in flagrante delicto* in its possession and was legally arrested on account thereof.[19] The CA likewise found substantial compliance with the chain of custody rule and that the integrity and evidentiary value of the confiscated item were properly preserved.[20]

However, it corrected the quantity of *shabu* stated in the RTC's dispositive portion to 0.04 gram in order to conform with the findings of PSI Villaraza and accordingly, modified the penalty imposed to twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum.[21]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Reyes's conviction for Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 should be upheld.

The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[22] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to

---

[17] *Id*. at 33-46.

[18] *Id*. at 44.

[19] See *id*. at 38-40.

[20] See *id*. at 40-43.

[21] See *id*. at 43-44.

[22] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[23]

"Section 2,[24] Article III of the 1987 Constitution mandates that **a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure [become] 'unreasonable' within the meaning of said constitutional provision**. To protect the people from unreasonable searches and seizures, Section 3 (2),[25] Article III of the 1987 Constitution provides that **evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.** In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree.[26]

One of the recognized exceptions to the need [of] a warrant before a search may be [e]ffected is a search incidental to a lawful arrest.[27] **In this instance, the law requires that there first be a lawful arrest before a search can be made – the process cannot be reversed.**[28]

---

[23] *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[24] Section 2, Article III of the 1987 Constitution states:

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

[25] Section 3 (2), Article III of the 1987 Constitution states:

Section 3. x x x.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[26] See *Miguel v. People,* G.R. No. 227038, July 31, 2017, citing *Sindac v. People*, 794 Phil. 421, 428 (2016); further citation omitted.

[27] See Section 13, Rule 126 of the Rules of Court.

[28] See *Miguel v. People,* G.R. No. 227038, *supra* note 26, citing *Sindac v. People*, *supra* note 26.

A lawful arrest may be effected with or without a warrant. With respect to the latter, the parameters of Section 5, Rule 113 of the Revised Rules of Criminal Procedure should – as a general rule – be complied with:

> Section 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
>
> In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

The aforementioned provision identifies three (3) instances when warrantless arrests may be lawfully effected. These are: (*a*) an arrest of a suspect *in flagrante delicto*; (*b*) an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; and (*c*) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.[29]

In warrantless arrests made pursuant to Section 5 (a), Rule 113, two (2) elements must concur, namely: (*a*) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (*b*) such overt act is done in the presence or within the view of the

---

[29] See *id*. See also *Comerciante v. People*, 764 Phil. 627, 634-635 (2015).

arresting officer. On the other hand, Section 5 (b), Rule 113 requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it.[30]

In both instances, the officer's personal knowledge of the fact of the commission of an offense is essential. [The scenario under] Section 5 (a), Rule 113 of the Revised Rules of Criminal Procedure [contemplates that] the officer himself witnesses the crime; while in Section 5 (b) of the same, [the officer] knows for a fact that a crime has just been committed."[31]

Essentially, the validity of this warrantless arrest requires compliance with the overt act test, showing that "**the accused x x x exhibit an overt act within the view of the police officers suggesting that [she] was in possession of illegal drugs at the time [she] was apprehended**."[32] Absent any overt act showing the commission of a crime, the warrantless arrest is rendered invalid, as in a case where a person was apprehended for merely carrying a bag and traveling aboard a jeepney without acting suspiciously.[33] Similarly, in *People v. Racho*,[34] a search based solely on a tip describing one of the passengers of a bus was declared illegal, since at the time of apprehension, the said accused was not "committing a crime in the presence of the police officers," nor did he commit a crime or was about to commit one.[35]

In this case, Reyes argues that no valid warrantless arrest took place as she did not do anything as to rouse suspicion in the minds of the arresting officers that she had just committed, was committing, or was about to commit a crime when she

---

[30] See *Miguel v. People*, *id*. See also *Veridiano v. People*, G.R. No. 200370, June 7, 2017; and *Comerciante v. People*, *id*. at 635, citing *People v. Villareal*, 706 Phil. 511, 517-518 (2013).

[31] See *Miguel v. People*, *id*. See also *Comerciante v. People*, *id*.

[32] See *Veridiano v. People*, *supra* note 30.

[33] See *People v. Cogaed*, 740 Phil. 212 (2014).

[34] 640 Phil. 669 (2010).

[35] See *id*. at 678-682.

was just passing by.[36] During cross-examination, PO1 Monteras revealed:

[Atty. Cynthia D. Iremedio]: Mister Witness these two youngsters, **the only information that they gave you is that there is a woman with a tattoo?**

[PO1 Monteras]: Yes ma'am.

Q: No further description regarding this woman was given to you?

A: Long haired and with tattoo on the left arm ma'am.

Q: And no description of the tattoo on her left hand?

A: None ma'am.

COURT: What is the tattoo on her left arm?

A: I think it was a Dragon sir.

Q: These two persons did not mention to you the name of the accused?

A: Yes ma'am.

Q: Aside from those description, you will agree with me that this long hair and a dragon tattoo can be possessed by any other person aside from the accused?

A: Yes ma'am.

x x x x x x x x x

Q: Now Mister Witness you did not conduct further investigation on these two persons?

A: Not anymore ma'am.

x x x x x x x x x

Q: Now, Mister Witness, can you describe to us when you saw this accused?

A: While we were at the corner of the Diversion Road we saw a female persons (sic) coming towards us who fits the description given by the two teenagers ma'am.

---

[36] See *rollo*, pp. 20-21.

Q: And despite the description, **this accused merely passes in front of you and did nothing wrong against you?**

A: Yes ma'am.

x x x x x x x x x

Q: But when you greeted her "good evening" there is nothing unsual with this accused?

A: She smelled of liquor ma'am.

Q: **She was not holding anything or acting in a suspicious manner which will elicit a response from you?**

A: **None ma'am.**

x x x x x x x x x[37] (Emphases and underscoring supplied)

On the basis of the foregoing, the Court finds that no lawful arrest was made on Reyes. PO1 Monteras himself admitted that Reyes passed by them without acting suspiciously or doing anything wrong, except that she smelled of liquor.[38] As no other overt act could be properly attributed to Reyes as to rouse suspicion in the mind of PO1 Monteras that she had just committed, was committing, or was about to commit a crime, the arrest is bereft of any legal basis. As case law demonstrates, the act of walking while reeking of liquor *per se* cannot be considered a criminal act.[39]

Neither has the prosecution established the conditions set forth in Section 5 (b), Rule 113, particularly, that the arresting officer had personal knowledge of any fact or circumstance indicating that the accused had just committed a crime. "Personal knowledge" is determined from the testimony of the witnesses that there exist reasonable grounds to believe that a crime was committed by the accused.[40] As ruled by the Court, "[a] hearsay tip by itself does not justify a warrantless arrest. Law enforcers must have personal knowledge of facts, based on their observation, that

---

[37] TSN, September 4, 2013, pp. 12-15.

[38] See *id*. at 14-15.

[39] See *People v. Villareal*, *supra* note 30, at 519-520.

[40] See *People v. Tudtud*, 458 Phil. 752, 773-778 (2003).

the person sought to be arrested has just committed a crime."[41] In this case, records failed to show that PO1 Monteras had any personal knowledge that a crime had been committed by Reyes, as in fact, he even admitted that he merely relied on the two (2) teenagers' tip and that, everything happened by "chance."[42] Surely, to interpret "personal knowledge" as to encompass unverified tips from strangers would create a dangerous precedent and unnecessarily stretch the authority and power of police officers to effect warrantless arrests, rendering nugatory the rigorous requisites under Section 5 (b), Rule 113.[43]

Moreover, the Court finds the version of the prosecution regarding the seizure of the subject item as lacking in credence. To recapitulate, the prosecution, through the testimony of PO1 Monteras, claimed that when the police officers asked Reyes if she purchased *shabu,* she turned her back and voluntarily showed the plastic sachet containing the same which she retrieved from her brassiere. According to jurisprudence, the issue of credibility of a witness's testimony is determined by its conformity with knowledge and consistency with the common experience of mankind.[44] As the Court observes, it is rather contrary to ordinary human experience for a person to willfully exhibit incriminating evidence which would result in his or her conviction for a crime, absent any impelling circumstance which would prompt him or her to do so.

In addition, the Court notes the inconsistencies in the claim of the Office of the Solicitor General (OSG) that Reyes consented to the search when she voluntarily showed the sachet of *shabu* to the police officers. In their Comment,[45] the OSG stated that at the time of arrest, Reyes was so intoxicated that she "simply let her

---

[41] See *Veridiano v. People*, G.R. No. 200370, June 7, 2017.

[42] See TSN, September 4, 2013, p. 9.

[43] See *People v. Villareal*, *supra* note 30, at 521.

[44] See *Medina, Jr. v. People*, 724 Phil. 226, 238 (2014). See also *Flores v. People*, 705 Phil. 119, 136 (2013); *People v. De Guzman*, 690 Phil. 701, 712-713 (2012); and *People v. San Juan*, 383 Phil. 689, 703 (2000).

[45] Dated August 29, 2017. *Rollo*, pp. 125-139.

senses down" and showed the *shabu* to PO1 Monteras;[46] but later, in the same Comment, the OSG argued that Reyes was actually "in her right senses when she reminded the police officers" that they were not allowed to frisk a woman.[47] These material inconsistencies clearly render suspect the search conducted on Reyes's person and likewise, destroy the credibility of the police officers who testified against Reyes.[48] In order to deem as valid a consensual search, it is required that the police authorities expressly ask, and in no uncertain terms, **obtain the consent of the accused to be searched and the consent thereof established by clear and positive proof**,[49] which were not shown in this case.

In fine, there being no lawful warrantless arrest, the sachet of *shabu* purportedly seized from Reyes on account of the search is rendered inadmissible in evidence for being the proverbial fruit of the poisonous tree.[50] And since the *shabu* is the very *corpus delicti* of the crime charged, Reyes must necessarily be acquitted and exonerated from criminal liability.

Besides, the Court finds the police officers to have committed unjustified deviations from the prescribed chain of custody rule under Section 21, Article II of RA 9165, through their admission that only the Barangay Captain was present during the marking and inventory of the seized items.[51] Records are further bereft of any showing that efforts were made by the police officers to secure the presence of the other necessary personalities under the law or provide any justification for their absence, which could have excused their leniency in strictly complying with the said procedure.[52] Section 21, Article II of RA 9165, prior

---

[46] See *id*. at 129.

[47] See *id*. at 133.

[48] See *People v. Emoy*, 395 Phil. 371, 383 (2000).

[49] *People v. Nuevas*, 545 Phil. 356, 376-377 (2007).

[50] See *People v. Manago*, G.R. No. 212340, August 17, 2016, 801 SCRA 103, 112.

[51] See TSN, September 4, 2013, pp. 8 and 17.

[52] See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

to its amendment by RA 10640,[53] requires, among others, that the apprehending team shall **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.[54] It is well-settled that unjustified non-compliance with the chain of custody procedure would result in the acquittal of the accused,[55] as in this case.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 20, 2016 and the Resolution dated January 11, 2017 of the Court of Appeals in CA-G.R. CR No. 36821 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Leniza Reyes *y* Capistrano is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause her immediate release, unless she is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

---

[53] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014.

[54] See Section 21 (1) and (2), Article II of RA 9165.

[55] See *People v. Manansala*, G.R. No. 229092, February 21, 2018. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

THIRD DIVISION

[G.R. No. 229645. June 6, 2018]

NORMA M. BALEARES, DESIDERIO M. BALEARES, GERTRUDES B. CARIASA, RICHARD BALEARES, JOSEPH BALEARES, SUSAN B. DELA CRUZ, MA. JULIA B. RECTRA, and EDWIN BALEARES, *petitioners, vs.* **FELIPE B. ESPANTO, rep. by MARCELA B. BALEARES, Attorney-in-Fact,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE FACTUAL FINDINGS OF THE TRIAL COURTS, ESPECIALLY WHEN AFFIRMED ON APPEAL BY THE COURT OF APPEALS, ARE BINDING AND CONCLUSIVE UPON THE COURT, EXCEPT WHEN THE COURT OF APPEALS MANIFESTLY OVERLOOKED CERTAIN RELEVANT FACTS NOT DISPUTED BY THE PARTIES, WHICH, IF PROPERLY CONSIDERED, WOULD JUSTIFY A DIFFERENT CONCLUSION.— Generally, the factual findings of the trial courts, especially when affirmed on appeal by the CA, are binding and conclusive upon this Court. This rule, however, admits of several exceptions and one of which is when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. In which case, this Court can go over the records and re-examine the evidence presented by the parties in order to arrive at a much better and just resolution of the case.

2. ID.; SPECIAL CIVIL ACTION; UNLAWFUL DETAINER; THE ONLY ISSUE TO BE RESOLVED IS WHO IS ENTITLED TO PHYSICAL POSSESSION OF THE PREMISES, NONETHELESS, WHERE THE PARTIES RAISE THE ISSUE OF OWNERSHIP AND SUCH IS INSEPARABLY LINKED TO THAT OF POSSESSION, THE COURTS MAY PASS UPON THAT ISSUE TO DETERMINE WHO BETWEEN THE PARTIES HAS THE BETTER RIGHT TO POSSESS THE PROPERTY, BUT

THE ADJUDICATION OF THE OWNERSHIP ISSUE IS NOT FINAL AND BINDING.— This case involved an action for unlawful detainer filed by the respondent against the petitioners. An action for unlawful detainer is summary in nature and the only issue that needs to be resolved is who is entitled to physical possession of the premises, possession referring to possession *de facto*, and not possession *de jure*. Nonetheless, where the parties to an ejectment case raise the issue of ownership and such is inseparably linked to that of possession, the courts may pass upon that issue to determine who between the parties has the better right to possess the property. The adjudication of the ownership issue, however, is not final and binding. The same is only for the purpose of resolving the issue of possession. Otherwise stated, the adjudication of the issue of ownership is only provisional, and not a bar to an action between the same parties involving title to the property.

3. **ID.; ID.; ID.; A MERE TRANSFEREE OF THE PROPERTY WHO HAS KNOWLEDGE THAT HIS TRANSFEROR'S MORTGAGED RIGHT OVER THE SAME HAS BEEN CANCELLED WITH FINALITY BY THE COURT, MERELY STEPPED INTO HIS TRANSFEROR'S SHOES, THUS, HE HAS NO RIGHT OVER THE SAID PROPERTY.—** [T]he petitioners claim that they have a better right of possession over the subject property as they are the heirs of one of its original co--owners and they have been in lawful possession and occupation thereof ever since, thus, they cannot be dispossessed of the subject property. The respondent, on the other hand, based his claim of ownership and right of possession over the subject property on a certificate of title issued in his name. However, the respondent, being a mere transferee of the subject property who has knowledge that his transferor's mortgaged right over the same has been cancelled with finality by the court, merely stepped into his transferor's shoes, thus, he has no right over the subject property.

APPEARANCES OF COUNSEL

Peter C.A. Gonzales Law Office for petitioners.
Ariel Osabel Labra for respondent.

DECISION

VELASCO, JR., *J.*:

For review in the instant Petition[1] is the Decision[2] promulgated on January 31, 2017 by the Court of Appeals (CA) in CA-G.R. SP No. 144007, which affirmed the Decision[3] and the Order[4] dated July 24, 2015 and December 29, 2015, respectively, of the Regional Trial Court (RTC) of Makati City, Branch 137 in Civil Case No. 15-113 (For Ejectment).

The controversy arose from the following antecedents:

The herein respondent is the current registered owner of a parcel of land with improvements situated at No. 3288 A. Mabini St., Poblacion, Makati City (subject property), and covered by Transfer Certificate of Title (TCT) No. 225428. The herein petitioners, on the other hand, were the heirs of Santos Baleares (Santos), one of the original co-owners of the subject property[5] (previously covered by TCT No. 9482[6]), together with his siblings Tomasa, Julia, Matilde, Marcela, Gloria (now deceased), all surnamed Baleares, and his nephew, Ernest B. Nonisa, Jr. (now deceased).

Way back on February 18, 1988, the Baleares siblings mortgaged the subject property to Arnold Maranan (Arnold).[7] The mortgage was registered and annotated at the back of TCT No. 9482 as Entry No. 47847.[8] Unknown to the petitioners,

---

[1] *Rollo*, pp. 10-32.

[2] Penned by Associate Justice Florito S. Macalino with Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles, concurring, *id*. at 38-48.

[3] Penned by Presiding Judge Ethel V. Mercado-Gutay, *id*. at 51-58.

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

[5] RTC Decision dated July 24, 2015, *id*. at 51.

[6] *Id*. at 83.

[7] Real Estate Mortgage, *id*. at 90-92.

[8] TCT No. 9482, *id*. at 185-186.

the subject property was apparently foreclosed and sold at public auction on August 13, 1996, where Arnold appeared to be the highest bidder.[9]

Contrariwise, sometime in 1998, believing that Arnold failed to enforce his mortgaged right over the subject property within the 10-year prescriptive period, the petitioners, as heirs of Santos and the possessors and occupants thereof,[10] lodged a **Complaint for the Cancellation of the Mortgage Inscription on TCT No. 9482** grounded on prescription before Branch 134 of RTC-Makati City, **docketed as Civil Case No. 98-1360**.[11] During its pendency, however, a Certificate of Sale[12] dated March 2, 1999 was allegedly issued to Arnold. TCT No. 9482 was consequently cancelled and a new one, TCT No. 225363, was issued in his favor.[13]

Sometime thereafter in April 2000, respondent and his mother likewise filed a complaint against Arnold but for **Nullification of Mortgage and/or Foreclosure with TRO/Injunction** based also on prescription of the latter's mortgaged right. This was lodged before Branch 135 of RTC-Makati City and **docketed as Civil Case No. 00-523**.[14] Purportedly, respondent and his mother were among the co-owners of the subject property; the latter (respondent's mother) being one of the Baleares siblings.

On July 18, 2003, the RTC rendered a Decision[15] **in Civil Case No. 98-1360 (cancellation of mortgage inscription) in favor of the petitioners**. The RTC held that there was no valid extrajudicial foreclosure of mortgage and auction sale for non-

---

[9] Per Certificate of Sale dated March 2, 1999, *id*. at 98.

[10] *Id*. at 39.

[11] *Id*. at 93-97.

[12] *Id*. at 98.

[13] *Id*. at 187-188.

[14] *Id*. at 75-82.

[15] Penned by Penned by Pairing Judge Rebecca R. Mariano, *id*. at 167-174.

compliance with the notice and posting of publication requirements set forth under Act No. 3135, as amended. And, since the alleged mortgage loan had been due for more than 10 years, without Arnold having exercised his mortgaged right, thus, the inscription on TCT No. 9482 can now be cancelled on the ground of prescription. The RTC, thus, ordered the Register of Deeds of Makati City to cancel Entry No. 47847 dated February 18, 1988 at the back of TCT No. 9482.[16] The CA affirmed this decision, which became final and executory on February 1, 2008.[17]

In the same year, all this notwithstanding, Arnold was able to sell[18] the subject property to none other than the respondent himself. Later, TCT No. 225428 was issued in respondent's name. The latter, however, did not immediately take possession of the subject property. Instead, he allowed the petitioners, who were its actual occupants, to remain therein as they are his blood relatives.[19]

After some time, the respondent sent a demand letter to the petitioners for them to vacate the subject property as he wanted to construct an apartment thereon but they refused. In so refusing, the petitioners maintained that they have a better right of possession over the subject property being the heirs of its original owners.[20] On June 17, 2009, a final demand was made for the petitioners to vacate the subject property and to pay the reasonable rentals thereon,[21] but this remained unheeded. Even the subsequent barangay settlement proved futile. Thus, the respondent instituted a **Complaint for Unlawful Detainer** before the MeTC-Makati City against the petitioners, **docketed as Civil Case No. 98995** (the origin of this Petition).

---

[16] RTC Decision dated July 18, 2003, *id*. at 173.

[17] Per Entry of Judgment dated August 12, 2008, *id*. at 175.

[18] Deed of Absolute Sale of Real Property, *id*. at 178-179.

[19] *Id*. at 40.

[20] *Id*. at 41.

[21] *Id*. at 110-111.

In their Verified Answer with Motion to Dismiss and Counterclaim, the petitioners averred that the MeTC has no jurisdiction over the instant action, as it is one for recovery of possession and not for unlawful detainer. They also raise the existence of *litis pendentia,* as there are allegedly two pending cases involving similar issues of ownership and possession that are still pending before the RTC-Makati City. They maintained that they are co-owners of the subject property, thus, their right to stay thereon was not because of the respondent's tolerance.[22]

In a Decision dated August 11, 2014, the MeTC ruled for the respondent and granted the Complaint. It found the complaint to be sufficient for an unlawful detainer case and upheld that the case should not be dismissed on the ground of *litis pendentia,* as the issues in the alleged two pending cases before the RTC-Makati City do not abate ejectment suit. The MeTC, thus, ordered the petitioners and all persons claiming rights under them to vacate the subject property and to peaceably surrender its possession to the respondent. The petitioners were also ordered to pay the respondent these amounts (1) ₱5,000.00 per month as reasonable compensation for use and occupation of the subject property reckoned from December 22, 2008 and every month thereafter until they fully vacated the same; (2) ₱15,000.00 as attorney's fees; and (3) the costs of suit.[23] The subsequent Motion for Reconsideration was denied in an Order[24] dated October 24, 2014 for being a prohibited pleading.

On appeal, the RTC, in a Decision dated July 24, 2015, affirmed in its entirety the MeTC ruling. The petitioners moved to reconsider the same but it was similarly denied for lack of merit in an Order dated December 29, 2015.

In the interim, the respondent moved for the execution of the RTC Decision, which was granted in an Order[25] dated

---

[22] *Id*.

[23] MeTC Decision dated August 11, 2014, *id*. at 64, 66, 68.

[24] *Id*. at 69.

[25] *Id*. at 282-284.

December 26, 2016 pursuant to Section 21,[26] Rule 70 of the Rules of Court in relation to Section 21[27] of the Revised Rule on Summary Procedure.

On further appeal, the CA, in the now assailed Decision dated January 31, 2017, affirmed both the Decision and the Order of the RTC. The CA also ordered the petitioners to pay six percent (6%) interest rate of the outstanding obligation from finality of judgment until fully satisfied. The CA rejected the petitioners' argument that the RTC Decision in Civil Case No. 98-1360 binds the respondent for being a mere transferee of Arnold under the doctrine of *res judicata*.

Hence, this Petition raising these arguments: (1) the CA erred in not finding that respondent is a transferee *pendete lite* with respect to the subject property; and (2) the CA erred in ruling that the respondent's ejectment complaint is not barred by the final and executory Decision in Civil Case No. 98-1360 against Arnold, his transferor, with respect to the subject property.[28]

In essence, the pivotal issue that must be resolved here is who between the petitioners and the respondent has a better right of possession over the subject property? The petitioners who are in possession of the same continuously for a long period of time or the respondent whose right of possession is anchored on a Torrens title obtained through purchase from someone whose right over the subject property has long ceased and he has knowledge of such fact?

---

[26] **Section 21.** *Immediate execution on appeal to Court of Appeals or Supreme Court.* — The judgment of the Regional Trial Court against the defendant shall be immediately executory, without prejudice to a further appeal that may be taken therefrom.

[27] Sec. 21. Appeal. — The judgment or final order shall be appealable to the appropriate regional trial court which shall decide the same in accordance with Section 22 of Batas Pambansa Blg. 129. The decision of the regional trial court in civil cases governed by this Rule, including forcible entry and unlawful detainer, shall be immediately executory, without prejudice to a further appeal that may be taken therefrom. Section 10 of Rule 70 shall be deemed repealed.

[28] *Rollo*, pp. 18-19.

This Court rules for the petitioners.

Generally, the factual findings of the trial courts, especially when affirmed on appeal by the CA, are binding and conclusive upon this Court. This rule, however, admits of several exceptions and one of which is when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. In which case, this Court can go over the records and re-examine the evidence presented by the parties in order to arrive at a much better and just resolution of the case.

This case involved an action for unlawful detainer filed by the respondent against the petitioners. An action for unlawful detainer is summary in nature and the only issue that needs to be resolved is who is entitled to physical possession of the premises, possession referring to possession *de facto,* and not possession *de jure*. Nonetheless, where the parties to an ejectment case raise the issue of ownership and such is inseparably linked to that of possession, the courts may pass upon that issue to determine who between the parties has the better right to possess the property. The adjudication of the ownership issue, however, is not final and binding. The same is only for the purpose of resolving the issue of possession. Otherwise stated, the adjudication of the issue of ownership is only provisional, and not a bar to an action between the same parties involving title to the property.[29]

Here, the petitioners claim that they have a better right of possession over the subject property as they are the heirs of one of its original co-owners and they have been in lawful possession and occupation thereof ever since, thus, they cannot be dispossessed of the subject property. The respondent, on the other hand, based his claim of ownership and right of possession over the subject property on a certificate of title issued in his name. However, the respondent, being a mere transferee of the subject property who has knowledge that his transferor's mortgaged right over the same has been cancelled

[29] *Corpuz v. Sps. Agustin*, G.R. No. 183822, January 18, 2012.

with finality by the court, merely stepped into his transferor's shoes, thus, he has no right over the subject property.

It is true that a title issued under the Torrens system is entitled to all the attributes of property ownership, which necessarily includes possession.[30] As such, ordinarily, the Torrens title holder over the subject properties is considered the rightful owner who is entitled to possession thereof. But, in this case, it has not been disputed that the petitioners have been in continuous possession of the subject property in the concept of ownership and not by mere tolerance of the respondent. Moreover, the latter has knowledge that his transferor has no more right to enforce the mortgage over the subject property on the ground of prescription as stated in the RTC Decision in Civil Case No. 98-1360. The trial court also declared therein that Arnold's extrajudicial foreclosure and auction sale of the subject property was non-existent and void, which ruling already attained finality. As such, it would appear that the respondent's right over the subject property is highly questionable. Under these circumstances, the respondent cannot simply oust the petitioners from possession through the summary procedure of an ejectment proceeding.

It bears stressing that the herein ruling is limited only to the determination as to who between the parties has the better right of possession. It will not in any way bar any of the parties from filing an action with the proper court to resolve conclusively the issue of ownership.

WHEREFORE, premises considered, the present petition is **GRANTED**. The CA Decision dated January 31, 2017 in CA-G.R. SP No. 144007 is **REVERSED** and **SET ASIDE**. A new judgment is rendered **DISMISSING** the Complaint in Civil Case No. 98995 for lack of merit.

SO ORDERED.

Bersamin, Leonen, Martires, and *Gesmundo, JJ.,* concur.

---

[30] *Id*.

SECOND DIVISION

[G.R. No. 230170. June 6, 2018]

MA. SUGAR M. MERCADO and SPOUSES REYNALDO AND YOLANDA MERCADO, *petitioners, vs.* **HON. JOEL SOCRATES S. LOPENA [PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BRANCH 33, QUEZON CITY], HON. JOHN BOOMSRI S. RODOLFO [PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BRANCH 38, QUEZON CITY], HON. REYNALDO B. DAWAY [PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 90, QUEZON CITY], HON. ROBERTO P. BUENAVENTURA [PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 86, QUEZON CITY], HON. JOSE L. BAUTISTA, JR. [PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 107, QUEZON CITY], HON. VITALIANO AGUIRRE II (IN HIS CAPACITY AS SECRETARY OF JUSTICE), HON. DONALD LEE (IN HIS CAPACITY AS THE CHIEF OF THE OFFICE OF THE CITY PROSECUTOR OF QUEZON CITY), KRISTOFER JAY I. GO, PETER AND ESTHER GO, KENNETH ROUE I. GO, CASEY LIM JIMENEZ, CHRISTINA PALILEO, and RUEL BALINO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI* OR PROHIBITION; CAN PROSPER ONLY WHEN THERE IS NO OTHER PLAIN, SPEEDY, AND ADEQUATE REMEDY AVAILABLE IN THE ORDINARY COURSE OF LAW.— For a petition for *certiorari* or prohibition to prosper, the Rules require that there be no other plain, speedy, and adequate remedy available in the ordinary course of law. Here, the cases before the public respondents are still pending. Thus, there still exists in law a plain, speedy, and adequate remedy for petitioners x x x. In the same vein, petitioner Mercado is also entitled to the

appropriate relief under R.A. No. 9262 in case of a violation of the PPO dated February 19, 2016 issued in Civil Case No. R-QZN-15-10201. Under Section 21 of R.A. No. 9262, a violation of any provision of a PPO shall constitute Contempt of Court punishable under Rule 71 of the Rules x x x. The Court is a court of last resort. This policy must be strictly observed so as not to unduly burden the Court with cases that may be resolved by the lower courts vested with concurrent jurisdiction. The Court's original jurisdiction may only be invoked when serious and important reasons exist that necessitate the same.

2. ID.; ID.; ID.; *CERTIORARI*; FAILURE TO INCLUDE A STATEMENT OF MATERIAL DATES IN THE PETITION SHALL BE SUFFICIENT GROUND FOR THE DISMISSAL OF THE PETITION.— [T]he Petition is dismissible for failure to include a statement of material dates in violation of Rule 56 of the Rules of Court, in relation to Section 3 of Rule 46. Rule 46 provides that the following material dates must be stated in a petition for *certiorari* brought under Rule 65: (a) the date when notice of the judgment or final order or resolution was received, (b) the date when a motion for new trial or for reconsideration was filed, and (c) the date when notice of the denial thereof was received. The same provision states that the petitioner's failure to comply with said requirements shall be sufficient ground for the dismissal of the petition. The purpose of this requirement is to determine whether the petition was filed within the proper reglementary period. A petition for *certiorari* or prohibition must be filed not later than sixty (60) days from notice of the judgment, order, or resolution sought to be assailed.

3. ID.; COURTS; RULE ON HIERARCHY OF COURTS; A DIRECT INVOCATION OF THE SUPREME COURT'S ORIGINAL JURISDICTION TO ISSUE EXTRAORDINARY WRITS SHOULD BE ALLOWED ONLY WHEN THERE ARE SPECIAL AND IMPORTANT REASONS THEREFOR; EXCEPTIONS.— [O]n the issue of the rule on hierarchy of courts, the Court finds the direct filing with the Court unwarranted under the circumstances. Generally, a direct invocation of the Court's original jurisdiction to issue extraordinary writs should be allowed only when there are special and important reasons therefor. Thus, in *Rama v. Moises*, the Court recognized the following exceptions to the strict

application of the rule on hierarchy of courts: "x x x (a) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (b) when the issues involved are of transcendental importance; (c) **cases of first impression**; (d) when the constitutional issues raised are best decided by this Court; (e) when the time element presented in this case cannot be ignored; x x x." Notwithstanding the foregoing, while the Court notes that the Petition presents, at the very least, a case of first impression, novelty alone cannot cure the inherent defects of the Petition.

4. **POLITICAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; RULE-MAKING POWER; CONSIDERED PLENARY IN NATURE AND THE COURT CANNOT BE CALLED UPON BY A PRIVATE CITIZEN TO EXERCISE SUCH POWER IN A PARTICULAR MANNER, ESPECIALLY THROUGH THE VEHICLE OF A PETITION FOR *CERTIORARI* OR PROHIBITION, WHICH IS INTENDED FOR AN ENTIRELY DIFFERENT PURPOSE.—** Petitioners invoke the power of the Court to promulgate rules of procedure, presumably to extend the relief of SLAPP to those cases filed against victims of domestic violence in the context of R.A. No. 9262. Foremost, the rule-making power of the Court in matters of pleading, practice, and procedure in all courts is vested by Section 5(5), Article VIII of the Constitution. Hence, being plenary in nature, the Court cannot be called upon by a private citizen to exercise such power in a particular manner, especially through the vehicle of a petition for *certiorari* or prohibition, which is intended for an entirely different purpose.

5. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE RELIEF IN A PETITION FOR *CERTIORARI* MERELY TAKES THE FORM OF CORRECTING ANY ERROR OF JURISDICTION COMMITTED BY THE TRIBUNAL OR OFFICE.—** [A] petition filed under Rule 65 is directed against any tribunal, board or officer exercising judicial or quasi-judicial functions that has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. Relief in such a petition merely takes the form of correcting any error of jurisdiction committed by the tribunal or officer. Here, petitioners would want the Court to accommodate

her cause of action by granting a collateral relief that is not comprehended under the provisions of Rule 65 — or any of the Rules, for that matter — which is to extend the concept of SLAPP to cases of violence against women and their children.

6. ID.; A.M. NO. 09-6-8-SC (RULE OF PROCEDURE FOR ENVIRONMENTAL CASES); STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION; SET UP AS A DEFENSE IN THOSE CASES CLAIMED TO HAVE BEEN FILED MERELY AS A HARASSMENT SUIT AGAINST ENVIRONMENTAL ACTIONS.— The concept of SLAPP was first introduced to this jurisdiction under the Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC). x x x In application, the allegation of SLAPP is set up as a defense in those cases claimed to have been filed merely as a harassment suit against environmental actions x x x. Transposed to this case, the Court finds no occasion to apply the foregoing rules as the Petition has no relation at all to "the enforcement of environmental laws, protection of the environment or assertion of environmental rights." R.A. No. 9262, which involves cases of violence against women and their children, is not among those laws included under the scope of A.M. No. 09-6-8-SC x x x. SLAPP, as a defense, is a mere privilege borne out of procedural rules; accordingly, it may only be exercised in the manner and within the scope prescribed by the Court as a rule-making body. Here, petitioners cannot, under the guise of substantial justice, rely on a remedy that is simply not available to them. In fact, by invoking the Court's rule-making power in their Petition, petitioners have admitted that the instant action has no basis under any of the rules promulgated by the Court. x x x Further on this matter, it is highly improper for petitioners to invoke SLAPP as a defense in an original action before a separate forum considering that the x x x rules clearly mandate that such a defense can only be invoked **in the same action and consequently, before the same court.** Here, petitioners essentially initiated an omnibus motion before the Court to dismiss all cases pending elsewhere. Such maneuver is patently repugnant to established procedure and thus cannot be sanctioned by the Court.

7. ID.; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI* AND PROHIBITION; MAY BE AVAILED OF

WHEN ANY TRIBUNAL, BOARD, OR OFFICER EXERCISING JUDICIAL OR QUASI-JUDICIAL FUNCTIONS HAS ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION; GRAVE ABUSE OF DISCRETION, DEFINED.— The writs of *certiorari* and prohibition under Rule 65 are extraordinary remedies that may be availed of when any tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of jurisdiction amounting to lack or excess of jurisdiction. The term *grave abuse of discretion* connotes capricious and whimsical exercise of judgment as is equivalent to excess, or a lack of jurisdiction. The abuse must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, 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.

APPEARANCES OF COUNSEL

Gabriela Women's Party (GWP) Legal Services for petitioner.

Arlene J. Carbon for respondents Go, *et al.*

Office of the Solicitor General for public respondents.

D E C I S I O N

CAGUIOA, *J.*:

This is a Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court (Petition), invoking the power of the Court "to promulgate rules concerning protection and enforcement of constitutional rights, to declare the cases filed by private respondents against petitioners as Strategic Lawsuits Against Public Participation (SLAPP) and therefore contrary to the Constitution, public policy and international law and x x x repugnant to fundamental equality before the law of women and men and the spirit and the intent of Republic Act [No.]

9262."[1]

Petitioner Ma. Sugar M. Mercado (Mercado) is joined herein by her parents, co-petitioners spouses Reynaldo and Yolanda Mercado (collectively, petitioners).

Private respondent Kristofer Jay I. Go (Go) is the husband of petitioner Mercado. The other private respondents herein are spouses Peter and Esther Go (parents of respondent Go), Kenneth Roue Go, Casey Lim Jimenez, Cristina Palileo, and Ruel Balino (relatives and friends of respondent Go) (collectively, private respondents). Likewise impleaded herein are public respondent judges and prosecutors presiding over various cases filed against petitioners (collectively, public respondents).

Factual Antecedents

The root of this controversy is a domestic dispute between estranged spouses petitioner Mercado and private respondent Go. Such dispute eventually led to the filing of numerous suits by both parties against each other, as summarized below.

Cases filed by private respondents against petitioners

Sometime in October 2015, respondent Go filed a Petition for *Habeas Corpus* with Custody of their children, which was docketed as Civil Case No. R-QZN-15-08943. The case was raffled to and is still pending with the Regional Trial Court (RTC) of Quezon City, Branch 86, which is presided by herein public respondent Judge Roberto P. Buenaventura.[2]

Within the period of September 2015 to November 2015, private respondents also filed the following cases against petitioners:

1. *People v. Sugar Mercado and Yolanda Mercado* (Crim. Case No. R-QZN-16-06371-CR) for violation of Republic Act (R.A.) No. 7610[3];

---

[1] *Rollo*, p. 6.

[2] *Id*. at 993-994.

[3] SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT, dated June 17, 1992.

2. *People v. Yolanda Mercado* (Crim. Case No. R-QZN-16-06372-CR) for violation of R.A. No. 7610;
3. *Kristofer Go v. Sugar Mercado-Go* (NPS XV-INV-15J-11698) for Libel;
4. *Kristofer Go v. Yolanda Mercado* (NPS-XV-INV-15J-11699) for Libel;
5. *People v. Sugar Mercado* (Crim. Case No. R-QZN-16-5596-98-CR) for Physical Injuries, Oral Defamation, Slander by Deed, and Unjust Vexation; and
6. *People v. Yolanda and Reynaldo Mercado* (Crim. Case No. 16-09066-69) for Unjust Vexation, Unlawful Arrest, Slight Physical Injuries, Grave Coercion.

All the cases were still pending at the time the Petition was filed, except for NPS XV-INV-15J-11698, which was dismissed by the Office of the City Prosecutor (OCP) of Quezon City in a Resolution dated November 23, 2016.[4]

In addition to the foregoing, beginning February 2016, private respondents initiated the following cases:

1. *Kristofer Go and Christina Palileo v. Yolanda Mercado* (QC-OCP-NOS-INV-16A-01033) for Grave Threats;
2. *Kristofer Go v. Sugar Mercado* (NPS-XV-02-INV-16C-00840) for violation of R.A. No. 10175[5];
3. *Kristofer Go v. Sugar Mercado* (Civil Case No. R-QZN-16-02517-CV) for Indirect Contempt; and
4. *Kristofer Go v. Sugar Mercado* (Civil Case No. R-QZN-16-07881-CV) for Indirect Contempt.

Of the above cases, NPS-XV-02-INV-16C-00840 was dismissed for lack of probable cause.[6]

---

[4] *Rollo*, p. 15.

[5] CYBERCRIME PREVENTION ACT of 2012, dated September 12, 2012.

[6] *Rollo*, pp. 398-401, 996.

Cases filed by petitioners against private respondents

On the other hand, on November 5, 2015, petitioner Mercado filed an Urgent Petition for Issuance of Temporary and/or Permanent Protection Order (TPO/PPO), docketed as Civil Case No. R-QZN-15-10201 (the PPO Case).[7] The case was also raffled to Branch 86 of the RTC of Quezon City.[8] Therein, petitioner Mercado complained of several acts of respondent Go allegedly constituting domestic violence.

At the same time, petitioner Mercado also filed a criminal complaint for violation of R.A. No. 9262[9] against respondent Go and his parents, respondent spouses Peter and Esther Go, which was eventually dismissed for insufficiency of evidence.

On February 19, 2016, the RTC in the PPO case granted the petition and forthwith issued a PPO in favor of petitioner Mercado.[10] The Order granting the PPO was appealed by respondent Go to the Court of Appeals (CA) and was docketed as CA-G.R. No. 106476.[11] In a Decision dated March 3, 2017, the CA denied respondent Go's appeal.[12] The CA's Decision was then elevated to the Court via Rule 45 appeal by *certiorari* in G.R. No. 232206 (*Kristofer Jay I. Go v. AAA*), which was denied through a Resolution dated October 2, 2017 for failure to show any reversible error on the part of the CA.[13]

Petitioner Mercado also filed several other cases against private respondents, as follows:

---

[7] *Id*. at 20.

[8] *Id*. at 21.

[9] ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT of 2004, dated March 8, 2004.

[10] *Rollo*, p. 22.

[11] *Id*. at 26.

[12] *Id*. at 1095. Annex "E" of petitioner Mercado's Consolidated Reply to Respondents' Comment with Manifestation.

[13] *Id*.

1. *Sugar Mercado v. Kristofer Jay Go* (R-QZN-16-05478-CV) for Indirect Contempt;
2. *Sugar Mercado v. Krystle Anne I. Go-Cantillo* (OCP NPS-INV-16H-09264) for violation of R.A. No. 10175;
3. *Ma. Sugar Mercado v. Kristofer Hay Go, Peter and Esther Go* (NPS-XV-03-INV-15K-12139) for violation of R.A. No. 9262; and
4. *Ma. Sugar Mercado v. Kristoffer Jay Go, Peter and Esther Go* (NPS-XV-INV-16C-00802 OCP) for violation of R.A. No. 9262.

The last two cases for violation of R.A. No. 9262 were eventually dismissed by the OCP of Quezon City for lack of probable cause.[14]

Hence, the instant Petition.

Petitioners aver that the cases filed by private respondents against them (the subject cases) are forms of SLAPP intended to harass, intimidate, and silence them.[15] Petitioners claim that the subject cases are false and baseless complaints that were filed to emotionally, psychologically, and financially drain them and ultimately to pressure them to give up custody of petitioner Mercado's minor children. Petitioners also argue that the filing of the subject cases falls within the definition of "abuse" and "violence against women" under R.A. No. 9262. In this regard, petitioners claim that public respondents committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in taking cognizance of the subject cases even though petitioner Mercado is a "judicially declared victim of domestic violence" and in whose favor a PPO has been issued.[16]

Petitioners thus pray that the Court declare the subject cases as SLAPP and for the Court to issue a TRO/Writ of Preliminary

---

[14] *Id*. at 997.

[15] *Id*. at 34.

[16] *Id*. at 40-44.

Injunction directing public respondents to desist from conducting further hearings on the subject cases and for the immediate dismissal of the same. Petitioners also seek the amendment of A.M. No. 04-10-11-SC (Rule on Violence Against Women and Children) to include provisions against SLAPP.

Comment of Private Respondents

On September 14, 2017, private respondents filed their Comment to the Petition.

Private respondents allege that the Petition does not satisfy the procedural requisites of judicial review and that petitioners are guilty of forum-shopping. They likewise claim that the filing of the subject cases against petitioners was not a violation of the PPO as some of the cases were filed **prior** to the issuance of the PPO on February 19, 2016. Nonetheless, there was no pronouncement in the PPO that the filing of said cases was a violation thereof. Private respondents further allege that the subject cases had factual and legal bases and that the enforcement of a right or seeking redress through judicial processes does not constitute violence against women. Thus, private respondents argue that there was no grave abuse of discretion on the part of public respondents as they were merely performing their official functions.

Comment of Public Respondents

On November 9, 2017, public respondents Vitaliano Aguirre II, in his capacity as Secretary of Justice, and Donald Lee, in his capacity as Chief of the Prosecutor's Office, Quezon City, filed their Comment through the Office of the Solicitor General (OSG).

Public respondents stress several procedural infirmities in the Petition, namely: (i) that the requisites for judicial review are not present in this case; (ii) that the filing of the Petition is premature because there are other plain, speedy, and adequate remedies available to petitioners; and (iii) that there was also a failure to observe the hierarchy of courts.

With respect to the substantive issue, public respondents further aver that they did not commit grave abuse of discretion in taking cognizance of the subject cases as the same cannot be considered as SLAPPs because such rule applies specifically to environmental cases only. Hence, the relief being sought by petitioners lacks legal or procedural basis.

Issues

As gathered from the submissions of the parties, the principal issue for the Court's resolution is whether public respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction in taking cognizance of the subject cases.

Discussion

The Petition is dismissed.

The Petition is procedurally infirm; availability of plain, speedy, and adequate remedies; failure to state material dates

At the outset, the Court finds the filing of the instant Petition premature. For a petition for *certiorari* or prohibition to prosper, the Rules require that there be no other plain, speedy, and adequate remedy available in the ordinary course of law.[17] Here, the cases before the public respondents are still pending. Thus, there still exists in law a plain, speedy, and adequate remedy for petitioners — which is to participate in said cases and await the judgment of the RTC. And, if the RTC renders an unfavorable judgment against petitioners, they may appeal the cases to the CA. Meanwhile, as to the complaints filed before the OCP of Quezon City, the same may be elevated via petition for review before the Secretary of Justice and thereafter to the Office of the President; if the prosecutor's finding of probable cause is ultimately upheld, the case may then proceed to trial.

In the same vein, petitioner Mercado is also entitled to the appropriate relief under R.A. No. 9262 in case of a violation

---

[17] *Asian Trading Corp. v. Court of Appeals*, 362 Phil. 490 (1999).

of the PPO dated February 19, 2016 issued in Civil Case No. R-QZN-15-10201. Under Section 21 of R.A. No. 9262, a violation of any provision of a PPO shall constitute Contempt of Court punishable under Rule 71 of the Rules:

> SECTION 21. *Violation of Protection Orders.* —
>
> x x x x x x x x x
>
> Violation of any provision of a TPO or PPO issued under this Act shall constitute contempt of court punishable under Rule 71 of the Rules of Court, without prejudice to any other criminal or civil action that the offended party may file for any of the acts committed.[18]

The Court is a court of last resort. This policy must be strictly observed so as not to unduly burden the Court with cases that may be resolved by the lower courts vested with concurrent jurisdiction. The Court's original jurisdiction may only be invoked when serious and important reasons exist that necessitate the same.

Furthermore, the Petition is dismissible for failure to include a statement of material dates in violation of Rule 56 of the Rules of Court, in relation to Section 3 of Rule 46. Rule 46 provides that the following material dates must be stated in a petition for *certiorari* brought under Rule 65: (a) the date when notice of the judgment or final order or resolution was received, (b) the date when a motion for new trial or for reconsideration was filed, and (c) the date when notice of the denial thereof was received.[19] The same provision states that the petitioner's failure to comply with said requirements shall be sufficient ground for the dismissal of the petition.[20] The purpose of this requirement is to determine whether the petition was filed within the proper reglementary period. A petition for *certiorari* or prohibition must be filed not later than sixty (60) days from notice of the judgment, order, or resolution sought to be assailed.[21]

---

[18] R.A. No. 9262, Sec. 21.

[19] RULES OF COURT, Rule 46, Sec. 3.

[20] *Id*.

[21] *Lapid, et al. v. Laurea*, 439 Phil. 887 (2002).

Here, out of the ten (10) subject cases, not once did petitioners allege any material date in compliance with Rule 56, much less cite a specific order or ruling of the court or agency which they are questioning. Consequently, there is no way for the Court to determine the timeliness of the Petition because petitioners failed to include the required statement, nor did they attempt to satisfactorily explain their failure to do so.

Parenthetically, on the issue of the rule on hierarchy of courts, the Court finds the direct filing with the Court unwarranted under the circumstances. Generally, a direct invocation of the Court's original jurisdiction to issue extraordinary writs should be allowed only when there are special and important reasons therefor.[22] Thus, in *Rama v. Moises*,[23] the Court recognized the following exceptions to the strict application of the rule on hierarchy of courts:

> x x x (a) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (b) when the issues involved are of transcendental importance; (c) **cases of first impression**; (d) when the constitutional issues raised are best decided by this Court; (e) when the time element presented in this case cannot be ignored; x x x.[24] (Emphasis supplied)

Notwithstanding the foregoing, while the Court notes that the Petition presents, at the very least, a case of first impression, novelty alone cannot cure the inherent defects of the Petition.

Those who seek relief from the Court must comply with its rules. Procedural rules are in place for the orderly administration of justice. Litigation may not be a mere contest of technicalities, but this does not excuse strict compliance with the Rules of Court.[25] The Court will only relax the application of the rules for the most compelling and exceptional reasons, none of which

---

[22] *Tolentino v. People*, 532 Phil. 429 (2006).

[23] G.R. No. 197146, August 8, 2017.

[24] *Id*. at 2.

[25] See *Bibiana Farms & Mills, Inc. v. NLRC*, 536 Phil. 430 (2006).

are existent in this case. Based on the foregoing, the Petition should therefore be dismissed.

The Court's rule-making power cannot be invoked through a Rule 65 petition

Petitioners invoke the power of the Court to promulgate rules of procedure, presumably to extend the relief of SLAPP to those cases filed against victims of domestic violence in the context of R.A. No. 9262.

Foremost, the rule-making power of the Court in matters of pleading, practice, and procedure in all courts is vested by Section 5(5), Article VIII of the Constitution.[26] Hence, being plenary in nature, the Court cannot be called upon by a private citizen to exercise such power in a particular manner, especially through the vehicle of a petition for *certiorari* or prohibition, which is intended for an entirely different purpose.

Moreover, as discussed above, a petition filed under Rule 65 is directed against any tribunal, board or officer exercising judicial or quasi-judicial functions that has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[27] Relief in such a petition merely takes the form of correcting any error of jurisdiction committed by the tribunal or officer. Here, petitioners would want the Court to accommodate her cause of action by granting a collateral relief that is not comprehended under the provisions of Rule 65 — or any of the Rules, for that matter — which is to extend the concept of SLAPP to cases of violence against women and their children.

Prescinding therefrom, the Court finds no occasion under the circumstances to allow such a relief.

---

[26] CONSTITUTION, Art. VIII, Sec. 5(5).

[27] RULES OF COURT, Rule 65, Sec. 1.

The concept of SLAPP is inapplicable to cases of domestic violence against women and children under R.A. No. 9262

The concept of SLAPP was first introduced to this jurisdiction under the Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC).[28] As defined therein, a SLAPP refers to

> an action whether civil, criminal or administrative, brought against any person, institution or any government agency or local government unit or its officials and employees, with the intent to harass, vex, exert undue pressure or stifle any legal recourse that such person, institution or government agency has taken or may take **in the enforcement of environmental laws, protection of the environment or assertion of environmental rights**.[29] (Emphasis supplied)

In application, the allegation of SLAPP is set up as a defense in those cases claimed to have been filed merely as a harassment suit against environmental actions:

> RULE 6
>
> *Strategic Lawsuit Against Public Participation*
>
> x x x x x x x x x
>
> SECTION 2. *SLAPP as a Defense; How Alleged.* — In a SLAPP filed against a person involved in the enforcement of environmental laws, protection of the environment, or assertion of environmental rights, **the defendant may file an answer interposing as a defense that the case is a SLAPP** and shall be supported by documents, affidavits, papers and other evidence; and, by way of counterclaim, pray for damages, attorney's fees and costs of suit.
>
> The court shall direct the plaintiff or adverse party to file an opposition showing the suit is not a SLAPP, attaching evidence in support thereof, within a non-extendible period of five (5) days from receipt of notice that an answer has been filed.

---

[28] Dated April 13, 2010.

[29] A.M. No. 09-6-8-SC, Rule 1, Sec. 4(g).

The defense of a SLAPP shall be set for hearing by the court after issuance of the order to file an opposition within fifteen (15) days from filing of the comment or the lapse of the period.[30] (Emphases supplied)

RULE 19

Strategic Lawsuit Against Public Participation in Criminal Cases

SECTION 1. *Motion to Dismiss*. — Upon the filing of an information in court and before arraignment, **the accused may file a motion to dismiss on the ground that the criminal action is a SLAPP**.

SECTION 2. *Summary Hearing*. — The hearing on the defense of a SLAPP shall be summary in nature. The parties must submit all the available evidence in support of their respective positions. **The party seeking the dismissal of the case must prove by substantial evidence that his acts for the enforcement of environmental law is a legitimate action for the protection, preservation and rehabilitation of the environment.** The party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP.[31] (Emphases supplied)

Transposed to this case, the Court finds no occasion to apply the foregoing rules as the Petition has no relation at all to "the enforcement of environmental laws, protection of the environment or assertion of environmental rights."[32] R.A. No. 9262, which involves cases of violence against women and their children, is not among those laws included under the scope of A.M. No. 09-6-8-SC:

SECTION 2. Scope. — **These Rules shall govern the procedure in civil, criminal and special civil actions** before the Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts **involving enforcement or violations of environmental and other related laws, rules and regulations such as but not limited to the following**:

(a) Act No. 3572, Prohibition Against Cutting of Tindalo, Akli, and Molave Trees;

(b) P.D. No. 705, Revised Forestry Code;

---

[30] A.M. No. 09-6-8-SC, Rule 6, Sec. 2.

[31] A.M. No. 09-6-8-SC, Rule 19, Secs. 1 and 2.

[32] A.M. No. 09-6-8-SC, Rule 1, Sec. 4(g).

(c) P.D. No. 856, Sanitation Code;

(d) P.D. No. 979, Marine Pollution Decree;

(e) P.D. No. 1067, Water Code;

(f) P.D. No. 1151, Philippine Environmental Policy of 1977;

(g) P.D. No. 1433, Plant Quarantine Law of 1978;

(h) P.D. No. 1586, Establishing an Environmental Impact Statement System Including Other Environmental Management Related Measures and for Other Purposes;

(i) R.A. No. 3571, Prohibition Against the Cutting, Destroying or Injuring of Planted or Growing Trees, Flowering Plants and Shrubs or Plants of Scenic Value along Public Roads, in Plazas, Parks, School Premises or in any Other Public Ground;

(j) R.A. No. 4850, Laguna Lake Development Authority Act;

(k) R.A. No. 6969, Toxic Substances and Hazardous Waste Act;

(l) R.A. No. 7076, People's Small-Scale Mining Act;

(m) R.A. No. 7586, National Integrated Protected Areas System Act including all laws, decrees, orders, proclamations and issuances establishing protected areas;

(n) R.A. No. 7611, Strategic Environmental Plan for Palawan Act;

(o) R.A. No. 7942, Philippine Mining Act;

(p) R.A. No. 8371, Indigenous Peoples Rights Act;

(q) R.A. No. 8550, Philippine Fisheries Code;

(r) R.A. No. 8749, Clean Air Act;

(s) R.A. No. 9003, Ecological Solid Waste Management Act;

(t) R.A. No. 9072, National Caves and Cave Resource Management Act;

(u) R.A. No. 9147, Wildlife Conservation and Protection Act;

(v) R.A. No. 9175, Chainsaw Act;

(w) R.A. No. 9275, Clean Water Act;

(x) R.A. No. 9483, Oil Spill Compensation Act of 2007; and

(y) Provisions in C.A. No. 141, The Public Land Act; R.A. No. 6657, Comprehensive Agrarian Reform Law of 1988; R.A. No. 7160, Local Government Code of 1991; R.A. No. 7161, Tax Laws Incorporated in the Revised Forestry Code and Other Environmental Laws (Amending the NIRC); R.A. No. 7308, Seed Industry Development Act of 1992; R.A. No. 7900, High-Value Crops Development Act; R.A. No. 8048, Coconut Preservation Act; R.A. No. 8435, Agriculture and Fisheries Modernization Act of 1997; R.A. No. 9522, The Philippine Archipelagic Baselines Law; R.A. No. 9593, Renewable Energy Act of 2008; R.A. No. 9637, Philippine Biofuels Act; and other existing laws that relate to the conservation, development, preservation, protection and utilization of the environment and natural resources.[33] (Emphases supplied)

SLAPP, as a defense, is a mere privilege borne out of procedural rules; accordingly, it may only be exercised in the manner and within the scope prescribed by the Court as a rule-making body.[34] Here, petitioners cannot, under the guise of substantial justice, rely on a remedy that is simply not available to them. In fact, by invoking the Court's rule-making power in their Petition, petitioners have admitted that the instant action has no basis under any of the rules promulgated by the Court. The Court takes this occasion to remind petitioners that rules of procedure are not a "one-size-fits-all" tool that may be invoked in any and all instances at the whim of the litigant as this would be anathema to the orderly administration of justice.

Further on this matter, it is highly improper for petitioners to invoke SLAPP as a defense in an original action before a

---

[33] A.M. No. 09-6-8-SC, Rule 1, Sec. 2.

[34] See *Manila Electric Co. v. N.E. Magno Construction, Inc.*, 794 Phil. 228, 239 (2016).

separate forum considering that the above rules clearly mandate that such a defense can only be invoked **in the same action and consequently, before the same court.** Here, petitioners essentially initiated an omnibus motion before the Court to dismiss all cases pending elsewhere. Such maneuver is patently repugnant to established procedure and thus cannot be sanctioned by the Court.

Needless to state, the dismissal of the Petition does not mean denial of redress to the petitioners. As already discussed above, there are still available and adequate remedies within the framework of the law and applicable rules.

The public respondents did not commit grave abuse of discretion; writs of certiorari and prohibition are not available remedies to petitioners

The writs of *certiorari* and prohibition under Rule 65 are extraordinary remedies that may be availed of when any tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of jurisdiction amounting to lack or excess of jurisdiction.[35] The term *grave abuse of discretion* connotes capricious and whimsical exercise of judgment as is equivalent to excess, or a lack of jurisdiction. The abuse must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, 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.[36]

Based on the foregoing standards, the Court finds that petitioners herein utterly failed to establish their entitlement to a corrective writ of *certiorari* or prohibition.

It bears stressing that a special civil action for *certiorari* or prohibition seeks solely to correct **errors of jurisdiction** and

---

[35] RULES OF COURT, Rule 65, Sec. 1.

[36] *Spouses Mendiola v. CA*, 691 Phil. 244 (2012).

not merely errors of judgment made in the exercise of jurisdiction.[37] In this case, petitioners failed to demonstrate that the subject cases fell outside of the respective jurisdictions of public respondents; there was no showing that the subject matters of the said cases were not properly cognizable by the offices of public respondents. Instead, petitioners merely argue that public respondents committed grave abuse of discretion in the taking of cognizance of the subject cases despite the issuance of the PPO in favor of petitioner Mercado.[38] This is serious error.

While the PPO indeed enjoins private respondent Go from committing acts amounting to physical, psychological, and emotional abuse, and from harassing, annoying, contacting, or communicating with petitioner Mercado, such directive can hardly be construed to extend to public respondents in their act of dispensing the functions of their office. **There is absolutely nothing that precludes public respondents from exercising their respective jurisdictions over the complaints or cases filed before them; anything less would be tantamount to an abdication of their public offices**.

Further, neither does the issuance of the PPO prevent private respondents from seeking redress from the courts for any alleged offense committed by petitioners against them. The PPO granted in favor of petitioner Mercado does not and cannot insulate her from prosecution for acts committed in violation of the law, even if the action is initiated by private respondent Go. Granted, the PPO is a directive addressed to private respondent Go; however, the latter is still entitled to redress and be granted the reliefs he sought so long as they were based on legitimate grounds.

All told, as correctly submitted by both private and public respondents in their respective Comments, in taking cognizance of the subject cases, public respondents were merely fulfilling

---

[37] *Biñan Rural Bank v. Carlos*, 759 Phil. 416 (2015).

[38] *Rollo*, p. 34.

their respective duties in the administration of justice. This, the Court finds, does not amount to abuse of discretion, much less a grave one. Hence, the dismissal of the Petition must follow.

WHEREFORE, in view of the foregoing, the Petition is **DISMISSED** for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 231133. June 6, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARVIN MADRONA OTICO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— Basic is the rule that, for a conviction of the crime of illegal sale of dangerous drugs to stand, the prosecution should have proven the following elements beyond reasonable doubt: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment. The prosecution has the onus to prove beyond reasonable doubt that the transaction actually took place, coupled with the presentation before the court of the prohibited or regulated drug or the *corpus delicti*. This onus can be discharged by the prosecution only by clearly and adequately showing the details of the purported transaction, starting from the initial contact between the poseur-buyer and the pusher, the offer to

purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. Thus, the manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the buy-bust money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense or the constitutional rights of every citizen — to be presumed innocent and to be secure in their persons against unreasonable searches and seizures — are not unduly curtailed.

2. **REMEDIAL LAW; EVIDENCE; WITNESSES; INFORMANTS IN DRUG CASES MUST BE PRESENTED WHEN THERE APPEARS MATERIAL DISPARITY IN THE TESTIMONIES.—** While informants are usually not presented in court because of the need to hide their identity and preserve their invaluable service to the police, and the non-presentation of the confidential informant is not fatal to the prosecution, as where the testimony of the informant will merely be corroborative of the apprehending officers' eyewitness testimonies so that there is no need to present the informant in court where the sale was actually witnessed and adequately proved by prosecution witnesses, their presentation is necessary, if not indispensable, when the accused vehemently denies selling prohibited drugs and there are material inconsistencies in the testimonies of the arresting officers, or there are reasons to believe that the arresting officers had motives to testify falsely against the accused, or when the informant was the poseur-buyer and the only one who actually witnessed the entire transaction.

3. **CRIMINAL LAW; PNP MANUAL ON ANTI-ILLEGAL DRUGS OPERATION AND INVESTIGATION; WEIGHING OF DANGEROUS DRUGS; FAILURE TO INDICATE THE WEIGHT OF THE SHABU IN THE REQUIRED DOCUMENTS IS FATAL IN ESTABLISHING PROOF BEYOND REASONABLE DOUBT.—** In the PNP Manual on Anti-Illegal Drugs Operation and Investigation (PNP Manual), x x x part of the handling of drug evidence is "the weighing of dangerous drugs, x x x Given the failure to indicate the weight of the *shabu* in the documents required to be

accomplished in the handling of the drug evidence starting from recovery of the *shabu* from the civilian agent to the request for laboratory examination to prove the regularity of the buy-bust operation and preserve the integrity of the recovered *shabu*, and to comply with the requirement in the PNP Manual on the weighing thereof, the object of the illegal sale has clearly not been proven beyond reasonable doubt. There is thus reasonable doubt that the alleged *shabu*, which was recovered from the civilian agent and bought by the latter from Otico, might not be the same one that was delivered to the PNP Regional Crime Laboratory Office 7 for examination.

4. ID.; DANGEROUS DRUGS ACT OF 2002 (RA 9165); SERIOUS LAPSES IN THE COMPLIANCE OF CHAIN OF CUSTODY IS FATAL TO THE CONVICTION OF ACCUSED.— [T]here are serious lapses in the police officers' compliance with Section 21, Article II of RA 9165 and its Implementing Rules and Regulations. x x x As the Court explained in *People v. Mendoza*, the deliberate taking of the identifying steps, which include marking, physical inventory and photographing of the contraband, immediately upon seizure by the police officer concerned, or, if that is not possible, as close to the time and place of the seizure as practicable under the obtaining circumstances before the insulating presence of the three third-party witnesses is aimed at preserving an unbroken chain of custody and obviating 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). **The failure to do so will negate the integrity and credibility of the seizure and confiscation of the dangerous drug that is evidence of the *corpus delicti*, and adversely affected the trustworthiness of the incrimination of the accused.** x x x Given the unexplained major procedural lapses, the indefiniteness of the substantiation of the elements of illegal drug sale under Section 5 of RA 9165, and the questionable identification of the sachet of *shabu*, which is the purported object of the illegal sale, the Court is compelled to acquit Otico for the failure of the prosecution to prove his guilt beyond reasonable doubt. The presumption of innocence in favor of Otico stands.

PERALTA, *J., separate concurring opinion*:

CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY; THREE WITNESSES REQUIRED TO BE PRESENT DURING THE CONDUCT OF THE PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED ITEMS; NON-COMPLIANCE THEREOF MUST BE ADEQUATELY EXPLAINED.— [U]nder the original provision of Section 21 (RA 9165) and its IRR, which is applicable at the time the appellant committed the crime charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses**, namely: (a) a representative from the media, **and** (b) the DOJ, **and**; (c) any elected public official who shall be required to sign copies of the inventory and be given copy thereof. x x x The prosecution bears the burden of proving a 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 trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of 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. It should take note that 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 items.

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.:*

Before the Court is an appeal[1] under Section 13, Rule 124 of the 2000 Rules of Criminal Procedure assailing the Decision[2] dated October 26, 2016 (Decision) of the Court of Appeals[3] (CA) in CA-G.R. CR-HC. No. 02129, denying the appeal and affirming *in toto* the Decision[4] of the Regional Trial Court, 7th Judicial Region, Branch 62 of Oslob, Cebu (RTC) in Criminal Case No. OS-11-680 which found accused-appellant Marvin Madrona Otico a.k.a. "*Pare*"[5] (Otico) guilty beyond reasonable doubt of the offense of illegal sale of dangerous drug in violation of Section 5, Article II (Section 5) of Republic Act No. (RA) 9165[6] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," and imposed upon him the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00).

The Charge Against the Accused

Otico was indicted for illegal sale of dangerous drug, defined and penalized under Section 5 of RA 9165. The Information reads:

---

[1] *Rollo*, pp. 24-26.

[2] *Id*. at 4-23. Penned by Associate Justice Geraldine C. Fiel-Macaraig, with Associate Justices Edgardo L. Delos Santos and Edward B. Contreras concurring.

[3] Nineteenth Division.

[4] Records, pp. 113-118. Penned by Presiding Judge James Stewart Ramon E. Himalaloan.

[5] *Rollo*, p. 5.

[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).

That on the 22nd day of April, 2011 at about 10:30 o'clock in the morning, at Barangay Looc, Oslob, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell, deliver and distribute to a PNP agent acting as poseur buyer *one (1) heat sealed transparent plastic pack of white crystalline substance, weighing 0.02 gram*, in consideration of the sum of five hundred (₱500.00) pesos consisting of one (1) five hundred peso bill, with serial number QD628746, used as buy bust money, which when subjected for laboratory examination gave positive result for the presence of methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[7]

The Facts and Antecedent Proceedings

Otico pleaded not guilty during his arraignment.[8] Trial on the merits then ensued.

Version of the Prosecution

The CA Decision narrates the prosecution's version of the facts as follows:

On the strength of the report from their surveillance conducted around 1:00 o'clock in the afternoon on 21 April 2011, it was confirmed that a certain Marvin Madrona Otico, a.k.a. "Pare" [(Otico)] was engaged in the sale of illegal drugs or *shabu* in *Barangay* Looc, Oslob, Cebu. The Chief of Police of Oslob Police Station then called the attention of Police Officer 1 (PO1) Alan Villasurda, Police Officer 3 (PO3) Nelson Saquibal, and a civilian poseur-buyer to conduct a briefing for an entrapment operation.

During the said operational briefing, PO3 Saquibal was designated as the team leader, a civilian agent was assigned as the poseur-buyer, and PO1 Villasurda, as the immediate back-up. The poseur-buyer was given one (1) five hundred peso bill (Php 500.00) with serial number QD628746. PO3 Saquibal marked the bill with the suspect's initials, "MO," on both sides. Before proceeding with their planned

---

[7] Records, p. 1.

[8] *Rollo*, p. 5.

buy-bust operation, the team coordinated with the Philippine Drug Enforcement Agency (PDEA) through IO1 Melisa Montesa *via* telephone call. The latter then issued a coordination control number. As soon [as] the briefing was done, a pre-operation report was prepared and faxed to PDEA and a coordination form was also prepared by PNP Oslob.

Around 8:00 o'clock in the morning on 22 April 2011, the team proceeded to the target area. The poseur-buyer went ahead while PO3 Saquibal and PO1 Villasurda followed on board their own motorcycle. They arrived at the area around 10:10 in the morning that same day and positioned themselves in a strategic location near a store. They stood about ten (10) meters away from the poseur-buyer, who was texting near the house of [Otico].

Around 10:30 in the morning, [Otico] arrived and approached the poseur-buyer. PO1 Villasurda saw the poseur-buyer give the money to [Otico], who, in exchange, handed to the latter a plastic sachet. Upon receiving the plastic sachet from [Otico], the poseur-buyer executed the pre-arranged signal by scratching his head, indicating that the transaction was completed.

When the signal was given, PO3 Saquibal immediately held [Otico] and announced his authority as a police officer while PO1 Villasurda took the plastic sachet from the poseur-buyer. [Otico] tried to evade arrest upon hearing that the two (2) were police officers, but to no avail.

As soon as [Otico] was subdued, and after verifying that the plastic sachet contained *shabu,* PO3 Saquibal arrested him for violation of Section 5, Article II of R.A. No. 9165, and informed him of his constitutional rights. PO3 Saquibal took from [Otico's] possession the buy-bust money and a cellphone. Subsequently, the buy-bust team proceeded to the PNP Oslob Police Station together with [Otico].

At the police station, PO1 Villasurda conducted an inventory of the seized items in the presence of [Otico] and Municipal Councilor Guillermo Zamora. The items were photographed by PO2 Nelson Mendaros and then marked by PO1 Villasurda. The seized plastic sachet was marked "MMO-1" and the marked money, "MMO-2," the initials referring to [Otico's] complete name, Marvin Madrona Otico. PO3 Saquibal then prepared the Certificate of Inventory, a spot report and a letter-request for laboratory examination. PO1

Villasurda personally delivered the request and the specimen to the PNP Crime Laboratory for laboratory examination.

The letter-request and the specimen were received by PO1 Pangatungan, who personally delivered the same to Police Senior Inspector Ryan Ace Mabilen Sala, the PNP Forensic Chemist of the PNP Crime Laboratory.

P/S Insp. Sala conducted a [qualitative] examination on the specimen, which gave positive result to the test for Methamphetamine Hydrochloride, a dangerous drug under R.A. No. 9165. His findings and conclusion were indicated in his submitted Chemistry Report No. D-466-2011. The Chemistry Report, specimen and the letter request were all forwarded to PO2 Joseph Bocayan, the evidence custodian of the PNP Crime Laboratory.

In support of the case x x x, PO3 Saquibal and PO1 Villasurda executed a Joint Affidavit of Apprehension in connection with the arrest of [Otico].[9]

Version of the Defense

The CA Decision summarizes Otico's version, to wit:

In his testimony, [Otico] recounted that at around 10:30 in the morning on 22 April 2011, he was just buying a cellphone load at the store located near his house when he was apprehended by the police officers. When he inquired for the reason for his arrest, however, the police officers merely told him that he ask his questions at the police station. He was handcuffed and brought to the police station.

[Otico] testified that when they arrived at the police station, he saw PO3 Saquibal enter another office and was already holding one (1) plastic sachet when he came out. Allegedly, PO3 Saquibal subsequently entered another room and had with him one (1) Five Hundred Peso bill when he emerged therefrom.

[Otico] further averred that since he did not admit ownership of the items which were brought and presented on the table by PO3 Saquibal, the latter yelled and told him not to lie.[10]

---

[9] *Id*. at 7-10.

[10] *Id*. at 10.

The RTC Ruling

After trial, the RTC rendered a Decision dated August 27, 2015, the dispositive portion of which reads:

WHEREFORE, premises considered, the court finds accused Marvin Otico GUILTY beyond reasonable doubt of the offense of Illegal Sale of Dangerous Drug in violation of Section 5, Article II of R.A. 9165 and imposes upon him the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00).

His period of preventive imprisonment shall be credited in his favor.

LET a *mittimus* issue committing him to Leyte Regional Prisons in Abuyog, Leyte.

The subject shabu shall be confiscated in accordance with the rules governing the same.

Costs against the accused.

SO ORDERED.[11]

Aggrieved, Otico filed a Notice of Appeal[12] dated August 28, 2015.

The CA Ruling

The CA denied Otico's appeal in a Decision dated October 26, 2016, the dispositive portion of which states:

WHEREFORE, the appeal is **DENIED**. The Decision of the Regional Trial Court, 7th Judicial Region, Branch 62 of Oslob, Cebu, in Criminal Case No. OS-11-680, is hereby **AFFIRMED *in toto***.

SO ORDERED.[13]

---

[11] Records, p. 118.

[12] *Id*. at 123.

[13] *Rollo*, p. 23.

Otico filed a Notice of Appeal[14] dated December 2, 2016. In the Court's Resolution[15] dated July 5, 2017, the parties were required to file their respective supplemental briefs. The People, through the Office of the Solicitor General, filed a "Manifestation & Motion"[16] dated September 27, 2017, wherein it was manifested that the People would no longer file a supplemental brief and, in lieu thereof, the Brief filed before the CA would be considered in the resolution of the present appeal. Otico, through the Public Attorney's Office-Regional Special and Appealed Cases Unit-Cebu, filed a "Manifestation (In Lieu of Supplemental Brief)"[17] dated October 25, 2017.

Issue

The issue is whether the CA erred in affirming the conviction of Otico for the offense of illegal sale of dangerous drug in violation of Section 5, RA 9165.

The Court's Ruling

Basic is the rule that, for a conviction of the crime of illegal sale of dangerous drugs to stand, the prosecution should have proven the following elements beyond reasonable doubt: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment. The prosecution has the onus to prove beyond reasonable doubt that the transaction actually took place, coupled with the presentation before the court of the prohibited or regulated drug or the *corpus delicti*.[18]

This onus can be discharged by the prosecution only by clearly and adequately showing the details of the purported transaction,

---

[14] *Id*. at 24-26.

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

[16] *Id*. at 37-40.

[17] *Id*. at 41-44.

[18] *People v. Montevirgen*, 723 Phil. 534, 542 (2013); *People v. Blanco*, 716 Phil. 408, 414 (2013).

starting from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale.[19] Thus, the manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the buy-bust money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense[20] or the constitutional rights of every citizen — to be presumed innocent and to be secure in their persons against unreasonable searches and seizures — are not unduly curtailed.

In this case, the prosecution's proof that the "transaction actually took place" consists of the "eyewitness" accounts of police officers PO1 Alan Villasurda (PO1 Villasurda) and PO3 Nelson Saquibal (PO3 Saquibal), neither of whom was the poseur-buyer, and who were admittedly 10 meters away from where the poseur-buyer allegedly transacted with Otico.[21] The civilian agent, who was assigned as the poseur-buyer,[22] was never presented as a witness.

While informants are usually not presented in court because of the need to hide their identity and preserve their invaluable service to the police,[23] and the non-presentation of the confidential informant is not fatal to the prosecution,[24] as where the testimony of the informant will merely be corroborative of the apprehending

---

[19] *People v. Doria*, 361 Phil. 595, 621 (1999), citing *People v. Tadepa*, 314 Phil. 231, 235 (1995) and *People v. Crisostomo*, 294 Phil. 501, 507 (1993).

[20] *Id*.

[21] See *rollo*, p. 8.

[22] *Id*. at 7.

[23] *People v. Doria*, *supra* note 19, at 622, citing *People v. Gireng*, 311 Phil. 12, 21 (1995); *People v. Nicolas*, 311 Phil. 79, 87 (1995) and *People v. Marcelo*, 295 Phil. 26, 43 (1993).

[24] *Id*.

officers' eyewitness testimonies[25] so that there is no need to present the informant in court where the sale was actually witnessed and adequately proved by prosecution witnesses,[26] their presentation is necessary, if not indispensable, when the accused vehemently denies selling prohibited drugs and there are material inconsistencies in the testimonies of the arresting officers,[27] or there are reasons to believe that the arresting officers had motives to testify falsely against the accused,[28] or when the informant was the poseur-buyer and the only one who actually witnessed the entire transaction.[29]

Indeed, while the assistance of confidential informants or civilian agents is acknowledged to be invaluable, the Court is nevertheless aware of the pitfalls of the confidential informant system. The Court's observations in *People v. Doria*[30] are reiterated, *viz.*:

> Though considered essential by the police in enforcing vice legislation, **the confidential informant system breeds abominable abuse**. Frequently, a person who accepts payment from the police in the apprehension of drug peddlers and gamblers also accept payment from these persons who deceive the police. The informant himself may be a drug addict, pickpocket, pimp, or other petty criminal. For whatever noble purpose it serves, the spectacle that government is secretly mated with the underworld and uses underworld characters to help maintain law and order is not an inspiring one.[31] Equally

---

[25] *Id*., citing *People v. Lucero*, 299 Phil. 1, 9 (1994); *People v. Tranca*, 305 Phil. 492, 501-502 (1994); *People v. Solon*, 314 Phil. 495, 504 (1995); *People v. Abbu*, 317 Phil. 518, 524 (1995).

[26] *Id*., citing *People v. Solon*, *id*.; *People v. Co*, 315 Phil. 829 (1995).

[27] *Id*., citing *People v. Ale*, 229 Phil. 81 (1986).

[28] *Id*., citing *People v. Sillo*, 288 Phil. 841 (1992).

[29] *Id*., citing *People v. Sahagun*, 261 Phil. 200 (1990); *People v. Libag*, 263 Phil. 662, 671-672 (1990) and *People v. Ramos*, 264 Phil. 554, 565-566 (1990).

[30] *Supra* note 19.

[31] *Id*. at 619, citing Richard C. Donnelly, "*Judicial Control of Informants, Spies, Stool Pigeons and Agent Provocateurs*," The Yale Law Journal, Vol. 60: 1091, 1094 (1951).

odious is the bitter reality of dealing with unscrupulous, corrupt and exploitative law enforcers. **Like the informant, unscrupulous law enforcers' motivations are legion – harassment, extortion, vengeance, blackmail, or a desire to report an accomplishment to their superiors**. This Court has taken judicial notice of this ugly reality in a number of cases[32] where we observed that it is a common *modus operandi* of corrupt law enforcers to prey on weak and hapless persons, particularly unsuspecting provincial hicks.[33] **The use of shady underworld characters as informants, the relative ease with which illegal drugs may be planted in the hands or property of trusting and ignorant persons, and the imposed secrecy that inevitably shrouds all drug deals have compelled this Court to be extra-vigilant in deciding drug cases.**[34] Criminal activity is such that stealth and strategy, although necessary weapons in the arsenal of the police officer, become as objectionable police methods as the coerced confession and the unlawful search. x x x[35] (Emphasis supplied)

To determine whether "the transaction actually took place," the "eyewitness" accounts of the two police officers have to be strictly scrutinized.

PO1 Villasurda, the designated immediate back-up,[36] testified:

FISCAL MA. LUISA B. ONG: (To the Witness)

Q: Mr. Witness, you mentioned that you designated a civilian poseur buyer, can you tell this Honorable Court the identity of this civilian poseur buyer?

A: I cannot divulge his personal identity because he hides his personal identity.

---

[32] *Id*., citing *People v. Simon*, 304 Phil. 725, 744 (1994); *People v. Cruz*, 301 Phil. 770, 774-775 (1994); *People v. Crisostomo*, *supra* note 19, at 506; *People v. Fernando*, 229 Phil. 177, 184 (1986) and *People v. Ale*, *supra* note 27, at 87-88.

[33] *Id*., citing *People v. Simon*, *id*.

[34] *Id*. at 619-620, citing *People v. Cruz*, *supra* note 32; *People v. Salcedo*, 272-A Phil. 310, 319-320; *People v. William*, 285 Phil. 396, 402 and *People v. Ale*, *supra* note 27, at 87-88.

[35] *Id*. at 620.

[36] *Rollo*, p. 7.

Q: If you can enlighten this Honorable Court what is the actuation of this civilian poseur buyer that indeed his identity should not be disclosed, Mr. Witness?

A: As far as I know this civilian informant is a drug user.

Q: What is the reason, Mr. Witness, that being a user you and your office tasked him being a poseur buyer?

A: Considering that he is a drug user he will be given that prohibited drug if he is going to buy.

x x x x x x x x x

Q: What was the instruction given to the civilian poseur buyer during the planning when he tasked as poseur buyer?

A: We gave him the marked buy-bust money and his only task was just to buy drugs.

x x x x x x x x x

Q: Where did you conduct your briefing, Mr. Witness?

A: In the Police Station.

Q: In what particular area of the Police Station?

A: In the office of our Chief of Police.

x x x x x x x x x

Q: You mentioned, Mr. Witness, that after you have conducted the planning with the poseur buyer, how long this planning takes place?

A: One hour more or less.

Q: Per your planning and briefing, Mr. Witness, when did you undertake the buy-bust operation?

A: We decided to conduct a buy-bust operation on the following day.

x x x x x x x x x

Q: And after that final briefing, Mr. Witness, what happened next?

A: We proceeded to the area but we let the civilian poseur buyer went ahead to the area.

Q: How did you proceed to the area including the civilian poseur buyer?

A: We rode a motorcycle while the civilian poseur buyer rode also with his own motorcycle.

Q: Meaning to say, that the civilian poseur went ahead to the area alone, Mr. Witness?

A. Yes, ma'am.

Q: How about you, Mr. Witness, who were with you on the motorcycle?

A: I had no back rider because we rode in a separate motorcycle and PO3 Saquibal had his own motorcycle also.

x x x x x x x x x

Q: At around what time did you arrive at the area, Mr. Witness?

A: We arrived at the area at about 10:10 o'clock in the morning.

Q: You mentioned that you went to conduct a buy-bust operation in Looc, Oslob, Cebu, I would like to ask Mr. Witness, where in particular place of Looc, Oslob, Cebu did you stop?

A: As far as I know the place is just beyond the boundary of barangay Lagunde and barangay Looc, Oslob, Cebu.

Q: When you arrived there, Mr. Witness, where was the poseur buyer?

A: The poseur buyer was [a]waiting the subject.

Q: You mentioned that the poseur buyer was waiting for the subject, where in particular place did the poseur buyer waiting?

A: In the highway near the house of the subject.

Q: As you and PO3 Saquibal arrived in the area, what did you do?

A: When we arrived at the said place we hide our motorcycles and after that we stayed behind a store.

Q: How far was that store from where the poseur buyer was waiting?

A: More or less ten (10) meters.

Q: What can you see, Mr. Witness, from where you were standing near a store facing the poseur buyer?

A: We could clearly see if there is somebody will approach the civilian poseur byer.

Q: Since you mentioned, Mr. Witness, that the poseur buyer was still waiting of the subject, you and Saquibal situated at around ten (10) meters where the poseur buyer was, how long did the waiting take, Mr. Witness, until somebody approached the poseur buyer?

A: I could not recall anymore how long the poseur buyer waited until somebody approached him because he went ahead of us and when we arrived the poseur buyer was already there.

Q: How about you, Mr. Witness, how long did you wait before any development happened?

A: I think about 20 minutes because the transaction was made at about 10:30 in the morning and we arrived at the area about 10:10 in the morning.

Q: Considering, Mr. Witness, that you were waiting from 10:10 in the morning and 20 minutes was almost over, what have you observed of the poseur buyer?

A: I could not clearly see what the civilian poseur buyer did at that time what was I observed that he was just texting someone and the subject person arrived in the person of Marvin Otico.

Q: Mr. Witness, since the subject, Marvin Otico, arrived around 10:30 in the morning did you able to see his face?

A: Yes, ma'am.

x x x x x x x x x

Q: Have you noticed, Mr. Witness, when the accused approached the poseur buyer, what happened next?

A: When the subject approached the civilian poseur buyer I saw them exchanging something; I saw the poseur buyer gave something to the subject and I also saw the subject getting something from his right pocket and gave it to the civilian poseur buyer.

Q: As per observation, Mr. Witness, who made the handing first?

A: It was the poseur buyer handed first the money.

Q: What happened next?

A: The subject also handed something to the poseur buyer.

Q: Mr. Witness, what money did the poseur buyer handed to the subject?

A: The marked money that we gave to him.

Q: I would like to ask, Mr. Witness, when was this marked money handed to the civilian poseur buyer?

A: At the police station during our briefing.

Q: In which briefing, Mr. Witness, on April 21 or on April 22, 2011?

A: On April 22, 2011.

Q: As what you have observed, Mr. Witness, that after exchanging of the money and the items by the poseur buyer and the accused, what happened next?

A: As we agreed in our briefing the poseur buyer scratched his head when the transaction was consummated.[37] (Emphasis supplied)

On cross-examination, PO1 Villasurda confirmed:

[ATTY. PAOLO CRISPINO C. SUCALIT (to the witness)]

Q: You mentioned that during your briefing you secured the services of the civilian poseur buyer, am I correct?

A: Yes, sir.

Q: And is this civilian poseur buyer your civilian asset of the PNP?

A: Yes, sir.

x x x x x x x x x

[37] TSN, August 2, 2011, pp. 11-23.

Q: He is only an asset of the PNP Oslob station, am I correct or used by other station?

A: I think he is only the civilian asset of the PNP Oslob station.

Q: Is he under the payroll of the PNP Oslob?

A: No, sir.

Q: And since you answered that he is a civilian asset could you please tell the Honorable court who is his handler?

A: I do not know his handler but as far as I know he is a friend of Police Officer Saquibal and I only came across his identity in this operation.

x x x x x x x x x

Q: Was he a male or a female?

A: He is a male but I cannot divulge the name.

x x x x x x x x x

Q: By the way, how far were you from the poseur buyer?

A: 10 meters away from the poseur buyer.

Q: Based on where you are sitting will you please point the reference where the poseur buyer was standing at the time?

A: From where I am sitting up to the wall where there is a painting hung which is about 15 meters.

Q: **So based on that distance 10 to 15 meters were you able to see what transpired between the accused and your civilian poseur buyer?**

A: **We saw them exchanging something but we do not know what item they were exchanging**.

Q: You mentioned that this poseur buyer of yours is a known drug user here in Oslob, am I correct?

A: According to Officer Saquibal he is a user.

Q: You will agree with me that since he is a known drug user from time to time he has in his possession the shabu?

A: I am not sure if he has a shabu or not.

Q: So you are not sure, but what you are sure is that he is a known user?

A: Yes, that is according to PO3 Saquibal.

Q: As what you have said you are not sure that from time to time he has a shabu?

A: Maybe he does not have a shabu because he only buy if he is going to use.[38] (Emphasis supplied)

On the other hand, PO3 Saquibal testified as follows:

FISCAL MA. LUISA B. ONG: (To the Witness)

x x x x x x x x x

Q: Who was this civilian asset that you are referring to, Mr. Witness?

A: I am afraid, ma'am, I could not tell and I could not reveal his name in open court.

Q: If you could not reveal his name in open court, Mr. Witness, what can you tell about this civilian asset who you do utilize him as a civilian asset, Mr. Witness?

A: He is a drug user of course and he is a regular customer of the subject person.

Q: How were you able to identify this civilian asset, Mr. Witness?

A: He was a friend, he was my long asset.[39]

x x x x x x x x x

Q: Mr. Witness, the last thing that you have mentioned during your last testimony that you were situating yourselves, you and Police Officer Villasurda ten (10) meters away from the poseur buyer; at what place, Mr. Witness?

A. Barangay Looc, Oslob, Cebu specifically in the store owned by Rene Figues.

---

[38] TSN, December 6, 2011, pp. 12-13, 19-21.

[39] TSN, November 27, 2012, pp. 6-7.

x x x x x x x x x

Q; How did they make the transaction, Mr. Witness, between Marvin and the poseur buyer?

A: Our poseur buyer handed Marvin Madrona Otico the Five Hundred Peso bill buy-bust money to Marvin Otico.

Q: And after handing over the Five Hundred Peso bill, Mr. Witness, to Marvin Otico, what happened next?

A: In exchanged, the subject person Marvin Otico gave the plastic sachet containing white crystalline substance to our poseur buyer.

Q: Meaning to say, Mr. Witness, you can see that happening ten (10) meters away from the poseur buyer?

A: Yes, ma'am.

Q: And after Marvin Otico handed the plastic sachet containing white granules, Mr. Witness, to the poseur buyer, what happened next?

A: Our poseur buyer then as what has been agreed; he made his hand signal by scratching his head.[40]

Atty. Leo E. Sarvida (to the witness)

x x x x x x x x x

Q. Which part of the Fiquez's store where you hiding during that time at the back, at the front, at the right, at the left which side?

A. If you are heading to Cebu City facing the store, we hide ourselves at the right portion of the store covered by a very huge refrigerator.

Q: When you were hiding during that time you cannot actually hear what was talking about the accused and the poseur buyer, is that correct?

A: We can hear but just a little, we cannot exactly hear.

Q: Because of the distance where you hide, is that correct?

---

[40] TSN, January 15, 2013, pp. 4-6.

A: We can hear something but we cannot exactly hear clearly it was ten (10) meters from us.

Q: You did not hear that poseur buyer buy shabu from the accused, is that correct?

A: It was already programmed.

Q: I was asking if you have knowledge Officer Saquibal, you did not hear actually the accused saying that he was selling shabu?

A: No need for us to hear.

Q: Just answer the question "yes" or "no", you hear or you did not hear?

A: We did not hear.[41]

Given the foregoing testimonies of the two police officers, was the prosecution able to prove beyond reasonable doubt that the illegal sale of *shabu* between the unidentified civilian agent and Otico took place?

Section 2, Rule 133 of the Rules of Court provides:

SEC. 2. *Proof beyond reasonable doubt*. – In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

Both police officers, PO1 Villasurda and PO3 Saquibal, had testified that they were 10 meters away from Otico and the purported civilian agent, who acted as the poseur-buyer. PO1 Villasurda saw them "exchanging something" with the poseur-buyer handing "first the money" and "the subject also hand[ing] something to the poseur buyer."[42] PO3 Saquibal saw that the "poseur buyer handed [to] x x x Otico the Five Hundred Peso

---

[41] TSN, July 18, 2013, pp. 6-7.

[42] TSN, August 2, 2011, p. 22.

bill buy-bust money" and "[i]n exchanged (sic), x x x Otico gave the plastic sachet containing white crystalline substance to [the] poseur buyer."[43]

The version of PO3 Saquibal is incredible. Given the distance of 10 meters, it is unbelievable that a very small or tiny plastic sachet[44] can be seen being handed from one person to another. To be able to see the "white crystalline substance" with a weight of 0.02 gram inside such tiny plastic sachet is utterly impossible, unless one has "bionic eyes" or x-ray vision. Also, PO3 Saquibal's testimony wherein he was able to identify from 10 meters that the ₱500-bill, which the civilian asset allegedly handed to Otico, was the same one previously marked at the police station means that he was able to either read the serial number of the bill or see the marking "MO" thereon. Of course, that is again impossible.

PO1 Villasurda's version that he saw the handing of "money" from the civilian asset to Otico is too tentative given the fact that he used "something" as his initial description. Also, the use of the word "something" in describing what Otico handed to the civilian agent creates reasonable doubt because the description is equivocal.

The acquittal of Otico is warranted on the ground that the evidence presented by the prosecution to prove that the illegal sale of dangerous drug really took place falls terribly short of the quantum of proof beyond reasonable doubt.

In addition, the identity of the dangerous drug that Otico allegedly sold to the civilian agent is uncertain.

Nowhere is the weight of the plastic sachet containing the *shabu*, which was the object of the illegal sale, mentioned in the testimonies of police officers PO1 Villasurda and PO3

---

[43] TSN, January 15, 2013, pp. 5-6.

[44] See photograph of Otico and witnesses with the 500-bill marked money, confiscated cellphone and plastic sachet, Exh. "L-2", wherein the plastic sachet is so tiny; records, p. 14.

Saquibal. In their Affidavit of Apprehension[45] dated April 25, 2011, the weight of the "One (1) small lungitudinal (sic) size transparent plastic sachet containing white crystalline granules 'Marked MMO-1' believed to be SHABU"[46] is not specified. In the Spot Report dated "22 April 02, 2011" (Exh. "H"[47]) the "WEIGHT/VOLUME/QUANTITY" column is left blank. In the Certification dated "25 APRIL 2011" (Exh. J"[48]), the dangerous drug is described as "one (1) small longitudinal size transparent plastic sachet of white crystalline granules believed to be 'shabu'" without mention of its weight. The Certificate of Inventory dated "April 22, 2011" (Exh. "K"[49]) describes the dangerous drug as "[o]ne (1) small longitudinal size heat sealed transparent plastic sachet of white crystalline granules believed to be 'SHABU' marked MMO-1" without mention of its weight. In the Memorandum[50] dated April 22, 2011 from the Chief of Police, Oslob Police Station for the Chief PNP Regional Crime Laboratory Office (Attention: Chief Forensic Chemist) concerning the request for laboratory examination of "One (1) small longitudinal size transparent plastic sachet of white crystalline granules believed to be 'shabu' Marked MMO-1," the weight thereof is not indicated. It is only in Chemistry Report No. D-466-2011[51] issued by the PNP Regional Crime Laboratory Office 7 at Camp Sotero Cabahug, Cebu City where the weight is included in the description of the specimen submitted, to wit: "A – One (1) staple-sealed transparent plastic sachet containing: A-1 – One (1) heat-sealed transparent plastic sachet with attached markings 'MMO-1 4-22-11' with signature containing 0.02 gram white crystalline substance. xxx"

---

[45] Exh. "D", records, pp. 3-4.

[46] *Id*. at 4.

[47] *Id*. at 10.

[48] *Id*. at 12.

[49] *Id*. at 13.

[50] Exh. "A", *id*. at 125.

[51] Exh. "C", *id*. at 126.

In the PNP[52] Manual on Anti-Illegal Drugs Operation and Investigation (PNP Manual), approved by the National Police Commission in its Resolution No. 2010-094 on February 26, 2010, which provides for the standard rules to be followed by PNP members and units engaged in the enforcement of RA 9165 in support of the Philippine Drug Enforcement Agency (PDEA),[53] part of the handling of drug evidence is "the weighing of dangerous drugs, and if possible under existing conditions, with the registered weight of the evidence on the scale focused by the camera, in the presence of persons required, as provided under Section 21, Art II, RA 9165."[54]

Given the failure to indicate the weight of the *shabu* in the documents required to be accomplished in the handling of the drug evidence starting from recovery of the *shabu* from the civilian agent to the request for laboratory examination to prove the regularity of the buy-bust operation and preserve the integrity of the recovered *shabu*, and to comply with the requirement in the PNP Manual on the weighing thereof, the object of the illegal sale has clearly not been proven beyond reasonable doubt. There is thus reasonable doubt that the alleged *shabu*, which was recovered from the civilian agent and bought by the latter from Otico, might not be the same one that was delivered to the PNP Regional Crime Laboratory Office 7 for examination.

Furthermore, there are serious lapses in the police officers' compliance with Section 21, Article II of RA 9165[55] and its Implementing Rules and Regulations.

---

[52] Philippine National Police, thru Anti-Illegal Drugs Special Operations Task Force (AIDSOTF).

[53] PNP Manual on Anti-Illegal Drugs Operation and Investigation, Rule I, Sec. 2.

[54] *Id*., Rule II, Sec. 13(b).

[55] Sec. 21 of RA 9165 was subsequently amended by RA 10640, "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," which was approved on July 15, 2014. Based on the Information, the alleged violation of RA 9165 occurred on April 22, 2011. Thus, the original RA 9165 is applicable in this case.

Section 21, which embodies the procedure to be followed by a buy-bust team in the seizure, custody, handling and disposition of confiscated illegal drugs and/or paraphernalia, states in part:

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)

Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR), which added provisos to Section 21(1) of RA 9165 regarding the place of inventory and allowable deviation from the strict observance of the statutory requirements under justifiable grounds, provides:

SECTION 21. ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment***. — The PDEA shall take charge and have custody of all dangerous drugs, 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 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)

Strict observance of the requirements under Section 21 of RA 9165 and the IRR is enjoined under the PNP Manual.

Section 13, Rule II on General Rules and Procedures of the PNP Manual provides:

Section 13. Handling, Custody and Disposition of Drug Evidence

a. In the handling, custody and disposition of the evidence, the provision of Section 21, RA 9165 and its IRR shall be strictly observed.

b. Photographs of the pieces of evidence must be taken upon discovery without moving or altering its position in the place where it is situated, kept or hidden, including the process of recording the inventory and the weighing of dangerous drugs, and if possible under existing conditions, with the registered weight of the evidence on the scale focused by the camera, in the presence of persons required, as provided under Section 21, Art II, RA 9165.

c. The seizing officer must mark the evidence with his initials indicating therein the date, time and place where the evidence was found and seized. The seizing officer shall secure and preserve the

evidence in a suitable evidence bag or in an appropriate container for further laboratory examinations.

x x x x x x x x x

A – Drug Evidence

a. Upon seizure or confiscation of the dangerous drugs or controlled precursors and/or essential chemicals (CPECs), laboratory equipment, apparatus and paraphernalia, the operating unit's seizing officer/ inventory officer must conduct the physical inventory, markings and photograph the same in the place of operation in the presence of:

a. The suspect/s or the person/s from whom such items were confiscated and/or seized or his/her representative or counsel.

b. A representative from the media.

c. A representative from the Department of Justice; and

d. Any elected public official who shall affix their signatures and who shall be given copies of the inventory.

x x x x x x x x x

c. In warrantless seizures like buy-bust operations, the inventory and the taking of photographs should be done at the nearest police station or office of the apprehending officer or team. However, the apprehending authority is not precluded from conducting the inventory at the place where the drugs were seized.

d. If the said procedures in the inventory, markings and taking of photographs of the seized items were not observed, (Section 21, RA 9165), the law enforcers must present an explanation to justify non-observance of prescribed procedures and "must prove that the integrity and evidentiary value of the seized items are not tainted."

e. All the dangerous drugs and/or CPECs shall be properly marked for identification, weighed when possible or counted, sealed, packed and labeled. The items weighed in their gross weight, if already determined, should be noted on the inventory and chain of custody forms, or evidence vouchers.

f. Within the same period, the seizing/inventory officer shall prepare a list of inventory receipt of confiscation/seizure to include but not limited to the following:

1. Time, date and place of occurrence/seizure.
2. Identity of person/s arrested.
3. Identity of the seizing officer and all persons present.
4. Circumstances in which seizure took place.
5. Description of a vehicle, vessel, place or person searched where the substance was found.
6. Description of packaging, seals and other identifying features.
7. Description of quantity, volume and units and the measurement method employed.
8. Description of the substance found.
9. Description of any preliminary identification test (test kit) used and results.

Under Rule III on Specific Rules and Procedures of the PNP Manual, the seizing officer, during the Buy-Bust Phase, shall, after seizure and taking initial custody of the dangerous drugs:

f. x x x conduct the actual physical inventory, place markings and photograph the evidence in the place of operation 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;
3. A representative from the Department of Justice; and
4. Any elected public official (at least Brgy Kagawad) who shall sign, and shall be given copies of the inventory.

(Note: The presence of the above-mentioned witnesses shall only be required during the physical inventory of the confiscated items.)[56]

In warrantless searches and seizures, like buy-bust operations, the PNP Manual further provides:

---

[56] PNP Manual, Rule III, Sec. 19(B)(f).

g. In warrantless searches and seizures like buy-bust operations, the inventory and taking of photographs shall be made where the evidence or items were confiscated to properly preserve the integrity and evidentiary value of the evidence. In case of failure to do so, the conduct of inventory may be made at the nearest police station or office of the apprehending officer or team, however, they must execute a written explanation to justify non-compliance of the prescribed rules on inventory under Section 21, RA 9165. Thereafter, the arresting/seizing officer shall turn-over the arrested suspects as well as the seized articles or items of evidence to the Investigator-On-Case who shall be required to issue an acknowledgement receipt of the turnover.[57]

The failure of the police officers to comply with Section 21 of RA 9165 and its IRR as well as the PNP Manual, afore-quoted, is without question, and evident from the following statements of PO1 Villasurda and PO3 Saquibal in their testimonies.

PO1 Villasurda testified as follows:

[FISCAL MA. LUISA B. ONG: (To the Witness)]

Q After frisking and after recovering the buy bust money and the cellphone what happened next?

A PO3 Saquibal informed of his constitutional rights being an accused.

x x x x x x x x x

Q So you mean to say, Mr. Witness that after frisking and retrieving those items and also informing him of his arrest you immediately handcuffed him and brought him to the police station, correct?

A Yes, ma'am.

Q What happened Mr. Witness when you arrived at the police station, Mr. Witness?

A We made the photographing and the inventory of the said evidences.

---

[57] *Id*., Rule III, Sec. 19(B)(g).

Q Who lead the conduct of the inventory, Mr. Witness?

A PO3 Saquibal.

Q And who were present in that inventory, Mr. Witness?

A While the photographing and the inventory of the evidences were made Municipal Councilor Guillermo Zamora was present.

Q How about you Mr. Witness where were you?

A I was also present and I was the one who marked the evidences.

x x x x x x x x x

Q You mentioned that aside from the inventory and making of the spot report, Mr. Witness there was also a picture taking, Mr. Witness, who took the pictures, Mr. Witness?

A I could not recall the name of the person who took the pictures but he was the companion of the Municipal Councilor.[58]

PO3 Saquibal's version is as follows:

FISCAL MA. LUISA B. ONG: (To the Witness)

Q: After that, Mr. Witness, when you reached the police station in Oslob, what happened or transpired then?

A: We immediately made an inventory.

Q: Who were present during the conduct of the inventory, Mr. Witness?

A: I myself, PO1 Allan Villasurda, the accused and the SB member.

Q: Do you have any proof, Mr. Witness, that indeed the inventory was conducted during that time?

A: Yes, ma'am, we have the certificate of inventory and the pictures.

x x x x x x x x x

---

[58] TSN, September 27, 2011, pp. 7-10.

Q: You mentioned also that there were pictures taken, Mr. Witness x x x

x x x x x x x x x

Q: I would like to ask, Mr. Witness, who took these pictures, Mr. Witness?

A: It was PO2 Nelson Mendaros.[59]

In the Certificate of Inventory[60] dated April 22, 2011, in the spaces for the witnesses at the bottom, only the name and signature of Guillermo Rodriguez Zamora, as the "Elected Official," appear. **The spaces for the representatives from the media and DOJ are blank.** With respect to Otico, there is a note: "Refused to Sign." The Certificate of Inventory reflects PO3 Saquibal as the Team Leader and the one who prepared the same.

In fine, the following flaws or defects in the strict observance by the police officers of Section 21 of RA 9165 and its IRR are apparent:

1. The inventory and photograph taking were **not** done immediately after seizure and confiscation in the place of operation.

2. Except for the elected official, the required witnesses were **not** present during the inventory and photograph taking. Only one of the three third-party witnesses was present.

3. The police officers did **not** present justifiable grounds for their non-compliance with the required procedure and proof that the integrity and the evidentiary value of the seized items were properly preserved by them.

In *People v. Umipang*,[61] the Court stressed that:

---

[59] TSN, January 15, 2013, pp. 13-14.

[60] Exh. "K", records, p. 13.

[61] 686 Phil. 1024 (2012).

x x x the step-by-step procedure outlined under R.A. 9165 is a matter of substantive law, which cannot be simply brushed aside as a simple procedural technicality. The provisions were crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment. In *People v. Coreche*,[62] we explained thus:

> The concern with **narrowing the window of opportunity for tampering with evidence** found legislative expression in Section 21 (1) of RA 9165 on the *inventory* of seized dangerous drugs and paraphernalia by putting in place a **three-tiered requirement on the *time*, *witnesses*, and *proof* of inventory** by imposing on the apprehending team having initial custody and control of the drugs the **duty to "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.)

Consequently, in a line of cases,[63] we have lain emphasis on the importance of complying with the prescribed procedure. Stringent compliance is justified under the rule that penal laws shall be construed strictly against the government and liberally in favor of the accused.[64] Otherwise, "the procedure set out in the law will be mere lip service."[65]

x x x x x x x x x

Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted.[66] This is especially true when the lapses in

---

[62] 612 Phil. 1238, 1246 (2009).

[63] *People v. Garcia*, 599 Phil. 416, 430 (2009); citations omitted.

[64] *People v. Umipang*, *supra* note 61, at 1038-1039, citing *People v. Garcia*, *id*. at 430; citation omitted.

[65] *Id*. at 1039, citing *People v. Martin*, 675 Phil. 877, 890 (2011).

[66] *Id*. at 1053, citing *People v. Ulama*, 678 Phil. 861, 876-877 (2011).

procedure were "recognized and explained in terms of [] justifiable grounds."[67] There must also be a showing "that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason."[68] However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence.[69] This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties.[70] As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.[71]

As the Court explained in *People v. Mendoza*,[72] the deliberate taking of the identifying steps, which include marking, physical inventory and photographing of the contraband, immediately upon seizure by the police officer concerned, or, if that is not possible, as close to the time and place of the seizure as practicable under the obtaining circumstances before the insulating presence of the three third-party witnesses is aimed at preserving an unbroken chain of custody and obviating 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).[73] **The failure to do so will negate the integrity and credibility of the seizure and confiscation of the dangerous drug that is evidence of the *corpus delicti*, and adversely affected the trustworthiness of the incrimination of the accused**.[74]

---

[67] *Id*., citing *People v. Martin*, *supra* note 65, at 890.

[68] *Id*., citing *People v. Martin*, *id*.

[69] *Id*. at 1053-1054, citing *People v. Garcia*, *supra* note 63, at 436.

[70] *Id*. at 1054, citing *People v. Garcia*, *id*. at 436-437.

[71] *Id*., citing *People v. Garcia*, *id*.

[72] 736 Phil. 749 (2014).

[73] *Id*. at 761-764.

[74] *Id*. at 764.

In this case, the lapses noted above are far from being minor. They are major deviations from the statutorily mandated procedure and there was no attempt whatsoever by the prosecution, through the testimonies of the police officers, to explain why an honest-to-goodness compliance with Section 21 of RA 9165 and its IRR, as well as the PNP Manual, was unavailable under the circumstances obtaining during the buy-bust operation.

Given the unexplained major procedural lapses, the indefiniteness of the substantiation of the elements of illegal drug sale under Section 5 of RA 9165, and the questionable identification of the sachet of *shabu*, which is the purported object of the illegal sale, the Court is compelled to acquit Otico for the failure of the prosecution to prove his guilt beyond reasonable doubt. The presumption of innocence in favor of Otico stands.

As a reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with**. In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.[75]

---

[75] See *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

WHEREFORE, premises considered, the Decision dated October 26, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 02129 is **REVERSED** and **SET ASIDE**. Accused-appellant Marvin Madrona Otico is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Decision, the action he has taken. A copy shall also be furnished to the Director General of Philippine National Police for his information.

SO ORDERED.

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

Peralta, J., see separate concurring opinion.

SEPARATE CONCURRING OPINION

PERALTA, *J.*:

I concur with the *ponencia* in acquitting accused-appellant Marvin Madrona Otico of the charge of illegal sale of dangerous drugs, or violation of Section 5, Article II of Republic Act No. 9165 (*R.A. No. 9165*),[1] respectively. I agree that the prosecution failed to prove appellant's guilt beyond reasonable doubt, because the "eyewitness" accounts of the two police officers, who were admittedly ten (10) meters away from the place where the civilian agent/poseur-buyer and the appellant traded the 0.02 gram of

---

[1] "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."

suspected shabu and the ₱500.00 buy-bust money, are incredible. Moreover, the prosecution failed to provide justifiable grounds for the police officers' non-observance of the three-witness rule under Section 21[2] of R.A. No. 9165, *i.e.*, except for the elected public official, the representatives from the media and the Department of Justice were not present during the inventory photograph taking of the seized items. At any rate, I would like to emphasize on important matters relative to Section 21 of R.A. No. 9165, as amended.

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and added a saving clause in case the procedure is not followed:[3]

(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

---

[2] 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;

[3] *People v. Ramirez*, G.R. No. 225690, January 17, 2018.

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.**

It bears emphasis that R.A. No. 10640,[4] which amended Section 21 of R.A. No. 9165, now only requires **two (2) witnesses** to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; **and** (b) either a representative from the National Prosecution Service **or** the media.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe conceded 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 the increasing drug addiction and also, in the conflicting decisions of the courts."[5] Senator Poe stressed the necessity for the amendment of Section 21 based on the public hearing that the Senate Committee on Public Order and Dangerous Drugs had conducted, which revealed 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 the remote areas. For another there were instances where elected *barangay* officials themselves were involved in the punishable

---

[4] "*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*."

[5] Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

acts apprehended and thus, it is difficult to get the most grassroot-elected public official to be a witness as required by law."[6]

In his Co-sponsorship speech, Senator Vicente C. Sotto III said that in view of a substantial number of acquittals in drug-related cases due to the varying interpretations of prosecutors and 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."[7] Senator Sotto explained why the said provision should be amended:

> 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 the seized illegal drugs.
>
> x x x x x x x x x
>
> Section 21(a) of RA 9165 need 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 of illegal drugs 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.

---

[6] *Id*.

[7] *Id*.

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 where 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.[8]

However, under the original provision of Section 21 and its IRR, which is applicable at the time the appellant committed the crime charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses**, namely: (a) a representative from the media, **and** (b) the DOJ, **and**; (c) any elected public official who shall be required to sign copies of the inventory and be given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[9]

The prosecution bears the burden of proving a 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 trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law.[10] Its failure to follow the mandated procedure must be adequately

---

[8] *Id*. at 349-350.

[9] *People v. Sagana*, G.R. No. 208471, August 2, 2017.

[10] *People v. Miranda*, G.R. No. 229671, January 31, 2018; *People v. Paz,* G.R. No. 229512, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018.

explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that 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 items.[11] Strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.[12]

In this case, the prosecution never alleged and proved that the presence of all the required witnesses was not obtained for any of the following reasons, such as: (1) **their attendance was impossible because the place of arrest was a remote area**; (2) **their safety during the inventory and photograph of the seized drugs were threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf**; (3) **the elected official themselves were involved in the punishable acts sought to be apprehended**; (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125**[13] **of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention**; or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented**

---

[11] *People v. Saragena*, G.R. No. 210677, August 23, 2017.

[12] *Id*.

[13] Art. 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.

the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellant's conviction. 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 flawed because the lapses themselves are affirmative proofs of irregularity.[14] 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 found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.[15]

At this point, it is not amiss to express my position regarding the issue of which between the Congress and the Judiciary has jurisdiction to determine sufficiency of compliance with the rule on chain of custody, which essentially boils down to the application of procedural rules on admissibility of evidence. In this regard, I agree with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam*[16] that "if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to inadmissibility that would automatically destroy the prosecution's case but rather to the weight of evidence presented for each particular case." As aptly pointed out by Justice Leonardo-De Castro, the Court's power to promulgate judicial rules, including rules of evidence, is no longer shared by the Court with Congress.

---

[14] *People v. Ramirez*, *supra* note 3.

[15] *People v. Gajo*, G.R. No. 217026, January 22, 2018.

[16] G.R. No. 202206, March 5, 2018.

I subscribe to the view of Justice Leonardo-De Castro that the chain of custody rule is a matter of evidence and a rule of procedure, and that the Court has the last say regarding the appreciation of evidence. Evidentiary matters are indeed well within the powers of courts to appreciate and rule upon, and so, when the courts find appropriate, substantial compliance with the chain of custody rule as long as the integrity and evidentiary value of the seized items have been preserved may warrant the conviction of the accused.

I further submit that **the requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance. Violation of such procedure may even merit penalty under R.A. No. 9165**, to wit:

> **Section 29.** *Criminal Liability for Planting of Evidence.*— Any person who is found guilty of "planting" any dangerous drug and/or controlled precursor and essential chemical, regardless of quantity and purity, shall suffer the penalty of death.
>
> **Section 32.** *Liability to a Person Violating Any Regulation Issued by the Board.* — The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person found violating any regulation duly issued by the Board pursuant to this Act, in addition to the administrative sanctions imposed by the Board.

However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence.

SECOND DIVISION

[G.R. No. 234018. June 6, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EVANGELINE DE DIOS *y* BARRETO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED TRAFFICKING IN PERSONS (R.A. NO. 9208, AS AMENDED BY R.A. NO. 10364), SECTION 3(A) THEREOF; ELEMENTS; ESTABLISHED.— The Court dismisses the appeal. It affirms the conviction of De Dios for the crime of Qualified Trafficking in Persons under Section 3(a), in relation to Section 6(a), of R.A. No. 9208, as amended by R.A. No. 10364. Contrary to the contentions of De Dios, the prosecution was able to sufficiently establish the crime's commission. x x x In *People vs. Hirang*, the Court reiterated the following elements of the offense, as derived from Section 3(a) of R.A. No. 9208: (1) The *act* of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders"; (2) The *means* used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception or abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and (3) The *purpose* of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." In this case, the trial and appellate courts gave the same factual findings that established the foregoing.

2. REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL; IF UNCORROBORATED AND WEAK, COULD NOT OVERCOME THE WEIGHT OF THE PROSECUTION WITNESSES' TESTIMONIES, WHO DID NOT APPEAR TO HAVE ANY MOTIVE TO FALSELY TESTIFY AGAINST THE ACCUSED.— As against the solid evidence

presented by the prosecution, only De Dios testified for her defense. Her denial, however, was uncorroborated and weak. It could not overcome the weight of the prosecution witnesses' testimonies, especially those given by the investigator of NBI-AHTRAD and the agent of DOJ-IACAT. Their respective accounts pertained to the discharge of their official functions presumed under the law to have been regularly performed. They also did not appear to have any motive to falsely testify against De Dios.

3. **CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED TRAFFICKING IN PERSONS (R.A. NO. 9208, AS AMENDED BY R.A. NO. 10364), SECTION 3(A) THEREOF; WHERE THE ACCUSED TRAFFICKING IN PERSONS MAY BE COMMITTED TOOK ADVANTAGE OF THE PERSONS' VULNERABILITY AS MINORS, THROUGH THE OFFER OF FINANCIAL GAIN FOR THE ILLICIT SEXUAL TRADE.—** AAA directly explained the participation of De Dios in her prostitution even prior to the subject entrapment. De Dios convinced her to join the "*gimiks*" for the money. She was first lured to prostitution in May 2012, when De Dios offered her to a male customer and paid her ₱400.00 for the transaction. Several other transactions transpired thereafter. De Dios would transact with the customers and then pay AAA each time for her service. It did not matter that there was no threat, force, coercion, abduction, fraud, deception or abuse of power that was employed by De Dios when she involved AAA in her illicit sexual trade. AAA was still a minor when she was exposed to prostitution by the prodding, promises and acts of De Dios. Trafficking in persons may be committed also by means of taking advantage of the persons' vulnerability as minors, a circumstance that applied to AAA, which was sufficiently alleged in the information and proved during the trial. This element was further achieved through the offer of financial gain for the illicit services that were provided by AAA to the customers of De Dios.

APPEARANCES OF COUNSEL

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

D E C I S I O N

REYES, JR., *J.*:

Before the Court is an appeal from the Decision[1] dated May 12, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07879, which affirmed the Decision[2] dated October 26, 2015 of the Regional Trial Court (RTC), Branch 192 of Marikina City, finding defendant-appellant Evangeline De Dios *y* Barreto (De Dios) guilty for violation of Section 3 (a), in relation to Section 6 (a), of Republic Act (R.A.) No. 9208, otherwise known as the Anti-Trafficking in Persons Act of 2003, as amended by R.A. No. 10364.

De Dios was accused of trafficking in persons punishable under Section 4 (a), in relation to Sections 3(a) and 6(a) of R.A. No. 9208, as amended, *via* an Information dated October 14, 2013 with accusatory portion that reads:

> That on or about the 29th day of August 2013, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the accused EVANGELINE DE DIOS y BARRETO, by means of coercion, fraud, deception, abuse of power or of position, taking advantage of their vulnerability, for the purpose of exploitation, such as prostitution and other forms of sexual exploitation, did then and there willfully, unlawfully and feloniously recruit and harbor, XXX[3], 18 years old, YYY, 23 years old, and AAA, a minor (16 years old), to engage in or perform sexual intercourse or lascivious conduct with different customers upon a monetary consideration, to the damage and prejudice of the said victims.
>
> That the crime was attended by the qualifying circumstance of minority, complainant AAA being 16 years of age, and committed in large scale.

---

[1] Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Ramon R. Garcia and Henri Jean Paul B. Inting concurring; *rollo*, pp. 2-11.

[2] CA *rollo*, pp. 44-53.

[3] The real names of the victims are withheld and replaced with fictitious initials to protect their identities, as required under Section 6 of R.A. No. 9208.

CONTRARY TO LAW.[4]

Upon arraignment, De Dios pleaded not guilty to the charge. After pre-trial, trial on the merits ensued. [5]

Version of the Prosecution

AAA, who was born on October 21, 1996[6], was only 16 years old when she was peddled for sexual trade by De Dios on the evening of August 29, 2013 to Rugielito Gay (Gay) and two other male customers in Marikina City, near the Marikina River Park. De Dios approached Gay and as she introduced herself as "Vangie," asked him "*kung gusto ko daw ba gumimik*?" She explained that "*gimik*" meant having sex with a girl for ₱500.00. Negotiations ensued between Gay and De Dios, who claimed to have three girls with her. When De Dios refused to lower the price to ₱300.00, Gay handed to her the amount of ₱500.00; De Dios then called three girls who were standing by steel railings. Gay was allowed to choose from among the girls, and then selected AAA.[7]

It turned out that Gay and his companions were mere poseur customers, and that De Dios was the subject of an entrapment operation of the Anti-Human Trafficking Division (AHTRAD) of the National Bureau of Investigation (NBI). Prior to the operation, there was already information received by the NBI-AHTRAD that De Dios was peddling minors for sexual trade under the bridge at the Marikina River Park. The information was validated *via* a surveillance operation made by members of the agency, which then prompted the conduct of the entrapment operation on August 29, 2013.[8]

---

[4] CA *rollo*, p. 44.

[5] *Id*.

[6] *Id*. at 52; erroneously indicated in some parts of the records as October 21, 2006.

[7] *Id*. at 47-48.

[8] *Id*.

After the entrapment, Gay, who was actually an Intelligence Agent of the Department of Justice (DOJ) – Inter Agency Council Against Trafficking (IACAT), brought AAA to an area where personnel of the Department of Social Welfare and Development (DSWD) was waiting, and then to the AHTRAD for investigation.[9]

The accusation against De Dios was confirmed by minor AAA when she testified for the prosecution during the trial. She claimed to have known De Dios through her best friend, one Nicole, who also worked for De Dios in the latter's illegal activity. Sometime in May 2012, AAA had her first "*gimik*" with De Dios' male customer who brought her to a hotel in Antipolo City and there he had sexual intercourse with her. From then on, AAA worked for De Dios and had sex with several other male customers. She received ₱400.00 from De Dios for every transaction.[10]

On the night of the entrapment, De Dios invited AAA for a friend's *despedida* party at Lola Helen's Panciteria. Also present for the occasion were BBB, XXX, YYY, ZZZ, KKK and MMM. From there, they proceeded to the park under the Marikina bridge, where they saw De Dios approach two men and ask, "*Kuya, gigimik kayo*?" The men replied, "*Nasaan yung babae mo*?" De Dios then pointed at AAA, XXX and YYY. One man chose AAA and then gave ₱700.00 to De Dios. Thereafter, AAA and her customer took a tricycle to a McDonald's restaurant, where NBI and DSWD personnel took custody of AAA.[11]

Version of the Defense

Only De Dios testified for the defense. She claimed to have lived near the bridge in Sto Nino, Marikina City since 2008, until she moved to Rodriguez, Rizal in 2011. On August 29, 2013, at around 10:00 o'clock in the evening, she dined at Sienes

---

[9] *Id*.

[10] *Id*. at 45.

[11] *Id*.

Panciteria in Barangay Sto. Nino, Marikina City upon the invitation of a friend named Jay. On her way to the restaurant, she saw AAA, XXX, YYY and other companions. AAA told De Dios that she was hungry, and so her group joined De Dios to the restaurant.[12]

De Dios knew AAA, XXX and YYY as they used to regularly hang out by the bridge, where AAA, XXX and YYY looked for customers. Since her relocation to Rodriguez, Rizal, De Dios stopped hanging out in the area, and would visit Sto. Nino only to visit their old house.[13]

Ruling of the RTC

On October 26, 2015, the trial court rendered judgment finding De Dios guilty beyond reasonable doubt of the crime of qualified trafficking in persons. The dispositive portion of the RTC Decision reads:

> **WHEREFORE**, the court finds the accused, EVANGELINE DE DIOS *y* BARRETO, **GUILTY BEYOND REASONABLE DOUBT** of Qualified Trafficking in Persons under Section 3 (a) in relation to Section 6 (a) of Republic Act 9208 as amended by Republic act 10364. The accused is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and PAY a FINE of TWO MILLION PESOS (₱2,000,000.00). The accused is also ORDERED to pay moral damages of Five Hundred Thousand Pesos [(₱500,000.00)] and exemplary damages of One Hundred Thousand Pesos (₱100,000.00).
>
> **SO ORDERED.**[14]

Feeling aggrieved, De Dios appealed to the CA.

Ruling of the CA

On May 12, 2017, the CA rendered its Decision that affirmed the conviction of De Dios. The decretal portion of the appellate court's decision reads:

---

[12] *Id*. At 48.

[13] *Id*.

[14] *Id*. at 53.

WHEREFORE, foregoing considered, appeal is **DENIED**. The Decision of the Regional Trial Court dated October 26, 2015 in Criminal Case No. 2013-15282-MK, is hereby **AFFIRMED**.

The accused-appellant EVANGELINE DE DIOS y BARRETO, is GUILTY BEYOND REASONABLE DOUBT of Qualified Trafficking in Persons under Section 3 (a) in relation to Section 6 (a) of Republic Act 9208 as amended by Republic Act 10364 pursuant to Section 10 (c) thereof. The accused-appellant is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and pay a fine of Two Million Pesos (₱2,000,000.00). The accused-appellant is also ORDERED to pay moral damages of Five Hundred Thousand Pesos (₱500,000.00). Exemplary damages of One Hundred Thousand Pesos (₱100,000.00) is likewise ORDERED to be paid the private complainant.

SO ORDERED.[15]

Hence, this appeal.

The Present Appeal

In a Resolution[16] dated November 29, 2017, the Court required the parties to submit their respective supplemental briefs, should they so desire, within 30 days from notice. Both De Dios and the Office of the Solicitor General (OSG), as counsel of plaintiff-appellee People of the Philippines, however manifested that they would no longer file supplemental briefs and instead asked the Court to consider the briefs[17] that they respectively filed with the CA.[18]

De Dios insists on an acquittal, as she claims that the prosecution failed to prove beyond reasonable doubt that she was guilty of the crime of Qualified Trafficking in Persons under Section 3 (a) of R.A. No. 9208. AAA voluntarily peddled herself near the Marikina bridge for sexual services. De Dios

---

[15] *Rollo*, p. 10.

[16] *Id*. at 18.

[17] CA *rollo*, pp. 30-43, 59-73.

[18] *Rollo*, pp. 25-27, 21-23.

was regularly seen in the area but only because her house was situated under the bridge.[19] There was no threat, force, coercion, abduction, fraud, deception or abuse of power that was established in the case. The activities of AAA were never under the monitor or control of De Dios.[20]

This Court's Ruling

The Court dismisses the appeal. It affirms the conviction of De Dios for the crime of Qualified Trafficking in Persons under Section 3(a), in relation to Section 6(a), of R.A. No. 9208, as amended by R.A. No. 10364.

Contrary to the contentions of De Dios, the prosecution was able to sufficiently establish the crime's commission. Pertinent provisions of R.A. No. 9208, being the law that defines the crime of Trafficking in Persons, read as follows:

> **Section 3**. *Definition of Terms*. – As used in this Act:
>
> *(a) Trafficking in Persons* – refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.
>
> The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as "trafficking in persons" even if it does not involve any of the means set forth in the preceding paragraph.
>
> *(b) Child* – refers to a person below eighteen (18) years of age or one who is over eighteen (18) but is unable to fully take

---

[19] CA *rollo*, pp. 36-37.

[20] *Id.* at 37.

care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

(c) *Prostitution* – refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration.

Section 6. *Qualified Trafficking in Persons.* – The following are considered as qualified trafficking:

(a) When the trafficked person is a child;

x x x x x x x x x

Section 10(c) of the statute sets the applicable penalties for the crime, particularly:

Section 10. *Penalties and Sanctions.* – The following penalties and sanctions are hereby established for the offenses enumerated in this Act:

x x x x x x x x x

(c) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (₱2,000,000.00) but not more than Five million pesos (₱5,000,000.00)[.]

In *People vs. Hirang*, the Court reiterated the following elements of the offense, as derived from Section 3(a) of R.A. No. 9208:

(1) The *act* of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders";

(2) The *means* used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception or abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and

(3) The *purpose* of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."[21]

In this case, the trial and appellate courts gave the same factual findings that established the foregoing. The prosecution witnesses who testified during the trial included the minor child AAA, Special Investigator Doriente Durian of the NBI-AHTRAD and Intelligence Agent Gay of the DOJ-IACAT, whose testimonies matched as to how De Dios committed the crime on the evening of August 29, 2013. AAA, then still a minor, was among the girls offered in the illicit sexual trade upon the promise of financial gain for their services. The conduct of the entrapment operation became the culmination of a surveillance operation that was conducted by the NBI-AHTRAD. It was De Dios who approached and proposed a "*gimik*" to Gay, and when the latter pretended to accede to the proposal, De Dios readily accepted prepared marked money as consideration for the service.

As against the solid evidence presented by the prosecution, only De Dios testified for her defense. Her denial, however, was uncorroborated and weak. It could not overcome the weight of the prosecution witnesses' testimonies, especially those given by the investigator of NBI-AHTRAD and the agent of DOJ-IACAT. Their respective accounts pertained to the discharge of their official functions presumed under the law to have been regularly performed. They also did not appear to have any motive to falsely testify against De Dios.

AAA directly explained the participation of De Dios in her prostitution even prior to the subject entrapment. De Dios convinced her to join the "*gimiks*" for the money. She was first lured to prostitution in May 2012, when De Dios offered her to a male customer and paid her ₱400.00 for the transaction.

---

[21] G.R. No. 223528, January 11, 2017; citing *People v. Casio*, 749 Phil. 458, 472 (2014).

Several other transactions transpired thereafter. De Dios would transact with the customers and then pay AAA each time for her service.

It did not matter that there was no threat, force, coercion, abduction, fraud, deception or abuse of power that was employed by De Dios when she involved AAA in her illicit sexual trade. AAA was still a minor when she was exposed to prostitution by the prodding, promises and acts of De Dios. Trafficking in persons may be committed also by means of taking advantage of the persons' vulnerability as minors, a circumstance that applied to AAA, which was sufficiently alleged in the information and proved during the trial. This element was further achieved through the offer of financial gain for the illicit services that were provided by AAA to the customers of De Dios.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated May 12, 2017 of the Court of Appeals in CA-G.R. CR HC No. 07879 is **AFFIRMED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 234499. June 6, 2018]

RUDY L. RACPAN, *petitioner, vs.* **SHARON BARROGA-HAIGH,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; VENUE OF ACTIONS; THE NATURE OF THE ACTION

DETERMINES ITS PROPER VENUE; DISTINCTION BETWEEN A REAL AND A PERSONAL ACTION AND THEIR RESPECTIVE VENUES.— By weight of jurisprudence, the nature of an action is determined by the allegations in the complaint. In turn, the nature of the action determines its proper venue. Rule 4 of the Rules of Court provides the rules on the situs for bringing real and personal actions x x x. [W]hat determines the venue of a case is the primary objective for the filing of the case. On one hand, if the plaintiff seeks the recovery of personal property, the enforcement of a contract or the recovery of damages, his complaint is a personal action that may be filed in the place of residence of either party. On the other hand, if the plaintiff seeks the recovery of real property, or if the action affects title to real property or for the recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property, then the complaint is a real action that must be brought before the court where the real property is located.

2. ID.; ID.; ID.; AN ACTION WHICH IS NOT CONCERNED WITH THE TITLE TO OR RECOVERY OF THE REAL PROPERTY, BUT SOLELY FOR THE ANNULMENT OF A CONTRACT IS A PERSONAL ACTION THAT MAY BE FILED IN THE COURT WHERE THE PLAINTIFF OR THE RESPONDENT RESIDES.— [I]n *Chua v. Total Office Products and Services, Inc.*, this Court ruled that where the action is not intended for the recovery of real property but solely for the annulment of a contract, it is a personal action that may be filed in the court where the plaintiff or the respondent resides. x x x. In the Complaint filed with the court *a quo*, petitioner sought the nullification of the *Deed of Sale with Right to Repurchase* on the strength of this claim: he did not sign the same nor did he execute any special power of attorney in favor of his late wife to do so in his behalf. But, **as there was no allegation that the possession and title to the property have been transferred to respondent, nowhere in the Complaint did petitioner allege or pray for the recovery or reconveyance of the real property**. x x x. [A]s the Complaint was not concerned with the title to or recovery of the real property, it was a ***personal action***. Thus, Davao City, where both the petitioner and the respondent reside is the proper venue for the complaint. The appellate court therefore committed a reversible error in affirming the trial court's dismissal of the case for improper venue.

3. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; *BARANGAY* CONCILIATION; A COMPLAINT WHICH IS COUPLED WITH A PRAYER FOR THE ISSUANCE OF A PRELIMINARY INJUNCTION IS EXEMPT FROM *BARANGAY* CONCILIATION PROCEEDINGS.— As for petitioner's failure to resort to *barangay* conciliation, Section 412 of the Local Government Code (LGC) provides that parties may go directly to court where the action is coupled with provisional remedies: **SEC. 412. Conciliation. —** x x x. (b) *Where parties may go directly to court.* — The parties may go directly to court in the following instances: x x x. x x x. (3) **Where actions are coupled with provisional remedies such as preliminary injunction**, attachment, delivery of personal property, and support *pendente lite*; x x x. While there is no dispute herein that the present case was never referred to the *Barangay Lupon* for conciliation before petitioner instituted Civil Case No. 34, 742-2012, there is likewise no quibbling that his Complaint was coupled with a prayer for the issuance of a preliminary injunction. Hence, it falls among the exceptions to the rule requiring the referral to *barangay* conciliation.

4. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; GOOD FAITH IS ALWAYS PRESUMED, THUS, AN ACTION CANNOT BE DISMISSED ON ACCOUNT OF AN UNPROVEN ASSERTION OF BAD FAITH.— As good faith is always presumed, in the absence of proof of improper motive on the part of the petitioner, the Court cannot countenance the appellate court's assumption that petitioner was solely intent on evading the requirements of the LGC in applying for a preliminary injunction. This Court cannot sustain a dismissal of an action on account of an unproven assertion of bad faith.

APPEARANCES OF COUNSEL

Into Pantojan Feliciano-Braceros & Ong-Chang Law Offices for petitioner.

Cariaga Law Offices for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

This treats of the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the February 13, 2017 *Decision*[1] and August 17, 2017 *Resolution*[2] of the Court of Appeals (CA) in CA G.R. CV No. 04034-MIN. Said rulings affirmed the dismissal of the petitioner's complaint for improper venue and failure to comply with a condition precedent to its filing.

Factual Antecedents

Petitioner Rudy Racpan filed a Complaint "*For Declaration For Nullity of Deed of Sale with Right to Repurchase & Attorney's Fees*"[3] before the Regional Trial Court of Davao City, Branch 11 (RTC-Davao). In his Complaint, which was docketed as Civil Case No. 34, 742-2012, petitioner alleged that after his wife's death on November 12, 2011, he instructed their daughter to arrange his wife's important documents. In so doing, their daughter discovered a *Deed of Sale with Right to Purchase* dated March 29, 2011. The Deed of Sale was purportedly signed by him and his late wife and appeared to convey to respondent Sharon Barroga-Haigh a real property registered in his name under TCT No. T-142-2011009374 and located in Bo. Tuganay, Municipality of Carmen, Province of Davao del Norte.[4] Petitioner maintained that the Deed of Sale was falsified and fictitious as he never signed any contract, not even any special power of attorney, for the sale or conveyance

---

[1] Penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Romulo V. Borja and Ronaldo B. Martin, *rollo*, pp. 48-53.

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

[3] *Id*. at 74-85.

[4] *Id*. at 88.

of the property which is still in his possession. Thus, he prayed for the declaration of the Deed of Sale's nullity.

In her Answer with Compulsory Counterclaim,[5] respondent contended, by way of affirmative defense, that the venue of the Complaint was improperly laid and that the filing of the case lacks the mandatory requirement of Barangay Clearance. Subsequently, respondent filed a motion for preliminary hearing on her affirmative defenses.

Acting on the motion, the RTC-Davao set the case for preliminary hearing and thereafter issued an Order dated September 18, 2013[6] dismissing the petitioner's Complaint as follows:

> WHEREFORE, in view of the foregoing, the present case is hereby ORDERED DISMISSED for being improperly filed before the Regional Trial Court of Davao City and for failure to comply with a condition precedent prior to its filing.
>
> SO ORDERED.[7]

Petitioner moved for the RTC-Davao to reconsider[8] its Order dismissing the complaint but the trial court remained steadfast and denied his motion in its June 19, 2004 Order.[9] Hence, the petitioner came to the CA on appeal.[10]

Ruling of the Court of Appeals

As stated at the outset hereof, the appellate court affirmed the dismissal of the petitioner's Complaint as follows:

---

[5] *Id*. at 104-110.

[6] *Id*. at 116-117.

[7] *Id*. at 85, 117. Penned by Presiding Judge Virginia Hofileña Europa.

[8] *Id*. at 118-128.

[9] *Id*. at 129.

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

WHEREFORE, the order dated September 18, 2013 of the Regional Trial Court, Branch 11, Davao City in Civil Case No. 34,742-12 is AFFIRMED.

SO ORDERED.[11]

The CA explained that petitioner's Complaint is a real action as it wants the court to abrogate and nullify whatever right or claim the respondent might have on the property subject of the Deed of Sale. Hence, for the appellate court, Section 1, Rule 4 of the Rules of Court is applicable. Under this Rule, real actions shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved is situated. As the property involved is located in Bo. Tuganay, Municipality of Carmen, Province of Davao del Norte, the appellate court held that the Complaint should have been lodged with the RTC of Davao del Norte and not the RTC-Davao.

Further, the CA found that the petitioner's prayer for the issuance of a writ of preliminary injunction is a mere ploy to avoid the requirement of a barangay conciliation, as a mere annotation of a notice of *lis pendens* would achieve the same effect without having to undergo trial or post a bond.

In a Resolution dated August 17, 2017[12] the CA stood its ground by denying the petitioner's Motion for Reconsideration.[13]

Hence, the petitioner's present recourse, it being his contention that the Complaint he interposed with the RTC-Davao is a personal action. He maintains that his Complaint is not concerned with title to or possession of real property, as in fact, no transfer of possession or title of the real property to the respondent has occurred.[14] For the petitioner, the Complaint's venue was properly laid in Davao City where both he and the respondent reside.

---

[11] *Id*. at 53.

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

[13] *Id*. at 58-72.

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

Petitioner likewise reiterated that, as his Complaint was coupled with a prayer for the issuance of a writ of preliminary injunction, it is exempt from barangay conciliation proceedings.

Issue

The main and decisive issue for resolution is whether the CA erred in affirming the dismissal of the petitioner's Complaint.

Our Ruling

The petition is impressed with merit.

The venue was properly laid as the complaint was a personal action.

By weight of jurisprudence, the nature of an action is determined by the allegations in the complaint. In turn, the nature of the action determines its proper venue. Rule 4 of the Rules of Court provides the rules on the situs for bringing real and personal actions, viz:

Rule 4

VENUE OF ACTIONS

Section 1. Venue of real actions. — Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated.

Forcible entry and detainer actions shall be commenced and tried in the municipal trial court of the municipality or city wherein the real property involved, or a portion thereof, is situated.

Section 2. Venue of personal actions. — All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.

Expounding on the foregoing provisions, the Court delineated the basic distinction between a real and a personal action and

their respective venues in *Bank of the Philippine Islands v. Hontanosas, Jr.*,[15] stating that:

> The determinants of whether an action is of a real or a personal nature have been fixed by the *Rules of Court* and relevant jurisprudence. According to Section 1, Rule 4 of the *Rules of Court*, a real action is one that affects title to or possession of real property, or an interest therein. Such action is to be commenced and tried in the proper court having jurisdiction over the area wherein the real property involved, or a portion thereof, is situated, which explains why the action is also referred to as a local action. In contrast, the *Rules of Court* declares *all other actions* as personal actions. Such actions may include those brought for the recovery of personal property, or for the enforcement of some contract or recovery of damages for its breach, or for the recovery of damages for the commission of an injury to the person or property. The venue of a personal action is the place where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff, for which reason the action is considered a transitory one.

Otherwise stated, what determines the venue of a case is the primary objective for the filing of the case.[16] On one hand, if the plaintiff seeks the recovery of personal property, the enforcement of a contract or the recovery of damages, his complaint is a personal action that may be filed in the place of residence of either party. On the other hand, if the plaintiff seeks the recovery of real property, or if the action affects title to real property or for the recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property, then the complaint is a real action that must be brought before the court where the real property is located. Thus, in *Chua v.*

---

[15] 737 Phil. 38 (2014).

[16] *Latorre v. Latorre*, 631 Phil. 88 (2010); citing *Gochan v. Gochan*, 423 Phil. 491, 501 (2001) and *Olympic Mines and Development Corp. v. Platinum Group Metals Corporation*, G.R. Nos. 178188, 180674, 181141 & 183527, May 8, 2009; *Golden Arches Development Corp. v. St. Francis Square Holdings, Inc.*, 655 Phil. 221 (2011).

Total Office Products and Services, Inc.,[17] this Court ruled that where the action is not intended for the recovery of real property but solely for the annulment of a contract, it is a personal action that may be filed in the court where the plaintiff or the respondent resides. It held:

> Well-settled is the rule that an action to annul a contract of loan and its accessory real estate mortgage is a personal action. In a personal action, the plaintiff seeks the recovery of personal property, the *enforcement of a contract* or the recovery of damages. In contrast, in a real action, the plaintiff seeks the recovery of real property, or, as indicated in Section 2 (a), Rule 4 of the then Rules of Court, a real action is an action affecting title to real property or for the *recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property*.
>
> In the *Pascual* case, relied upon by petitioner, the contract of sale of the fishpond was assailed as fictitious for lack of consideration. We held that there being no contract to begin with, there is nothing to annul. Hence, we deemed the action for annulment of the said fictitious contract therein as one constituting a real action for the recovery of the fishpond subject thereof.
>
> We cannot, however, apply the foregoing doctrine to the instant case. Note that in *Pascual*, title to and possession of the subject fishpond had already passed to the vendee. There was, therefore, a need to recover the said fishpond. But in the instant case**, ownership of the parcels of land subject of the questioned real estate mortgage was never transferred to petitioner, but remained with TOPROS**. **Thus, no real action for the recovery of real property is involved. This being the case, TOPROS' action for annulment of the contracts of loan and real estate mortgage remains a personal action**. (emphasis supplied)

In the Complaint filed with the court *a quo*, petitioner sought the nullification of the *Deed of Sale with Right to Repurchase* on the strength of this claim: he did not sign the same nor did he execute any special power of attorney in favor of his late

---

[17] 508 Phil. 490 (2005); also cited in *Bank of the Philippine Islands v. Hontanosas, Jr.*, *supra* note 15.

wife to do so in his behalf.[18] But, **as there was no allegation that the possession and title to the property have been transferred to respondent, nowhere in the Complaint did petitioner allege or pray for the recovery or reconveyance of the real property**. Pertinent parts of the Complaint read thus:

4. Plaintiff was married to Ma. Lucila B. Racpan on 20 December 1978. The latter died on 13 November 2011 at Oroville, California...

5. Plaintiff Racpan purchased a property from his brother Lorezo L. Racpan formerly covered by Transfer Certificate of Title No. T-189893 and located at Carmen, Davao del Norte and the **said property is now covered by Transfer Certificate of Title No. T-142-2011009374**. Hereto attached and marked as Annex "B" is a copy of the **Transfer Certificate of Title No. T-142-2011009374 registered under the name of plaintiff Rudy L. Racpan**. Also attached and marked as Annex "C'" is the tax declaration of the subject property to prove that plaintiff is the owner of the same.

6. Plaintiff's wife died at Oroville, California on 12 November 2011. However, her remains were returned to Davao City, Philippines. Nonetheless, it was the daughter of the plaintiff in the person of Lani Racpan who arrived first in Davao City.

x x x x x x x x x

8. On 12 December 2011, plaintiff's daughter showed to him the subject deed of sale with right to repurchase dated 29 March 2011. Plaintiff was surprised because he did not know or has NO knowledge of the said deed of sale with right to repurchase. **When plaintiff navigated the Deed of Sale, he was surprised because his signature appearing on the same is COMPLETELY FALSIFIED....**

8.a Moreover, **plaintiff did not also execute any special power of attorney in favour of his deceased wife authoring the latter to [sell] the subject property to the defendant.**

8.b On the other hand, **the subject property is registered under the name of plaintiff Rudy Racpan and NOT TO SPOUSES**

[18] *Rollo*, p. 76.

Racpan. The words "married to Ma. Lucila B. Racpan" only signified the civil status of plaintiff to the latter.

x x x x x x x x x

9.d Evidently, from the foregoing **the (alleged) subject deed of sale with right to repurchase is NULL AND VOID as the same contains the falsified signature of the herein plaintiff**.

x x x x x x x x x

11. Plaintiff before and during the time of the execution of the subject Deed of Sale with Right to Repurchase dated 29 March 2011 NEVER MET defendant Saigh. It was only sometime in December 7 or 8, 2011 that he met defendant Saigh during the wake of his wife wherein he was introduced to the former by Orly Gabriel.

12. To date, **plaintiff is in possession of the subject property.** However, his daughter has been receiving text message from defendant requiring him to settle the said alleged obligation of his deceased wife to her.[19]

Evidently, as the Complaint was not concerned with the title to or recovery of the real property, it was a ***personal action***. Thus, Davao City, where both the petitioner and the respondent reside is the proper venue for the complaint. The appellate court therefore committed a reversible error in affirming the trial court's dismissal of the case for improper venue.

The Complaint was exempted from Barangay Conciliation Proceedings

As for petitioner's failure to resort to *barangay* conciliation, Section 412 of the Local Government Code (LGC) provides that parties may go directly to court where the action is coupled with provisional remedies:

SEC. 412. Conciliation. — (*a) Pre-condition to filing of complaint in court*. — No complaint, petition, action, or proceeding involving any matter within the authority of the lupon shall be filed or instituted directly in court or any other government office for adjudication, unless there has been a confrontation between the parties before the

---

[19] *Id*. at 75-80; emphasis supplied.

lupon chairman or the pangkat, and that no conciliation or settlement has been reached as certified by the lupon secretary or pangkat secretary as attested to by the lupon chairman or pangkat chairman or unless the settlement has been repudiated by the parties thereto.

(b) *Where parties may go directly to court*. — The parties may go directly to court in the following instances:

(1) Where the accused is under detention;

(2) Where a person has otherwise been deprived of personal liberty calling for habeas corpus proceedings;

(3) **Where actions are coupled with provisional remedies such as preliminary injunction**, attachment, delivery of personal property, and support pendente lite; and

(4) Where the action may otherwise be barred by the statute of limitations.

(c) *Conciliation among members of indigenous cultural communities*. — The customs and traditions of indigenous cultural communities shall be applied in settling disputes between members of the cultural communities.

While there is no dispute herein that the present case was never referred to the *Barangay Lupon* for conciliation before petitioner instituted Civil Case No. 34, 742-2012, there is likewise no quibbling that his Complaint was coupled with a prayer for the issuance of a preliminary injunction.[20] Hence, it falls among the exceptions to the rule requiring the referral to *barangay* conciliation.

As good faith is always presumed,[21]in the absence of proof of improper motive on the part of the petitioner, the Court cannot countenance the appellate court's assumption that petitioner was solely intent on evading the requirements of the LGC in applying for a preliminary injunction. This Court cannot sustain a dismissal of an action on account of an unproven assertion of bad faith.

---

[20] *Id*. at 83-84.

[21] *Escritor, Jr. v. Intermediate Appellate Court*, 239 Phil. 563 (1987).

WHEREFORE, the petition is **GRANTED**. The February 13, 2017 *Decision* and August 17, 2017 *Resolution* of the Court of Appeals in CA-G.R. CV No. 04034-MIN, as well as the *Orders* dated September 18, 2013 and June 19, 2004 of the Regional Trial Court of Davao City, Branch 11, in Civil Case No. 34, 742-2012 are **REVERSED** and **SET ASIDE**. Civil Case No. 34, 742-2012 is hereby ordered **REINSTATED**. The RTC is ordered to proceed with dispatch in the disposition of the mentioned case.

SO ORDERED.

Bersamin, Leonen, Martires, and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 234651. June 6, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENITO LABABO *alias* "BEN," WENEFREDO LABABO, JUNIOR LABABO (AL), and FFF,** *accused-appellants*.

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS.— Murder is defined and penalized under Art. 248 of the RPC, as amended x x x. The elements of murder are: 1. That a person was killed. 2. That the accused killed him. 3. That the killing was attended by *any* of the qualifying circumstances mentioned in Art. 248. 4. The killing is not parricide or infanticide. Thus, for the charge of murder to prosper, the prosecution must prove beyond a reasonable doubt that: (1) the offender killed the victim, (2) through treachery, or by

any of the other five qualifying circumstances, duly alleged in the Information.

2. ID.; ID.; ID.; ID.; ESTABLISHED; QUALIFYING CIRCUMSTANCE OF TREACHERY QUALIFIES THE KILLING TO MURDER; EXPOUNDED.— In the case at hand, the fact of AAA's death is undisputed. Similarly, there is no question that the killing is neither parricide nor infanticide. It has also been sufficiently established that the killing is attended with treachery. In *People v. Camat*, this Court expounded on the qualifying circumstance of treachery in this wise: There is treachery or *alevosia* 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 any defense which the offended party might make. For *alevosia* to qualify the crime to Murder, it must be shown that: (1) the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and (2) the said means, method and manner of execution were deliberately adopted. Moreover, for treachery to be appreciated, it must be present and seen by the witness right at the inception of the attack. Here, the prosecution sufficiently proved that AAA, an unarmed minor, sustained a single, but fatal wound on his back through from a firearm. This, to Us, is more than sufficient to prove that the killing is treacherous since the attack was so sudden and unexpected that AAA was not given an opportunity to defend himself.

3. ID.; ID.; FRUSTRATED MURDER; THE ACT OF KILLING BECOMES FRUSTRATED WHEN AN OFFENDER PERFORMS ALL THE ACTS OF EXECUTION WHICH COULD PRODUCE THE CRIME BUT DID NOT PRODUCE IT FOR REASONS INDEPENDENT OF HIS OR HER WILL. — The act of killing becomes frustrated when an offender performs all the acts of execution which could produce the crime but did not produce it for reasons independent of his or her will. Here, taking into consideration the fact that BBB was shot eight times with the use of a firearm and that AAA, who was with him at that time, was killed, convinces Us that the malefactor intended to take BBB's life as well. However, unlike in AAA's case, BBB survived. It was also established that he survived not because the wounds were not fatal, but

because timely medical attention was rendered to him. Definitely, BBB's survival was independent of the perpetrator's will. As such, this Court is convinced that the attack upon BBB qualifies as frustrated murder.

4. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT TO SUSTAIN CONVICTION.— In *People v. Evangelio*, We detailed the instances when a judgment of conviction can be sustained on the basis of circumstantial evidence. Thus: Circumstantial evidence, also known as indirect or presumptive evidence, refers to proof of collateral facts and circumstances whence the existence of the main fact may be inferred according to reason and common experience. Circumstantial evidence is sufficient to sustain conviction if (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; (c) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. A judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved form an unbroken chain that results in a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the perpetrator. Thus, for as long as the prosecution is able to meet the requirements for a finding of guilt beyond reasonable doubt anchored purely on circumstantial evidence, there is nothing to prevent a court from handing out a judgment of conviction.

5. ID.; CIVIL PROCEDURE; APPEALS; FINDINGS OF FACT OF THE TRIAL COURT, AS AFFIRMED BY THE APPELLATE COURT, ARE CONCLUSIVE ABSENT ANY EVIDENCE THAT BOTH COURTS IGNORED, MISCONSTRUED, OR MISINTERPRETED COGENT FACTS AND CIRCUMSTANCES OF SUBSTANCE WHICH, IF CONSIDERED, WOULD WARRANT A MODIFICATION OR REVERSAL OF THE OUTCOME OF THE CASE. — Basic is the rule that findings of fact of the trial court, as affirmed by the appellate court, are conclusive absent any evidence that both courts ignored, misconstrued, or misinterpreted cogent facts and circumstances of substance which, if considered, would warrant a modification or reversal of the outcome of the case. Since the aforementioned exceptions are not present, We are inclined to agree with the findings of the RTC and the CA.

6. CRIMINAL LAW; REVISED PENAL CODE; CONSPIRACY; REQUISITES.— Article 8 of the Revised Penal Code provides that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. To prove conspiracy, the prosecution must establish the following three requisites: (1) two or more persons came to an agreement, (2) the agreement concerned the commission of a crime, and (3) the execution of the felony was decided upon. Once conspiracy is established, the act of one becomes the act of all.

7. ID.; ID.; ID.; BASIC PRINCIPLES IN DETERMINING EXISTENCE OF CONSPIRACY.— In *Bahilidad v. People*, the Court summarized the basic principles in determining whether conspiracy exists or not. Thus: There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts. It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators. Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.

8. ID.; ID.; ID.; ONE WHO PARTICIPATES IN THE MATERIAL EXECUTION OF THE CRIME BY STANDING GUARD OR LENDING MORAL SUPPORT TO THE ACTUAL PERPETRATION THEREOF IS CRIMINALLY RESPONSIBLE TO THE SAME EXTENT AS THE ACTUAL PERPETRATOR, ESPECIALLY IF HE

DID NOTHING TO PREVENT THE COMMISSION OF THE CRIME.— While it is true that mere presence at the scene of the crime at the time of its commission, without actively participating in the conduct thereof, is insufficient to prove that the accused conspired to commit the crime, Wenefredo and FFF's act of standing near the victims and Benito, while wielding bolos, does not partake of this nature. To Our mind, their overt act of staying in close proximity while Benito executes the crime served no other purpose than to lend moral support by ensuring that no one could interfere and prevent the successful perpetration thereof. We are sufficiently convinced that their presence thereat has no doubt, encouraged Benito and increased the odds against the victims, especially since they were all wielding lethal weapons. Indeed, one who participates in the material execution of the crime by standing guard or lending moral support to the actual perpetration thereof is criminally responsible to the same extent as the actual perpetrator, especially if they did nothing to prevent the commission of the crime. Under the circumstances, there is no evidence to support a conclusion that they have nothing to do with the killing. We are, therefore, convinced that indeed, the three conspired to commit the crimes charged.

9. ID.; ID.; PRIVILEGED MITIGATING CIRCUMSTANCE OF MINORITY; APPRECIATED.— We sustain the CA's modification of the penalty imposed on FFF. The CA correctly took into account FFF's minority, he being 17 years old at the time of the commission of the crime, in reducing the period of imprisonment to be served by him. Being of said age, FFF is entitled to the privileged mitigating circumstance of minority under Article 68(2) of the RPC which provides that the penalty to be imposed upon a person under 18 but above 15 shall be the penalty next lower than that prescribed by law, but always in the proper period.

10. ID.; ID.; PENALTIES; JUVENILE JUSTICE AND WELFARE ACT OF 2006 (REPUBLIC ACT NO. 9344), SECTION 38 THEREOF; AUTOMATIC SUSPENSION OF SENTENCE ALSO APPLIES TO A CHILD IN CONFLICT WITH THE LAW WHO HAS BEEN FOUND GUILTY OF A HEINOUS CRIME, AS THE LAW DOES NOT DISTINGUISH BETWEEN A MINOR WHO HAS BEEN CONVICTED OF A CAPITAL OFFENSE AND ANOTHER

WHO HAS BEEN CONVICTED OF A LESSER OFFENSE. — We note, however, that FFF, being a minor at the time of the commission of the offense, should benefit from a suspended sentence pursuant to Section 38 of RA 9344, or the **Juvenile Justice and Welfare Act of 2006.** x x x. It is well to recall that Section 38 of the law applies regardless of the imposable penalty, since R.A. No. 9344 does not distinguish between a minor who has been convicted of a capital offense and another who has been convicted of a lesser offense. We, therefore, should also not distinguish and should apply the automatic suspension of sentence to a child in conflict with the law who has been found guilty of a heinous crime. Furthermore, the age of the child in conflict with the law at the time of the promulgation of judgment of conviction is immaterial. What matters is that the offender committed the offense when he/she was still of tender age. The promotion of the welfare of a child in conflict with the law should extend even to one who has exceeded the age limit of twenty-one (21) years, so long as he/she committed the crime when he/she was still a child. The offender shall be entitled to the right to restoration, rehabilitation and reintegration in accordance with the Act in order that he/she is given the chance to live a normal life and become a productive member of the community. FFF may thus be confined in an agricultural camp or any other training facility in accordance with Section 51 of Republic Act No. 9344, which provides that "[a] child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD." The case shall thus be remanded to the court of origin to effect appellant's confinement in an agricultural camp or other training facility, following the Court's pronouncement in *People v. Sarcia*.

11. ID.; ID.; MURDER; PROPER IMPOSABLE PENALTY.— Murder is punishable by *reclusion perpetua* to death. However, pursuant to RA No. 9346, proscribing the imposition of the death penalty, the penalty to be imposed on appellant should be *reclusion perpetua*. Applying Article 68 (2), the imposable penalty must be reduced by one degree, i.e., from *reclusion perpetua*, which is *reclusion temporal*. Being a divisible penalty,

the Indeterminate Sentence Law is applicable. To determine the **minimum** of the indeterminate penalty, *reclusion temporal* should be reduced by one degree, ***prision mayor***, which has a range of from **six (6) years and one (1) day to twelve (12) years**. The minimum of the indeterminate penalty should be **taken from the full range of** *prision mayor*. Furthermore, there being no modifying circumstances attendant to the crime, the **maximum** of the indeterminate penalty should be imposed in its **medium period** which is 14 years, eight months, and one day to 17 years and four months. The CA thus correctly imposed the penalty of imprisonment of six (6) years and one (1) day of *prision mayor* as minimum to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal* as maximum to FFF.

12. ID.; ID.; MURDER AND FRUSTRATED MURDER; CIVIL LIABILITY OF ACCUSED-APPELLANTS.— [W]e find the need to modify the damages awarded for both crimes, following *People v. Jugueta*. Thus, I. For those crimes like, Murder, Parricide, Serious Intentional Mutilation, Infanticide, and other crimes involving death of a victim where the penalty consists of indivisible penalties: 1.1 Where the penalty imposed is death but reduced to *reclusion perpetua* because of RA 9346: a. Civil indemnity - ₱100,000.00 b. Moral damages - ₱100,000.00 c. Exemplary damages - ₱100,000.00 1.2 Where the crime committed was not consummated: a. Frustrated: i. Civil indemnity - ₱75,000.00 ii. Moral damages - ₱75,000.00 iii. Exemplary damages - ₱75,000.00. It is well to mention that for FFF, Section 6 of RA 9344 expressly provides that the child in conflict with the law is still civilly liable for the crime committed. Accordingly, FFF shall pay the same amount of damages as shall be meted upon his co-accused-appellants. Thus, applying Our pronouncement in *People v. Jugueta*, in Criminal Case No. C-4460 [Murder], accused-appellants shall each pay civil indemnity in the amount of ₱100,000.00, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. As for their conviction for Frustrated Murder in Criminal Case No. C-4479, Benito and Wenefredo shall pay the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

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

VELASCO, JR., *J.*:

The Case

For consideration is an ordinary appeal from the August 31, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01992, entitled "*People of the Philippines v. Benito Lababo alias "Ben", Wenefredo Lababo, Junior Lababo (Al) and FFF"*.

The Facts

Accused-appellants Benito, Wenefredo, Junior, and FFF, all surnamed "Lababo," were charged in an Information for the crime of Murder before the Regional Trial Court (RTC), Branch 19 of Catarman, Northern Samar, docketed as Criminal Case No. C-4460, the accusatory portion of which reads:

> That on or about the 27th day of October 2007, at about 3:00 o'clock in the afternoon at (portion deleted) Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring with, confederating and mutually helping one another, armed with an unlicensed homemade shotgun locally known as "*bardog*" and with a long bolo, with deliberate intent to kill thru treachery, evident premeditation and abuse of superior strength, did then and there, willfully, unlawfully, and feloniously attack, assault and shoot AAA[2] with the use of said weapons which the accused had provided themselves for the purpose, thereby inflicting upon said AAA a gunshot wound which directly caused the death of said victim.

---

[1] Penned by Associate Justice Gabriel T. Robeniol, with the concurrence of Associate Justices Pamela Ann Abella Maxino and Pablito A. Perez.

[2] Minor victim.

CONTRARY TO LAW.[3]

Additionally, accused-appellants Benito and Wenefredo were likewise indicted with the crime of Frustrated Murder before Branch 20, RTC of Catarman, Northern Samar. Docketed as Criminal Case No. C-4479, the Information reads:

That on or about the 27th day of October, 2007, at about 3:00 o'clock in the afternoon, in (portion deleted) Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused armed with a homemade shotgun, conspiring with (sic) confederating, and mutually helping each other, with deliberate intent to kill thru treachery and evident premeditation did, then and there, willfully, unlawfully and feloniously attack, assault and shoot BBB[4] with the use of said weapon which the accused had provided themselves for the purpose, thus the accused having performed all the acts of execution which could have produced the crime of murder but did not produce it by reason of some cause independent of the will of the (sic) herein, accused, that is the timely and (sic) medical attendance to said BBB which prevented his death.

That the commission of the crime was aggravated with the use of an unlicensed firearm.

CONTRARY TO LAW.[5]

On January 26, 2009, accused-appellants pleaded not guilty to the charge of murder in Criminal Case No. C-4460. As for Criminal Case No. C-4479, Benito and Wenefredo pleaded not guilty to the charge of frustrated murder on April 21, 2009. Junior, however, remained at large.[6]

Upon joint motion of the prosecution and the defense, the cases were consolidated.

---

[3] *Rollo*, p. 6.

[4] AAA's father.

[5] *Rollo*, pp. 6-7.

[6] CA *rollo*, p. 96.

Prosecution's version

According to the prosecution, the facts surrounding the incident are as follows:

On October 27, 2007, at around 3:00 in the afternoon, BBB, his wife CCC,[7] and their son AAA, alighted from a motorcycle in front of Benito's house, some fifty (50) meters away from their residence, and proceeded directly to go to their house. A few minutes later, CCC heard a gunshot accompanied by a child's scream emanating from near Benito's house. When she went outside to check, she saw her husband and son lying on the ground, wounded. Within close proximity is Benito holding a 29-inch gun locally known as "*bardog*" together with Wenefredo, FFF, and Junior, all armed with bolos. Jesus Caparal corroborated these accounts, saying that he was nearby when the incident occurred and that after hearing gunshots, he proceeded to his house. On the way there, he saw Benito holding a "*bardog*", with the three each holding a bolo, while AAA and BBB were lying on the ground. He reported the incident to the Barangay Tanod.[8]

CCC ran towards Barangay Malobago to seek help from Vice Mayor Diodato Bantilo. The latter went to the crime scene with CCC, at which point, CCC lost consciousness. Vice Mayor Bantilo brought the two (2) victims to the hospital. AAA was declared dead on arrival. BBB survived the gunshot wounds on his left wrist, right leg, and left buttock, but was confined at the hospital for one (1) month. DDD, CCC's adopted daughter, reported the incident to the police authorities of Northern Samar.[9]

Dr. Candelaria Castillo, the attending physician of the victims, issued the *Post Mortem Report* on AAA declaring that he sustained a single but fatal gunshot wound on his back, injuring

---

[7] AAA's mother.

[8] CA *rollo*, p. 97.

[9] *Id*.

his lungs, which resulted in cardiopulmonary arrest, leading to his immediate death.[10]

As for her finding on BBB, in the *Medico-Legal Certificate*, it is stated that he sustained eight (8) non-fatal gunshot wounds in the different parts of his body, signifying that he was moving at the time of the shooting. The doctor stated that if BBB was not given timely medical attention, he would have died from his wounds.[11]

CCC suggested that the possible cause for the shooting was the boundary dispute between BBB and his brothers, Benito and Wenefredo.[12]

Version of the defense

For their part, the three denied the charges against them.

According to Wenefredo, he was fishing with a certain Rudy Castro at the time of the incident. He claims that it was only around 6:00 pm of that day when he learned of the shooting when DDD came to his house to borrow money for the hospital expenses.[13]

As for Benito, he claims that he was at home fixing his motorcycle with FFF's help when the incident happened. According to him, their house is at least twelve (12) kilometers away from (information deleted). He also posits that he only knew of the incident three (3) days later. As for the alleged boundary dispute, Benito states that he was not involved therein.[14]

In his defense, FFF claimed that on the day of the incident, he was helping with the chores in their house.[15]

---

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

[11] *Id*. at 98.

[12] *Id*.

[13] *Id*.

[14] *Id*. at 99.

[15] *Id*.

RTC Ruling

In its Decision[16] dated July 8, 2014, the RTC found accused-appellants guilty of murder. Benito and Wenefredo were also found guilty for the crime of frustrated murder. According to the trial court, despite the fact that there was no eyewitness to the actual commission of the crime, the combination of the circumstantial evidence points out to accused-appellants as the perpetrators and conspirators.[17] The *fallo* of the Decision reads:

> From all the foregoing, the Court finds the accused BENITO LABABO @ BEN, WENEFREDO LABABO and FFF, in Crim. Case No. C-4460 are also (sic) found guilty beyond reasonable doubt of Murder and hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to pay the private complainant each the amount of ₱50,000.00 civil indemnity, ₱50,000.00 moral damages, ₱25,000.00 exemplary damages and to pay the costs.
>
> Accused BENITO LABABO @ BEN and WENEFREDO LABABO in Crim. Case No. C-4479 are also found guilty of the (sic) frustrated murder beyond reasonable doubt, and are sentenced to suffer an indeterminate penalty of imprisonment of EIGHT (8) YEARS and ONE (1) DAY of prision mayor medium as minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal as maximum, and to pay the amount of ₱25,000.00 as temperate damages, P40,000.00 as moral damages, ₱30,000.00 exemplary damages and to pay the costs.
>
> SO ORDERED.[18]

CA Ruling

On appeal, the CA affirmed the RTC's findings.

According to the CA, convictions may be anchored on circumstantial evidence as long as the series of circumstances duly proved are consistent with each other and that each and every circumstance is consistent with the accused's guilt and

---

[16] Penned by Presiding Judge Norma Megenio-Cardenas.

[17] CA *rollo*, p. 99.

[18] *Id*. at 94.

inconsistent with his innocence. Applying this, the CA found that the circumstances proved by the prosecution lead to no other conclusion than that the accused-appellants were the assailants and are, therefore, guilty of the crimes charged.[19]

The CA likewise found that the elements for the crime of murder are all present in the killing of AAA, noting that it was done with treachery, the attack being sudden and unexpected, leaving AAA defenseless. As for the charge of frustrated murder, the CA agreed with the finding of the RTC that although the wounds sustained by BBB were not fatal, the sheer number thereof made the totality of said injuries fatal. The CA noted the attending physician's testimony that one of the wounds, located at the posterior lumbar area, was located in the area of a vital organ which could cause his death if it would not be treated.[20]

Anent the theory that the accused-appellants conspired to kill the victims, the CA held that the pieces of circumstantial evidence establish a common criminal design—that is, to harm and kill the victims. The appellate court added that although the victims only sustained gunshot wounds from Benito's *bardog*, and not from the bolos held by the three, the fact that they stayed together while wielding said bladed weapons are enough to demonstrate their common evil intent to threaten, harm, and eventually assault the victims.[21]

With respect to the penalties and damages imposed, the CA affirmed the penalty meted upon Benito and Wenefredo. But for FFF, the appellate court noted that he was 17 years old at the time of the commission of the crime thus, being a minor, Article 68 (2) of the Revised Penal Code, which states that the penalty next lower than that prescribed by law shall be imposed upon a person over fifteen and under eighteen, but always in the proper period, shall apply to him. After following said

---

[19] *Id*. at 101-102.

[20] *Id*. at 104.

[21] *Id*. at 105.

provision and the Indeterminate Sentence Law, the CA held, the range of penalty for FFF is *prision mayor* in any of its period, as minimum, to *reclusion temporal* in its medium period, as maximum.[22] The CA thus modified the RTC's ruling by imposing upon FFF for his commission of the crime of murder the penalty of imprisonment of six (6) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum.

As to the damages awarded, the CA modified the amounts thereof to the following to conform to recent jurisprudence and imposed legal interest at the rate of six percent (6%) per annum on all damages awarded, from the date of finality of the judgment until fully paid.[23]

The *fallo* of the Decision reads:

WHEREFORE, premises considered, the instant appeal is **DENIED.** The assailed 8 July 2014 *Decision* of the Regional Trial Court, Branch 19, of Catarman, Northern Samar is **AFFIRMED with MODIFICATIONS** as follows:

In Criminal Case No. C-4460, accused-appellants Benito Lababo, Wenefredo Lababo and FFF are held GUILTY beyond reasonable doubt of the crime of *Murder.* Accused-appellants Benito Lababo and Wenefredo Lababo are sentenced to suffer the penalty of *Reclusion Perpetua* while FFF, being a minor at the time of the commission of the crime, shall suffer the penalty of six (6) years and one (1) day of *prision mayor* as minimum to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal* as maximum. Said accused-appellants are also ordered to pay private complainant the amounts of Php75,000.00 as civil indemnity, Php75,000.00 as moral damages, Php30,000.00 as exemplary damages, and Php25,000.00 as temperate damages.

In Criminal Case No. C-4479, accused-appellants Benito Lababo and Wenefredo Lababo are held GUILTY beyond reasonable doubt of *Frustrated Murder* and are hereby sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision*

---

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

[23] *Id*. at 107.

mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum. They are also ordered to pay private complainant the amounts of Php40,000.00 as moral damages, Php25,000.00 as temperate damages, and Php20,000.00 as exemplary damages.

All monetary awards for damages shall earn interest at the legal rate of 6% *per annum* from date of finality of this *Decision* until fully paid.

SO ORDERED.[24]

The Issue

Whether or not the CA erred in affirming the RTC's finding that accused-appellants are guilty of the crimes charged.

Our Ruling

The instant appeal is without merit.

Conviction anchored on circumstantial evidence

Murder is defined and penalized under Art. 248 of the RPC, as amended, which provides:

> ART. 248. *Murder*. Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
>
> 2. In consideration of a price, reward, or promise;
>
> 3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
>
> 4. On occasion of any calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;

---

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

5. With evident premeditation;

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

The elements of murder are:

1. That a person was killed.

2. That the accused killed him.

3. That the killing was attended by *any* of the qualifying circumstances mentioned in Art. 248.

4. The killing is not parricide or infanticide.

Thus, for the charge of murder to prosper, the prosecution must prove beyond a reasonable doubt that: (1) the offender killed the victim, (2) through treachery, or by any of the other five qualifying circumstances, duly alleged in the Information.[25]

In the case at hand, the fact of AAA's death is undisputed. Similarly, there is no question that the killing is neither parricide nor infanticide. It has also been sufficiently established that the killing is attended with treachery. In *People v. Camat,* this Court expounded on the qualifying circumstance of treachery in this wise:

There is treachery or *alevosia* 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 any defense which the offended party might make. For *alevosia* to qualify the crime to Murder, it must be shown that: (1) the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and (2) the said means, method and manner of execution were deliberately adopted. Moreover, for treachery to be appreciated, it must be present and

---

[25] *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010.

seen by the witness right at the inception of the attack.[26] (Citations omitted)

Here, the prosecution sufficiently proved that AAA, an unarmed minor, sustained a single, but fatal wound on his back through from a firearm. This, to Us, is more than sufficient to prove that the killing is treacherous since the attack was so sudden and unexpected that AAA was not given an opportunity to defend himself.

As for BBB's case, We agree with the RTC and CA's factual finding that the eight gunshot wounds sustained by BBB, as contained in the *Medico-Legal Certificate*, would have caused his death if he was not given timely medical attention.[27] Furthermore, it does not appear that BBB was armed or was in a position to deflect the attack. As a matter of fact, based on CCC's narration of the events that transpired, the suddenness of the attack upon AAA and BBB cannot be denied. Only that, unlike AAA, BBB survived.

The act of killing becomes frustrated when an offender performs all the acts of execution which could produce the crime but did not produce it for reasons independent of his or her will.[28]

Here, taking into consideration the fact that BBB was shot eight times with the use of a firearm and that AAA, who was with him at that time, was killed, convinces Us that the malefactor intended to take BBB's life as well. However, unlike in AAA's case, BBB survived. It was also established that he survived not because the wounds were not fatal, but because timely medical attention was rendered to him. Definitely, BBB's survival was independent of the perpetrator's will. As such, this Court is convinced that the attack upon BBB qualifies as frustrated murder.

---

[26] *People v. Camat,* G.R. No. 188612, July 30, 2012.

[27] CA *rollo*, p. 98.

[28] See *Cirera v. People*, G.R. No. 181843, July 14, 2014.

What is left to be determined, therefore, is whether indeed it was Benito who fired the shot that took AAA's life and inflicted upon BBB eight wounds that could have killed him as well. In this respect, for one reason or another, no eyewitness was presented. The evidence to support accused-appellant's conviction are, therefore, circumstantial evidence.

Convictions based entirely on circumstantial evidence are not new. In *People v. Evangelio*,[29] We detailed the instances when a judgment of conviction can be sustained on the basis of circumstantial evidence. Thus:

> Circumstantial evidence, also known as indirect or presumptive evidence, refers to proof of collateral facts and circumstances whence the existence of the main fact may be inferred according to reason and common experience. Circumstantial evidence is sufficient to sustain conviction if (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; (c) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. A judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved form an unbroken chain that results in a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the perpetrator.

Thus, for as long as the prosecution is able to meet the requirements for a finding of guilt beyond reasonable doubt anchored purely on circumstantial evidence, there is nothing to prevent a court from handing out a judgment of conviction.

In the present case, We are sufficiently convinced that accused-appellant Benito is guilty of the crimes charged. As found by the RTC and affirmed by the CA, the prosecution were able to establish the following facts:

1. On October 27, 2007, gunshots, accompanied by a child's scream, were heard emanating from near Benito's house;
2. After such, the victims AAA and BBB were seen lying on the ground, wounded;

---

[29] G.R. No. 181902, August 31, 2011.

3. While the victims were sprawled on the ground, Benito was seen standing near them, holding a 29-inch "*bardog*" together with Wenefredo, FFF, and Junior, all armed with bolos;

4. AAA died from a single gunshot wound to the back; and

5. BBB sustained eight (8) gunshot wounds.

Basic is the rule that findings of fact of the trial court, as affirmed by the appellate court, are conclusive absent any evidence that both courts ignored, misconstrued, or misinterpreted cogent facts and circumstances of substance which, if considered, would warrant a modification or reversal of the outcome of the case.[30] Since the aforementioned exceptions are not present, We are inclined to agree with the findings of the RTC and the CA.

Furthermore, although none of the witnesses were able to testify on the actual shooting and BBB was not presented as a witness, still, the prosecution's evidence formed a coherent narration of the events that transpired that the only logical conclusion thereon is that it was Benito who shot the two victims. Aside from Benito being seen standing near the sprawled bodies of the victims while holding a firearm and that the wounds sustained by the victims emanated from a firearm, there is no evidence that there was another person there who was wielding a firearm and who could have fired the shots at the victims.

With these, We find no error on the ruling of both the RTC and the CA that it was Benito who attacked AAA and BBB.

On the alleged conspiracy

Having settled the issue on whether it was indeed Benito who fired at the victims, We shall now determine whether, as held by the RTC and the CA, accused-appellants conspired to commit the crimes charged.

---

[30] *People v. Badriago*, G.R. No. 183566, May 8, 2009.

Article 8 of the Revised Penal Code provides that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. To prove conspiracy, the prosecution must establish the following three requisites: (1) two or more persons came to an agreement, (2) the agreement concerned the commission of a crime, and (3) the execution of the felony was decided upon. Once conspiracy is established, the act of one becomes the act of all.[31]

In *Bahilidad v. People*,[32] the Court summarized the basic principles in determining whether conspiracy exists or not. Thus:

> There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.
>
> It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators. Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.

Here, it was established that Wenefredo and FFF were present at the scene of the crime, both wielding a bolo. However, it was also established that their alleged participation thereat did

---

[31] *People v. Tolentino*, G.R. No. 139179, April 3, 2002.

[32] G.R. No. 185195, March 17, 2010, 615 SCRA 597.

not go beyond being present and holding said weapons. As a matter of fact, both the victims only sustained gunshot wounds. The question now is this: Is Wenefredo and FFF's mere presence at the scene of the crime, while armed with bolos, sufficient to prove beyond reasonable doubt that they conspired with Benito to commit the crimes imputed against them?

We rule in the affirmative.

While it is true that mere presence at the scene of the crime at the time of its commission, without actively participating in the conduct thereof, is insufficient to prove that the accused conspired to commit the crime, Wenefredo and FFF's act of standing near the victims and Benito, while wielding bolos, does not partake of this nature.

To Our mind, their overt act of staying in close proximity while Benito executes the crime served no other purpose than to lend moral support by ensuring that no one could interfere and prevent the successful perpetration thereof.[33] We are sufficiently convinced that their presence thereat has no doubt, encouraged Benito and increased the odds against the victims, especially since they were all wielding lethal weapons.

Indeed, one who participates in the material execution of the crime by standing guard or lending moral support to the actual perpetration thereof is criminally responsible to the same extent as the actual perpetrator, especially if they did nothing to prevent the commission of the crime.[34] Under the circumstances, there is no evidence to support a conclusion that they have nothing to do with the killing. We are, therefore, convinced that indeed, the three conspired to commit the crimes charged.

On the penalties imposed

Finding that the RTC erred in the penalty imposed on FFF, the CA made the following modifications, noting that FFF was 17 years old at the time of the commission of the crime, thus:

---

[33] See *People v. Campos*, G.R. No. 176061, July 4, 2011.

[34] *Id*.

WHEREFORE, premises considered, the instant appeal is **DENIED.** The assailed 8 July 2014 *Decision* of the Regional Trial Court, Branch 19, of Catarman, Northern Samar is **AFFIRMED with MODIFICATIONS** as follows:

In Criminal Case No. C-4460, accused-appellants Benito Lababo, Wenefredo Lababo and FFF are held GUILTY beyond reasonable doubt of the crime of *Murder.* Accused-appellants Benito Lababo and Wenefredo Lababo are sentenced to suffer the penalty of *Reclusion Perpetua* while FFF, being a minor at the time of the commission of the crime, shall suffer the penalty of six (6) years and one (1) day of *prision mayor* as minimum to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal* as maximum. Said accused-appellants are also ordered to pay private complainant the amounts of Php75,000.00 as civil indemnity, Php75,000.00 as moral damages, Php30,000.00 as exemplary damages, and Php25,000.00 as temperate damages.

In Criminal Case No. C-4479, accused-appellants Benito Lababo and Wenefredo Lababo are held GUILTY beyond reasonable doubt of *Frustrated Murder* and are hereby sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum. They are also ordered to pay private complainant the amounts of Php40,000.00 as moral damages, Php25,000.00 as temperate damages, and Php20,000.00 as exemplary damages.

All monetary awards for damages shall earn interest at the legal rate of 6% *per annum* from date of finality of this *Decision* until fully paid.

SO ORDERED.[35] (underscoring ours)

We sustain the CA's modification of the penalty imposed on FFF.

The CA correctly took into account FFF's minority, he being 17 years old at the time of the commission of the crime, in reducing the period of imprisonment to be served by him. Being of said age, FFF is entitled to the privileged mitigating

---

[35] CA *rollo*, pp. 108-109.

circumstance of minority under Article 68(2) of the RPC which provides that the penalty to be imposed upon a person under 18 but above 15 shall be the penalty next lower than that prescribed by law, but always in the proper period.[36]

Murder is punishable by *reclusion perpetua* to death.[37] However, pursuant to RA No. 9346, proscribing the imposition of the death penalty, the penalty to be imposed on appellant should be *reclusion perpetua.* Applying Article 68 (2), the imposable penalty must be reduced by one degree, i.e., from *reclusion perpetua*, which is *reclusion temporal*. Being a divisible penalty, the Indeterminate Sentence Law is applicable. To determine the **minimum** of the indeterminate penalty, reclusion temporal should be reduced by one degree, ***prision mayor***, which has a range of from **six (6) years and one (1) day to twelve (12) years**. The minimum of the indeterminate penalty should be **taken from the full range of prision mayor.** Furthermore, there being no modifying circumstances attendant to the crime, the **maximum** of the indeterminate penalty should be imposed in its **medium period**[38] which is 14 years, eight months, and one day to 17 years and four months.[39]

The CA thus correctly imposed the penalty of imprisonment of six (6) years and one (1) day of *prision mayor* as minimum to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal* as maximum to FFF.

As for the penalties imposed on Benito and Wenefredo anent their conviction for Murder and Frustrated Murder, there is no reason to disturb the RTC and CA's ruling thereon.

Suspended sentence

We note, however, that FFF, being a minor at the time of the commission of the offense, should benefit from a suspended

---

[36] See *People v. Ancajas*, G.R. No. 199270, October 21, 2015.

[37] Art. 248, Revised Penal Code.

[38] See *People v. Ancajas*, *supra* note 36.

[39] Art. 76, Revised Penal Code.

sentence pursuant to Section 38 of RA 9344, or the **Juvenile Justice and Welfare Act of 2006. Said provision reads**:

SEC. 38. ***Automatic Suspension of Sentence.*** – Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, **instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application**: ***Provided, however*, That suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.**

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law. (emphasis ours)

It is well to recall that Section 38 of the law applies regardless of the imposable penalty, since R.A. No. 9344 does not distinguish between a minor who has been convicted of a capital offense and another who has been convicted of a lesser offense. We, therefore, should also not distinguish and should apply the automatic suspension of sentence to a child in conflict with the law who has been found guilty of a heinous crime.[40]

Furthermore, the age of the child in conflict with the law at the time of the promulgation of judgment of conviction is immaterial. What matters is that the offender committed the offense when he/she was still of tender age. The promotion of the welfare of a child in conflict with the law should extend even to one who has exceeded the age limit of twenty-one (21) years, so long as he/she committed the crime when he/she was still a child. The offender shall be entitled to the right to restoration, rehabilitation and reintegration in accordance with the Act in order that he/she is given the chance to live a normal life and become a productive member of the community.[41]

---

[40] *People v. Ancajas*, *supra* note 36; citing *People v. Sarcia*, 615 Phil. 97, 128 (2009).

[41] *Id*.; citing *People v. Jacinto*, 661 Phil. 224 (2011).

FFF may thus be confined in an agricultural camp or any other training facility in accordance with Section 51 of Republic Act No. 9344, which provides that "[a] child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD." The case shall thus be remanded to the court of origin to effect appellant's confinement in an agricultural camp or other training facility, following the Court's pronouncement in *People v. Sarcia*.[42]

On the damages awarded

Lastly, We find the need to modify the damages awarded for both crimes, following *People v. Jugueta*.[43] Thus,

I. For those crimes like, Murder, Parricide, Serious Intentional Mutilation, Infanticide, and other crimes involving death of a victim where the penalty consists of indivisible penalties:

1.1 Where the penalty imposed is death but reduced to *reclusion perpetua* because of RA 9346:

a. Civil indemnity – ₱100,000.00

b. Moral damages – ₱100,000.00

c. Exemplary damages – ₱100,000.00

1.2 Where the crime committed was not consummated:

a. Frustrated:

i. Civil indemnity – ₱75,000.00

ii. Moral damages –₱ 75,000.00

iii. Exemplary damages –₱ 75,000.00.

It is well to mention that for FFF, Section 6 of RA 9344 expressly provides that the child in conflict with the law is

---

[42] *Id*.

[43] G.R. No. 202124, April 5, 2016.

still civilly liable for the crime committed.[44] Accordingly, FFF shall pay the same amount of damages as shall be meted upon his co-accused-appellants.

Thus, applying Our pronouncement in *People v. Jugueta*,[45] in Criminal Case No. C-4460 [Murder], accused-appellants shall each pay civil indemnity in the amount of ₱100,000.00, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.

As for their conviction for Frustrated Murder in Criminal Case No. C-4479, Benito and Wenefredo shall pay the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

WHEREFORE, premises considered, the appeal is **DISMISSED**. The August 31, 2016 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01992 is hereby **AFFIRMED with MODIFICATION**. The dispositive portion of the assailed Decision, as modified, shall read:

In Criminal Case No. C-4460, accused-appellants Benito Lababo, Wenefredo Lababo and FFF are held GUILTY beyond reasonable doubt of the crime of *Murder.* Accused-appellants Benito Lababo and Wenefredo Lababo are sentenced to suffer the penalty of *Reclusion Perpetua,* [while the case against FFF, being a minor at the time of the commission of the crime, shall be remanded to the court of origin

---

[44] **SEC. 6.** ***Minimum Age of Criminal Responsibility.*** – A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws. (emphasis ours)

[45] *Supra*.

for appropriate disposition in accordance with Section 51 of Republic Act No. 9344.]

Each of the accused-appellants are ordered to pay private complainant the amounts of [₱100,000.00] as civil indemnity, [₱100,000.00] as moral damages, [₱100,000.00] as exemplary damages.

In Criminal Case No. C-4479, accused-appellants Benito Lababo and Wenefredo Lababo are held GUILTY beyond reasonable doubt of *Frustrated Murder* and are hereby sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum. They are also ordered to pay private complainant the amounts of [₱75,000.00] as civil damages, [₱75,000.00] as moral damages, and [₱75,000.00] as exemplary damages.

All monetary awards for damages shall earn interest at the legal rate of 6% *per annum* from date of finality of this *Decision* until fully paid.

SO ORDERED.

Bersamin, Leonen, Martires, and *Gesmundo, JJ.,* concur.

INDEX

INDEX

into a contract or transaction manifestly and grossly disadvantageous to the government; whether or not a person is a director or an officer of a corporation, so long as he or she is the party responsible for the offense, he or she is the party that ought to be charged. (Canlas *vs*. Bongolan, G.R. No. 199625, June 6, 2018) p. 293

Section 3(g) — The Court rules that respondents cannot be held liable under Sec. 3(g) of R.A. No. 3019; in *Froilan v. Sandiganbayan*, this Court enumerated the elements of the offense as follows: "(a) that the accused is a public officer; (b) that he [or she] entered into a contract or transaction on behalf of the government; and (c) that such contract or transaction is grossly and manifestly disadvantageous to the government"; in the case at bar, respondents exercised due diligence and sound business judgment before executing the sale; and although it is not an element to the offense, the sale does not seem to be tainted with any partiality, bad faith, or negligence; the law requires that the contract must be grossly and manifestly disadvantageous to the government or that it be entered into with malice. (Canlas *vs*. Bongolan, G.R. No. 199625, June 6, 2018) p. 293

APPEALS

Appeal from quasi-judicial agencies to the Court of Appeals — The decisions of the Director of Lands "as to questions of fact shall be conclusive when approved by the Secretary of Agriculture and Commerce"; This respect accorded to the factual findings of an administrative body is echoed in Rule 43, Sec. 10 of the Rules of Civil Procedure; This Court has consistently accorded respect and even finality to the findings of fact of administrative bodies, in recognition of their expertise and technical knowledge over matters falling within their jurisdiction; Rule 43, Sec. 10 of the Rules of Civil Procedure provides that findings of fact of a quasi-judicial agency, when supported by substantial evidence, shall be binding on the Court of Appeals; Consequently, the Court of Appeals did not err in upholding the findings of fact of the Department of

(People *vs*. Delociembre *y* Andales, G.R. No. 226485, June 6, 2018) p. 832

–– The trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, it having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies; this rule finds even more stringent application where the findings are sustained by the CA, as in this case; this general rule has recognized exceptions considering that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. (People *vs*. Ferrer *y* Remoquillo, G.R. No. 213914, June 6, 2018) p. 527

Appeal in labor cases –– In labor cases, an appeal by an employer is perfected only by filing a bond equivalent to the monetary award; Art. 229 [223] of the Labor Code; purpose of requiring an appeal bond; an appeal bond determined by the National Labor Relations Commission to be "irregular or not genuine" shall cause the immediate dismissal of the appeal; however, while the procedural rules strictly require the employer to submit a genuine bond, an appeal could still be perfected if there was substantial compliance with the requirement. (Malcaba *vs*. Prohealth Pharma Phils., Inc., G.R. No. 209085, June 6, 2018) p. 460

Factual findings of labor tribunals –– Dismissals under the Labor Code have two facets: the legality of the act of dismissal, which constitutes substantive due process; and the legality of the manner of dismissal, which constitutes procedural due process; the only issue to be resolved is the legality of the act of dismissal by re-examining the facts and evidence on record; given that the Court is not a trier of facts, and the scope of its authority under Rule 45 of the Rules of Court is confined only to errors of law and does not extend to questions of fact, which are for

findings of the court below. (People *vs*. Badillos, G.R. No. 215732, June 6, 2018) p. 572

Mixed question of law and fact –– "Negligence, that is, a failure to comply with some duty of care owed by one to another, is a mixed question of law and fact"; there is a question of law as to the duty of care owed by a defendant to a plaintiff; the existence of negligence, however, is determined by facts and evidence, which makes it a question of fact; the review of a finding of negligence involves a question of fact. (Cancio *vs*. Performance Foreign Exchange Corp., G.R. No. 182307, June 6, 2018) p. 212

Petition for review on certiorari to the Supreme Court under Rule 45 – Questions of fact will not be entertained by this Court, as it is not its function to analyze and weigh evidence all over again; the petitioner is bringing into issue the correct fair market value of the properties, which is a question of fact; such a question cannot be raised in a Petition for Review on Certiorari under Rule 45; the Court has laid down exceptions to this rule; petitioner must prove, not merely assert, that any of the exceptions is present in this case. (Canlas *vs*. Bongolan, G.R. No. 199625, June 6, 2018) p. 293

–– The existence or non-existence of bad faith is a factual inquiry; in this respect, the Petition is infirm for raising a question of fact, which is outside the scope of the Court's discretionary power of review in Rule 45 petitions; while questions of fact have been entertained by the Court in justifiable circumstances, the Petition is bereft of any allegation to show that the case is within the allowable exceptions. (Gov. Cerilles *vs*. Civil Service Commission, G.R. No. 180845, June 6, 2018) p. 183

–– The matters raised in this Petition are questions of fact not proper in a Rule 45 petition; petitions for review on certiorari may only raise questions of law; this Court may review factual issues if any of the following is present: "(1) When the findings are grounded entirely on speculation, surmises or conjectures; (2) when the

Warrantless arrest — A lawful arrest may be effected with or without a warrant; with respect to the latter, the parameters of Sec. 5, Rule 113 of the Revised Rules of Criminal Procedure should – as a general rule – be complied with; this provision identifies three (3) instances when warrantless arrests may be lawfully effected: (a) an arrest of a suspect in flagrante delicto; (b) an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; and (c) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another. (Reyes *y* Capistrano *vs*. People, G.R. No. 229380, June 6, 2018) p. 945

—— In warrantless arrests made pursuant to Sec. 5 (a), Rule 113, two (2) elements must concur, namely: (a) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is done in the presence or within the view of the arresting officer; on the other hand, Sec. 5 (b), Rule 113 requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it; in both instances, the officer's personal knowledge of the fact of the commission of an offense is essential; absent any overt act showing the commission of a crime, the warrantless arrest is rendered invalid, as in a case where a person was apprehended for merely carrying a bag and traveling aboard a jeepney without acting suspiciously; *People v. Racho*, cited. (*Id*.)

—— Neither has the prosecution established the conditions set forth in Sec. 5 (b), Rule 113, particularly, that the arresting officer had personal knowledge of any fact or circumstance indicating that the accused had just committed a crime; "personal knowledge" is determined from the testimony of the witnesses that there exist

—— Rule 65, Sec. 1 of the Rules of Court requires that there be "no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law" available before a petition for certiorari can be filed; in labor cases, it was necessary to first file a motion for reconsideration before resorting to a petition for certiorari since the National Labor Relations Commission's rules of procedure provided for this remedy; the same rule has since applied to civil cases through Estate of Salvador Serra Serra, regardless of the absence of a provision in the Rules of Court requiring a motion for reconsideration even for interlocutory orders; thus, the general rule, in all cases, "is that a motion for reconsideration is a sine qua non condition for the filing of a petition for *certiorari*"; there are, however, recognized exceptions to this rule, namely: "(a) where the order is a patent nullity, as where the Court *a quo* had no jurisdiction; (b) where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were ex parte or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved." (Banco Filipino Savings and Mortgage Bank *vs*. Bangko Sentral ng Pilipinas, G.R. No. 200678, June 4, 2018) p. 27

—— The Rules of Court categorically provide that petitions for *certiorari* involving acts or omissions of a quasi-judicial agency "shall be filed in and cognizable only by

CLERKS OF COURT

Dereliction of duty — Dereliction of duty may be classified as gross or simple neglect of duty or negligence; simple neglect of duty means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference"; in contrast, gross neglect of duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty. (Office of the Court Administrator *vs*. Calija, A.M. No. P-16-3586 [Formerly A.M. No. 14-4-43-MCTC], June 5, 2018) p. 123

Functions — As chief administrative officers of their respective courts, they are entrusted to perform delicate functions with regard to the collection of legal fees, and as such, are expected to implement regulations correctly and effectively; they act as custodians of court funds, and as such, they are required to immediately deposit the funds which they receive in their official capacity to the authorized government depositories for they are not supposed to keep such funds in their custody. (Office of the Court Administrator *vs*. Calija, A.M. No. P-16-3586 [Formerly A.M. No. 14-4-43-MCTC], June 5, 2018) p. 123

— The Manual for Clerks of Court provides that the clerk of court is the administrative officer of the court who controls and supervises the safekeeping of court records, exhibits, and documents, among others; Rule 136, Sec. 7 of the Rules of Court further provides that the clerk of court shall safely keep all records, papers, files, exhibits, and public property committed in his charge; Sec. 1 of Canon IV of the Code of Conduct for Court Personnel stresses that court personnel shall at all times perform official duties properly and diligently. (Office of the Court Administrator *vs*. Inmenzo, A.M. No. P-16-3617, June 6, 2018) p. 143

failed to establish the unbroken chain of custody. (People *vs*. Sood *y* Amatondin, G.R. No. 227394, June 6, 2018) p. 850

—— Sec. 21, Art. II of R.A. No. 9165 prescribes the procedure to be followed by the apprehending officers in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia; R.A. No. 9165 was later amended by R.A. No. 10640, which was approved on July 15, 2014; the original version of Sec. 21 applies in this case; Sec. 21(a), Art. II of the Implementing Rules and Regulations of R.A. No. 9165 filled in the details as to the prescribed place of inventory and photographing; the provision also added a saving clause in case of non-compliance with the requirements under justifiable grounds. (People *vs*. Callejo *y* Tadeja, G.R. No. 227427, June 6, 2018) p. 881

—— Sec. 21, Art. II of R.A. No. 9165 provides the procedural safeguards that the apprehending team should observe in the handling of seized illegal drugs in order to preserve their identity and integrity as evidence; "as indicated by their mandatory terms, strict compliance with the prescribed procedure is essential and the prosecution must show compliance in every case"; here, the buy-bust team failed to strictly comply with the prescribed procedure under Sec. 21, par. 1. (People *vs*. Suarez *y* Cabuso, G.R. No. 223141, June 6, 2018) p. 779

—— Sec. 21 of R.A. No. 9165 is a critical means to ensure the establishment of the chain of custody by providing for the procedures to be followed in the seizure, custody and disposition of confiscated, seized and/or surrendered drugs and/or drug paraphernalia; *People v. Dela Cruz*, cited; compliance with the requirements forecloses opportunities for planting, contaminating, or tampering of evidence in any manner; non-compliance, on the other hand, is tantamount to failure in establishing the identity of *corpus delicti*, an essential element of the offense of illegal sale of dangerous drugs, thus, engendering the acquittal of an accused; the law allows such non-

—— Jurisprudence is consistent as to the elements that the prosecution needs to prove beyond reasonable doubt in order to secure a conviction for illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165, *viz*: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor; in all prosecutions for violations of R.A. No. 9165, the *corpus delicti* is the dangerous drug itself, the existence of which is essential to a judgment of conviction; its identity must be clearly established beyond reasonable doubt to prove its case against the accused. (People *vs*. Ferrer *y* Remoquillo, G.R. No. 213914, June 6, 2018) p. 527

—— R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, being the law in place at the time of the commission of the offense and being more favorable to the accused than its successor, R.A. No. 10640, shall apply in this case; Sec. 3(ii), Art. I of R.A. No. 9165 defines "selling" as any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration; in the context of a buy-bust operation, its elements are 1) that the transaction or sale took place between the accused and the poseur buyer; and 2) that the dangerous drugs subject of the transaction or sale is presented in court as evidence of the *corpus delicti*. (People *vs*. Ga-a *y* Coronado, G.R. No. 222559, June 6, 2018) p. 731

Inventory and photographing of seized items —— Sec. 21(a), Art. II of the Implementing Rules and Regulations of R.A. No. 9165 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

for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. (People *vs*. Ferrer *y* Remoquillo, G.R. No. 213914, June 6, 2018) p. 527

—— The following links must be established by the prosecution: "first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court"; "the failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the corpus delicti and suffices to rebut the presumption of regularity in the performance of official duties." (People *vs*. Suarez *y* Cabuso, G.R. No. 223141, June 6, 2018) p. 779

Physical inventory and photographing of the seized illegal drugs —— Sec. 21 requires the apprehending team to "immediately after seizure and confiscation, physically inventory and photograph the seized illegal drugs in the presence of the accused or his representative or counsel, a representative from the media and the Department of Justice (DOJ) and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof"; the phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be at the place of apprehension and/or seizure. (People *vs*. Ga-a *y* Coronado, G.R. No. 222559, June 6, 2018) p. 731

Section 21 —— Following the IRR of R.A. No. 9165, the courts may allow a deviation from the mandatory requirements of Sec. 21 in exceptional cases, 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

there are special and important reasons therefor; in *Rama v. Moises*, the Court recognized the following exceptions to the strict application of the rule on hierarchy of courts: "x x x (a) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (b) when the issues involved are of transcendental importance; (c) cases of first impression; (d) when the constitutional issues raised are best decided by this Court; (e) when the time element presented in this case cannot be ignored; x x x"; while the Court notes that the Petition presents, at the very least, a case of first impression, novelty alone cannot cure the inherent defects of the Petition. (Mercado *vs*. Hon. Lopena, G.R. No. 230170, June 6, 2018) p. 972

Jurisdiction — In all civil actions which involve title to, or possession of, real property, or any interest therein, the RTC shall exercise exclusive original jurisdiction where the assessed value of the property exceeds 20,000.00 or, for civil actions in Metro Manila, where such value exceeds 50,000.00; for those below the foregoing threshold amounts, exclusive jurisdiction lies with the Metropolitan Trial Courts (MeTC), Municipal Trial Courts (MTC), or Municipal Circuit Trial Courts (MCTC); thus, the determination of the assessed value of the property, which is the subject matter of the partition, is essential; according to Foronda-Crystal, failure to allege the assessed value of a real property in the complaint would result to a dismissal of the case; reason. (Agarrado *vs*. Librando-Agarrado, G.R. No. 212413, June 6, 2018) p. 513

CRIMINAL PROCEDURE

Proof beyond reasonable doubt — The legal principle constantly upheld in our jurisprudence is that in all criminal cases, the presumption of innocence of an accused is a constitutional right that should be upheld at all times; case law trenchantly maintains that the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution; while not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required in criminal

EMPLOYMENT, TERMINATION OF

Due process requirement –– The due process requirement is not a mere formality that may be dispensed with at will; to meet the requirements of due process, the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected, *i.e.*: (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice after due hearing which informs the employee of the employer's decision to dismiss him. (Gopio *vs*. Bautista, G.R. No. 205953, June 6, 2018) p. 411

Illegal dismissal — In termination disputes or illegal dismissal cases, it has been established by Philippine law and jurisprudence that the employer has the burden of proving that the dismissal is for just and valid causes; and failure to do so would necessarily mean that the dismissal was not justified and is, therefore, illegal; taking into account the character of the charges and the penalty meted to an employee, the employer is bound to adduce clear, accurate, consistent, and convincing evidence to prove that the dismissal is valid and legal; this is consistent with the principle of security of tenure as guaranteed by the Constitution and reinforced by Art. 292(b) of the Labor Code of the Philippines. (Gopio *vs*. Bautista, G.R. No. 205953, June 6, 2018) p. 411

Just or authorized causes –– Art. 294 [279] of the Labor Code provides that an employer may terminate the services of an employee only upon just or authorized causes; Art. 297 [282] enumerates the just causes for termination, among which is "fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative"; loss of trust and confidence is a just cause to terminate either managerial employees or rank-and-file employees who regularly handle large amounts of money or property in the regular exercise of their functions; for an act to be considered a loss of trust and confidence, it must be first, work-related, and second,

which deceives or is intended to deceive another so that he shall act upon it to his legal injury"; *People v. Reyes*, cited. (Batac *vs*. People, G.R. No. 191622, June 6, 2018) p. 279

–– Jurisprudence has consistently held that *estafa* under Art. 315, par. 2(d) of the RPC consists of the following elements: (1) the offender has post-dated or issued a check in payment of an obligation contracted at the time of the postdating or issuance; (2) at the time of postdating or issuance of said check, the offender has no funds in the bank or the funds deposited are not sufficient to cover the amount of the check; and (3) the payee has been defrauded. (*Id*.)

–– While sourced from the same act, *i.e.*, the issuance of a check subsequently dishonored, *estafa* and violation of B.P. Blg. 22 are separate and distinct from each other because they pertain to different causes of action; the Court has held that, among other differences, damage and deceit are essential elements for *estafa* under Art. 315 2(d) of the RPC, but are not so for violation under B.P. Blg. 22, which punishes the mere issuance of a bouncing check. (*Id*.)

Penalty — The penalty imposed by the CA must be modified in view of the amendments embodied in R.A. No. 10951, to wit: "Sec. 85. Art. 315 of the same Act, as amended by R.A. No. 4885, P.D. No. 1689, and P.D. No. 818, is hereby further amended to read as follows: Art. 315. Swindling (*estafa*). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by: x x x 3rd; penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum period, if such amount is over Forty thousand pesos (40,000) but does not exceed One million two hundred thousand pesos (1,200,000)"; application. (Batac *vs*. People, G.R. No. 191622, June 6, 2018) p. 279

EVIDENCE

INTEGRATED BAR OF THE PHILIPPINES

Jurisdiction — The accountability of respondents as officials performing or discharging their official duties as lawyers of the Government is always to be differentiated from their accountability as members of the Philippine Bar; the IBP has no jurisdiction to investigate them as such lawyers. (Trovela *vs*. Robles, A.C. No. 11550, June 4, 2018) p. 1

INTELLECTUAL PROPERTY CODE (IPC)

Distinctions between mark and copyright — The controversy revolves around the SAKURA mark which is not a copyright; the distinction is significant; a mark is any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise, and includes a stamped or marked container of goods; in contrast, a copyright is the right to literary property as recognized and sanctioned by positive law; explained. (Kensonic, Inc. *vs*. Uni-Line Multi-Resources, Inc. (Phil.), G.R. Nos. 211820-21, June 6, 2018) p. 495

Section 123 — The prohibition under Sec. 123 of the Intellectual Property Code extends to goods that are related to the registered goods, not to goods that the registrant may produce in the future; in *Mighty Corporation v. E. & J. Gallo Winery*, the Court has identified the different factors by which to determine whether or not goods are related to each other for purposes of registration: (a) the business (and its location) to which the goods belong (b) the class of product to which the goods belong (c) the product's quality, quantity, or size, including the nature of the package, wrapper or container; (d) the nature and cost of the articles; (e) the descriptive properties, physical attributes or essential characteristics with reference to their form, composition, texture or quality (f) the purpose of the goods; (g) whether the article is bought for immediate consumption, that is, day-to-day household items; (h) the fields of manufacture; (i) the conditions under which the article is usually purchased; and (j) the channels of trade through which the goods flow, how

writs necessary to maintain and exercise its jurisdiction, to the exclusion of all other courts; once the Court of Tax Appeals acquired jurisdiction over petitioner's appeal, the Court of Appeals would have been precluded from taking cognizance of the case. (Phil. Ports Authority *vs*. City of Davao, G.R. No. 190324, June 6, 2018) p. 265

Jurisdiction over the res –– The partition of real estate is an action quasi in rem; for the court to acquire jurisdiction in actions quasi in rem, it is necessary only that it has jurisdiction over the res; *Macasaet v. Co, Jr.*, cited; in *De Pedro v. Romansan Development Corporation*, the Court clarified that while this is so, "to satisfy the requirements of due process, jurisdiction over the parties in *in rem* and *quasi in rem* actions is required." (Heirs of Ernesto Morales *vs*. Agustin, G.R. No. 224849, June 6, 2018) p. 795

Jurisdiction over the subject matter –– In determining whether a case is incapable of pecuniary estimation, the case of *Cabrera vs. Francisco*, in reiterating the case of *Singson vs. Isabela Sawmill*, teaches that identifying the nature of the principal action or remedy sought is primarily necessary; 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. (Agarrado *vs*. Librando-Agarrado, G.R. No. 212413, June 6, 2018) p. 513

JUVENILE JUSTICE AND WELFARE ACT OF 2006 (R.A. NO. 9344)

Section 38 –– The accused, being a minor at the time of the commission of the offense, should benefit from a suspended sentence pursuant to Sec. 38 of R.A. No. 9344, or the Juvenile Justice and Welfare Act of 2006; Sec. 38 of the law applies regardless of the imposable penalty, since R.A. No. 9344 does not distinguish between a minor who has been convicted of a capital offense and another who has been convicted of a lesser offense; the promotion of the welfare of a child in conflict with the law should

MURDER AND FRUSTRATED MURDER

Civil liability of accused — The court finds the need to modify the damages awarded for both crimes, following *People v. Jugueta*; discussed; Sec. 6 of R.A. No. 9344 expressly provides that the child in conflict with the law is still civilly liable for the crime committed; accordingly, the accused shall pay the same amount of damages as shall be meted upon his co-accused-appellants. (People *vs.* Lababo *alias* "Ben", G.R. No. 234651, June 6, 2018) p. 1056

NEW CENTRAL BANK ACT (R.A. NO. 7653)

Closed bank under receivership — A closed bank under receivership can only sue or be sued through its receiver, the Philippine Deposit Insurance Corporation; when the Monetary Board finds a bank insolvent, it may "summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution"; the relationship between the Philippine Deposit Insurance Corporation and a closed bank is fiduciary in nature; Sec. 30 of R.A. No. 7653 directs the receiver of a closed bank to "immediately gather and take charge of all the assets and liabilities of the institution" and "administer the same for the benefit of its creditors"; the law likewise grants the receiver "the general powers of a receiver under the Revised Rules of Court"; Rule 59, Sec. 6 of the Rules of Court. (Banco Filipino Savings and Mortgage Bank *vs.* Bangko Sentral ng Pilipinas, G.R. No. 200678, June 4, 2018) p. 27

— Philippine Deposit Insurance Corporation's participation would have been necessary, as it had the duty to conserve petitioner's assets and to examine any possible liability that petitioner might undertake under the Business Plan; PDIC also safeguards the interests of the depositors in all legal proceedings; when banks become insolvent, depositors are secure in the knowledge that they can still recoup some part of their savings through PDIC; thus, PDIC's participation in all suits involving the

OFFICE OF THE OMBUDSMAN

Powers — Sec. 13, Art. XI of the Constitution enumerates the powers, functions, and duties of the Office of the Ombudsman; also stated in Sec. 15 of R.A. No. 6770 or the Ombudsman Act of 1989; Sec. 13, paragraphs (1) and (5), Art. XI of the Constitution state: Sec. 13. The Office of the Ombudsman shall have the following powers, functions and duties: (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient; (5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents; the Office of the Ombudsman may also ask for the assistance of a government agency, like the COA in this case, to carry out its duties. (Pasok, Jr. *vs*. Office of the Ombudsman–Mindanao, G.R. No. 218413, June 6, 2018) p. 719

—— The law allows the filing of cases to the Ombudsman against public officers by any complainant; the Ombudsman is a tool to maintain this faith; this particular State interest must also be balanced with two (2) other State interests, which arise after the filing of a case against a public officer or employee: (i) the State interest in affording due process to all persons; and (ii) the State interest in assuring efficiency of government functions, particularly through the protection of its officers from harassment. (Canlas *vs*. Bongolan, G.R. No. 199625, June 6, 2018) p. 293

—— Under Art. XI, Sec. 12 of the 1987 Constitution, the Ombudsman has the power to act on any complaint against those in public service; Sec. 15(1) of R.A. No. 6770 states that no matter the identity of the complainant, the Ombudsman may act on the matter; it may, on its own, inquire into illegal acts of public officials, which may be discovered from any source; for administrative complaints, however, if the "the complainant has no

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC) (2000)

Assessment of disability — The POEA-SEC clearly provides the primary responsibility of a company-designated physician to determine the disability grading or fitness to work of seafarers; to be conclusive, however, company-designated physicians' medical assessments or reports must be complete and definite to give the proper disability benefits to seafarers; *Monana v. MEC Global Shipmanagement and Manning Corp.*, cited. (Orient Hope Agencies, Inc. *vs*. Jara, G.R. No. 204307, June 6, 2018) p. 380

—— While the assessment of a company-designated physician *vis à vis* the schedule of disabilities under the POEA-SEC is the basis for compensability of a seafarer's disability, it is still subject to the periods prescribed in the law; in *Carcedo v. Maine Marine Philippines, Inc.*, this Court declared that a partial and permanent disability could, by legal contemplation, become total and permanent when a company-designated physician fails to arrive at a definite assessment within the 120- or 240-day periods prescribed under Art. 198 [192](c)(1) of the Labor Code and the Amended Rules on Employee Compensation, implementing Book IV, Title II of the Labor Code; total disability and permanent disability, defined; here, the respondent is entitled, under the law, to permanent and total disability compensation; non-compliance with the third-doctor-referral provision as provided in the POEA-SEC will not prejudice respondent's claim. (*Id*.)

Assessment of injury or illness — The only instance when the assessment of a company-designated physician may be challenged is when the seafarer likewise consulted with his personal physician who issued a different assessment; the conflicting assessments shall be settled by referring the matter to a neutral third-party physician, whose assessment shall be final and binding, pursuant to

(Orient Hope Agencies, Inc. *vs*. Jara, G.R. No. 204307, June 6, 2018) p. 380

—— In the case of *Crew and Ship Management International, Inc. v. Soria*, the Court explained that the employment of seafarers, including claims for death and disability benefits, is governed by the contracts they sign every time they are hired or rehired, and as long as the stipulations therein are not contrary to law, morals, public order or public policy, they have the force of law between the parties; the petitioner's disability was due to an injury he sustained while engaged in the performance of his work as respondent's employee; although the Court has always been vigilant in ensuring that the rights of seafarers are protected, it is likewise keen in upholding labor laws; the entitlement of an overseas seafarer to disability benefits is governed by (1) the law, (2) the employment contract, and (3) the medical findings of the company-designated physician. (Tulabing *vs*. MST Marine Services (Phils.), Inc., G.R. No. 202113, June 6, 2018) p. 363

—— It is settled that the entitlement of a seafarer on overseas employment to disability benefits is governed by law, by the parties' contracts, and by the medical findings; by law, the relevant statutory provisions are Arts. 197 to 199 (formerly Arts. 191 to 193) of the Labor Code in relation to Sec. 2 (a), Rule X of the Amended Rules on Employee Compensation; by contract, the material contracts are the POEA-SEC, the parties' Collective Bargaining Agreement, if any, and the employment agreement between the seafarer and the employer; here, pursuant to Sec. 20 (A) of the 2010 POEA-SEC, the employer is liable for disability benefits when the seafarer suffers from a work-related injury or illness during the term of his contract. (Philsynergy Maritime, Inc. *vs*. Gallano, Jr., G.R. No. 228504, June 6, 2018) p. 922

Occupational disease and resulting disability or death —— Sec. 20 (A) of the 2010 POEA-SEC provides that a seafarer shall be entitled to compensation if he suffers from a work-related injury or illness during the term of

official records, and second, a certificate of land classification status issued by the Community Environment and Natural Resources Office (CENRO) or the Provincial Environment and Natural Resources Office (PENRO) based on the land classification approved by the DENR Secretary. (*Id*.)

PUBLIC LAND ACT (C.A. NO. 141)

Director of Lands — The Director of Lands, under the immediate control of the Secretary of Agriculture and Commerce, now the Department of Environment and Natural Resources Secretary, has executive control over the survey, classification, lease, concession, disposition, and management of lands under the public domain; the Director of Lands is empowered to put in place such rules and regulations, which would best carry out the provisions of the Public Land Act. (Galindez *vs*. Firmalan, G.R. No. 187186, June 6, 2018) p. 244

Lands of the public domain — The prevailing rule is that the applicant must clearly establish the existence of a positive act of the government, such as a presidential proclamation or an executive order; an administrative action, investigation reports of Bureau of Lands investigators, and a legislative act or a statute to prove the alienable and disposable nature of the subject land; a certification alone is not sufficient in proving the subject land's alienable and disposable nature; a PENRO and/or CENRO certification must be accompanied by a copy of the original classification, certified as a true copy by the legal custodian of the official records, which: (a) released the subject land of the public domain as alienable and disposable, and (b) was approved by the DENR Secretary. (Rep. of the Phils. *vs*. Jabson, G.R. No. 200223, June 6, 2018) p. 346

Miscellaneous sales application — There is nothing in the miscellaneous sales application which forbade the applicant from entering into or occupying the lot being applied for; Instead, what the miscellaneous sales application provides is an acknowledgment from the

pertained to the President; in either case, the authority may also pertain to the Office of the Ombudsman, which similarly exercises disciplinary jurisdiction over them as public officials pursuant to Sec. 15, par. 1, of R.A. No. 6770 (Ombudsman Act of 1989). (Trovela *vs*. Robles, A.C. No. 11550, June 4, 2018) p. 1

Duties and powers — Public officers and employees are expected to uphold public interests; as such, they are held to higher standards not usually required of ordinary citizens to keep the faith of the people in the State; in case of administrative offenses, it is the character of the public officers or employees that is looked into; objective. (Canlas *vs*. Bongolan, G.R. No. 199625, June 6, 2018) p. 293

Grave misconduct –– "Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer"; to be considered grave misconduct, the transgression must have been committed in bad faith; malice is a necessary element in the offense of grave misconduct; it is the element of corruption and a clear intent to flagrantly disregard an established rule or violate the law that characterizes grave misconduct; these elements must be proven by substantial evidence. (Canlas *vs*. Bongolan, G.R. No. 199625, June 6, 2018) p. 293

QUALIFIED TRAFFICKING IN PERSONS (R.A. NO. 9208, AS AMENDED BY R.A. NO. 10364)

Section 3(a) –– The Court affirms the conviction of the accused for the crime of Qualified Trafficking in Persons under Sec. 3(a), in relation to Sec. 6(a), of R.A. No. 9208, as amended by R.A. No. 10364; contrary to the contentions of the accused, the prosecution was able to sufficiently establish the crime's commission; in *People vs. Hirang*, the Court reiterated the following elements of the offense, as derived from Sec. 3(a) of R.A. No. 9208: (1) The act of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders"; (2) The means used which include "threat or use of force,

community tax certificate or cedula is no longer considered as a valid and competent evidence of identity; rationale. (Dandoy *vs*. Atty. Edayan, A.C. No. 12084, June 6, 2018) p. 132

–– The 2004 Rules on Notarial Practice provides that a notary public should not notarize a document unless the signatory to the document is in the notary's presence personally at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity; Sec. 12, Rule II of the same rules defines "competent evidence of identity". (*Id*.)

–– The statements made by the witnesses to the documents as regards the identity of the persons do not comply with the 2004 Notarial Rules' requirements on competent evidence of identity; Sec. 12 clearly states that the credible witness/es making the oath – as to the identity of the individual subscribing the document – must: not be a privy to the document, *etc*.; personally know/s the individual subscribing; and, must either be (a) personally known to the notary public, or (b) must show to the notary public a photograph-and-signature-bearing identification document. (*Id*.)

SEARCHES AND SEIZURES

Probable cause –– "Sec. 2, Art. III of the 1987 Constitution mandates that a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure become 'unreasonable' within the meaning of said constitutional provision; Sec. 3 (2), Art. III of the 1987 Constitution provides that evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding; one of the recognized exceptions to the need of a warrant before a search may be effected is a search incidental to a lawful arrest; in this instance, the law requires that there first be a lawful arrest before a search

deliberately adopted. (People *vs*. Lababo *alias* "Ben", G.R. No. 234651, June 6, 2018) p. 1056

— Treachery is present 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; a finding of the existence of treachery should be based on clear and convincing evidence; in the absence of proof beyond reasonable doubt that treachery attended the killing of the victim, the crime is homicide, not murder. (People *vs*. Badillos, G.R. No. 215732, June 6, 2018) p. 572

As an aggravating circumstance — The mere fact that the attack was inflicted when the victim had his back turned will not in itself constitute treachery; when there is no evidence that the accused had, prior to the moment of the killing, resolved to commit the crime, or there is no proof that the death of the victim was the result of meditation, calculation or reflection, treachery cannot be considered; the suddenness of attack does not, of itself, suffice to support a finding of treachery, even if the purpose was to kill, so long as the decision was made all of a sudden and the victim's helpless position was accidental. (People *vs*. Francisco *y* Villagracia, G.R. No. 216728, June 4, 2018) p. 111

— Treachery is present when the offender commits any of the crimes against persons, 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 conditions must be present: 1) the employment of means of execution that gave the person attacked no opportunity to defend himself or to retaliate; and 2) the means of execution were deliberately or consciously adopted. (*Id*.)

Elements — For treachery to be appreciated, two elements must concur: first, the malefactor employed such means,

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

Page

B. STATUTES

Page

Page

Page

Page

Page

Page

Page

C. OTHERS

D. BOOKS

(Local)

Page

Paras, Civil Code of the Philippines Annotated, 12th Edition, Volume 3, p. 18 75
II Edgardo L. Paras, Civil Code of the Philippines Annotated 33-34 (10th Ed. 1981) 711, 713
Ernesto L. Pineda, Law on Property 32-33 (2009) 711
Luis B. Reyes, The Revised Penal Code Criminal Code, Book Two, 17th Ed., p. 496 (2008) 119
2 Arturo M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines 30 (1992) 711

II. FOREIGN AUTHORITIES

BOOKS

Black's Law Dictionary, Centennial Edition., 6th Ed. West Group, St. Paul Minnesota, USA, 1990, p. 336 505
Oxford Dictionary of Business 63 (2nd Ed. 1996) 330